

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.
21 -----x

May 1, 1995
9:55 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

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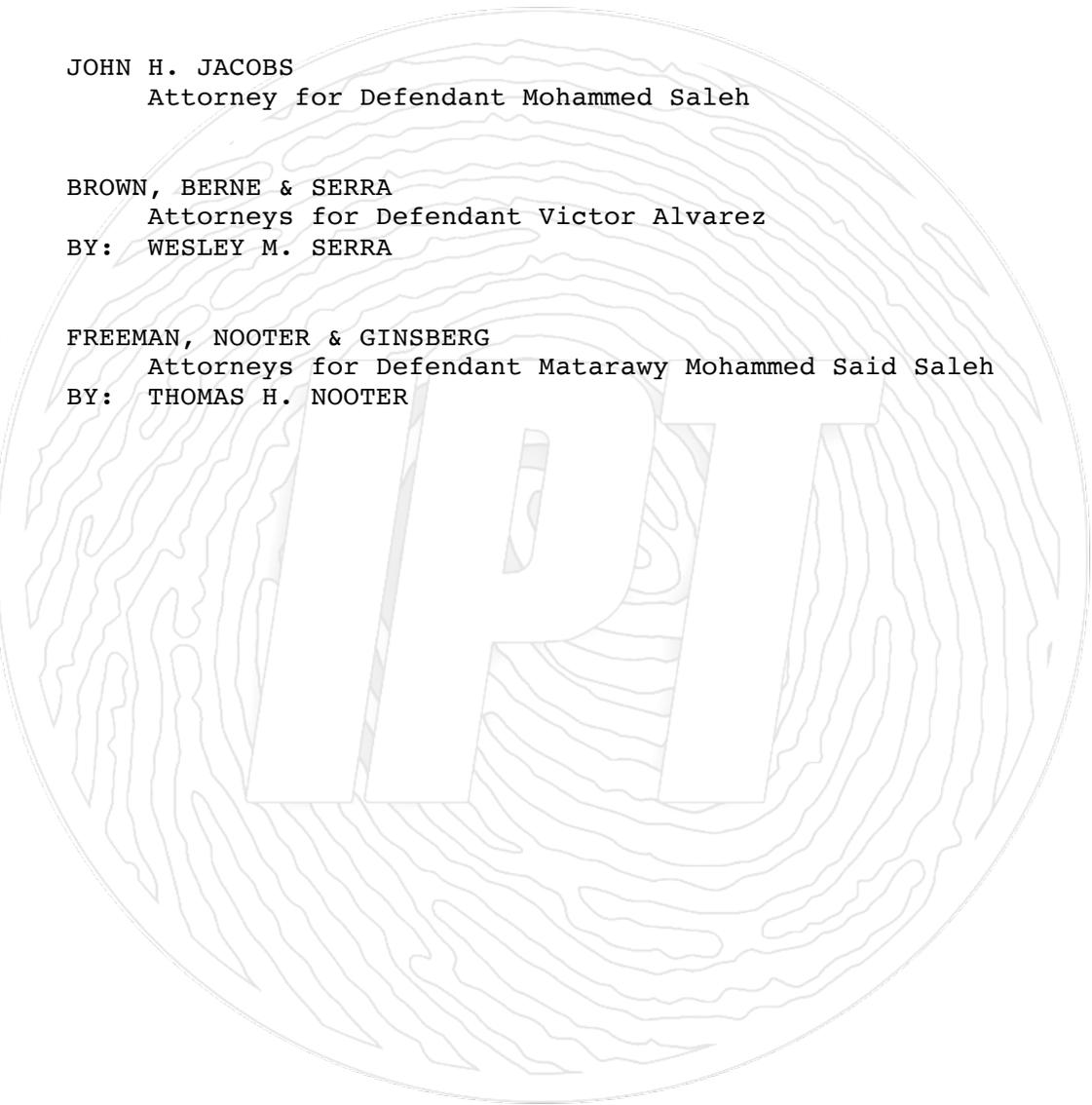
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. Mr. Serra.

4 MR. SERRA: Your Honor, there is a matter which I
5 think as far as my client is concerned is settled by an
6 agreement with Mr. Khuzami but that I would like to put on
7 the record anyway. On Saturday morning, I received
8 additional 3500 for the witness Haggag who, I understand it,
9 will be called as a witness by the government. That 3500
10 appeared to show a statement by Mr. Alvarez which the way I
11 read it sounded as though it was made in the MCC. I called
12 Mr. Khuzami and spoke to him on Saturday. He told me that
13 that particular statement was not made in the MCC but there
14 were other statements which Haggag would claim that Mr.
15 Alvarez did make to him in the MCC that the government had
16 not yet decided that they were going to offer as of
17 Saturday.

18 I spent a couple of hours updating my Massiah
19 Henry file. I wrote a letter to the court which I have with
20 me this morning but Mr. Khuzami informed me this morning
21 that they will not be offering the statements, so I did not
22 deliver the letter. He did also inform me, however, that
23 there are other MCC statements from other defendants which
24 the government would be offering, that those statements,
25 however, would be offered as admissions and not

1 coconspirator statements and do not mention Mr. Alvarez.

2 I am only putting this on the record because I am
3 on notice of this and it is my understanding, however, that
4 I have no legal standing based on what the government's
5 offer will be, to object.

6 THE COURT: We have two people standing. Is this
7 something we can profitably pursue now?

8 MR. JACOBS: No, no problem.

9 MR. STAVIS: The only reason that time may be of
10 the essence is that we were advised when we came in this
11 morning that the government was planning to introduce a
12 jailhouse statement from Mr. Nosair to Mr. Haggag, I believe
13 tomorrow. But we can deal with it later today.

14 THE COURT: Let's deal with it later today.

15 MS. STEWART: I believe the government is going
16 to be putting their translator on first, with a view towards
17 offering another group of FISA's with regard to my client.
18 I had indicated to Mr. Fitzgerald that I wanted to make
19 relevance arguments on those FISA's, or raise the objection
20 outside the presence of the jury.

21 THE COURT: Is that going in first?

22 MR. McCARTHY: Yes, your Honor. I am going to at
23 least lay the foundation through the translators.

24 THE COURT: Which exhibits in particular?

25 MS. STEWART: 704A, Judge. Do you want me to

1 list them all or should we go through them one at a time?

2 THE COURT: Let's do them one at a time, I guess.
3 704A is February 25. There is a relevance objection. Mr.
4 McCarthy?

5 MR. McCARTHY: Yes, your Honor. I direct the
6 court's attention to page 6 of the transcript first, which
7 is a discussion of American policy overseas, particularly in
8 Bosnia, with respect to Somalia.

9 THE COURT: One second.

10 MR. McCARTHY: And it carries over, your Honor,
11 to page 7.

12 THE COURT: The relevance of this is what?

13 MR. McCARTHY: A number of things. Number one,
14 it goes to both his intent and the manner in which he has
15 presented himself to the jury in this case. But more
16 specifically, there is a specific count in this indictment
17 that he solicited an attack on the American military with
18 respect to which the government as an essential element of
19 the charge has to prove that the solicitation was done under
20 circumstances which evinced at least a reliability -- I
21 don't have the exact words in front of me, but we have to
22 show that there are strong corroborating circumstances such
23 that the person being solicited would have understood the
24 solicitation to be a serious one. That really, a statement
25 about American marines being hit goes to the heart of that

1 issue.

2 Moreover, he has simply presented himself as
3 something completely different to the jury, and I think we
4 are entitled to show that. The fact is that the argument he
5 has made is that he is against -- if he is a jihad person at
6 all it is jihad overseas. This shows that he approves of
7 violent action against the American military, as we argue he
8 does.

9 MS. STEWART: While it might show his opinion or
10 his position on this, it is hardly orders or anything along
11 those lines.

12 THE COURT: It is not orders but there is another
13 conversation that has been testified to that the government
14 argues is orders, or something like it, and I think they are
15 entitled to show what his mindset is. Protected speech can
16 be used to show what was intended behind the speech. That
17 objection is overruled.

18 What is the next one?

19 MS. STEWART: The next thing is, on the heading
20 and on the tape there is something next to Abdelgani. There
21 are two people whose names are very close to that, if not
22 the same --

23 THE COURT: That will be made clear to the jury,
24 that this is not either defendant here.

25 MS. STEWART: Also on page 11 there is a

1 reference to Mohammed Saleh, which I believe the government
2 will also concede is not the Mohammed Saleh of this case.

3 THE COURT: Mr. Bernstein, is that what you
4 wanted to tell me?

5 MR. BERNSTEIN: Yes, just by the black lettering
6 lettering on it. Abdelgani are not our Abdelgani clients,
7 and also Mr. Saleh.

8 THE COURT: I will tell the jury that explicitly.

9 MR. BERNSTEIN: Can we do it formally or have the
10 government stipulate?

11 MR. McCARTHY: Yes.

12 THE COURT: Do you want to have the government
13 stipulate?

14 MR. BERNSTEIN: During whatever instruction you
15 give, if you could say that the government stipulated.

16 THE COURT: Fine.

17 MS. STEWART: The next is a message on the
18 answering machine, 704B.

19 MR. McCARTHY: Your Honor, there is no tab. It
20 is actually the last page of what is behind 704.

21 MR. McCARTHY: Your Honor, our argument with
22 respect to this is, Dr. Abdel Rahman, in our view, is the
23 head of a terrorist organization. This is someone who is
24 calling in to report on him on a terrorist act carried out
25 by his people to civilians. I direct your Honor's attention

1 to the fact that this is a statement that was made on
2 February 25, 1993, before the bombing of the World Trade
3 Center. After the bombing of the World Trade Center, when
4 in the same interview where Sheik Abdel Rahman denies
5 knowing Mahmoud Abouhalima when in actual fact he is quite
6 closely connected to him, he actually portrays himself as
7 somebody who is against violence, and particularly against
8 violence against civilian targets. Moreover, throughout the
9 trial Miss Stewart has sought to portray him --

10 THE COURT: Leave the portrayal aside for a
11 minute. Is the person calling to tell him this identified
12 as a coconspirator in the case?

13 MR. McCARTHY: He is not on the coconspirator
14 list, your Honor, but this conversation has been turned over
15 in discovery since prior to the trial.

16 THE COURT: I understand it has been turned over,
17 but this man is not named as a coconspirator?

18 MR. McCARTHY: Judge, he is not named as a
19 coconspirator, but first of all the coconspirator list
20 doesn't name any coconspirators. The law of the circuit is
21 that the government is not required to turn over
22 coconspirator lists, in United States against Torres, which
23 was affirmed by the Second Circuit. Here on a name of one
24 out of 250 on a list which the sheik has had since the
25 beginning is not only the name but the message, which is far

1 more than you get in discovery on a 250-name list of
2 coconspirators, who aren't even, by the way, alleged to be
3 coconspirators.

4 THE COURT: Miss Stewart.

5 MS. STEWART: Judge, first of all, anyone can
6 call and leave a message on anyone's answering machine. It
7 doesn't have much indicia of reliability. The second thing
8 is, in their 404(b) letter this is one of the things that
9 they noticed us they wanted to introduce, and I believe your
10 Honor ruled at that point that that was not coming in at
11 least at that point. This is backdooring that issue, by
12 showing that he is receiving a message.

13 It seems that the prejudice far outweighs any
14 probative value. They have conversations which I assume
15 they are going to introduce where the sheik talks about this
16 incident, but to put in a bald message like this without any
17 background is pure hearsay and does not seem to have any
18 probative value.

19 THE COURT: This is out.

20 MR. McCARTHY: Can I be heard in response to
21 that?

22 THE COURT: You have been heard -- in response to
23 that? What is the response?

24 MR. McCARTHY: The response is that your Honor
25 isn't required to look at each conversation in a vacuum.

1 This telephone has been shown by all the evidence to be the
2 means by which he communicates with his confederates
3 overseas. They report to him and he gives directions.

4 THE COURT: Miss Stewart, did you say there is
5 another conversation in which he comments on this?

6 MS. STEWART: I believe there is another
7 conversation with a person in Rome which we have gotten a
8 transcript for which has not been offered or numbered.

9 MR. McCARTHY: That is the tourist buses. That
10 is not the Cairo cafe.

11 THE COURT: So there is no followup on this at
12 all?

13 MR. McCARTHY: No, your Honor.

14 THE COURT: This is out. What is next?

15 MR. McCARTHY: 706A, your Honor.

16 MR. McCARTHY: Your Honor, just to make the court
17 aware, the next three conversations, 706A, 706B and 707, all
18 contain references to a CNN interview that the government is
19 going to offer in evidence today that Dr. Abdel Rahman gave
20 to CNN, I believe on March 18, 1993. These three, 706A and
21 B and 707, all deal with the CNN conversation. There are
22 some references to code on 706, and also there is
23 conversation about the case -- I am sorry, your Honor. The
24 other strain that goes through all of them is the sheik
25 reports to the people he is speaking to in 706A and B about

1 what he had to say about Mahmoud Abouhalima on the CNN tape.
2 Later in 707 he is basically getting a report on the
3 progress of Abouhalima's case and who is able to get in
4 touch with him.

5 THE COURT: Miss Stewart.

6 MS. STEWART: Judge, as far as 706A, this is a
7 conversation with the sheik in Los Angeles. The person he
8 is speaking to is in Albania, and it does mention the CNN
9 interview. Other than that, it doesn't seem to be relevant
10 at all.

11 THE COURT: 706A and 706B, in addition to
12 mentioning the CNN interview, do they mention Abouhalima?

13 MR. McCARTHY: Page 3 at the bottom, for example,
14 on 706A, there is conversation about Mahmoud Abouhalima and
15 what the sheik had to say about him in the CNN interview.

16 THE COURT: I see, I see. All right, that is in.

17 MR. McCARTHY: 706B is basically a repetition of
18 the same thing.

19 THE COURT: Where?

20 MR. McCARTHY: One moment, sir. Page 5, around a
21 third of the way down the page.

22 THE COURT: That is in as well. 707?

23 MR. McCARTHY: 707, there is a discussion about
24 page 3, about Abouhalima's case and about who is able to get
25 in to see him in the jail, pages 3 to 5, I think.

1 MS. STEWART: Would you repeat that again. Who
2 was able to get in to see him in the jail, you say?

3 MR. McCARTHY: First there is some conversation
4 about the CNN interview where the unidentified male says
5 they brought in of course El Sayyid and Mahmoud.

6 MS. STEWART: Right, I see that on 3.

7 MR. McCARTHY: Then about Mahmoud is your private
8 driver. Then I believe this is the one where he speaks with
9 him about -- yes, on page 5.

10 THE COURT: He also opines if it is a violation
11 have international law.

12 MR. McCARTHY: Right.

13 THE COURT: That's in.

14 MR. McCARTHY: 731 is next.

15 MS. STEWART: We have 747.

16 MR. McCARTHY: Can I just have a moment with Miss
17 Stewart?

18 THE COURT: Yes.

19 MR. McCARTHY: Your Honor, 747 is next.

20 THE COURT: Yes.

21 MR. McCARTHY: 747, your Honor, there is
22 discussion between Mr. Sattar and Sheik Abdel Rahman about
23 Salameh. On page 2, Sattar reports to Sheik Abdel Rahman
24 that Salameh called me yesterday. The sheik responds why?
25 What is the story? Ultimately Sattar says to him I'll talk

1 to you about it in the mosque.

2 MS. STEWART: Judge, I would just point out, this
3 conversation is June 3. We already had testimony about fund
4 raising that was taking place in the mosque for Salameh and
5 Sattar was in charge of that fund raising, that the guy has
6 no family. It doesn't go to whether or not he says he knew
7 him at a time close to the explosion. It only goes to that
8 he knew of him on June 3, as indeed the whole world knew of
9 him on June 3.

10 MR. McCARTHY: The conversation on June 3 is
11 through Salem, who Miss Stewart says is incredible.

12 MS. STEWART: There is a tape --

13 THE COURT: Also the fact that they say they are
14 not going to talk about it on the program but they talk
15 about it in the mosque. Go ahead.

16 MR. McCARTHY: That is the end of the FISA's,
17 your Honor. There are also four sermons or lectures which
18 we would offer into evidence this morning or offer portions
19 of this morning. They are 478, 479, 481 and 484.

20 (Continued on next page)

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1 MS. STEWART: If I just might have a moment, your
2 Honor.

3 THE COURT: All right.

4 (Pause)

5 MR. McCARTHY: Judge, on 478, the portion I will
6 be referring to is from page 9 to page 11. It is the bottom
7 of 9 to the top of 11. This is a question-and-answer
8 session.

9 MS. STEWART: Could you repeat that.

10 MR. McCARTHY: Sure. The bottom of page 9, which
11 is where the unidentified male asks a question and the
12 defendant Abdel Rahman's response, and that discussion
13 carries over to the top of page 11, through about the first
14 third of the page on page 11.

15 MS. STEWART: Judge, I assume they are going to
16 offer the entire document. What they are saying is they are
17 going to read only from that portion, is that correct?

18 MR. McCARTHY: Our preference would be only to
19 have that portion.

20 MS. STEWART: I would want the whole document to
21 go in. It's a very small portion, with a lot of advice on a
22 lot of subjects, and I don't think it's fair for the jury to
23 suppose that the sheik is giving only advice on one subject
24 or making only political statements. He is talking about so
25 many subjects within this particular one --

1 THE COURT: That is not a proper context
2 objection at all. I am not going to have a 14-page
3 transcript read.

4 MS. STEWART: I didn't say read, Judge. I said
5 in evidence.

6 THE COURT: They are planning on offering the
7 whole thing.

8 MS. STEWART: He just said no.

9 MR. McCARTHY: I would prefer not to, but to get
10 that in I will offer the whole thing.

11 THE COURT: Fine.

12 MR. McCARTHY: I actually don't think the rest of
13 it has any relevance at all.

14 THE COURT: I am simply not going to have it read
15 all 14 pages of it.

16 MR. McCARTHY: No.

17 MS. STEWART: But I think it is proper cross to
18 bring out that this was a question-and-answer period, where
19 one question went to this issue.

20 THE COURT: That you can bring out.

21 MS. STEWART: That is the only issue.

22 THE COURT: That is fine.

23 MR. McCARTHY: The next one, your Honor, is 479.

24 To us the pertinent discussion -- again, with the
25 caveat that I will offer the whole transcript -- really

1 begins at page 7, the first full paragraph, and following
2 that. That theme continues throughout.

3 THE COURT: From 7 until where?

4 MR. McCARTHY: The gist of the rest of the
5 conversation, your Honor, is the believers and the
6 unbelievers. The portion that I invited your Honor's
7 attention to is somewhat of a definition of who those
8 characters are. The theme, I would submit to the court, of
9 the believers versus the unbelievers continues, but
10 specifically what we are interested in is what is on page 7,
11 and I guess in fairness carries over to page 8.

12 THE COURT: Ms. Stewart?

13 MS. STEWART: We believe this is a sermon that is
14 a unity. It starts out with a discussion of the Koran,
15 about Judgment Day, and what will happen to people on
16 Judgment Day between believers and nonbelievers. He then
17 speaks about the current state of the world, of which the
18 portion the government wants to introduce is a small
19 portion, which, if it is not taken in context with the
20 entire religious message both before that and after that
21 really does not give the true meaning of what the sheik is
22 saying in this particular sermon.

23 I would just note parenthetically that on none of
24 these sermons do we have dates, places, times. All we know
25 is that they were seized at Elmasry's house, and it is the

1 sheik's voice on there. I think he is entitled to have the
2 entire sermon read to the jury because it is a unity.

3 THE COURT: All right. As to this one, it is all
4 or nothing. What is the preference?

5 MR. McCARTHY: All.

6 THE COURT: All.

7 MR. McCARTHY: 481 is the next one, your Honor.

8 THE COURT: I'm sorry?

9 MR. McCARTHY: 481.

10 THE COURT: All right. Go ahead.

11 MR. McCARTHY: Your Honor, we would be offering
12 this entire speech, which is on the theme of the importance
13 of not abandoning jihad, the relationship between the United
14 States and Israel, the peace conference initiatives, and
15 Dr. Abdel Rahman's feelings behind that.

16 MS. STEWART: We don't object to this one.

17 THE COURT: All right. 481 is in.

18 MR. McCARTHY: Finally, 484, your Honor.

19 THE COURT: And as to this?

20 MR. McCARTHY: The basic theme that we are
21 interested in, your Honor, begins on about page 2. The
22 theme, I guess, is the people of truth versus the people of
23 falsehood. There is a description, beginning with the
24 second full paragraph on page 2, of who the people of
25 falsehood are.

1 MS. STEWART: Judge, I think it is repetitive. I
2 think everything in there is in some other sermon that will
3 be introduced at some other point, and indeed in some of the
4 ones that were put in earlier. I would ask on that ground
5 to exclude it.

6 THE COURT: This is repetitive.

7 MR. McCARTHY: What's also repetitive is how many
8 times we have heard all the rest of it. I mean, Ms.
9 Stewart's been permitted on cross, albeit without objection
10 usually from the government, to bring out that conferences
11 where he makes belligerent speeches were actually charity
12 events, basically these are religious themes divorced from
13 the person that we allege Dr. Rahman is.

14 I don't contend to the court that we ought to
15 take up the jury's time with the entirety of this. But I
16 think there is a portion of it which is highly relevant,
17 which is directly aimed at America and the West, which is
18 what the indictment is about, and which we ought to be --

19 THE COURT: Which part?

20 MR. McCARTHY: Page 2. The second full
21 paragraph: "They congregate in order to hit the believers
22 and eliminate every Islamic movement. Don't let America and
23 its allies with their great capabilities make you feel
24 weak," and so on. "Its great wealth in Europe as its powers
25 get together to oust Islamic precursors, the Islamic rise

1 everywhere. Don't be afraid of their fleets in the sea,
2 their aircraft in the sky and their armies being trained
3 here and there."

4 The solicitation count specifically addresses the
5 American military.

6 THE COURT: All right.

7 Do you propose to read it all?

8 MR. McCARTHY: I don't, your Honor. I would be
9 content to read that paragraph.

10 THE COURT: I am sure you would.

11 MS. STEWART: If it is not all out, I want it all
12 in. It is, once again, the same thing. He quotes the Koran
13 at the beginning about believers and nonbelievers, and this
14 flows directly from that.

15 MR. McCARTHY: Your Honor, if I may, if we were
16 going to offer a phone record or even a series of phone
17 records that were in the same compilation, we would be able
18 to put the whole thing in evidence and point to the things
19 that were relevant, and if counsel had a 106 objection
20 similar to the ones that we had throughout Salem's
21 testimony, they could read the portions that they argued in
22 fairness ought to be considered by the jury in conjunction
23 with what we were offering.

24 I don't think in this context that the entirety
25 of this has to be read in order for the jury to get a fair

1 sense of what the limited portion that we want to bring to
2 their attention means. There isn't any bar as long as we
3 put the whole thing in from Ms. Stewart reading whatever
4 parts of it she want to read and arguing whatever she wants
5 to argue to the jury.

6 THE COURT: All right. I will allow it.

7 MR. McCARTHY: Thank you, your Honor.

8 THE COURT: What is next?

9 MR. McCARTHY: I don't think we have issues with
10 respect to anything else.

11 THE COURT: Do we?

12 MR. McCARTHY: I don't think we have issues that
13 we need to take up your Honor's time on with respect to
14 anything else.

15 (Pause)

16 MR. McCARTHY: That is it, your Honor.

17 THE COURT: That is it? We are starting with the
18 translator?

19 MR. McCARTHY: Yes.

20 THE COURT: All right. Mr. Jacobs, what is the
21 problem?

22 MR. JACOBS: Your Honor, some of us got this
23 morning a Government Exhibit 508, proposed government
24 exhibit. I just didn't want to do it at side bar with the
25 jury. That is all. We have a lot of objections to 508, and

1 we didn't want to do it at the side bar. That is all. I'll
2 do whatever your Honor wants. I just didn't want to do it
3 with the jury sitting there. That is all.

4 THE COURT: When are we getting to 508?

5 MR. McCARTHY: We have two translators to put on
6 yet and some reading to do. It is not likely that we will
7 get to it before the break.

8 THE COURT: Before the lunch break, you mean?

9 MR. McCARTHY: Yes, your Honor.

10 MR. JACOBS: That's fine.

11 MR. McCARTHY: If we move faster than that,
12 obviously we will alert the court before we do anything.

13 THE COURT: Thank you.

14 (Jury present)

15 THE COURT: Good morning, ladies and gentlemen.

16 JURORS: Good morning.

17 THE COURT: I seem to be starting more and more
18 often with apologies. We had a fair number of questions to
19 take up today, and, rather than doing it at the side and
20 having you sit in the jury box while we did it, we tried to
21 do the issues in a block so as to be considerate at least of
22 your time and not have you sitting in the jury box while we
23 were doing it. Again, I'm sorry for the delay.

24 Please understand that everybody here is trying
25 to use your time as economically as possible. Go ahead.

1 FRANK NALU,

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 morning, Mr. Nalu.

9 A Good morning, sir.

10 Q Can you tell us, please, what you do for a
11 living.

12 A I am a language specialist with the Federal
13 Bureau of Investigation.

14 Q How long have you been a language specialist with
15 the FBI?

16 A A little bit over 11 years.

17 Q How old are you, sir?

18 A Fifty-six.

19 Q Where were you from originally?

20 A Originally I'm from Iraq.

21 Q Is Arabic your native language?

22 A Yes, sir.

23 Q Can you tell us, please, how you learned English.

24 A I started school, from the fourth grade we take
25 English all the way through high school and college.

1 Q Let me ask you, Mr. Nalu, to try to keep your
2 voice up and try to speak a little bit more slowly so we can
3 all hear you back here. OK?

4 A OK.

5 Q How did you learn English?

6 A I started my English from the fourth grade and
7 elementary school through high school and college.

8 Q What did you do for a living in Iraq before
9 coming to the United States?

10 A I worked for an oil company which was 50 percent
11 British/American, and 50 percent Iraqi for over 17 years.

12 Q Maybe I should --

13 MS. STEWART: I didn't hear the end of it, Judge,
14 I'm sorry.

15 THE COURT: He said "for over 17 years."

16 Go ahead.

17 Q When did you come to the United States?

18 A 1975.

19 Q I want to go back for a moment to the job that
20 you had in Iraq.

21 Did the job at the oil company have anything to
22 do with journalism?

23 A Yes.

24 Q Can you explain that.

25 A We published a magazine, plus I worked in local

1 newspapers in Arabic and English at the same time.

2 Q Did the job working for the magazine or
3 publishing in the newspapers have anything to do with
4 English?

5 A Yes, sir.

6 Q Can you explain that to us.

7 A I used to translate articles from different
8 magazines like, "Time," "Life," "Newsweek," some British
9 magazine called "Knowledge," social magazines, stuff like
10 this, also sports.

11 Q Also sports?

12 A Yes, sir.

13 Q You translated English into Arabic for the
14 magazine?

15 A Right.

16 Q Mr. Nalu, can you speak any other languages
17 besides English and Arabic?

18 A Yes, sir, I speak German and Caldean.

19 Q What is Caldean?

20 A Caldean is an ancient language spoken by the
21 Christians in Iraq, Iran, part of turkey and Syria.

22 Q I think you told us you had been working for the
23 FBI for 11 years.

24 A Yes, sir.

25 Q That was beginning in around 1984?

1 A Yes. From 1984 until now.

2 Q What were you doing for a living between 1975,
3 when you came to the United States, and 1984, when you began
4 working for the FBI?

5 A I worked for about ten years in a wholesale
6 bakery. At the same time, I --

7 Q I'm sorry. Let me stop you for a moment.
8 You said a wholesale bakery?

9 A Yes, sir.

10 Q OK what else did you do?

11 A Also I translated for some attorneys in the
12 Detroit metro area.

13 Q Did you ever have a business that had anything to
14 do with translation?

15 A Yes, sir.

16 Q What kind of business was that?

17 A It was accounting and translation services.

18 Q For whom did you perform translation services?

19 A For some attorneys, like depositions and
20 sometimes trials and stuff like that.

21 Q Was that Arabic?

22 A Arabic, yes, sir.

23 Q That was in Detroit?

24 A Yes.

25 Q How long did you have that business?

1 A For a little bit over a year, and then I closed
2 it, because I joined the Bureau.

3 Q You joined the Bureau you said?

4 A Yes, sir.

5 Q Can you briefly describe, please, your everyday
6 duties at the FBI.

7 A It's all translation from written material,
8 tapes, videos, reports, sometimes interviews with subjects
9 or informants with agents helping them out.

10 Q What do you mean by helping them out with
11 interviews?

12 A With Arabic-speaking people and Caldeans.

13 Q In other words, you interpret the Arabic of the
14 subject for the agent who doesn't speak Arabic?

15 A That's true, sir.

16 Q Have you ever testified in court as a translator
17 of Arabic?

18 A Yes. I testified at least five times in federal
19 courts, and I would say about over 10 times in state and
20 local courts.

21 MR. McCARTHY: Your Honor, I would like to
22 approach Mr. Nalu with three exhibits.

23 THE COURT: Go ahead.

24 Q I'm sorry, Mr. Nalu.

25 Mr. Nalu, I am placing before you first

1 Government Exhibit 411, a videotape, and Government Exhibit
2 411T.

3 Do you recognize those items?

4 A Yes, sir, I do.

5 Q What do you recognize 411 to be?

6 A That is --

7 Q That is the videotape?

8 A It was a video interview from CNN with Sheik
9 Abdel Rahman, Bernard Shaw, yes, I think that was it.

10 Q Bernard Shaw was the CNN correspondent?

11 A Yes, sir.

12 Q Were you actually able to see Sheik Omar Abdel
13 Rahman and Bernard Shaw speaking on the screen?

14 A Yes, sir.

15 Q Directing your attention to 411T, can you tell us
16 what that is.

17 A That's the transcript which I did for the tape.

18 Q In the transcript -- I am not asking you to read
19 from something that's not in evidence?

20 MR. JABARA: Objection, your Honor. He has not
21 been qualified yet as a translator. We've merely gotten
22 over his background.

23 THE COURT: Is that an objection?

24 MR. JABARA: Yes.

25 THE COURT: It is overruled.

1 MR. McCARTHY: May I proceed, your Honor?

2 THE COURT: You may.

3 Q What is 411T?

4 A That is the transcript of the videotape.

5 Q Without asking you to read from the document, do
6 you notice that there are places where the interpreter is
7 speaking and that is in bold type and then there are
8 passages which are in regular type? Do you see that?

9 A Right.

10 Q Can you explain to us what the difference is
11 between the regular type and the bold type.

12 A The bold type, it was what the sheik was stating.
13 The other one it was the translator.

14 Q Sheik Abdel Rahman had a translator in the
15 broadcast interview?

16 A Right.

17 Q The regular type is what is broadcast over the
18 television?

19 A That is true.

20 Q The bold type is what you interpreted the actual
21 Arabic that you heard to be?

22 A Right.

23 Q Did you find the broadcast, that is, the
24 interpretation that was broadcast over the television to be
25 substantially accurate?

1 A I would say it was about 75 percent accurate, but
2 there are some contradictions between this and that.

3 Q Is this set up so that what appears is the
4 sentence or the statement that was broadcast over the
5 television screen, and then right after that in brackets and
6 in bold your interpretation of what you heard in Arabic?

7 A That's true.

8 MR. McCARTHY: Your Honor, the government offers
9 411 and 411T.

10 MR. JABARA: We would like to voir dire, your
11 Honor.

12 THE COURT: Go ahead.

13 VOIR DIRE EXAMINATION

14 BY MR. JABARA:

15 Q Good morning, Mr. Nalu.

16 A Good morning, sir.

17 Q My name is Abdeen Jabara.

18 Have you ever met me before?

19 A Yes, sir.

20 Q You've met me in Detroit, is that correct?

21 A Right.

22 Q Mr. Nalu, when you were first employed by the
23 FBI, where were you stationed?

24 THE COURT: This isn't voir dire.

25 This is cross.

1 MR. JABARA: All right. Thank you, your Honor.

2 Q On page 5 of this document, Mr. Nalu -- do you
3 have the document in front of you?

4 A OK, sir.

5 Q Do you see in the middle of the page on page 5
6 where it says "interpreter"? Is that correct, that this
7 should be "interpreter"?

8 A I didn't follow you, sir.

9 MR. JABARA: May I approach the witness, your
10 Honor?

11 THE COURT: No, just focus him on where you are.

12 Q All right. At the top of the page --

13 A OK.

14 Q -- to the left, the first item is "Shaw," do you
15 see that?

16 A Yes, sir.

17 Q Then underneath that is "interpreter," is that
18 correct?

19 A Right.

20 Q The third item there, it says "Interpreter," is
21 that correct? Or should it be Dr. Abdel Rahman?

22 A You see, the problem, it was both the sheik and
23 the interpreter, they were talking at the same time. So
24 they both repeated the same words most of the time.

25 Q So is that indicated on this translation, that

1 there was that, they were talking at the same time?

2 A You see sometimes the voice of the sheik will be
3 faded by the CNN technicians, so it happens I pick up some
4 of it and then the interpreter will continue.

5 THE COURT: In this situation did you put down
6 the words of the interpreter again?

7 THE WITNESS: Excuse me.

8 THE COURT: In this instance that he is talking
9 about did you put down the words of the interpreter again?

10 THE WITNESS: Your Honor, I have to listen to it
11 to tell you exactly what it is.

12 MR. McCARTHY: Your Honor, we will stipulate that
13 it only says "interpreter."

14 MR. JABARA: Fine.

15 I have nothing further, your Honor.

16 We have no objection.

17 THE COURT: 411 and 411T are received without
18 objection.

19 (Government's Exhibits 411 and 411T for
20 identification were received in evidence)

21 DIRECT EXAMINATION (Continued)

22 BY MR. McCARTHY:

23 Q Mr. Nalu, I next want to show you Exhibits 162
24 and 163, and transcripts marked 162T and 163T, and ask you
25 if you recognize those items.

1 A Yes, sir, I do.

2 Q What do you recognize 162 and 163 and the
3 transcripts to be?

4 A Yes. That's true.

5 Q What are they, sir?

6 A These are audio recordings of Mr. Nosair.

7 Q Are both of them recordings of Mr. Nosair?

8 A Yes, sir.

9 Q On the transcripts you have identified the voice
10 of Mr. Nosair and then the voice of an unidentified male, is
11 that correct?

12 A That's true.

13 Q How are you able to recognize Mr. Nosair's voice?

14 A When he started calling, he says, he left a
15 message, he says, "This is your brother, El Sayyid Nosair,"
16 right at the beginning. At the end he mentioned something
17 about a bullet which went through his neck, and I remember
18 from the incident, you know, it was him.

19 Q When you say he identified himself, directing
20 your attention to 163T, on page 1, where it says
21 "Mr. Nosair," about midway through that attribution, is it
22 correct that it says, "This is your brother, Sayyid Nosair"?

23 A That's true, sir.

24 Q Is the voice that you hear on 163 where you have
25 attributed it to Mr. Nosair the same voice that you hear on

1 Government's Exhibit 162?

2 A That's true.

3 MR. McCARTHY: Your Honor, the government offers
4 162 and 163 and the transcripts.

5 MR. STAVIS: We have an objection under Rule 403,
6 and we would ask to approach the side bar, your Honor.

7 THE COURT: May I see counsel briefly at the
8 side.

9 (Continued on next page)

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1 (At the side bar)

2 THE COURT: This is what I had hoped to avoid.

3 MR. STAVIS: Yes, your Honor. We had no idea
4 that these exhibits were coming in today. We had seen them
5 previously.

6 THE COURT: When is this supposed to be played?

7 MR. McCARTHY: Your Honor, it doesn't have to be
8 played now. It can be played at any point. This is the
9 interpreter who did them. I thought it would save time.

10 MR. STAVIS: Can we reserve because we have
11 extensive argument on these?

12 THE COURT: You can reserve on whatever objection
13 there is, but I want whatever voir dire or cross is done on
14 this witness to be done so we don't have to have him back.

15 MR. STAVIS: That's correct, your Honor.

16 THE COURT: OK.

17 (Continued on next page)

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1 (In open court)

2 THE COURT: All right.

3 Those will be reoffered at another time.

4 MR. McCARTHY: I have no other questions for Mr.

5 Nalu.

6 THE COURT: All right. Cross?

7 Mr. Stavis?

8 MR. STAVIS: We have no cross-examination of this
9 witness, your Honor.

10 THE COURT: No cross. Mr. Jabara?

11 CROSS-EXAMINATION

12 BY MR. JABARA:

13 Q Mr. Nalu, when you first were employed with the
14 FBI, where were you employed?

15 A I had my own place, translation service in the
16 Detroit area, and I was working in a bakery.

17 Q You were working in a bakery?

18 A Yes, sir.

19 Q All right.

20 A At the same time I used to work for attorneys,
21 including you, Mr. Abdeen Jabara. I worked for you.

22 Q Yes. At the time that you were employed by the
23 FBI, were you employed in Detroit or did you go to
24 Washington?

25 A No, I was employed somewhere else. In Cleveland,

1 Ohio.

2 Q You were living in Cleveland at the time?

3 A Yes.

4 Q How long did you live in Cleveland?

5 A Around three years.

6 Q Did you have at any time have any formal
7 translating education or instruction to learn how to
8 translate as a profession?

9 A Sir, since I was a kid I loved languages.

10 THE COURT: No. The question is simply whether
11 you have any formal training directed at translating
12 specifically, as opposed to simply the languages that you do
13 translate.

14 Q Yes. Have you had any formal training as to
15 translating?

16 A No.

17 Q You have not?

18 Now, what is Dr. Abdel Rahman's last name?

19 A "Rahman."

20 Q It's "Rahman"?

21 A That's according to our files.

22 Q According to your files.

23 What do you understand his last name to be?

24 A I think it's "Ali" or something like that.

25 Q You think his last name is "Ali"?

1 A Right.

2 MR. McCARTHY: Objection, relevance.

3 THE COURT: Sustained.

4 MR. JABARA: Your Honor, the question is --

5 THE COURT: I sustained the objection.

6 Ask another.

7 Q When you were hired by the FBI, Mr. Nalu, did you
8 take any kind of a competitive exam as a translator?

9 A Yes, sir, and passed with very good grades.

10 Q Do you know how many people you were competing
11 against?

12 A As far as I know, it's like if you have 100
13 applicants, one will pass, and that was -- that person was
14 me.

15 Q Do you know specifically how many applicants
16 there were for that position?

17 A On my daily basis, you know, with my experience,
18 I see a lot of people --

19 THE COURT: He asked specifically whether you
20 know at the time you took the test how many applicants there
21 were at that time.

22 THE WITNESS: I know a lot of them.

23 THE COURT: You may know a lot of them, but do
24 you know what the total number was?

25 THE WITNESS: No, I don't.

1 Q Did you apply for the job or were you solicited
2 for the job?

3 MR. McCARTHY: Objection, relevance.

4 THE COURT: Sustained.

5 Q In this translation of the CNN interview you said
6 that 75 percent of the translations by the translator that
7 was employed by CNN and the Sheik Abdel Rahman were correct,
8 is that your statement?

9 A That's true.

10 Q Is the essence of what was translated by the
11 translator correct?

12 A Yes, that was correct.

13 Q It gives basically the essence of what Dr. Abdel
14 Rahman was saying in that interview?

15 A In a way it's true.

16 Q Mr. Nalu, can you tell me what "Rahman" means?

17 A It means "the merciful."

18 Q And what does "Abdel Rahman" mean?

19 A That means "servant of the merciful."

20 (Continued on next page)

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1 Q Isn't it correct, Mr. Nalu, that Dr. Abdel
2 Rahman's last name is Abdel Rahman, servant of the merciful?

3 A Right, if you want to translate it like this,
4 yes, true.

5 Q And that is his last name, isn't that correct?

6 A That is correct.

7 Q And the only one that is merciful is God, isn't
8 that correct?

9 A That is true.

10 Q But you do not refer to Dr. Abdel Rahman in this
11 translation as Abdel Rahman, you refer to him as Rahman,
12 right?

13 A Sir, when we do the transcripts --

14 THE COURT: Just answer whether that is the
15 reference to him on the transcript. Is that correct?

16 Q Is that the reference to Dr. Abdel Rahman in
17 here?

18 THE COURT: Is he referred to as Rahman on those
19 transcripts?

20 A Are you talking about the one with CNN?

21 Q Yes.

22 A Sir, if I use the whole name, the line would come
23 all the way to the middle.

24 THE COURT: Just answer whether it refers to him
25 as Rahman. Does it?

1 THE WITNESS: Right.

2 Q And among Muslims only God is to be referred to
3 as merciful, is that correct?

4 A Yes.

5 Q So that is an incorrect translation --

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained. Anything else?

8 MR. JABARA: Nothing further, your Honor.

9 THE COURT: Anything else?

10 REDIRECT EXAMINATION

11 BY MR. McCARTHY:

12 Q At the top of the transcript where it says
13 participants, the very first line, Omar Ali Abdel Rahman?

14 A That is right.

15 Q And you simply -- you refer to him in all caps as
16 Rahman in the top?

17 A Right.

18 Q Down the page as there is an attribution to him
19 you refer to him as Rahman?

20 A Yes, sir. Also, sir, we refer to Bernard Shaw as
21 Shaw only, S-H-A-W.

22 Q You didn't mean any disrespect to Bernard Shaw, I
23 take it?

24 A No, I mean no disrespect to anybody.

25 Q Referring to the last page of the transcript,

1 there is a question by Mr. Shaw, "When will you be returning
2 to the mosque in New Jersey," and an attribution to the
3 interpreter where he says "When will you be returning to
4 your mosque in New Jersey? Unintelligible, don't answer
5 this question." Then there is an attribution to Abdel
6 Rahman and the interpreter that says "Whenever I please."
7 Did you hear the interpreter broadcast "Don't answer this
8 question"?

9 A Yes, sir. That unintelligible term, "I say don't
10 answer this question." I say that in the Arabic only.

11 Q You are saying where it is currently marked
12 unintelligible, you heard "I say"?

13 A Don't answer this question, right.

14 Q The words "don't answer this question" appear on
15 the transcript, is that correct?

16 A That is true.

17 Q And you say that what is now marked
18 unintelligible, you heard it to say "I say"?

19 A "I say" or "I tell you" or something like that,
20 you know, don't answer this.

21 Q When did you realize that the unintelligible was
22 "I say"?

23 A This morning about 8:00, 8:15 when I was at your
24 office.

25 THE COURT: He is going to have to talk into the

1 microphone because he can't be heard.

2 Q Go ahead.

3 A I heard it morning when I was reviewing it in
4 your office.

5 Q Was that the first time that you reviewed the
6 original tape?

7 A No, it might be the third or the fourth time.

8 MR. McCARTHY: Thank you, your Honor.

9 MR. JABARA: I have one more question, your
10 Honor.

11 THE COURT: With respect to that, go ahead.

12 RE-CROSS-EXAMINATION

13 BY MR. JABARA:

14 Q Mr. Nalu, turning your attention to page 12 of
15 the transcript, do you have it there in front of you?

16 A Could I have it, please.

17 MR. JABARA: May I approach?

18 THE COURT: Yes.

19 Q Directing your attention, Mr. Nalu, here, to the
20 translation of the interpreter at the top of the page, where
21 he says don't answer this question, were you aware, Mr.
22 Nalu, that there had been an attack on the mosque that
23 Dr. Abdel Rahman preached at in New Jersey the day before?

24 A No, sir, I did not.

25 MR. McCARTHY: I ask for an instruction to the

1 jury.

2 THE COURT: Ladies and gentlemen, as I have told
3 you several times, the evidence is the answers, not the
4 questions. So if somebody says were you aware of a
5 particular fact and the witness says no, I wasn't, there is
6 no proof of that fact. Go ahead.

7 Q But the basic essence of this transcript really,
8 by Dr. Abdel Rahman was an attack on the way the media had
9 portrayed him, is that correct?

10 A That is correct, sir.

11 Q Much of his answers to the questions to CNN and
12 Bernard Shaw was essentially his complaint that the media
13 was unfairly portraying him, is that correct?

14 MR. McCARTHY: Objection.

15 A That is correct.

16 THE COURT: Sustained.

17 Anything else? Thank you. You are excused.

18 (Witness excused)

19 MR. McCARTHY: The government calls Gamal
20 Abdel-Hafiz.

21 (Continued on next page)

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1 GAMAL ABDEL-HAFIZ,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 THE COURT: Go ahead.

5 DIRECT EXAMINATION

6 BY MR. McCARTHY:

7 Q Good morning, Mr. Abdel-Hafiz.

8 A Good morning, sir.

9 Q Would you remind us of what you do for a living.

10 A I am a translator with the Federal Bureau of
11 Investigation.

12 Q Did you review this morning a series of tapes and
13 transcripts?

14 A Yes, I have.

15 Q Had you previously reviewed those tapes and
16 transcripts?

17 A Yes.

18 Q Did you prepare transcripts on the basis of your
19 review with Arabic tapes?

20 A Yes, sir, I have.

21 MR. McCARTHY: Your Honor, I would like to read a
22 number of exhibits into the record.

23 THE COURT: Go ahead.

24 MR. McCARTHY: The tape exhibits do not have a
25 letter after them. The transcript exhibits all end in T

1 except for the first one, which is 461R, as in redacted,
2 pursuant to an agreement with the parties. It would be 461,
3 478, 479, 481, 484, 704A, 704B, 70 -- I am sorry, your
4 Honor. 704B is not being offered. 706A, 706B, 707, and
5 747.

6 Q Mr. Abdel-Hafiz, showing you the transcripts
7 marked 461R, 478T, 479T, 481T, 484T, 704AT, 706AT, 706BT,
8 707T, 747T and 852T, are these English transcripts that you
9 prepared from reviewing Arabic tapes of the same numbers
10 without the letter end goes?

11 A Yes.

12 MR. McCARTHY: Your Honor, the government offers
13 those exhibits, the transcripts and the tapes.

14 MS. STEWART: Other than what was stated on the
15 record.

16 THE COURT: Other than as previously ruled on,
17 those are received without objections. The objections
18 previously stated are overruled.

19 (Government's Exhibits 461, 478, 479, 481, 484,
20 704A, 706A, 706B, 707, 747, 461R, 478T, 479T, 481T, 484T,
21 704AT, 706AT, 706BT, 707T, 747T and 852T, were received in
22 evidence)

23 MR. McCARTHY: Your Honor, if I may take a moment
24 with Mr. Stavis and Mr. Patel.

25 THE COURT: Go ahead.

1 MR. McCARTHY: Your Honor, at this time the
2 government also offers Exhibits 850 and 850T, 851 and 851T,
3 which have been the subject of prior testimony.

4 MS. STEWART: Could you give us the numbers
5 again?

6 MR. McCARTHY: Sure. 850 and 851, and 850T and
7 851T.

8 THE COURT: Those are received as well.

9 (Government's Exhibits 850 851 850T and 851T were
10 received in evidence)

11 Q Mr. Abdel-Hafiz, let me direct your attention for
12 a moment to 852T, the transcript. Do you see where in the
13 participants section it says Mohammed last name unknown,
14 Omar Ali Abdel Rahman, Abu Fadil and Mahmoud Abouhalima?

15 A Yes, sir.

16 Q Did you know the voice of Mahmoud Abouhalima?

17 A No, I did not.

18 Q Did you add Mr. Mahmoud Abouhalima's name at my
19 request?

20 A Yes, I have.

21 Q Do you recall the name of the person who you had
22 there?

23 A It was Abu Abdallah.

24 Q Thank you.

25 A You are welcome.

1 MR. McCARTHY: Your Honor, the government
2 stipulates that the Abu Fadil who I just referred to is not,
3 of course, Fadil Abdelgani.

4 THE COURT: Thank you.

5 MR. McCARTHY: I have no further questions.
6 Thank you.

7 MS. STEWART: Judge, may we have a side bar,
8 please?

9 THE COURT: Yes.

10 (At the side bar)

11 MS. STEWART: Before I object, I just want to
12 know what is the substance of you told him to put down
13 Mahmoud Abouhalima.

14 MR. McCARTHY: Salem testified that it was
15 Mahmoud Abouhalima, the person Abu Abdallah is Mahmoud
16 Abouhalima. I just wanted it clear that that wasn't the
17 leap this witness is making.

18 THE COURT: It is the subject of previous
19 testimony.

20 MR. McCARTHY: Yes. It is based on Mr. Salem's
21 identification of the voice.

22 THE COURT: Do you want the jury instructed?

23 MR. McCARTHY: I would ask for that, your Honor.
24 I don't want them to think it is my testimony.

25 MS. STEWART: I just was not clear.

1 THE COURT: That is 851?

2 MR. McCARTHY: 852.

3 (In open court)

4 THE COURT: Just to clarify something, ladies and
5 gentlemen, with respect to the testimony about the
6 transcript 852T, in which the translator said he had put
7 down the name Mahmoud Abouhalima at the request of the
8 government, that was based on the testimony of Mr. Salem,
9 who testified that he had reviewed that tape and that that
10 voice was, according to his testimony, the voice of Mahmoud
11 Abouhalima. That was the basis for the government telling
12 this translator to put down that name, that attribution, and
13 Mr. Salem so testified here.

14 MR. McCARTHY: Thank you, your Honor. I
15 neglected to offer the tape, which is 852, and I do so now.

16 THE COURT: That is received without objection.

17 (Government's Exhibit 852 received in evidence)

18 MR. McCARTHY: Judge I have no further questions
19 at this time.

20 THE COURT: Cross? Miss Stewart.

21 MS. STEWART: Your Honor, if the jury has been
22 supplied with the items that are now in evidence, I wonder
23 if they might turn to them. It might aid in their --

24 THE COURT: You should have two binders, one
25 marked 700 series and one marked 800 series.

1 MS. STEWART: Is there a 400 series? I had
2 intended to --

3 THE COURT: I am sorry, one marked 400 series and
4 one marked 800 series.

5 MR. McCARTHY: Your Honor, the 800 are in the 700
6 series book.

7 THE COURT: Again, there are two binders, one
8 marked 400 series and one marked 700 series. The book
9 marked 700 series also contains the 800 series that have
10 been referred to today. Do you want to indicate which
11 exhibit you are starting with, Miss Stewart?

12 MS. STEWART: Yes. I am starting with 461,
13 Judge, the 400 series.

14 THE COURT: Go ahead.

15 MS. STEWART: Thank you, Judge.

16 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MS. STEWART:

3 Q Mr. Gamal Hafiz, did you take a look at the 400
4 series of tapes, starting with 461?

5 A Yes, I have.

6 Q Mr. Abdel-Hafiz.

7 461 is designated at the top as a sermon, is that
8 correct?

9 A Yes, that is correct.

10 Q Did you do these descriptive headings on each of
11 these translations?

12 A I believe so, yes.

13 Q Do you know where you got them from?

14 A The heading?

15 Q The heading.

16 A I just, when I hear the tape and I hear it is a
17 sermon, I title it as a sermon.

18 Q If you go on to 479, 481 and 484.

19 A Yes, ma'am.

20 Q They are just described as audiotape
21 translations, is that right, Elmasry audiotape translation?

22 A Yes, that is right.

23 Q But clearly 481 is a Friday sermon as described
24 in your first paragraph, right?

25 A Yes, ma'am.

1 Q And would it be fair to say that 479 and 484 are
2 also sermons, even though the heading does not say they are?

3 A Yes, ma'am, it is fair to say that.

4 Q The sermons are given as a part of the Friday
5 prayer service usually at noontime, is that correct?

6 A What is given on Friday prayer at noontime that
7 is a sermon, but sometimes there is a sermon that can be
8 given between the afternoon and sunset prayer or after the
9 sunset prayer, between sunset prayer and Al-Isha prayer,
10 which is the last prayer.

11 Q And this is part of the Jummah service, is that
12 correct? Traditional on Jummah?

13 A Yes, ma'am.

14 Q Directing your attention to 478, this is a
15 question and answer between the Sheik Omar Abdel Rahman and
16 a gathering in a mosque, one would assume, is that right?

17 A That is true.

18 Q And he is being asked questions and giving
19 answers, is that right?

20 A That is right.

21 Q It begins by his speaking upon what is prohibited
22 and what is allowable for a pilgrimage to Mecca, is that
23 correct?

24 A That is correct, ma'am.

25 Q The pilgrimage to Mecca is one of the

1 obligations, is that correct, that a Muslim should make at
2 some point in his life, a hajj or pilgrimage to Mecca?

3 A That is correct.

4 Q And the sheik is telling his congregation here
5 what is permissible, what you may do, what you may not do
6 when you are on this pilgrimage, is that right?

7 A That is correct.

8 Q He goes on to answer other questions that are put
9 to him by the audience pretty much at random, is that right?

10 A That is true.

11 Q He is asked about education, is that right?

12 A Which page are you on?

13 Q I am on page 11 of 478.

14 A Yes, ma'am.

15 Q And he is he goes on to talk again about
16 pilgrimage after that, is that right?

17 A That is right.

18 Q Approximately in the middle of this question and
19 answer period, he is asked a question about someone serving
20 in the army, is that right?

21 A Yes. Can you please tell me which page are you
22 on?

23 Q Yes, that is at page 9.

24 A Yes, ma'am.

25 Q The answer to that question goes on for a number

1 of pages, does it not?

2 A Yes, that is correct.

3 Q The person or persons asking this question have
4 been identified by you as unidentified man, is that right?

5 A That is right.

6 Q Are you able to recollect whether or not these
7 questions regarding being a member of the United States Army
8 were all asked by the same person? In other words, were you
9 able to identify that voice as being from the same person?

10 A I believe they were not all by the same person.

11 Q In other words, other people asked questions,
12 followup questions to the first question?

13 A That is correct.

14 Q This was on the -- the original tape that you
15 worked from, was this a tape that was in the public domain?
16 Did it appear to you to be -- strike that. This is an
17 audiotape, is that right, a cassette audiotape?

18 A Yes, ma'am, it was.

19 Q Do you have any recollection of the labeling on
20 that tape?

21 A Not really.

22 Q In translating these sermons and the question and
23 answer period, which are the exhibits in that 400 series,
24 you once again put things that were quotes from the Koran in
25 quotation marks, is that right?

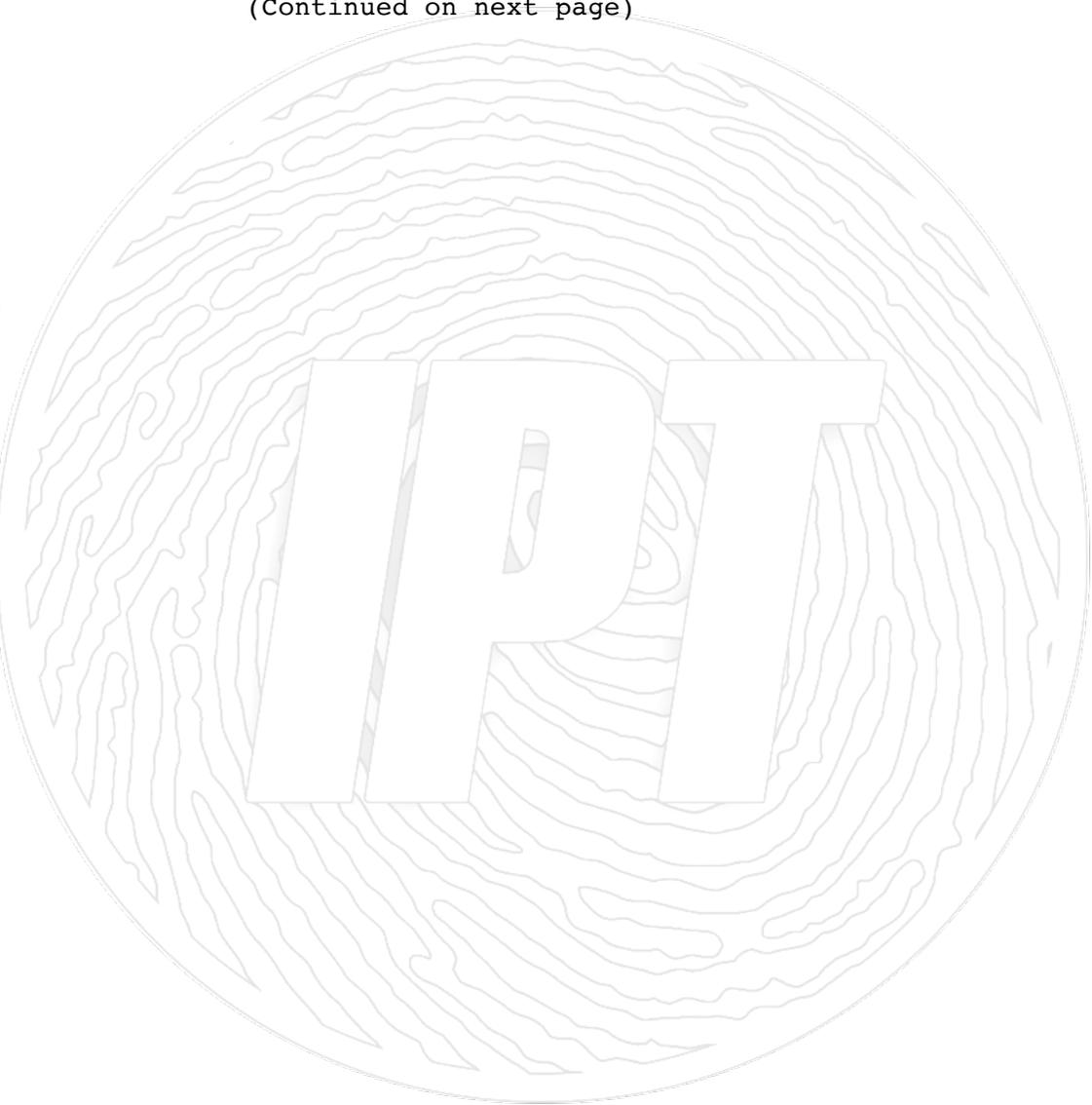
1 A That is correct.

2 Q But there is no attribution as to with where in
3 the Koran they are taken from, is that correct?

4 A That is correct.

5 (Continued on next page)

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1 THE COURT: Miss Stewart, could you find a
2 convenient break point in the next five minutes or so.

3 MS. STEWART: I could stop now, Judge. I was
4 about to move to FISA.

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

9 (Recess)

10 (Pages 9626 through 9627 sealed)

11 (Continued on next page)

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1 (Jury present)

2 THE COURT: OK. You can go ahead, Ms. Stewart.

3 CROSS-EXAMINATION

4 BY MS. STEWART:

5 Q Mr. Abdel-Hafiz, I would just like you to take a
6 look -- and the jury as well -- at document 481.

7 A Yes, ma'am.

8 Q On that document, the third full paragraph of the
9 sermon itself --

10 A Yes, ma'am.

11 Q -- do you see in the third line down of that
12 paragraph where you translated, "They held up the flag of
13 jihad for the cause of Allah"?

14 A Yes, ma'am.

15 Q "Jihad" is Arabic, is that right?

16 A That's true.

17 Q It means to struggle for the cause of God, does
18 it not? Struggle in the sense of struggling for God?

19 A That's true.

20 Q On page 3 of the same document, the sixth
21 paragraph on that page, beginning with, "The successful
22 solution and the sure cure is to struggle for the cause of
23 Allah."

24 A Yes.

25 Q Here you use the English word as opposed to

1 jihad, is that correct?

2 A That's correct.

3 Q But actually they're identical in meaning in
4 these two particular instances, is that right?

5 A That's right.

6 Q I ask you now to look at the 700 series of
7 documents that were put into evidence.

8 Directing your attention to document 704A, all of
9 this 700 series are FISA tapes, is that correct?

10 A Yes, that's correct.

11 Q "FISA" stands for Foreign Intelligence
12 Surveillance Act, is that right, if you know?

13 THE COURT: I believe that's stipulated.

14 MS. STEWART: Right. Thank you, Judge, and
15 Mr. McCarthy.

16 Q This conversation took place on February 25,
17 1993, is that correct?

18 A That's correct, ma'am.

19 Q It is between Sheik Abdel Rahman and a person
20 named Adel, last name unknown, is that right?

21 A That's right.

22 Q It is interrupted by a call from someone named
23 Abdul Ghani, is that right?

24 A That's correct.

25 THE COURT: I think at this point I should point

1 out to the jury that the government and the defendants have
2 stipulated that the person named "Abdul Ghani" on this tape
3 is not either of the defendants in this case. It is neither
4 Fadil Abdelgani nor Amir Abdelgani. It is somebody whose
5 full name is first name Abdul, second name, Ghani.

6 Go ahead.

7 Q The person whose named Adil, are you able to tell
8 from his accent what his nationality is?

9 A At this time I don't remember.

10 Q Is it fair to say that this is a local call, the
11 sheik and Adil seem to be in the same location, if you
12 recall?

13 A I don't recall. I have to look at the whole
14 document, if I have --

15 Q If you notice on page 1, going over to page 2
16 they are talking about the weather outside.

17 A Yes, I recall now they are not in the same
18 country. When they said, "It's cold here" and the one --
19 "Is there cold weather right now?" "Yes."

20 Yes, they are two different locations.

21 Q I think I may have been unfair,
22 Mr. Abdel-Hafiz --

23 A OK.

24 Q -- at the very end of this conversation, doesn't
25 the sheik ask this person named Adel to pick him up on the

1 following day to take him to the airport, the very last two
2 pages?

3 A That's true.

4 Q Even though the sheik says, "I'm feeling hot
5 right now," they are talking about the weather outside, is
6 that right?

7 A The weather outside, and he asked him if it's
8 cold out there. He said, "Yes, it's cold."

9 Q The interruption in this call from the person
10 named Abdul Ghani, is it fair to say that that person is
11 calling from California?

12 A I need to look at it.

13 Q If you would look at page 12 once again.

14 A Yes, it seems like it.

15 Q He even makes a reference to being in Fresno, "we
16 are in Fresno"?

17 A Yes, ma'am.

18 Q That's in California?

19 A That's true.

20 Q In the course of this conversation, Adel and the
21 sheik discuss a magazine article, is that right, from a
22 magazine called "Al-Ufuq"?

23 A Page?

24 Q 4 at the bottom.

25 A "Al-Ufuq."

1 Q Ufuq?

2 A Yes.

3 Q They go on to speak about, at the bottom of page
4 5, Bosnia?

5 A Yes.

6 Q Then, on page 6 and 7, Somalia?

7 A Yes, ma'am.

8 Q And there is some discussion of fighting going on
9 in Somalia between the Somalians and the UN forces there, is
10 that right?

11 A That's right.

12 Q The sheik asks if the Americans were not hit by
13 anything. Do you see that at the top of page 7?

14 A Yes.

15 Q Adel replies, "Two Marines were hit," is that
16 right?

17 A Yes, ma'am.

18 Q The sheik then says, "OK, that's enough. That's
19 good."

20 Is he clearly saying, "I've heard enough. Let's
21 go on to something else" now when he says that?

22 A No, I don't believe so.

23 Q Also, on page 7 he talks about the exiles'
24 problem with regard to Palestine.

25 Do you see that near the bottom of the page?

1 A Yes, ma'am.

2 Q Adel is speaking about that.

3 He also speaks a little later on about the PLO,
4 is that right?

5 A Yes, that's right.

6 Q This is concerning Israel, is that your
7 understanding of the context in which this is mentioned?

8 A Yes, concerning, the, I believe 200 or 400 people
9 that were expelled from Israel to the border with Lebanon.

10 Q That was an issue in the peace negotiations that
11 went on, is that right, whether they would be allowed to
12 return?

13 A That's correct.

14 Q On page 11, there is a mention, is there not, of
15 Mohammed Saleh near the top.

16 A Yes, ma'am.

17 THE COURT: Again, I believe it's stipulated by
18 the government with the defendants that this is not the same
19 Mohammed Saleh who is a defendant in this case. This is a
20 different Mohammed Saleh. Go ahead.

21 MS. STEWART: Thank you, Judge.

22 Q At bottom of page 11, Mr. Ghani from California
23 tells the sheik that someone named Sami had tried to get
24 into Bosnia and was rejected at the border, is that right?

25 A That's right, ma'am.

1 Q Going on, Mr. Hafiz, to -- I think the next one
2 is 706A. This is dated March 21, 1993, is that right?

3 A That's right.

4 Q It takes place between Dr. Abdel Rahman, someone
5 named Khaled, someone named Abou Mossa'ab and an
6 unidentified person, is that right?

7 A That's right.

8 Q The sheik is speaking from Los Angeles, is that
9 right? I direct your attention to page 3, slightly down
10 from the middle of the page where he says, "No, I'm calling
11 from Los Angeles by the Pacific Ocean"?

12 A Yes, ma'am.

13 Q He's calling Albania, is he not? Page 5,
14 slightly down from the middle.

15 A Yes, ma'am.

16 Q In the course of this conversation at page 3, he
17 speaks about a CNN interview that he gave, is that correct?

18 A Yes, that's correct.

19 Q On page 4 he speaks about an attack on the mosque
20 as part of the news of America?

21 A Where exactly on page 4?

22 Q On page 4, slightly down from the middle,
23 Mossa'ab says, "What is the news in America"?

24 A Yes.

25 Q And two more attributions he said, yes --

1 A Yes, ma'am, I've got it. Yes.

2 Q And Mossa'ab tells him that they opened an office
3 in Albania, is that right, the Human Agency for Relief and
4 Settlement?

5 A Yes, ma'am.

6 Q They go on to talk about computers on the next
7 page, MacIntosh computers?

8 A Yes.

9 Q On page 6, Mossa'ab says, "Regarding our
10 situation here we're in need for anything, clothing, food,"
11 that the people are so poor they are poorer than anywhere in
12 Africa maybe, is that right?

13 A Yes, ma'am.

14 Q You translated the next line as saying, "There
15 will be a good Islamic conquerer."

16 A Yes.

17 Q A more, I guess, generalized translation would be
18 that this is like a good place for Islamic work or for Islam
19 to conquer, would that be a fair --

20 MR. McCARTHY: Objection to form.

21 THE COURT: Would you rephrase it.

22 MS. STEWART: I'm sorry?

23 THE COURT: Would you rephrase the question.

24 MS. STEWART: Sure.

25 Q On that line where it says, "There will be a good

1 Islamic conquerer," in context it means this is a good place
2 for Islamic work. This is a good place for Islam to
3 conquer, a poor place where there is great need, is that the
4 context in which that is said?

5 A That's true.

6 Q At the very bottom of page 6, Mossa'ab talks
7 about the projects that are planned for Albania, and they
8 include teaching, social affairs and health affairs, is that
9 right?

10 A That's right.

11 Q On page 7, almost in the middle of the page, this
12 is Mossa'ab speaking again, he says that he will send the
13 account number to the sheik "so that your eminence may help
14 us with anything." Do you see that?

15 A Yes, ma'am.

16 Q Moving along to 706B, this is the same date as
17 the FISA that preceded it, is that correct, 706A, is that
18 correct?

19 A That's correct, ma'am.

20 Q It's about an hour and 15 minutes later, is that
21 right?

22 A That's right.

23 Q So it is probably fair to assume that Sheik Omar
24 is still in Los Angeles by the Pacific Ocean, is that right?

25 A That's right.

1 Q He's speaking to someone, and does that person
2 have an Egyptian accent, if you can remember?

3 A I believe so, yes.

4 Q That person is speaking to him about something
5 that appears on the first page of the "Times," is that
6 right? That's at the very bottom of page 1.

7 A Yes, ma'am.

8 Q And the sheik says, "'The New York Times'?"

9 And the person says, "Yes."

10 Is that right?

11 A Yes, ma'am.

12 Q He talks once again about the CNN tape, is that
13 right?

14 A Yes.

15 Q At page 2.

16 A Yes.

17 Q On page 3, this person describes a demonstration
18 that took place at the El Salaam mosque, is that correct?

19 A That's right.

20 Q Also on page 3, near the bottom, the sheik says,
21 "Shall I come or what?"

22 And the person replies, "Welcome."

23 A That's true.

24 Q And then goes on to say, "Originally they made a
25 big commotion," meaning where the unidentified male is

1 speaking from, is that right?

2 A Yes. That's right.

3 Q Moving along again to 707, this is March 24,
4 three days later, is that right?

5 A That's right.

6 Q The unidentified male on this call asks the
7 sheik, "Did you return late last night?" is that correct,
8 about the middle of the first page?

9 A Yes, ma'am.

10 Q On the second page he asks him in the middle of
11 the page about Raheed and the lady attorney.

12 A Yes.

13 Q That's in the context of talking about an
14 immigration case that the sheik has pending, is that right?

15 A Yes.

16 Q He goes on to say, on page 3, that an appeal was
17 filed, the sheik filed for an appeal, this is near the top.

18 A Yes, ma'am.

19 Q They then go on to talk about the World Trade
20 Center and the news that's been reported, is that right?

21 A Yes.

22 Q The unidentified male says, "And Nidal and things
23 like that, and I don't know. And that Mahmud is the one who
24 planned all this operation. And that they all participated
25 in one thing, that they all used to attend your" -- and then

1 you put in brackets, "lectures"?

2 A Yes.

3 Q The sheik then laughs and says, "They attend my,"
4 and you put in brackets again "lectures." "Is this an
5 accusation!" Exclamation point. Is that because the tone
6 of his voice led you to put in those exclamation points?

7 A No, it's not the tone of his voice. When it was
8 said in Arabic, "attend yours," if I translated it from
9 Arabic to English the way it was said, it wouldn't make
10 sense. That's something that they say, "when I attend
11 yours" or "attend to you," it's understood to any
12 Arabic-speaking person, he attends your sermons or your
13 lectures. But there's no equivalent to it in English. That
14 is why I added it in between the brackets, because it's my
15 addition, but that's what's meant by it.

16 Q They then go on on page 4 to talk about a
17 demonstration in Egypt, is that right?

18 A Yes, ma'am.

19 Q Do you remember whether this person, Unidentified
20 Male 1, speaks with an Egyptian accent?

21 A I am not sure. I don't recall that.

22 Q On page 5 they are speaking about Mahmud
23 Abouhalima.

24 A Yes.

25 Q After first discussing that it may be a violation

1 of international law for Egypt to have turned him over, the
2 two of them go on to say, "Thanks be to God that he came
3 here."

4 Is it your understanding that they are giving
5 thanks to God for that because they fear what might have
6 happened to him in Egypt, the torture in Egypt that he might
7 have faced?

8 A Yes.

9 Q Page 7, Mr. Abdel-Hafiz, the unidentified male
10 asks the sheik, "Did you pray the dawn prayer at El Salaam?"

11 El Salaam is the name of the mosque in Jersey
12 City, is that right?

13 A That's right.

14 Q And he said, "Did you go for the dawn prayer to
15 El Salaam, or they are afraid?"

16 And the sheik says, "A little bit. I prayed in
17 the mosque of the Americans, it is called the mosque of
18 Muhammed."

19 A That's correct.

20 Q 747, this is a conversation that takes place on
21 June 3, 1993, is that correct?

22 A That's correct, ma'am.

23 Q It's between Dr. Abdel Rahman and Ahmed Abdel
24 Sattar, is that right?

25 A That's right.

1 Q On page 2, they talk about translations, and then
2 go on to talk about Salameh, is that right?

3 A Yes.

4 Q Sattar indicates, does he not, that he will speak
5 about what is upsetting Salameh when the sheik comes to the
6 mosque, is that right?

7 A Yes, that's right.

8 Q And Mohammed Salameh, to your understanding, is
9 one of the defendants in the World Trade Center case, is
10 that right?

11 A That's right.

12 Q On page 3 in the middle of the page, the sheik
13 asks Sattar, "Did you read the book 'A Word of Truth' or
14 not?" You have "A Word of Truth" in bold-face type, is that
15 right?

16 A Yes. That's correct.

17 Q Are you familiar with the subject matter of this
18 book?

19 A No.

20 Q Do you know who it is written by?

21 A No.

22 Q Did you provide for "A Word of Truth" to be in
23 capital letters when you made your translation?

24 A No, I haven't.

25 Q You just translated it directly as "A Word of

1 Truth"?

2 A I put it in between quotes.

3 Q You don't know this to be a book written by
4 Dr. Abdel Rahman?

5 A I'm not sure.

6 Q As an Egyptian, were you aware that the closing
7 summation of Dr. Rahman at the trial for the assassination
8 of Anwar Sadat was made into a book, "A Word of Truth"?

9 A I am not aware of that.

10 Q Let us move along. This is now the 800 series.

11 THE COURT: I believe that is in the same book.

12 MS. STEWART: OK. Thank you.

13 Q Starting with 850.

14 A I don't believe I have it here.

15 Q I'm sorry. He does not seem --

16 MR. MCCARTHY: I am getting it.

17 MS. STEWART: OK.

18 A Yes, ma'am.

19 Q Did you have anything to do with putting the date
20 on the top of this or establishing what date that was?

21 A No, ma'am.

22 Q Do you know if it was written on the outside of
23 the original cassette or anything?

24 A I'm not positive.

25 Q In the body of the tape that you translated on

1 page 2 in the middle of the page, talking about the mosque
2 board of directors --

3 A Yes, ma'am.

4 Q -- it makes a mention to March 16, does it not?

5 It will be held on March 16?

6 A Yes.

7 Q This is a conversation between Sheik Omar and El
8 Sayyid Nosair, is that right?

9 A That's right.

10 Q In the body of this they speak about -- and this
11 is on page 2 again near the top of the page -- they speak
12 about a court proceeding in Egypt, is that right?

13 A Yes, ma'am.

14 Q There is a word that you translated in connection
15 with this, "The seige continues to exist."

16 A Yes.

17 Q Do you know, Mr. Abdel-Hafiz, that the sheik at
18 this point in Egypt, his home was surrounded by over 200
19 military and police personnel he was unable to come or go.

20 MR. McCARTHY: Objection, scope.

21 THE COURT: Sustained.

22 Q In any event, you translated the word used in
23 this conversation as "seige," meaning a type of military
24 encounter in English, is that right? This was the word that
25 people used in the conversation?

1 A That's right.

2 Q Directing your attention to page 5, the very
3 first line is, "Any other orders for us, sheik?"

4 Then again, halfway down, "Any other orders?"

5 Do you see those two references?

6 A Yes, ma'am.

7 Q Would both of those be considered a polite
8 breaking off in Arabic, sort of saying, "At your hand," or,
9 "whatever I can do for you"?

10 Is this a common Arabic phrase, not necessarily
11 to be taken literally?

12 A That's true.

13 Q Also, on page 5, they speak about women being
14 attacked in Ein Shams, do you see that?

15 A Yes, ma'am.

16 Q Is that a university in Egypt?

17 A There is a university called Ein Shams, and there
18 is a neighborhood called Ein Shams in Cairo.

19 Q Moving on to 851, this is an undated tape, is
20 that correct?

21 A That's correct.

22 (Continued on next page)

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1 Q And it is between Dr. Abdel Rahman and El Sayyid
2 Nosair once again, is that right?

3 A That's right.

4 Q It is fair to say that the thrust of this is the
5 news back and forth between the two of them, is that right?

6 A Yes, I believe so.

7 Q I mean, the sheik speaks again about women being
8 beaten in Ein Shams on page 2, is that right?

9 A Yes, ma'am.

10 Q Mr. Gamal Hafiz, did you ever transmit any other
11 tapes where El Sayyid Nosair is speaking about another
12 sheik, a different sheik, not Dr. Abdel Rahman?

13 A No, not that I can recall, ma'am.

14 Q Going on to 852,, this is dated March 24, 1990,
15 is that correct?

16 A That is correct.

17 Q And it is between -- I believe you told us that
18 Mahmoud Abouhalima was a name that Mr. McCarthy asked you to
19 put on there and the judge then instructed that Mr. Salem
20 had actually supplied that name. Do you remember that
21 happening earlier this morning?

22 A Yes, ma'am.

23 Q And it is Dr. Abdel Rahman once again, is that
24 right?

25 A Yes, ma'am.

1 Q Is it fair to say that the main portion of this
2 tape is taken up with Dr. Abdel Rahman being asked to
3 mediate a dispute that the parties are having, Mohammed,
4 Mahmud, with a person named Moustafa?

5 A Yes.

6 Q Are you familiar with the term -- and forgive me
7 if my pronunciation is not that good -- Sulh, S-U-L-H?

8 A Sulh, yes, ma'am.

9 Q Sorry.

10 A That is all right.

11 Q Could you just explain what is meant by that?

12 A It's when two people or two groups of people,
13 they have dispute amongst each other, and they ask someone
14 else to interfere, to make peace and truth and reach an
15 agreement, and just to overgap the difference between the
16 two parties, the two disputing parties.

17 Q This is outside the regular, if I recall it,
18 regular legal system or judicial system, is that right?

19 A That is right.

20 Q This is based on Arab and Islamic tradition, is
21 that right?

22 A That is correct.

23 Q And the person that does the mediation is someone
24 that has to be respected by both sides, is that right?

25 A That is true.

1 Q So that they will abide by his decision, is that
2 correct?

3 A That is correct.

4 Q In this particular case, the respected person was
5 Dr. Abdel Rahman, is that right?

6 A That is right.

7 Q And there are numerous points in this particular
8 transcript where he is saying, I am ordering, tell him the
9 sheik is ordering him to do thus and so. Do you remember
10 translating that in this tape?

11 A Yes, ma'am.

12 MS. STEWART: I believe I have nothing else,
13 Judge. Thank you.

14 THE COURT: Do you have any redirect?

15 MR. McCARTHY: Very brief, Judge.

16 THE COURT: Do you want to do it? Go ahead.

17 REDIRECT EXAMINATION

18 BY MR. McCARTHY:

19 Q Mr. Abdel-Hafiz, let me show you the tape that is
20 Government's Exhibit 850 in evidence. Do you see on the
21 tape itself a date written in Arabic on the right side of
22 the label?

23 A Yes.

24 Q Can you tell us what that date is?

25 A It should be March 5, 1990.

1 Q I direct your attention next to 852, the label
2 for side A, and ask you if you see a date written in Arabic
3 on the left side.

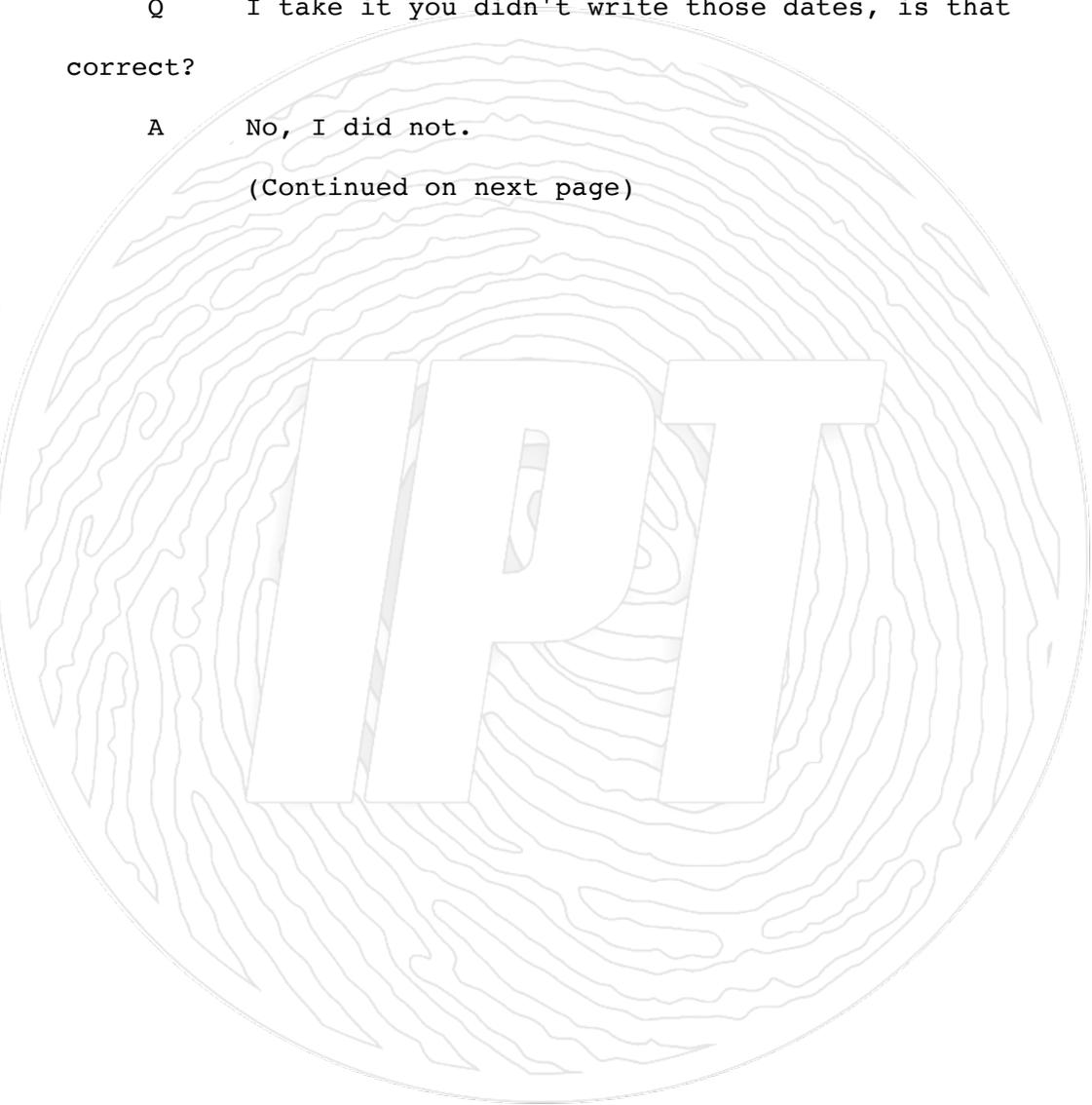
4 A Yes. It is March 24, 1990.

5 Q I take it you didn't write those dates, is that
6 correct?

7 A No, I did not.

8 (Continued on next page)

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1 MR. McCARTHY: Thank you, your Honor.

2 THE COURT: Anything else?

3 MS. STEWART: No, Judge.

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. We will
7 resume after lunch. Have a pleasant lunch.

8 (Jury excused)

9 (Witness excused)

10 THE COURT: Yes.

11 MR. STAVIS: Your Honor, this morning the
12 government offered 162T and 163T, which are transcripts of
13 conversations and messages that Mr. Nosair made from Rikers
14 Island prison. Last week on April 26, I asked your Honor to
15 take a look at these two transcripts because I thought that
16 it was important for your Honor to familiarize yourself with
17 these transcripts in order to rule on a Rule 403 issue.
18 Since they have been offered this morning, if there is any
19 way that your Honor could peruse these two transcripts in
20 order to entertain that application this afternoon.

21 THE COURT: Why don't I look at them over lunch,
22 because I have to admit to you that I did not attend to that
23 task before now. So I am going to do it over lunch.

24 MR. FITZGERALD: Judge, I think I asked you not
25 to because we thought the dispute would go away. One of

1 them did.

2 THE COURT: Now I feel better about it, but I
3 still admit that I didn't do it. I will do it over lunch.

4 MR. FITZGERALD: The only other item that may
5 need to be discussed, we may not get to the phone records
6 this afternoon but if we do, I don't know if you wanted to
7 raise it before lunch or after lunch or when we all get to
8 it.

9 THE COURT: Since we are all here now, what is
10 the problem with the phone chart?

11 MR. STAVIS: I have an objection. It is called a
12 Chart of Telephone Activity from August 1992 to early March
13 1993, and it has been marked for identification as
14 Government's Exhibit 508. While it purports to be a chart
15 of telephone activity, it includes things like, on page 2
16 under an entry for September 1, 1992, Ramzi Yousef and Ahmad
17 Ajaj enter the United States; on page 4 an entry for
18 November 30, 1992, Space Station contract opened; another
19 entry for November 30, 1992, City Chemical order placed by
20 Kamal --

21 THE COURT: I assume that what this is intended
22 to do is to show events that were occurring that have been
23 the subject of proof that were going on at the same time as
24 the telephone calls that are charted on them.

25 MR. STAVIS: Your Honor, my point is that it also

1 includes visits to Mr. Nosair, Mahmoud Abouhalima buying
2 smokeless powder -- what it is is a chronology of the
3 government's case, a synthesis of different types of
4 evidence that have been presented thus far. In effect, your
5 Honor, this is a chart of the government's summation in this
6 case, and I believe under Rule 1006 they are entitled to
7 summarize, and they have summarized the telephone records,
8 they have summarized the Attica visiting records. Those
9 summaries are in evidence, your Honor. This is a summation
10 and not a summary.

11 MR. JACOBS: Your Honor, I have additional
12 objections.

13 THE COURT: Go ahead.

14 MR. JACOBS: Besides it being a summary, this is
15 not accurate in the sense that there are calls from one
16 number to the other number but there is no proof that
17 Salameh/Yousef called Mahmoud Abouhalima on certain dates.
18 The government is entitled, as they have done previously, to
19 show one number to another number and I think we have had
20 some testimony from a paralegal in the U.S. Attorney's
21 Office. But there is no proof that people actually made
22 these calls, and I think it is improper to do it in the
23 manner that the government has done it.

24 In addition --

25 THE COURT: Wait a second. Are they in each case

1 the registered subscriber of --

2 MR. JACOBS: I don't think Yousef is the regular
3 subscriber, no, Judge. So what I am suggesting, your Honor,
4 is that it is improper for the government, even if it were a
5 subscriber, to have a number to another number. They are
6 certainly entitled as they have done in the past to put
7 their little phone charts in, one number to the next, etc.,
8 etc.

9 I also have additional objections to the fact
10 that we are continuing to get evidence concerning Denmark,
11 evidence concerning Pakistan, without being provided
12 discovery from the government relative to those two matters.
13 Back to my usual subject, Judge.

14 THE COURT: The usual subject being
15 Mr. Yousef's --

16 MR. JACOBS: Correct, travels and so forth.

17 THE COURT: -- material, which I have already
18 reviewed.

19 MR. STAVIS: Your Honor, there is one other
20 matter here that I wish to bring to the court's attention.
21 On page 9 of this Government's Exhibit 508, under February
22 24, 1993 entry, it says Nidal Ayyad calls El-Gabrownny, and
23 then in brackets there is the editorial comment that this is
24 the, quote, only call by Nidal Ayyad from work to
25 El-Gabrownny. If your Honor moves down to the entry for

1 February 28, 1993, on that same page you have another Nidal
2 Ayyad call to El-Gabrowny, again with the brackets, quote,
3 only call from Nidal Ayyad to El-Gabrowny, which I think
4 underscores my point about this being a summation.

5 MR. FITZGERALD: Your Honor, my response would
6 be, if we had a witness on the stand and asked him to read
7 each one of these entries they could. If we asked them to
8 read from the documents in evidence they could. And if we
9 asked them to read from the February 24, 1993, can you tell
10 us if there is any other phone call from Nidal Ayyad's work
11 phone to Mr. El-Gabrowny's phone, no. So if all these
12 questions are proper in a question and answer form, I don't
13 see why putting it in a synthesized form would be improper.
14 It can be elicited on cross as it will be on direct that
15 obviously she is not a participant on the calls. So
16 obviously it says 34 Kensington, calls Nidal Ayyad, she
17 doesn't know who is making the call. It is what it is.

18 MR. JACOBS: I object to that. It is not proper
19 to put a document in evidence that is not accurate.

20 THE COURT: The issue is not whether they are
21 capable of putting it in evidence. The issue is whether
22 they will be perfectly capable of understanding it in some
23 months from now when this thing goes walking into the jury
24 room unaccompanied, and I don't share your confidence that
25 they are going to be aware of it at that time.

1 MR. FITZGERALD: Your Honor, what if the chart
2 were amended so, for example, if it says Abdel Rahman, Abdel
3 Rahman telephone calls --

4 THE COURT: He is the subscriber. That is less
5 of a problem than some of the other --

6 MR. FITZGERALD: Yes, Judge. The origin of the
7 phone numbers is on the key. Some of them are subscribers.
8 Some of them come from -- for example, Mr. Yousef gave this
9 number on Government's Exhibit 767 when he called up a
10 particular company. For example, defendant Abdel Rahman is
11 not the subscriber. However, on some of the FISA's he has
12 identified that as his number. He had the phone bills in
13 his possession.

14 I would say that if you are looking at the chart,
15 it is half or even less than half of the persons there
16 actually subscribe to the phone in their own name. But the
17 authority for linking the person to the phone number is
18 listed under the source column. I don't think it should
19 make a difference whether Nidal Ayyad listed in his own
20 name, his phone records come in.

21 THE COURT: What about the editorial comments?

22 MR. FITZGERALD: I take it -- if that's the
23 objection I can remove the only calls and elicit that by
24 testimony.

25 THE COURT: Yes. Those are out. Such notations

1 as only call from Nidal Ayyad home to El-Gabrowny and the
2 like are to be excluded.

3 MR. FITZGERALD: Shall I amend everything to add
4 the word telephone --

5 THE COURT: Yes.

6 MR. STAVIS: There is already a telephone record
7 chart in evidence.

8 MR. FITZGERALD: That is from 1990, Judge.

9 MR. STAVIS: Miss Fugger from your office
10 introduced that telephone.

11 THE COURT: I will allow it provided that they
12 amend it simply to show that that is the telephone and that
13 they exclude the editorial comments.

14 MR. JACOBS: We have gone in without objection,
15 your Honor, telephone number to telephone number. That is
16 certainly proper for the government to do that. But how can
17 you have Salameh/Yousef as making phone calls or receiving
18 calls?

19 THE COURT: It will be indicated that that is
20 their telephone.

21 MR. JACOBS: I don't agree that is their
22 telephone, whether Salameh/Yousef received phone calls from
23 other coconspirators. If they do it in summation that is
24 their business, but I don't think they should get a document
25 in the jury room that we can't --

1 THE COURT: Again, my understanding that those
2 are telephone numbers subscribed to by certain people,
3 correct?

4 MR. FITZGERALD: I could have put Yousef.
5 Mr. Yousef gave the number 443-4381 and he had that call
6 slip --

7 MR. JACOBS: I am at a loss. Somebody gives a
8 number and that means every call is attributable to that
9 person? That is not the Federal Rules of Evidence, my
10 understanding. I object under 403 and I object under 401.

11 MR. STAVIS: Your Honor, can I draw your
12 attention --

13 THE COURT: Let's deal with one problem at a
14 time. With regard to that telephone number, when does he
15 give the number?

16 MR. FITZGERALD: I want to check, but I believe
17 it is October '92, late October '92.

18 THE COURT: If he gives it in late October '92,
19 that is the only period of time in which you can show him as
20 a named person at that telephone. There is also testimony
21 that various people moved around at various times, and I
22 don't think that you can stick someone with a phone number
23 as Mr. Jacobs argues, when the testimony is that he gave the
24 number at a particular time and he was not the subscriber.

25 MR. FITZGERALD: My concern, Judge, is, if we

1 limit it to the time he calls on the phone, the single time,
2 that means if Ramzi Yousef doesn't go around using his real
3 name, he is using an alias in the first place, his phone
4 records would never come in. I think the basis can be
5 explored that he used that number.

6 THE COURT: That he used it at a particular time.
7 If you want to argue that he used it at another time that is
8 fine, but that exhibit is not going in like that.

9 MR. JACOBS: I agree with your Honor.

10 THE COURT: Thanks. Mr. Stavis.

11 MR. STAVIS: Your Honor, one of the points I was
12 trying to make, if your Honor looks at page 9, there is an
13 entry for 2/26/93 which says at 12:27 p.m., the World Trade
14 Center explosion. They have interspersed other events --

15 THE COURT: Other events that are the subject of
16 testimony. I don't see any reason why they can't do that.

17 MR. STAVIS: Because my point is that what they
18 are doing is creating a document to go in to the jury that
19 in effect is their summation. They take seizures, again,
20 for example, on page 9 --

21 THE COURT: Mr. Stavis, if you have a summary of
22 events that points out other events that are the subject of
23 proof in this case, you can feel free to introduce it.

24 MR. JACOBS: I tried that on the cross of Salem.
25 I had my little summary chart with the dates of the

1 indictment --

2 THE COURT: As I recall it, that was not the
3 problem with the chart. I recall there were a number of
4 characterizations on that chart that were --

5 MR. JACOBS: I don't think it was.

6 MR. STAVIS: This chart is labeled chart of
7 telephone activity, your Honor. Somewhat misleading.

8 THE COURT: How would you like it labeled? Is it
9 the label that bothers you?

10 MR. STAVIS: There is already a chart of
11 telephone activity. If you want a chart of more telephone
12 activity --

13 THE COURT: I am not going to limit them to one
14 document styled chart of telephone activity. If that is
15 your objection, it is overruled. I don't think that is your
16 objection.

17 MR. STAVIS: My real objection is that this is a
18 summation disguised as an exhibit to go to the jury, your
19 Honor. That is my real objection.

20 THE COURT: To the extent it is argument, the
21 information will be deleted. To the extent there are
22 objective facts that have been the subject of testimony in
23 the case, that may be presented.

24 Miss Stewart.

25 MS. STEWART: Judge, I am objecting because I

1 think it is misleading because it is incomplete. That is,
2 they are selective facts that are put in here --

3 THE COURT: If you have other facts that you
4 would like to include on your own chart, feel free.

5 MS. STEWART: I hear that, Judge, but to put the
6 burden on 12 defendants to each create their own chart of
7 facts that are missing from the government chart and then to
8 ask jurors to match up the 12 charts so that they get some
9 kind of -- for example, the fact that the sheik leaves for a
10 one-month tour on February 26 or 25 is not noted on here.

11 THE COURT: As I said -- you've got time. You
12 can feel free to do it.

13 MS. STEWART: I would quarrel with your Honor
14 about whether I have time. I hear what you are saying but I
15 think that puts a burden on the defense, which really does
16 not have to produce anything whatsoever --

17 THE COURT: Please, I am not saying you have to.
18 I have not ordered you to introduce a chart. Anybody who
19 construes what I just said as an order -- I mean, when I say
20 feel free, that's what I mean. Feel free not to do it also.

21 MS. STEWART: By reason of this not being a
22 complete chart or a chart we can all agree on, it is
23 misleading, and as you said, when it walks into the jury
24 room a couple months from now on its own, without, perhaps,
25 charts put in by everybody else with other facts, it is

1 misleading. It is not a piece of evidence that they can
2 look at and take at face value --

3 THE COURT: No, it is not misleading if there are
4 no statements on here that are subject to dispute, for
5 example, people being identified with telephone numbers when
6 there is no indication that they were identified with those
7 numbers at the time of the particular calls. But this trial
8 and every trial is a matter of selecting particular facts to
9 be presented in a courtroom. We do not go through the
10 entire history of the world during the dates in question so
11 that the jury can then select out those facts that they
12 think are relevant. The government puts certain facts in
13 evidence, you put other facts in evidence, and that is the
14 nature of a trial. I don't see that this exhibit is
15 anything different when you omit misleading things like
16 editorial comments and hooking up telephone numbers with
17 people at times when there is no evidence showing that they
18 were hooked up with those numbers at that time.

19 MR. JACOBS: I assume, your Honor, that your
20 Honor is going to permit us to cross-examine the appropriate
21 government witness before this comes into evidence -- we
22 make our objections at this point but I assume someone --

23 THE COURT: Is that a rhetorical question?

24 MR. JACOBS: I am not sure. I don't want us to
25 waive our opportunity to cross-examine as to the weight of

1 what this document is whenever it gets into some final form.
2 We still want to be able to cross-examine on it.

3 THE COURT: If there is something to
4 cross-examine about, that is one thing. If there isn't,
5 that's another.

6 MR. JACOBS: I understand.

7 THE COURT: Mr. Ricco has been trying to talk and
8 hasn't for awhile.

9 MR. RICCO: On the March 4 entry, my objection --

10 THE COURT: That is the last entry.

11 MR. RICCO: Yes, your Honor, would be under 106.
12 There were 200 telephone numbers recovered from Mr.
13 El-Gabrownny's apartment on that day. I don't want to have
14 to put in a separate document to show that. Mr. Fitzgerald
15 indicated to me that he was going to draft a document of the
16 telephone activities between the two apartments. I don't
17 have any objections, but I do have an objection to the
18 selection of certain seized evidence as part of a telephone
19 activity exhibit. If the exhibit is for telephone activity,
20 I am not objecting to that, but here they are --

21 THE COURT: Again I think we are hung up on the
22 title of the document.

23 MR. RICCO: But even, your Honor, if we called it
24 Government's Exhibit blank, under 1006 I think I would be
25 entitled to have, particularly this Government's Exhibit

1 XG150. There were at least 25 telephone calls on that one
2 exhibit alone. It seems to me we are opening up a lot of
3 litigation on an issue that is really unnecessary. If the
4 government is going to put in an exhibit that is a summary
5 of telephone calls they should do that, and I am willing to
6 accept it.

7 MR. FITZGERALD: Judge, why don't I circulate a
8 revised form.

9 THE COURT: Was this supposed to go in today?

10 MR. FITZGERALD: It was.

11 THE COURT: It won't.

12 MR. BERNSTEIN: Judge, I am concerned that this
13 is a document they are getting now, not at the end of the
14 case, look what we have proven to you already. It is in
15 effect an intermediary summation before the jury has had, A,
16 the government's entire case and, more importantly, both
17 sides of the case. It goes around the standard charge for
18 the jury that says keep an open mind, hear all the evidence,
19 and then when I give you the case that's when you put facts
20 together and determine what legal conclusions, after I give
21 you a charge, you are to make from the facts as you find
22 them. What this in effect does is say to the jury we have a
23 set of facts, we have proven them to you already and here we
24 are argue to you in this mini-summation in the intermediary
25 stage of the trial. That is what I think is unfair, even if

1 you eliminate what we call the questionable notations here,
2 where some of the names should be attributed to a particular
3 phone. But I think it effectively says to the jury look
4 what we have proven, close your eyes and now we go on to
5 other things in the case because look what we have proven
6 already. I think the problem is that it is only part of the
7 evidence in the case.

8 MR. McCARTHY: Then there are no summary charts
9 ever in a trial.

10 MR. BERNSTEIN: I am not saying that.

11 THE COURT: Again, every summary chart, in fact
12 the nature of evidence is to bring in disparate facts and
13 array them, and every summary chart does that.

14 MR. BERNSTEIN: But it is usually within an ambit
15 of things, to show the jury what this means in the --

16 THE COURT: No. There have been numerous fraud
17 cases in which bank deposits have been coordinated with
18 telephone calls, have been coordinated with travel. I have
19 seen that before.

20 MR. BERNSTEIN: I have also, Judge. I have never
21 seen this in midstream as a focal point of bringing together
22 all aspect of testimony to prove --

23 THE COURT: It isn't all aspects of testimony, it
24 is some.

25 Why don't you circulate it in revised form. Yes,

1 Mr. Serra.

2 MR. SERRA: Your Honor, this telephone cart
3 occurs long before Mr. Alvarez arrives on the scene. I only
4 rise because I assume this is directed to 1006. I direct
5 your Honor's attention to the rule. Rather than read it,
6 your Honor, I would invite the court to read it. I submit
7 the rule is clearly talking about a summary chart, for
8 example, of phone records, a summary chart of bank records,
9 not a summary chart of the evidence in the case. I don't
10 care what the chart is called, whether it is called phone
11 records or whatever.

12 THE COURT: I think what you are arguing is that
13 1006 summaries are the only kinds of summaries that can be
14 received.

15 MR. SERRA: I think that is right, with one
16 exception, as an aid to the government or defense counsel in
17 their summation. I have distributed charts in my summations
18 and I have seen the government here do it frequently. But
19 that is not in evidence. The jury follows the chart in
20 summation but it doesn't go into the jury room. I think
21 1006 does outline --

22 THE COURT: Let me take a closer look at -- I am
23 sorry.

24 MR. MCCARTHY: Judge, I want to direct the
25 court's attention with respect to that point to United

1 States against Casamento in which Judge Leval allowed to go
2 to the jury charts received during the trial which were a
3 compilation not only of dry, objective facts, which is
4 essentially the type of compilation that we offer here, but
5 summaries of Title 3 conversations interspersed with the
6 fact that observing agents had witnessed --

7 THE COURT: Where in that extensive opinion does
8 that issue go -- I will find it.

9 MR. SERRA: My recollection is that in Casamento
10 they were introduced without objection at the trial. Mr.
11 McCarthy was there.

12 THE COURT: He is shaking his head no.

13 MR. McCARTHY: They were introduced over
14 objection but Judge Leval, as your Honor did a little
15 earlier, invited the defense to make whatever charts they
16 sought to make.

17 THE COURT: I would like to decide this with
18 something other than the wind blowing in my face, and that
19 is not a reference to your arguments. It is just an
20 innocent metaphor. I gather that you still want me to voir
21 dire the jurors individually, do you? Mr. Jacobs?

22 MR. JACOBS: Yes, sir, that is my request.

23 THE COURT: I assume everybody still joins in
24 that.

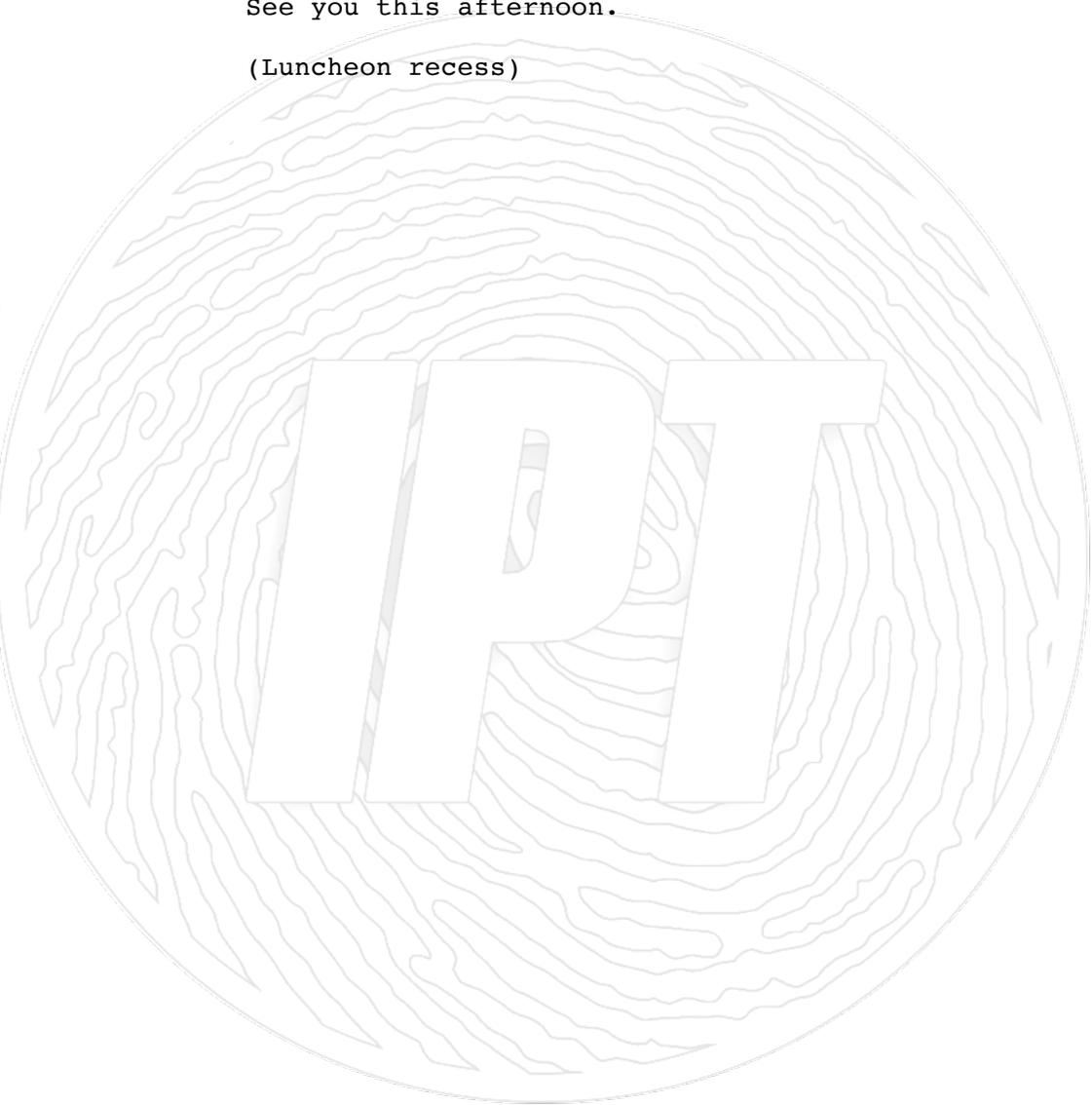
25 MR. STAVIS: Yes, your Honor.

1 THE COURT: Then I may have something to read to
2 you this afternoon if I can do it this afternoon by way of
3 what I am going to tell them and what question, singular, I
4 am going to ask them, if I do it.

5 See you this afternoon.

6 (Luncheon recess)

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A F T E R N O O N S E S S I O N

Time noted, 2:20

THE COURT: We were talking about an exhibit when we broke, or two exhibits when we broke. I don't see why we can't continue to talk about them, even in the absence of the defendants, since it is a legal issue.

You have a 403 objection, Mr. Stavis?

MR. STAVIS: Yes, your Honor. The government this morning proffered --

MS. AMSTERDAM: Excuse me, Mr. Stavis. Your Honor, is there a problem with the defendants?

THE COURT: There is no problem. Somebody thought that I was going to be doing a voir dire of the jury and therefore delayed producing the defendants. Why one follows from the other, I have no idea.

MS. AMSTERDAM: I thought there was some problem.

THE COURT: This is one of the few occasions when there is no problem.

MS. AMSTERDAM: Thank you.

MR. STAVIS: Your Honor, 162T, that was a recorded message from Mr. Nosair at Attica Prison to a conference of some sort. It was made from Rikers Island. It was to a conference concerning Palestine. In the middle of page 2, basically smack in the middle, Mr. Nosair says on this transcript, "Brothers, thank God the almighty that he

1 sends from his people those predisposed to great warfare.
2 May Allah revive this nation anew. We know that this is a
3 conference for Palestine. The Muslim brothers must realize
4 that the entire Palestine and each inch of it is a
5 Palestinian land. We will not relinquish one inch of
6 Palestine."

7 The transcript and the tape go on to make various
8 statements concerning Jews, and it's the kind of virulent
9 anti-Semitic statements that I brought to your Honor's
10 attention last week with regard to Government Exhibit 160,
11 which was a letter from Mr. Nosair to his cousin Ibrahim
12 El-Gabrownny, which also concerned the war between Muslims
13 and Jews and Christians.

14 This particular transcript, 162T, does not
15 include Christians, but it does include quite a bit about
16 Jews and fighting Jews and killing Jews, and on the bottom
17 of page 3 it states, "Look what is happening in Palestine,
18 the Jewish immigration from Russia. It is more now than it
19 was approximately" --

20 THE COURT: I read that.

21 MR. STAVIS: Yes.

22 The point is, your Honor, in this seditious
23 conspiracy case where the government has alleged a war of
24 urban terrorism against the United States of America, these
25 virulent anti-Semitic remarks, which were made in

1 conjunction with the Palestinian conference and relate to
2 Palestine have very little probative value and will be very
3 prejudicial. That is why I make the Rule 403 objection.

4 THE COURT: That is on 162?

5 MR. STAVIS: 162.

6 THE COURT: There is only one part of this that I
7 saw as potentially relevant, and that is on page 4. But do
8 you want to be heard as to the remainder or as to any of it?

9 MR. McCARTHY: I think that it is highly
10 relevant, especially when it's considered in the context of
11 all the evidence in the case. The letter that went into
12 evidence, for example, last week, Ayyad's letter to the "New
13 York Times," tied the bombing of the World Trade Center
14 specifically to American policy in Palestine. Our entire
15 argument vis-a-vis that incident and Mr. Nosair's connection
16 to it, during which he is visiting with the very people who
17 carried out the bombing at the time they're planning the
18 bombing, is basically connected to that same motivation;
19 that is, that this is jihad on account of Palestine.

20 It also runs counter, that is, this tape, to what
21 Mr. Stavis argued to the jury in his opening. He argued to
22 the jury in the opening that Mr. Nosair's only jihad, if he
23 was involved in it at all, was Afghanistan. This
24 conversation -- I actually shouldn't call it a conversation,
25 this belligerent statement by Mr. Nosair flies directly in

1 the face of what his lawyer opened to the jury about what
2 Mr. Nosair is about.

3 Also, to the extent that counsel have taken the
4 liberty, which they have as late as this morning, to ask one
5 of the government interpreters what jihad means, and isn't
6 jihad any sort of a struggle for the sake of Allah, on page
7 3 Mr. Nosair goes on to say, "Our honorable scholar sheik
8 Abdallah Azzam, may God rest his soul, whom they killed, he
9 said, the Islamic nation will not awake and will not arise
10 except at the sound of bombs and bullets."

11 That is what this case is about, what jihad is
12 about. They say it's about one thing, and they act as if
13 it's about something else.

14 (Defendants present)

15 MR. STAVIS: I have to correct the record.
16 Mr. McCarthy said in my opening statement. If your Honor
17 will permit me to just -- would your Honor wish me to
18 continue or can I wait for a minute until the defendants are
19 seated?

20 THE COURT: Whatever makes you more comfortable.

21 MR. STAVIS: When I opened to the jury in this
22 case, I said that Mr. Nosair's jihad was not here in
23 America. I did say that it was in Afghanistan. I also
24 specifically stated to the jury in my opening statement that
25 his jihad also concerned Palestine, and I told the jury he

1 has very strong views concerning Palestine and some of those
2 views may be different from your views.

3 I might also say, your Honor, that this statement
4 in Government 162T is a statement of Mr. Nosair's political
5 beliefs. It concerns his political beliefs with regard to
6 Palestine or Israel. He is allowed to hold those political
7 beliefs, and in a seditious conspiracy case, I don't think
8 that his free expression and his holding of those political
9 beliefs should be introduced as evidence unless they relate
10 specifically to the charges in this indictment, which would
11 be --

12 THE COURT: The law is against you on that.
13 Don't argue that. It is not your strong point. It really
14 isn't.

15 MR. STAVIS: I think the political beliefs of the
16 defendants' in a seditious conspiracy trial have to relate
17 to the seditious conspiracy.

18 THE COURT: You gentlemen can go back and forth
19 forever on this. There is only one part of this that I
20 would see as potentially relevant. That is the exhortation
21 in the middle of page 4 where he says he urges a bursting
22 forth and then he says, "By God, by God, by God, whoever
23 gets into the jihad once, and whoever feels that he is going
24 to be killed for the sake of God, by God, I feel as if I
25 want to do the jihad over again and to fight anew."

1 Then he goes on to say, "God saved my life," etc.

2 That part I think relates directly to a charge in
3 this case, or could be read to relate directly to a charge
4 in this case. The remainder of this and all of 163, unless
5 somebody can point out something in 163 --

6 MR. McCARTHY: Your Honor, if I could invite your
7 Honor's attention to page 4 of 163, which is, I guess
8 beginning 8 to 10 lines down or so.

9 THE COURT: Is this the same thing again?

10 MR. McCARTHY: No, they are two different ones.
11 Your Honor, we will withdraw 163 and just go with
12 162.

13 Your Honor, if I may, I'm sorry, I should have
14 directed your Honor's attention to page 2 of 163 where there
15 is a discussion. It is the first attribution that says
16 "Nosair" on that page. There are a number of statements
17 there which are statements about Meir Kahane. The
18 government would argue that that goes directly not only to
19 his motive, but rebuts --

20 THE COURT: Where? I don't see it. This is in
21 163?

22 MR. McCARTHY: 163, your Honor, page 2.
23 Beginning with, "The greatest proof of that what happened in
24 New York," which is about ten lines down.

25 THE COURT: Ten lines down on the page or --

1 MR. McCARTHY: Ten lines down after the
2 attribution to Nosair, your Honor.

3 THE COURT: OK. Mr. Stavis?

4 MR. STAVIS: Yes, your Honor. This does not
5 appear to be an admission. It appears to be a statement by
6 Mr. Nosair in the context of his political beliefs
7 concerning Palestine. Earlier on the same page he states
8 his belief that we will, that we will fight the Jews. We
9 are from the east side of the river and they are from the
10 west of the river.

11 THE COURT: I know. But I asked you what about
12 the statement that he referred to, and you tell me about all
13 the other statements on the page.

14 MR. STAVIS: Well, it has to be read in context,
15 your Honor. It is not an admission of any kind. It's
16 stating events as they relate to Palestine and as they
17 relate to Mr. Nosair's views as to Palestine, that the
18 believers should penetrate the lines, no matter how strong
19 they are. The greatest proof of that, what happened in New
20 York. He's not referring to the greatest proof is what I
21 did in New York, your Honor.

22 MR. McCARTHY: Your Honor, I think -- I'm sorry.

23 MR. STAVIS: I'm sorry.

24 MR. McCARTHY: All I would respond is that Mr.
25 Stavis's argument that he made with the Kahane witnesses in

1 particular seemed to be that Mr. Kahane may have been
2 actually done in, as it were, by people within his own
3 organization, and that Mr. Nosair was chased out simply
4 because he was an Arab by a crowd screaming, "Get the Arab."

5 I think this part of the conversation considered
6 in conjunction with the last page, which clearly is an
7 admission, rebuts that claim and goes to his motive.

8 MR. STAVIS: I think Mr. McCarthy may have the
9 wrong trial. I haven't summed up yet in this trial. I have
10 cross-examined witnesses, but I haven't argued anything to
11 the jury.

12 THE COURT: You certainly suggested a different
13 theory. You have certainly suggested the theory that he
14 indicated. You did in your opening.

15 MR. STAVIS: Under a Rule 403 analysis, if this
16 is not an admission, which it is not, and we get into an
17 analysis of how probative it is versus how prejudicial it
18 is, I believe that your Honor should exclude this part and
19 any part of 163 because the entire gestalt of 163T is the
20 political beliefs, and you don't get anything probative.

21 THE COURT: The fact that it happens to be
22 political beliefs is as far as I'm concerned, or that it
23 includes political beliefs as far as I'm concerned is
24 irrelevant. Your political beliefs can be introduced as
25 evidence if you're charged with something other than simply

1 expressing them, which he is charged with here. Whether 163
2 ought to be redacted is a whole different story. As to that
3 I can see an excellent argument.

4 MR. McCARTHY: Your Honor, if I may -- I'm sorry.

5 THE COURT: Yes.

6 MR. McCARTHY: I didn't mean to cut your Honor
7 off.

8 THE COURT: Go ahead.

9 MR. McCARTHY: What I was going to suggest is
10 that I would be guided by what seems to be your Honor's
11 sentiment about it. I would propose to redact it overnight
12 and give it to --

13 THE COURT: "Sentiment" is kind of a sloppy
14 description of what it is I am doing.

15 MR. McCARTHY: I have been given to sloppiness
16 before.

17 But, in any event, my suggestion would be that I
18 redact it along the lines of trying to cut it down to what
19 we would argue directly relates to the Kahane incident,
20 which at least I perceive to be where your Honor is coming
21 from.

22 THE COURT: Right. You would not be offering
23 what Mr. Stavis referred to as the entire gestalt, namely,
24 both documents, right?

25 MR. McCARTHY: Right.

1 THE COURT: We will see what it looks like
2 redacted.

3 MR. PATEL: Your Honor, very briefly.

4 THE COURT: Yes.

5 MR. PATEL: It can wait.

6 THE COURT: Good.

7 I said something about doing a voir dire. I am
8 not going to do that today because, frankly, we have burned
9 a lot of time, and I don't see a dime's worth of difference
10 between doing it today and doing it tomorrow if we are going
11 to do it at all.

12 But what I would propose to do at some point is
13 to read to you the instruction and the question that I
14 propose to give and hear you on it, and then at least we
15 will know what it is that we are going to do, if we do it.

16 Do you want to do that now because it is
17 relatively brief?

18 MS. AMSTERDAM: Yes.

19 THE COURT: What I would propose to tell them is
20 the following:

21 Ladies and gentlemen, last week and the week
22 before I discussed with you the bombing in Oklahoma City,
23 which has no relationship to this case or to any defendant
24 here, but has caused speculation and comparisons that
25 mentioned this case. As I explained several times, because

1 you took an oath to decide this case based only on the
2 evidence presented here, you should avoid, to the extent you
3 can, reading about or hearing or discussing anything about
4 the events in Oklahoma City so as not to endanger your
5 ability to live up to that oath.

6 It is possible that in the future an appeals
7 court will have to review the record in this case, and it
8 would be helpful to that review if they could see not only
9 my explanations and instructions to you, but also your words
10 specifically on the question of whether you can decide this
11 case based only on the evidence presented here and not based
12 on anything you might have seen or heard on the outside,
13 particularly in the last couple of weeks.

14 So what I'm going to do is ask each of you
15 separately in the robing room in the presence of two lawyers
16 from each side whether you can do that. I want to emphasize
17 to you that in asking you that question I am not suggesting
18 that I have any doubt as to the ability of any of you to
19 live up to your oath. I told you more than once that if any
20 of you had any hesitation that you could do that, you should
21 raise the matter with my courtroom deputy, Ms. Schwartz, and
22 none of you has done that. That's good enough for me
23 because I have seen your diligence over these months, but I
24 want to make sure that this record is good enough not only
25 for me, but also for appeals judges who will not have seen

1 you at the time they review the record in this case, if they
2 have occasion to review it.

3 In other words, I am doing this out of what I
4 consider to be an excess of caution and not because I doubt
5 any of you. Nonetheless, if you do have reason to believe
6 that events outside this courtroom will influence your
7 verdict, I hope, and I am sure that you will be candid and
8 tell me that.

9 I will then have them in the robing room and ask
10 each of them the following question: In spite of anything
11 you may have seen or heard in the last couple of weeks,
12 including things you may have heard from family and friends,
13 can you decide this case based only on the evidence
14 presented in court, and on my instructions as to the law?

15 Mr. Jacobs?

16 MR. JACOBS: I don't have any objection to the
17 question asked of the jurors. I do object to your Honor's
18 remarks with respect to, I think, pitting your Honor's
19 credibility against the jurors. I think when your Honor
20 says that you have no doubt as to their ability, I think
21 your Honor is pitting your Honor's belief and what their
22 response is going to be and your Honor's faith in them
23 against -- I think it's injecting the court's opinion into
24 the question. The general introductory remarks I have no
25 problem with. I think they are correct and accurate. I

1 think as to the remarks where your Honor injects your
2 Honor's personal opinions as to what you expect the jurors
3 to say, I would object to those.

4 I don't object to the question. As I said, I am
5 trying to remember exactly what your Honor said, but I think
6 it was pretty clear that your Honor is telling them that you
7 don't expect them to answer no, and that whatever it is -- I
8 don't remember your specific remarks but --

9 THE COURT: All right. I think I understand your
10 point as to some of it. What I would propose to do, I told
11 you early on, and I am going to convey this idea one way or
12 the other, and that is I do not want this question read by
13 them to convey any suggestion that I have any doubt about
14 them.

15 MR. JACOBS: That is what I object to. I'm
16 sorry.

17 THE COURT: You object to --

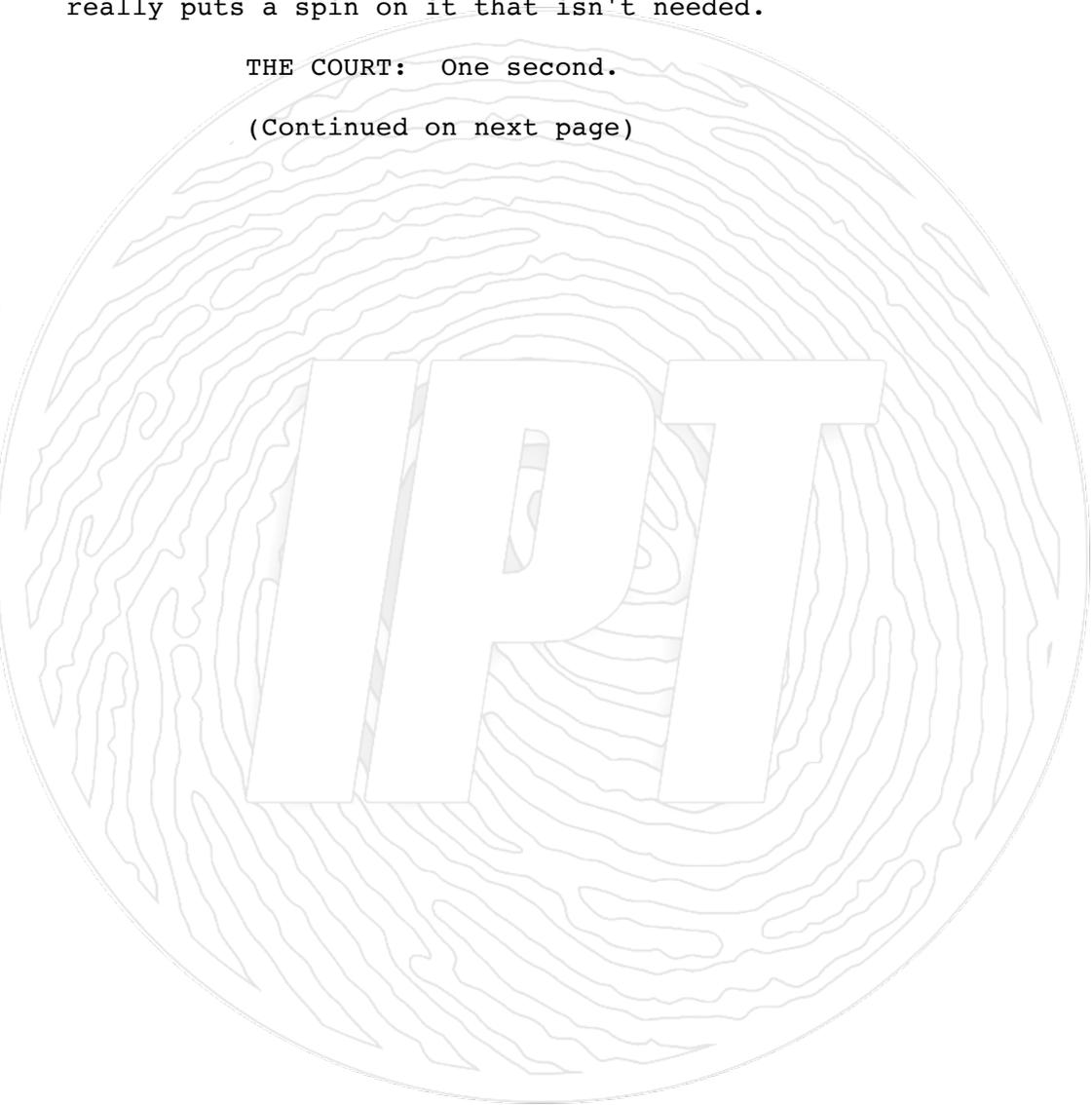
18 MR. JACOBS: Yes, I object to that part of it
19 because I think that it is interjecting your Honor's
20 personal opinion, just as we have personal opinions.
21 Whether it may affect them, I think it affects all the
22 jurors, but I don't think the government would want me to
23 say to the jurors some counsel think you have been affected
24 by it. It is no different than me injecting my opinion,
25 which I don't think has any more weight than your Honor's.

1 I think the initial remarks seem to be perfectly
2 accurate. I have no objection to saying the appellate court
3 is going to review it. I think the question itself seems to
4 be fair. But I think interjecting your Honor's statements
5 really puts a spin on it that isn't needed.

6 THE COURT: One second.

7 (Continued on next page)

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1 THE COURT: Anyone else?

2 MR. BERNSTEIN: I have a different concern and
3 that is the question that you raise with the jury about
4 making a record for an appeals court. I think that
5 presupposes --

6 THE COURT: I said if it is necessary. I said
7 that twice.

8 MR. BERNSTEIN: Being that they are not lawyers,
9 they are not involved in that process, it seems to me that
10 you are implying without intending to something to maybe
11 some of the more sophisticated ones that there will an
12 appeal, appeals courts will look at it. I don't think it is
13 their business what happens after this trial is over. I
14 think you should neutrally indicate to them that the
15 questions are being asked solely out of a desire to make
16 sure there is no problem, that there is no presumption on
17 any of our parts or your part. The appeals question, I
18 think, is not relevant to their concerns and only says to a
19 jury who knows that there are appeals for defendants and not
20 for prosecutors, that that presupposes convictions also.

21 MR. LAVINE: Judge, I am afraid it will give them
22 the uncomfortable sense that we as lawyers and judges, that
23 someone is looking over our shoulders. We are used to it
24 but I think someone on a jury may be a little less
25 comfortable with that concept than we are.

1 THE COURT: Anyone else?

2 MS. AMSTERDAM: Yes, your Honor. I have a
3 separate consideration to address for the court. I have no
4 objection to the proposed instruction and the question that
5 your Honor intends to ask. I would, however, think that
6 there should be, for want of a better word, a second part to
7 this question, which is to explore whether or not at any
8 time last week when they heard evidence, whether there was
9 anything in the past that had forced them to listen to
10 evidence with a jaundiced view.

11 THE COURT: That question I will not ask.

12 MS. AMSTERDAM: Just so the record is clear, I
13 believe we should probe whether or not at any time during
14 the hearing of the last week of evidence, whether or not
15 they heard any of that evidence with a jaundiced view or any
16 assumptions.

17 THE COURT: We can then go into the question of
18 what constitutes a jaundiced view which is exactly the kind
19 of free form -- Mr. Jacobs?

20 MR. JACOBS: No, I am just listening.

21 THE COURT: -- which is exactly the kind of free
22 form psychological game that I am not going to get into.

23 Mr. Jabara.

24 MR. JABARA: Yes, your Honor. With regard to the
25 question that is going to be asked in the robing room, could

1 the court specifically refer to the events of Oklahoma City
2 rather than the events of the last two weeks?

3 THE COURT: I did refer to them in the precursor
4 instruction. I am not going to refer to them specifically
5 in the question in the robing room.

6 Ms. London.

7 MS. LONDON: I would like to add to the objection
8 of Mr. Jacobs and Mr. Bernstein about the court interjecting
9 the court's belief --

10 THE COURT: I think I pretty much said that I am
11 going to adopt that.

12 MS. LONDON: And Mr. Bernstein's objection about
13 the reference to the Court of Appeals?

14 THE COURT: I think I am going to excise the
15 statement about the Court of Appeals, which will give me a
16 certain delicious pleasure.

17 MS. LONDON: I believe that it is not
18 unreasonable to ask this jury whether in light of events
19 that happened they still think they can be fair without
20 making an excuse to ask them -- I think it is not an
21 unreasonable question to ask them if they can be fair based
22 on the events themselves.

23 THE COURT: Again I prefer to put it in terms of
24 their oath, based on the evidence and my instructions as to
25 the law, and that is the way I am going to rephrase it. I

1 will recast this to meet your cogent objections.

2 Sir.

3 MR. JABARA: Your Honor, our position is that we
4 feel that this is not a timely voir dire, that it should
5 have been conducted at the time of the events, and for that
6 reason we would object to it.

7 THE COURT: I think I made it clear that I
8 disagree with that, because the time to have conducted this
9 was not when events were still unfolding, it was when the
10 event is an assimilated event, as it pretty much is now.

11 Does the government have anything?

12 MR. McCARTHY: No. Thank you, your Honor.

13 THE COURT: Let's get the jury.

14 MR. JACOBS: Your Honor, at the end of the day
15 can we discuss Mr. Haggag's proposed testimony?

16 (Jury present)

17 (Continued on next page)

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1 LORETTA SILVERENCE,

2 called as a witness by the government,

3 having been duly sworn, testified as follows:

4 THE COURT: Before we start, ladies and
5 gentlemen, I should wish you first of all good afternoon, as
6 I usually do, and secondly tell you that the explanation for
7 the late start now is the same as the one before, namely
8 that we have been trying to do our legal wrangling in your
9 absence and not while you are in the jury box.

10 Miss Silverence, if you would talk into the
11 microphone so everyone can hear you.

12 DIRECT EXAMINATION

13 BY MR. FITZGERALD:

14 Q Good afternoon, Miss Silverence. Could you tell
15 the jury who you work for.

16 A I work for Independent Savings Bank.

17 Q Could you tell us, was there a time when you
18 worked at the branch in downtown Brooklyn at Atlantic Avenue
19 on Court Street?

20 A Yes.

21 Q Can you tell us what years you worked at that
22 branch?

23 A Between 1983 -- excuse me -- between 1989 and
24 1993.

25 THE COURT: Excuse me. Please try to move up.

1 The chair will move. And try to get a little closer to that
2 mike.

3 Q Can you tell the jury, during the time that you
4 worked at the downtown Brooklyn branch of Independent
5 Savings Bank, did you know a man whose name was Mr. Abdel
6 Rahman?

7 A Yes.

8 Q Did you ever see him in the bank?

9 A Yes.

10 Q Do you recall who he would come to the bank with?

11 MR. JABARA: Your Honor, time frame.

12 Q Can you tell us approximately what year or years
13 it was that you would see the man you knew as Mr. Abdel
14 Rahman at the bank?

15 A Between 1989 and 1991.

16 Q When you saw him, was he generally alone or with
17 other people?

18 A With another gentleman.

19 Q Can you tell us what the other gentleman looked
20 like that he would be with?

21 A A gentleman with reddish and brownish hair,
22 medium built, freckles on his face.

23 Q Can you tell us as between Mr. Abdel Rahman and
24 the reddish-brown-haired man with freckles on his face, who
25 would you talk to?

1 A The gentleman with the freckles on his face.

2 Q Can you tell us how you would interact with the
3 two of them when they were in your bank?

4 A Yes. I would speak to the gentleman with the
5 freckles on his face, and he would translate to Abdel
6 Rahman, the blind man.

7 Q What would happen after the gentleman with the
8 freckles and the reddish brown hair would translate to Mr.
9 Abdel Rahman?

10 A Mr. Rahman would then translate back to him what
11 he wanted to transact on that day.

12 Q Then who would tell you in English what you were
13 supposed to do?

14 A The gentleman with the red hair and the freckles
15 on his face.

16 Q Did you know the name of the gentleman with the
17 red hair and freckles on his face?

18 A No.

19 Q Let me approach you with what has been premarked
20 as Government's Exhibit 512. Miss Silverence, I ask you to
21 take a look at Government's Exhibit 512 before you and tell
22 us if you recognize the person in the picture?

23 A Yes, I do, I recognize him.

24 Q Can you tell us how you recognize the person
25 depicted in Government's Exhibit 512?

1 A I recognize him from coming into the bank on
2 Fourth Street and Atlantic Avenue.

3 Q And the person depicted in Government's Exhibit
4 512, is he the same or different person as the person you
5 described would come into the bank with Mr. Abdel Rahman, if
6 you know?

7 A I can't be so sure.

8 Q So you recognize the person on 512 but you are
9 not sure if that is the person with the red hair who came in
10 with Mr. Abdel Rahman?

11 A That is correct.

12 Q Let me approach you with what have been premarked
13 as Government's Exhibits 509D, 509E, then 509A and 509C.
14 Prior to coming to court today, did you have a chance to
15 look at those documents which I have placed before you? You
16 can take a moment and look at them, if you like.

17 A Before today I have not seen these documents.

18 Q How about today?

19 A Today, yes, I did. I saw them this morning.

20 Q Miss Silverence, by the way, have you ever
21 testified before in court?

22 A Before? No, I have not.

23 Q Looking at what you have reviewed today before
24 court and marked as 509D, E, A and C, are those records of
25 the Independent Savings Bank?

1 A Yes, they are.

2 Q Those are the records kept in the ordinary course
3 of the business of Independent Savings Bank?

4 A Yes.

5 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, I agreed with Miss
2 Stewart that we would discuss which particular pages would
3 be offered privately at a later time.

4 MS. STEWART: Mr. Jabara will be handling that.

5 THE COURT: Other than that, those have been
6 identified as business records of the bank?

7 MR. FITZGERALD: Yes.

8 THE COURT: Cross, Mr. Jabara?

9 MR. JABARA: Yes.

10 THE COURT: Go ahead.

11 MR. FITZGERALD: Your Honor, I had some questions
12 about it, but maybe I should have a conference with Mr.
13 Jabara first.

14 THE COURT: Why don't you do that.

15 (Pause)

16 MS. STEWART: Judge, may we have a side bar?

17 THE COURT: Yes.

18 (At the side bar)

19 MR. FITZGERALD: There was a disagreement this
20 morning as to, they didn't recall receiving all these papers
21 before. I am trying to check into it. I know they received
22 some, I don't know if they received all. I don't know that
23 we care about the difference. I told Mr. Jabara that rather
24 than offer the documents before the jury -- there were two
25 accounts. One was with Mr. Mahmoud Abouhalima, one was

1 another. The time span, the fact that they were interest
2 bearing, the fact that both persons did transactions, and
3 the fact that the balance was no higher than that noted,
4 \$38,000.

5 MR. JABARA: We have no problem with that.

6 The problem is that number one there is writing
7 we don't know anything about. I understand they are not
8 going to put anything in. The other thing, as my cocounsel
9 said, we had a very reduced lunch period --

10 THE COURT: I know. I had a reduced lunch period
11 myself. Do you want to subject this poor woman to a
12 withering cross-examination about the foundation for these?

13 MR. JABARA: No, I don't think we want to. She
14 is very nervous.

15 THE COURT: I'll say.

16 MS. STEWART: We had some benign
17 cross-examination that is usual with this, and without
18 knowing what is in there --

19 THE COURT: He is not saying that any of the
20 transactions in there were illegal or bank fraud.

21 MR. JABARA: Can we have a statement to the jury
22 that it has been stipulated that all these are --

23 MS. STEWART: You don't need that. Roger called
24 my attention to a currency transaction.

25 MR. STAVIS: Three consecutive days.

1 THE COURT: What are they doing, structuring?

2 MR. STAVIS: Not if they filled out the CTR.

3 THE COURT: So.

4 MR. STAVIS: So why didn't he do it on the first
5 day, but it's not my --

6 THE COURT: Are you offering those particular
7 transactions to show that they coincide with something else?

8 MR. FITZGERALD: No.

9 THE COURT: What's the point of any of it?

10 MR. FITZGERALD: I don't care about those --
11 that's why I said I wasn't going to offer them.

12 THE COURT: Can we excuse her?

13 MR. JABARA: We just have the one benign
14 question.

15 THE COURT: Fine.

16 (At the in open court)

17 MR. FITZGERALD: Thank you, Judge.

18 (Continued on next page)

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1 BY MR. FITZGERALD:

2 Q Miss Silverence, if you could look at the
3 document marked 509E, I am just going to ask you, there are
4 two accounts referred to in the four sets of documents. On
5 the account for 509E, can you tell the jury whose account
6 that was?

7 A It is Mr. Abouhalima Mahmoud or Mr. Omar Ahmed.

8 Q Would that be Mr. Mahmoud Abouhalima or Mr. Omar
9 Ahmed?

10 A That is correct.

11 Q Can you tell the jury, looking at the next page
12 of the exhibit and the next page after that -- you can pull
13 it out of the plastic -- 509E, just the time period covered
14 by that account? Looking at the next two pages of the
15 account, can you tell us just the time period covered by the
16 account in the name of Mr. Mahmoud Abouhalima and Mr. Omar
17 Ahmed?

18 A September 6, 1990 to March 20, 1991.

19 MR. JABARA: Which document is this?

20 MR. FITZGERALD: 509E.

21 THE COURT: March 20, '91?

22 THE WITNESS: Yes.

23 Q And in looking at the account, did both
24 Mr. Abouhalima and Mr. Omar Ahmed make transactions on that
25 account, looking at 509D and E?

1 A Yes.

2 Q When Mr. Abouhalima would make transactions, he
3 would sign his name, is that fair to say?

4 A That is correct.

5 Q What about when Mr. Omar Ahmed would make
6 transactions?

7 A He also signed his name.

8 Q If you look at some of the documents, do you see
9 fingerprints on them, or copies of fingerprints?

10 A Yes.

11 Q Does the bank have a practice of when they have
12 customers put their fingerprints on a transaction?

13 A Yes.

14 Q What is that policy?

15 A When the person is either impaired or for
16 whatever reason cannot see.

17 Q If a person is blind and cannot see, will they
18 use fingerprints instead of signing?

19 A Yes.

20 Q Just two more questions about that account.

21 Looking at the first page of 509D, can you tell us what the
22 balance was on September 6, 1990?

23 A Balance after deposit is \$38,665.

24 Q Looking at 509E, the second page, is it fair to
25 say that the balance never got higher than that?

1 A That is correct.

2 Q And looking at that same page, was the account an
3 interest-bearing account?

4 A Yes.

5 Q Now I will direct your attention to 509A and
6 509C, the other two sets of papers before you. Looking at
7 the first page of 509A, first, is it fair to say that that
8 account went from April of 1991 to approximately April of
9 1992?

10 A That is correct.

11 Q And looking at the first page of 509C, can you
12 tell us whose name that account was in?

13 A Omar Ahmed Ali.

14 Q Would that be Omar Ahmed, A-H-M-E-D, Ali?

15 A Yes.

16 Q Again, the person whose account that was used
17 their fingerprints rather than their signature?

18 A That is correct.

19 Q Unlike the first account, that was not a joint
20 account with Mahmoud Abouhalima, is that correct?

21 A That is correct.

22 Q Looking at the second page of 509C, can you tell
23 us approximately the highest balance that account achieved
24 during the period of April '91 to April '92?

25 A \$60,330.

1 Q And finally, looking at the first page of 509A,
2 can you tell us whether or not this account is an
3 interest-bearing account?

4 A Yes, it is.

5 Q And just one question regarding joint accounts.
6 A joint account is an account that either person can put
7 money in or take money out?

8 A That is correct.

9 MR. FITZGERALD: Thank you. I have nothing
10 further.

11 THE COURT: Mr. Jabara?

12 CROSS-EXAMINATION

13 BY MR. JABARA:

14 Q Good afternoon, Miss Silverence. Do you recall
15 what date the account on 509C was opened?

16 A April 4, 1991.

17 Q The joint account, in 509E, can you tell me what
18 date that was opened?

19 THE COURT: She already testified that was
20 September 6, 1990.

21 MR. JABARA: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes, you may.

24 Q If you look at the top of the page, is that the
25 date that this account was opened?

1 A July 10, 1990.

2 Q Isn't that July 19?

3 A Could be. It is smeared. The ink was smeared at
4 the time.

5 Q So the date that that was opened was not
6 September 9, is that correct?

7 A That is correct.

8 THE COURT: Not September 6.

9 MR. JABARA: September 6, excuse me, your Honor.

10 THE COURT: So it was either July 10 or July 19?

11 THE WITNESS: That is correct.

12 Q Miss Silverence, on how many different occasions
13 did you happen to see Dr. Abdel Rahman in the bank? Do you
14 recall?

15 A I would say approximately three.

16 Q Three times?

17 A Approximately.

18 Q How many times did you see the gentleman in the
19 photograph that was shown to you by the U.S. Attorney? On
20 how many occasions did you see him in the bank?

21 A I would say about the same.

22 Q Three times. So every time you saw Dr. Abdel
23 Rahman in the bank, you saw the gentleman with the freckles
24 and the red hair that you testified about, is that correct?

25 A I would say I saw them in the bank approximately

1 the same amount of times but I couldn't definitely say that
2 it was at the same time, together.

3 Q Did you ever see Dr. Abdel Rahman come in
4 separately from the man with the red hair?

5 A He always had an assistant, or somebody to escort
6 him.

7 Q He always had an assistant? Did he always have
8 the assistant translate for him?

9 A Yes.

10 Q Did he always speak in a foreign tongue to the
11 assistant?

12 A That is correct.

13 Q You didn't understand what he was saying to the
14 assistant, did you?

15 A No, I did not.

16 Q The bank doesn't provide any records in Braille,
17 does it?

18 A No, they do not.

19 Q So someone who is blind and can't read would have
20 to have an assistant, is that correct?

21 A That is correct.

22 Q In terms of the deposits that were made in the
23 account number that was opened on July 19, 1990, all those
24 deposits and withdrawals were legal deposits and
25 withdrawals, were they not, Miss Silverence?

1 A Yes.

2 Q With regard to the account that was opened on
3 April 4, 1991, in the name of Dr. Abdel Rahman, all of those
4 deposits and withdrawals in that account were legal, were
5 they not?

6 A Yes.

7 Q You don't have any idea what this money was being
8 used for, do you?

9 A No, sir.

10 Q This is normal in the course of a checking
11 account that a person has if money is deposited and
12 withdrawn and transferred, is that correct?

13 A That is correct.

14 Q This is a normal banking procedure?

15 A Yes.

16 MR. JABARA: I have nothing further, your Honor.

17 THE COURT: Anything else?

18 MR. FITZGERALD: Just one question.

19 THE COURT: Go ahead.

20 REDIRECT EXAMINATION

21 BY MR. FITZGERALD:

22 Q So we are clear, Miss Silverence, the person in
23 this account, Omar Ahmed, was he the person you knew as Mr.
24 Abdel Rahman, if you recall?

25 A I don't recall.

1 Q Can you tell us whether or not his date of birth
2 and place of birth are listed on 509E?

3 A Yes, it is.

4 Q What is his place of birth?

5 A May 3 -- I am sorry. What place of birth?
6 Egypt.

7 Q Egypt, and the date of birth?

8 A May 3, 1938.

9 Q So the Omar Ahmed in the account is from Egypt
10 and born on May 3, 1938?

11 A That is correct.

12 MR. FITZGERALD: Thank you. I have nothing
13 further.

14 MR. JABARA: Your Honor, I have one other
15 question, if I may.

16 THE COURT: Go ahead.

17 MR. JABARA: May I approach the witness, your
18 Honor?

19 THE COURT: Yes, you may.

20 RE-CROSS-EXAMINATION

21 BY MR. JABARA:

22 Q Miss Silverence, with regard to the average daily
23 balance in that account, where did you ascertain that in the
24 records that you looked at?

25 MR. FITZGERALD: Objection to form.

1 THE COURT: Sustained. She never testified to
2 the average daily balance. She testified to a balance and
3 testified that the balance never went above that amount,
4 i.e., was the highest balance.

5 MR. JABARA: Fine.

6 Q As to the highest balance that was in that
7 account, Miss Silverence, would you please indicate where
8 you ascertained that from in the exhibits.

9 MR. JABARA: It was in Exhibit 509E, I believe.
10 Is that correct, Mr. Fitzgerald?

11 MR. FITZGERALD: Yes, 509E, yes.

12 A It was a DSH, which is a computer printout, on
13 the last date being known as March 20, 1991, and it would
14 give you the balance from August until March. That is
15 August of 1990 till March 1991.

16 Q Would you please indicate to me where that is
17 located here on the --

18 A DSH.

19 Q All right. You testified, did you not, that the
20 highest balance in that account was -- where does it
21 indicate what that amount was?

22 THE COURT: You have to speak up.

23 A This is balances after deposit.

24 Q The highest balance in that account was how much?

25 A \$38,665, as of September 6, 1990.

1 Q You testified on direct examination, did you not,
2 that it was 60 some thousand?

3 MR. FITZGERALD: Objection.

4 THE COURT: Sustained. That was the other
5 account.

6 MR. JABARA: I have nothing further of this
7 witness, your Honor.

8 THE COURT: Thank you. Anything else?

9 MR. FITZGERALD: No, Judge.

10 THE COURT: Thank you, Miss Silverence. You are
11 excused.

12 THE WITNESS: Thank you.

13 (Witness excused)

14 MR. FITZGERALD: The government next calls
15 Lillian Rolon, R-O-L-O-N.

16 LILLIAN ROLON,

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 Ms. Rolon, can you tell the jury what you do for
22 a living.

23 A I am a consultant for Bell Bell Atlantic.

24 Q You don't have to get that close to the
25 microphone. I might have misled you earlier.

1 How long have you worked for Bell Atlantic
2 telephone?

3 A Fifteen years.

4 Q Let me approach you with what has been premarked
5 as Government's Exhibit 507. I will ask you if you have had
6 a chance to review those records before coming to court
7 today?

8 A Yes.

9 Q Are they records of the Bell Atlantic Telephone
10 Company?

11 A Yes, they are.

12 Q Are they the ordinary billing records for Bell
13 Atlantic Telephone Company?

14 A Can you tell us the billing address they are
15 records for?

16 A 115 Fairview Avenue, apartment 4B, Jersey City,
17 New Jersey.

18 Q Is that 4B or 48, if you can tell?

19 A Looks like a B.

20 Q Are these the telephone records for that billing
21 address?

22 A Yes.

23 MR. FITZGERALD: Your Honor, the government would
24 offer Government's Exhibit 507.

25 MR. JABARA: No objection.

1 THE COURT: 507 is received without objection.

2 (Government's Exhibit 507 received in evidence)

3 MR. FITZGERALD: I have nothing further.

4 THE COURT: Cross, Mr. Jabara.

5 CROSS-EXAMINATION

6 BY MR. JABARA:

7 Q Good afternoon, Miss Rolon.

8 A Good afternoon.

9 Q How do you do?

10 A Fine, thank you.

11 Q Miss Rolon, did you provide these records on the
12 basis of subpoena?

13 A Yes.

14 Q When were they subpoenaed?

15 A I am not sure.

16 Q Do your records indicate that? Can you check
17 your records to see when they would have been subpoenaed?
18 Would you do that.

19 A I don't have them with me.

20 Q How long do you keep these telephone records?

21 A Which ones? These in particular? Any account?

22 Q Yes. How long do you keep telephone records on
23 an account?

24 A Two years, usually.

25 Q When you say two years usually, is it sometimes

1 more than that?

2 A Yes.

3 Q Under what circumstances are they kept longer
4 than that?

5 A In the office we keep them for two years but the
6 accounting department keeps them for seven.

7 Q So when I subpoena records that go back seven
8 years, I can receive those from the accounting department,
9 is that your testimony? Would you please answer.

10 A Yes.

11 Q In terms of these phone records, they don't
12 indicate who was speaking on the telephone, do they?

13 A No.

14 Q And they don't indicate who made the telephone
15 call, do they?

16 A No.

17 Q And they don't indicate who answered the phone,
18 do they?

19 A Correct.

20 Q So all they are are the fact that certain calls
21 were made from a particular number on a particular dates and
22 time, is that correct?

23 A That is correct.

24 Q And the length of that call?

25 A Right.

1 Q And it indicates also the place where that call
2 was made, is that correct?

3 A Yes.

4 MR. JABARA: I have nothing further of this
5 witness, your Honor.

6 THE COURT: Anything else?

7 MR. FITZGERALD: No, Judge.

8 THE COURT: Thank you very much. You are
9 excused.

10 (Witness excused)

11 MR. McCARTHY: Your Honor, at this time the
12 government would ask to read from a number of items in
13 evidence.

14 THE COURT: Go ahead.

15 MR. McCARTHY: We begin first, your Honor, with
16 Government's Exhibit 478 and direct the attention of the
17 court, counsel, and the ladies and gentlemen of the jury to
18 page 9 of that transcript.

19 THE COURT: That is in the books marked 400
20 series, under tab 478T. Which page?

21 MR. McCARTHY: I am sorry, Judge, page 9.

22 MS. STEWART: What was the exhibit, Judge? I am
23 sorry.

24 THE COURT: 478T.

25 MR. McCARTHY: Your Honor, Mr. Fitzgerald will

1 read the attributions to the person identified as an
2 unidentified male, and I will read the attributions to the
3 defendant Abdel Rahman. We would be beginning two
4 attributions up from the bottom on page 9.

5 (Portions of Government's Exhibit 478 were read
6 to the jury)

7 MR. McCARTHY: Your Honor, I would next ask to be
8 permitted to read Government's Exhibit 481.

9 THE COURT: It is under tab 481T.

10 MR. McCARTHY: May I begin, your Honor?

11 THE COURT: Go ahead.

12 (Government's Exhibit 481 read to the jury)

13 (Continued on next page)

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1 MR. McCARTHY: Then Sheik Omar Abdel Rahman led
2 the prayer.

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

7 (The jury was excused)

8 MR. RICCO: Your Honor, before you leave, I have
9 to leave a few minutes early this afternoon. I have a
10 conference with Judge Griesa, and Mr. Serra said that he
11 will be happy to sit in with Mr. El-Gabrowny and
12 Mr. El-Gabrowny gives his consent.

13 THE COURT: Is that satisfactory to you,
14 Mr. El-Gabrowny?

15 DEFENDANT IBRAHIM EL-GABROWNY: Yes.

16 THE COURT: Thank you very much.

17 MR. RICCO: Thank you.

18 (Recess)

19 (Jury present)

20 THE COURT: Go ahead.

21 MR. McCARTHY: Thank you, your Honor.

22 Your Honor, we would like to defer on 479, which
23 is one of the ones that came in earlier, and move to 484,
24 which I would propose to read a portion of.

25 THE COURT: Go ahead.

1 MR. McCARTHY: From Government's Exhibit 484 in
2 evidence, and the transcript 484T, your Honor, I would
3 propose to read from the third full paragraph on page 1
4 through the second full paragraph on page 2, and then from
5 the first full paragraph on page 8 until the end.

6 THE COURT: Go ahead.

7 (Portions of Government Exhibit 484T were read to
8 the jury)

9 (Continued on next page)

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1 MR. McCARTHY: I move to page 8.

2 MS. STEWART: Judge, may we approach for one
3 moment?

4 (At the side bar)

5 MS. STEWART: Does Mr. McCarthy propose to read
6 over to page 9?

7 MR. McCARTHY: To the end. I remind you that you
8 are the one who asked me to read the whole thing.

9 MS. STEWART: Unfortunately, I misspoke myself.
10 I have reviewed quite a lot of material this weekend. I am
11 just raising starting from page 9 Farag Foda. It has to do
12 with apostasy and it is Salman Rushdie type of stuff. It is
13 highly prejudicial and I don't think it is probative. I
14 realize that I am out of time asking this but I am still
15 asking that that portion be kept out completely.

16 MR. McCARTHY: Your Honor, in the CNN interview
17 which is after the World Trade Center bombing, which we will
18 get to later on, I hope this afternoon, Dr. Abdel Rahman
19 makes public pronouncements condemning the act or at least
20 purporting to condemn the act, and saying that Islam is
21 against aggressions. Again, there is a difference between --

22 THE COURT: I don't see what a reference to Farag
23 Foda on page 9 has to do with that.

24 MR. McCARTHY: The discussion goes over to page
25 10, where he says: If a Muslim youth killed that atheist,

1 he is a man who is zealous for his religion, a fighter for
2 the sake of God. He deserves honor and esteem, not jail and
3 detention. This is after having said at the bottom of page
4 9: The apostate who committed one heresy after another
5 doesn't just deserve to be killed once, he should be killed
6 and killed and killed as a punishment for the inequities he
7 may have committed.

8 MS. STEWART: Without arguing how many angels may
9 dance on the head of a pin --

10 THE COURT: This is totally different. This is
11 out.

12 One more thing. We are going to stop at 10 to 5
13 today, so plan accordingly.

14 MR. McCARTHY: I am going to move on to the next
15 thing in light of that.

16 THE COURT: Fine.

17 (In open court)

18 MR. McCARTHY: Your Honor, I just need to take a
19 planning moment.

20 Your Honor, at this time I would like to play
21 Exhibit 411 and direct the attention of the jury to the
22 transcript 411T. I think this tape will take us up to the
23 time your Honor mentioned.

24 THE COURT: This is the tape that Mr. Nalu
25 testified about this morning?

1 MR. McCARTHY: Yes, your Honor, the CNN
2 interview.

3 THE COURT: Will we need earphones for this or
4 not?

5 MR. McCARTHY: Yes, your Honor.

6 (Videotape played)

7 THE COURT: Your Honor, should we continue?

8 THE COURT: Let's break now. Ladies and
9 gentlemen, we are going to break for the day. Please leave
10 your notes and other materials behind. As I have said to
11 you other times, please don't discuss this case or events in
12 Oklahoma City. Again, if you have any hesitancy on your
13 ability to decide the case based only on the evidence that
14 you hear here and my instructions on the law, you should
15 notify my clerk of that.

16 In any event, we will pick up tomorrow morning
17 where we left off.

18 (Jury excused)

19 MR. PATEL: Your Honor, I spoke with Mr. Khuzami
20 over the weekend about some additional 3500 material
21 concerning Mr. Haggag. He has agreed to turn over a copy of
22 Mr. Haggag's rap sheet, for lack of a better title, and he
23 is reviewing a number of other documents that are requested
24 to see if they are in fact 3500 material.

25 THE COURT: Miss Stewart?

1 MS. STEWART: Judge, on the same topic of the
2 Haggag records, we would be asking about Mr. Haggag's
3 telephone records, if they were ever secured, not only
4 records that were subpoenaed from MCC, many, many months
5 ago, even before that, we received two tapes --

6 THE COURT: That matter was never pressed. We
7 discussed that at the time. It was never pressed. I have
8 the subpoena. I will give it to you if you want me to give
9 it to you. I don't know whether those individual records
10 are available, but --

11 MS. STEWART: We have received two tapes and two
12 transcripts of MCC calls. My assumption is that they then
13 must have the rest of them. Rather than make us go through
14 the subpoena process, if they would --

15 THE COURT: I don't know that that is a fair
16 assumption.

17 MR. KHUZAMI: Your Honor, the assumption is not
18 correct. We subpoenaed particular calls and those are the
19 ones that we received.

20 MS. STEWART: I would ask that you sign the
21 subpoena then, Judge, if you will.

22 THE COURT: I will.

23 MS. STEWART: I also requested Mr. Khuzami about
24 the exact monetary arrangements, the exact things received
25 by Mr. Haggag on his behalf, including travel, payments in

1 the Witness Protection Program, all those things that are
2 considered Giglio.

3 MR. KHUZAMI: Your Honor, we just received a
4 printout and we will make that available and we are also
5 reviewing his interview in the Witness Protection Program.
6 We will turn that over as we did with Mr. Salem.

7 MS. STEWART: I would also request income tax
8 records and passports.

9 MR. KHUZAMI: I don't know of any basis for
10 turning over income tax records. There will be some
11 testimony regarding Mr. Haggag's payment or nonpayment of
12 taxes but I am not sure of any basis to provide them. As
13 far as passport, I would have the same position. Unless
14 there is some sort of Giglio item, I am not sure of the
15 basis to turn that over as well.

16 MS. STEWART: With regard to the passport, there
17 are frequent trips mentioned. There is a connection to
18 Egyptian intelligence that is clear in this particular
19 witness' background. With regard to the income tax, part of
20 his plea agreement is that he is to be allowed to revise
21 prior returns. I would like to see what the original
22 returns are and talk to him a little bit about what
23 revisions he intends to make.

24 MR. KHUZAMI: As to the first matter, I don't
25 know how a trip to Egypt is relevant to whatever issue Ms.

1 Stewart may want to cross him on. As to the tax returns, I
2 believe the agreement provides that he must file 1993 and
3 1994 returns.

4 MR. WASSERMAN: If I may, must provide corrected
5 returns.

6 THE COURT: If it provides for corrected returns
7 and suggests that something is to be corrected, those are to
8 be turned over. The passport itself can be copied and
9 turned over as well.

10 Mr. Jacobs.

11 MR. JACOBS: Your Honor, we received 3500
12 material Thursday, over the weekend and this morning, and I
13 think each separate set are documents containing redactions.
14 In particular, for example, this morning we received the
15 personal diary which we got this morning, 35119-II, which
16 contains extensive redactions from his diary, some of which
17 we got and some of which we didn't get. Whenever it is
18 convenient for your Honor, perhaps we can go over each item
19 and discuss it. It is up to your Honor's schedule.

20 THE COURT: I reviewed the redactions on the
21 material that was turned over to you earlier. There were
22 two redactions that I questioned and the government is going
23 to get back to me. The others in my estimation are proper.
24 I haven't seen an unredacted version of what you got this
25 morning. In fact, I don't think I have seen the redacted

1 version of what you got this morning.

2 MR. JACOBS: I would again ask the government to
3 please supply your Honor with all 3500 so that we can one
4 way or another get rulings.

5 THE COURT: When it comes to a personal diary, I
6 don't know of any requirement that says that I have to
7 review every single redaction in a personal diary.

8 MR. JACOBS: This is one at MCC, your Honor, that
9 refers to many of the defendants in the case. At least the
10 way I look at it, it is certainly not a personal diary of
11 this kind of business and it is a little unusual to have
12 this kind of document made at MCC. A lot of the stuff is
13 insignificant. I am not making the request at a whim. It
14 begins in August of '93 and I think it is important for your
15 Honor to review because it does contain a lot of
16 information, statements of the defendants and things like
17 that.

18 THE COURT: As I said, since I hadn't seen the
19 unredacted part I was not aware of that. I will look at the
20 entire document.

21 MR. JACOBS: One final matter.

22 THE COURT: There is somebody else -- don't get
23 my hopes up.

24 MR. JACOBS: He sent a letter to the general
25 consul for the Republic of Egypt, 35119-KK, which is

1 undated.

2 However, in the course of this letter he
3 indicates, looks like at page 4, that the FBI had come to
4 see him and made offers for him to work with the FBI in
5 exchange for money and other things, quoting, they came to
6 me several times to offer me temptations, again the FBI came
7 to me several times and every time there were attempts at
8 inducement. Our first 302 is dated July 16, 1993, when he
9 was in custody, but I would like to find out from the
10 government were there earlier contacts with him, and if
11 there were, are they 302's or are they confidential
12 informant files? I am referring to the document they gave
13 us referring to earlier contacts. Looks like that way.

14 (Continued on next page)

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1 THE COURT: It sounds like fertile ground for
2 cross-examination.

3 MR. JACOBS: Well, the problem --

4 THE COURT: Maybe.

5 MR. JACOBS: I'm sorry, your Honor. The point is
6 if there are other documents, we would need them for the
7 cross. I would ask the government to look into it.

8 THE COURT: I assume if they have turned over
9 302's, they have turned over all of them.

10 MR. JACOBS: I just want to alert them to what
11 was in this document.

12 THE COURT: They are alert.

13 MR. JACOBS: Thank you, your Honor.

14 THE COURT: Mr. Stavis.

15 MR. STAVIS: Before Ms. Stewart was discussing
16 the line that is in page 3 of Mr. Haggag's agreement of
17 April 28, 1995, it gave us, defense counsel, pause. The
18 paragraph next to the bottom paragraph says, "It is
19 understood that prior to the date of sentencing Abdo
20 Mohammed Haggag shall file accurate tax returns for the
21 years 1993 and 1994. 1994 were just filed, but this
22 suggests, at least to our reading, that there was an
23 inaccurate tax return for the year 1993, which is why we --

24 THE COURT: Everybody can draw whatever
25 impression he wants. What I drew from that is that he

1 didn't file any tax return for 1993, and that whatever he
2 has to file has to be accurate.

3 MR. KHUZAMI: That is correct, your Honor. I
4 will point out, as I said earlier, that there will be some
5 testimony regarding inaccurate returns and nonfiling in
6 years prior to 1993.

7 THE COURT: We can all look forward to that.

8 MR. PATEL: Your Honor, may I have a moment with
9 Mr. Khuzami.

10 (Counsel conferred)

11 MR. WASSERMAN: Can we get the tax returns prior
12 to '93. We understand also in '91 he received cash
13 payments. We suspect that would be the reason that the
14 returns are incorrect.

15 MR. KHUZAMI: I'm sorry, your Honor.
16 I was distracted.

17 THE COURT: What he said is if he has to correct
18 returns before '93, specifically a return he believes was
19 filed in '91 or for '91, that he would want to see the
20 return that has to be corrected, the return or returns.

21 MR. KHUZAMI: I will make an effort to obtain
22 those, your Honor.

23 THE COURT: Please.

24 MR. PATEL: I would ask that Mr. Haggag's
25 immigration file similarly be turned over to us. There is a

1 reference to that in the agreement INS will be given notice
2 of his cooperation. That would indicate to me that there is
3 some immigration problem.

4 THE COURT: Mr. Khuzami?

5 MR. KHUZAMI: Your Honor, the reference to INS
6 has nothing to do with whether or not there is a problem.
7 Again, there will be testimony regarding visa overstays by
8 Mr. Haggag. We have his immigration file, but if that
9 information is elicited during his testimony, I don't
10 understand Giglio to require us to turn over the file. I
11 have reviewed that item, and I don't know of any independent
12 basis to turn it over.

13 THE COURT: It seems to me that the only thing
14 that would have to be turned over is whatever is in there
15 that he is aware of.

16 You don't simply go rooting through the file.
17 That is my understanding, and I take it as your
18 representation that whatever he is aware of with respect to
19 his immigration status is going to be gone over or has been
20 turned over.

21 MR. KHUZAMI: I'm sorry. With respect to what he
22 is aware of?

23 THE COURT: In his immigration status has been
24 turned over.

25 MR. KHUZAMI: What he is aware of?

1 THE COURT: Yes. That is, if he is aware that
2 INS has some sort of claim on him with regard to a visa
3 overstay, then that should be turned over.

4 MR. KHUZAMI: Just so we are not speaking in the
5 abstract, he is a legitimate green card holder as of 1987.
6 In 1981 he overstayed a tourist visa and then a petition
7 filed on behalf of his American wife for citizenship was
8 denied. So he was here illegally from late 1981 to 1987
9 when he successfully obtained a green card.

10 THE COURT: That seems like pretty weak tea.

11 All right. We are adjourned.

12 (Pages 9722 to 9730 were sealed by order of the
13 court)

14 (Proceedings adjourned to Tuesday, May 2, 1995 at
15 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

May 2, 1995
9:45 p.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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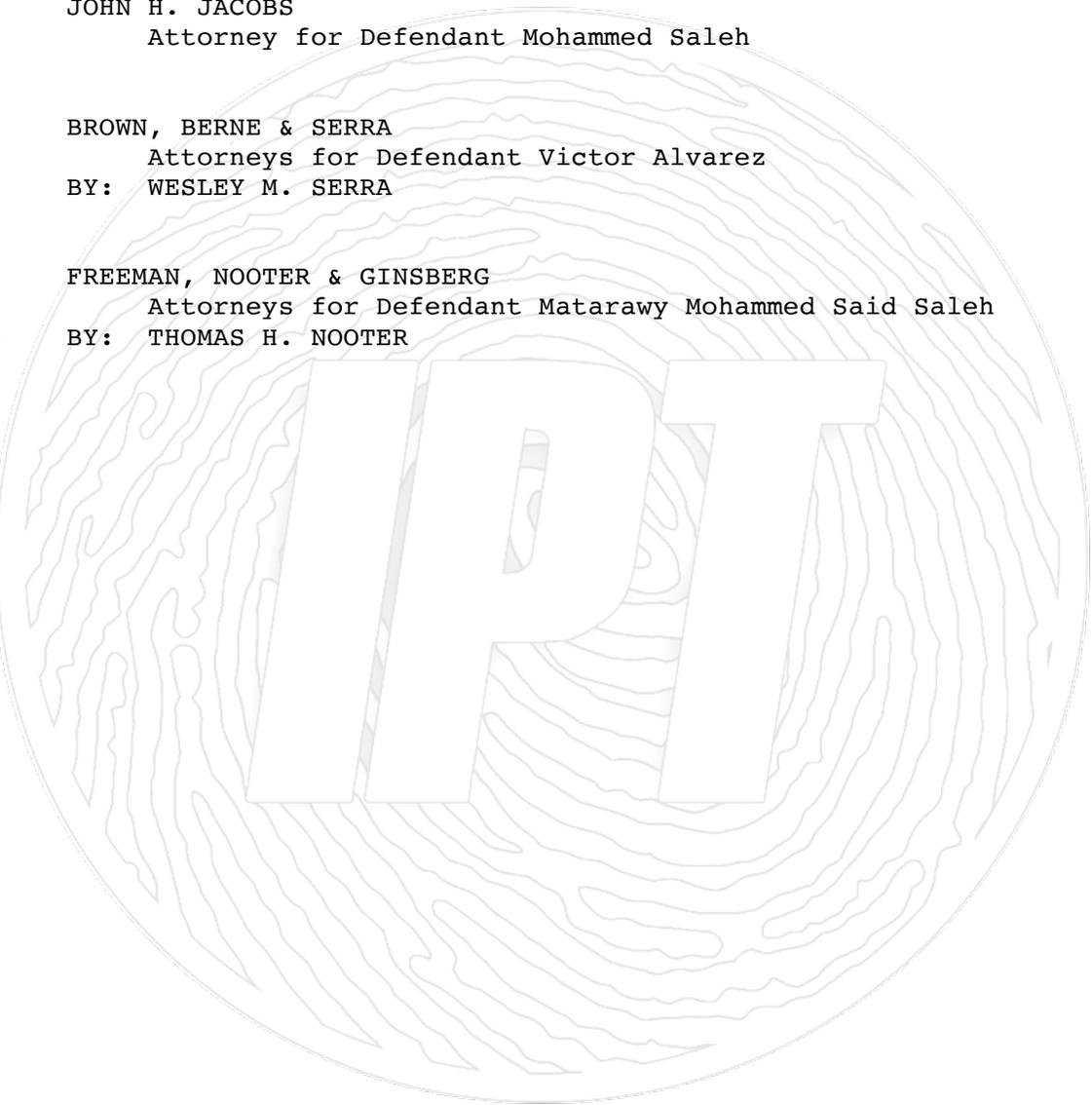
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 JURORS: Good morning.

4 THE COURT: Mr. McCarthy?

5 MR. McCARTHY: Your Honor, we would like to begin
6 this morning by reading a number of conversations which are
7 in the jurors' books marked 700 series. That is the fat
8 black binder.

9 THE COURT: If you would take out the binder
10 marked "700 series."

11 MR. McCARTHY: We will be beginning with 852,
12 your Honor, which is --

13 THE COURT: The transcript that is going to be
14 read is 852T, which is in the 700 series book.

15 MS. STEWART: Judge, may we have a side bar?

16 THE COURT: No.

17 MS. STEWART: I thought we were in the middle of
18 an exhibit yesterday.

19 MR. McCARTHY: We are not offering the rest of
20 that exhibit at this time.

21 MS. STEWART: I have an objection.

22 THE COURT: Let's proceed.

23 MR. McCARTHY: Thank you, your Honor.

24 Your Honor, I will be reading the attributions to
25 the defendant Abdel Rahman; Mr. Fitzgerald will read the

1 attributions to Mahmud Abouhalima, and Mr. Khuzami will read
2 the attributions to Mohammed last name unknown and Abu
3 Fadil.

4 (Government Exhibit 852T was read to the jury)

5 MR. McCARTHY: Your Honor, the government again
6 stipulates that the Abu Fadil in this conversation is not
7 the defendant Fadil Abdelgani.

8 MR. LAVINE: I think that stipulation could
9 continue to the effect that the person referred to as Abu
10 Fadil in the transcript is referred to as "Fadil," but that
11 person is not Fadil Abdelgani.

12 THE COURT: That is not Fadil Abdelgani.

13 MR. LAVINE: Thank you.

14 THE COURT: OK.

15 MR. McCARTHY: Your Honor, the next conversation
16 is 850T, which is two before the one we just read.

17 THE COURT: That one was March 24, 1990 and this
18 is May 3, 1990?

19 MR. McCARTHY: Your Honor, I believe the
20 testimony yesterday is that that is the date that was on the
21 cassettes that were taken from the house of the defendant
22 Nosair.

23 THE COURT: I see.

24 MR. McCARTHY: On 850T, I will be reading the
25 attributions of the defendant Abdel Rahman, and Mr.

1 Fitzgerald will read the attributions to the defendant
2 Nosair.

3 (Government Exhibit 850T was read to the jury)

4 MR. McCARTHY: Your Honor, the next conversation
5 is Government's Exhibit 851T, which is the next conversation
6 in the book.

7 I will read the attributions to the defendant
8 Abdel Rahman, Mr. Fitzgerald will read the attributions to
9 the defendant Nosair, and Mr. Khuzami will read the
10 attributions to the unidentified male.

11 (Government Exhibit 851T was read to the jury)

12 MR. McCARTHY: Your Honor, the next conversation
13 we would read is Government's Exhibit 706A, which is in the
14 same book.

15 THE COURT: That is under the tab marked 706T.

16 MR. McCARTHY: Yes, your Honor.

17 This is a conversation March 21, 1993 at 7:17
18 a.m. I will read the attributions to the defendant Abdel
19 Rahman; Mr. Fitzgerald will read the attributions to Khalid,
20 last name unknown; Mr. Khuzami will read the attributions to
21 Abou Mossa'ab and the unidentified male.

22 (Government Exhibit 706A was read to the jury)

23 MR. McCARTHY: Your Honor, the next conversation
24 is Government's Exhibit 706BT, which is the next
25 conversation in the book.

1 THE COURT: Go ahead.

2 MR. McCARTHY: This is a conversation dated March
3 21, 1993 at 8:31 a.m.

4 I will read the attributions to the defendant
5 Abdel Rahman, and Mr. Fitzgerald will read the attributions
6 to the unidentified male.

7 (Government Exhibit 706BT was read to the jury)

8 MR. McCARTHY: The next conversation, your Honor,
9 is Government Exhibit 707T, which is the next one in the
10 book.

11 Your Honor, in Government's Exhibit 707T, which
12 is dated March 24, 1993, I will read the attributions to the
13 defendant Abdel Rahman; Mr. Khuzami will read the
14 attributions to the unidentified female and unidentified
15 males 2 and 3; and Mr. Fitzgerald will read the attributions
16 to unidentified male No. 1.

17 (Government Exhibit 707T was read to the jury)

18 MR. McCARTHY: Your Honor, the next conversation
19 we would read is Government Exhibit 747T.

20 THE COURT: Go ahead.

21 MR. McCARTHY: Your Honor, this is a call that is
22 dated June 3, 1993. I will read the attributions to the
23 defendant Abdel Rahman, and Mr. Fitzgerald will read the
24 attributions to Ahmed Abdel Sattar.

25 (Government Exhibit 747T was read to the jury)

1 MR. McCARTHY: Your Honor, the last conversation
2 we would read at this point is 704A. It is in the tab
3 behind 704T.

4 THE COURT: Go ahead.

5 MR. McCARTHY: Your Honor, Government's Exhibit
6 704AT is dated February 25, 1993. I will read the
7 attributions to the defendant Abdel Rahman; Mr. Fitzgerald
8 will read the attributions to Adel, last name unknown; Mr.
9 Khuzami will read the attributions to the person identified
10 as Abdul Ghani. Again, it is stipulated by the government
11 that Abdul Ghani is neither of the defendants whose name is
12 Abdelgani in this case.

13 THE COURT: Go ahead.

14 (Government Exhibit 704AT was read to the jury)

15 THE COURT: Ladies and gentlemen, we are going to
16 take a break now.

17 MR. McCARTHY: Your Honor, the stipulation for
18 Mohammed Saleh?

19 THE COURT: Right. The Mohammed Saleh mentioned
20 in this telephone call is not either of the defendants named
21 Saleh who are on trial here. That is stipulated.

22 Please leave your notes and other materials
23 behind. Please don't discuss the case and we will resume
24 after the break.

25 (The jury was excused)

1 THE COURT: Yes?

2 MR. McCARTHY: Your Honor, in the conversation, I
3 believe it was 747T, between the defendant Abdel Rahman and
4 Mr. Sattar, there was mention of a Tarig.

5 THE COURT: Right.

6 MR. McCARTHY: The government does not contend
7 that that Tarig is Tarig Elhassan.

8 THE COURT: Then I will instruct the jury on that
9 after the break. Is that satisfactory?

10 MS. LONDON: Yes, your Honor. The reference was
11 to a Tarig who comes every Thursday.

12 THE COURT: In 747?

13 MS. LONDON: Yes.

14 THE COURT: Yes?

15 MS. STEWART: I just want to object. My
16 understanding from the government was that the whole tape of
17 CNN was going to be played, and it was stopped because of
18 time constraints yesterday and then just dropped. I place
19 an objection on the record.

20 MR. McCARTHY: I think it is in all in evidence.
21 We are not here to put Dr. Abdel Rahman's defense in for
22 him. There are a lot of things that I wanted in that didn't
23 come in of the belligerent nature of the Dr. Abdel Rahman.
24 The whole tape is in evidence, and it is there to be argued
25 from.

1 THE COURT: All right. The objection is
2 overruled.

3 I revised the comments that I said I was going to
4 make in connection with a voir dire to take account of Mr.
5 Jacobs' objections and Mr. Bernstein's objections.

6 Do want me to read them?

7 MR. JACOBS: If you don't mind.

8 THE COURT: What I propose to do is to do that
9 now. Do you have two people you can designate? Because I
10 don't want a mob scene in there. Do we know who the two
11 people are going to be?

12 MS. STEWART: Ms. Amsterdam and myself.

13 THE COURT: The usual suspects.

14 MS. STEWART: The usual.

15 THE COURT: What I am going to tell them is this:
16 Ladies and gentlemen, last week and the week
17 before, I discussed with you the bombing in Oklahoma City,
18 which has no relationship to this case or to any defendants
19 here, but has caused speculation and comparisons that
20 mention this case.

21 As I explained several times, because you took an
22 oath to decide this case based only on the evidence
23 presented here, you should avoid, to the extent you can,
24 reading about or hearing or discussing anything about the
25 events in Oklahoma City so as not to endanger your ability

1 to live up to that oath. I have also told you several times
2 that if at any time you have seen or heard anything that
3 might interfere with your ability to decide this case based
4 only on the evidence and my instructions on the law, you
5 should let Ms. Schwartz or another of my clerks know about
6 it.

7 Although there is certainly no evidence in this
8 record to suggest that you have not been able to follow
9 those instructions, it would be helpful if the record of
10 this trial contains not only my explanations and
11 instructions to you, but also your words specifically on the
12 question of whether you can decide this case based only on
13 the evidence presented here and not based on anything you
14 might have seen or heard on the outside, particularly in the
15 last couple of weeks.

16 So what I am going to do is to ask each of you
17 separately in the robing room in the presence of two lawyers
18 for each side whether you can do that. My inquiry will
19 consist of only that one question, and it should not take
20 very long.

21 What I propose to do is to tell them that at the
22 entrance of the jury room with two people present so that
23 you can see me do it, and then call them out one by one and
24 ask them the question that I said yesterday I was going to
25 ask them, having omitted, number one, all reference to the

1 Court of Appeals and reviews and appeals and so forth, and,
2 number two, a reference to my confidence in their ability to
3 do what I said I thought they should do.

4 MR. JACOBS: Thank you, your Honor.

5 THE COURT: May I see the two defense lawyers and
6 the two government's lawyers in the robing room.

7 (In the robing room)

8 (Ms. Stewart, Ms. Amsterdam, and government
9 counsel present)

10 THE COURT: Is somebody else coming for the
11 government?

12 MR. MCCARTHY: No.

13 THE COURT: Yes?

14 MS. AMSTERDAM: Your Honor, for the record, and I
15 don't want to reargue the point yesterday, but I want the
16 record to be clear that I thought the court's inquiry
17 starting at this point, not going retroactive to their
18 feelings of last week, was inadequate.

19 THE COURT: The response is that if you carry
20 that to its logical conclusion, and I recognize that not all
21 arguments should be carried to their logical conclusion, but
22 if you carry that one to its logical conclusion, any voir
23 dire in a situation where there is even a past event would
24 have to inquire into the jurors' immediate reaction to it
25 and a sliding scale of reaction. That is something that I

1 think it is futile to believe that you can actually do in
2 any situation, let alone in this one.

3 So I am going to do what I said I was going to do
4 for the reasons I said I was going to do it, particularly
5 because I think that this is now an event that, if not fully
6 understood, at least is understood enough insofar as it has
7 an impact here, so that an intelligent estimate can be made
8 without the effect being lost; that is, the effect of the
9 news being lost as it might be a month or two hence.

10 This is my compromise. You have your record, and
11 my explanation.

12 MS. AMSTERDAM: Thank you.

13 THE COURT: Mr. Jacobs isn't here and Mr.
14 Bernstein isn't here, but I should note that I was really
15 pleased with the way this particular thing went. Having
16 lawyers around to make objections, often, in my estimation,
17 you get objections that don't enlighten. Here they did, and
18 I appreciate that.

19 MS. AMSTERDAM: I will pass that along.

20 THE COURT: See that he doesn't get too
21 enthusiastic about it.

22 MS. AMSTERDAM: I will pass it along to
23 Mr. Bernstein.

24 MS. STEWART: Mr. Jacobs can read the record.

25 THE COURT: When I open the door they are going

1 to think that I am there because it is home-free-all, and I
2 am going to tell them that it is not.

3 (In the jury room)

4 THE COURT: Good morning. I am sorry to invade
5 your turf here.

6 There is a matter that I need to talk to you
7 about, and please forgive the formality of my reading it,
8 but I told the lawyers inside exactly what I was going to
9 say, and so, to make sure that I say it, I am going to read
10 it.

11 Last week and the week before, I discussed with
12 you the bombing in Oklahoma City, which has no relationship
13 to this case or to any defendant here, but has caused
14 speculation and comparisons that mention this case. As I
15 explained several times, because you took an oath to decide
16 this case based only on the evidence presented here and on
17 my instructions as to the law, you should avoid, to the
18 extent that you can, reading about or hearing or discussing
19 anything about the events in Oklahoma City so as not to
20 endanger your ability to live up to that oath.

21 I have also told you several times that if at any
22 time you have seen or heard anything that might interfere
23 with your ability to decide this case based only on the
24 evidence and on my instructions as to the law, you should
25 let Ms. Schwartz or another clerk know about it.

1 Although there is certainly no evidence in this
2 record to suggest that you have not been able to follow
3 those instructions, it would be helpful if the record of
4 this trial contained not only my explanations and
5 instructions to you, but also your words specifically on the
6 question of whether you can decide this case based only on
7 the evidence presented here and not based on anything you
8 may have seen or heard on the outside, particularly in the
9 last couple of weeks.

10 So what I am going to do is to ask each of you
11 separately into the robing room in the presence of lawyers
12 from each side and ask you whether you can do that. My
13 inquiry is going to consist only of that one question, and
14 it shouldn't take terribly long. We will do it one by one.

15 OK. Thank you.

16 (In the robing room)

17 (Juror No. 1 present)

18 BY THE COURT:

19 Q Good morning.

20 A Good morning.

21 Q First let me just get your juror number.

22 A Seventy-three.

23 Q No. 73?

24 A Yes.

25 Q In spite of anything you may have seen or heard

1 in the last couple of weeks, including things you may have
2 seen or heard from family and friends, can you decide this
3 case based only on the evidence presented in court and on my
4 instructions as to the law?

5 A Yes, I can.

6 Q Thank you very much.

7 A You're welcome.

8 (Juror No. 1 was excused)

9 (Juror No. 2 present)

10 BY THE COURT:

11 Q Good morning.

12 Let me just get your juror number.

13 A Two.

14 Q No. 2?

15 A That's Juror Seat No. 2. Juror No. 100.

16 Q The question is: In spite of anything you may
17 have seen or heard in the last couple of weeks, including
18 things you may have heard from family and friends, can you
19 decide this case based only on the evidence presented in
20 court and on my instructions as to the law?

21 A Yes.

22 Q Thank you.

23 (Juror No. 2 was excused)

24 (Juror No. 3 present)

25 BY THE COURT:

1 Q Good morning.

2 A Good morning.

3 Q You are in seat No. 3?

4 A Number 3.

5 Q If I can just get your juror number.

6 A Twenty-two.

7 Q In spite of anything that you might have seen or
8 heard in the last couple of weeks, including things you may
9 have heard from family and friends, can you decide this case
10 based only on the evidence presented in court and on my
11 instructions as to the law?

12 A Yes.

13 Q Thank you.

14 (Juror No. 3 was excused)

15 (Juror No. 4 present)

16 BY THE COURT:

17 Q Good morning.

18 A Good morning.

19 Q You are in seat No. 4?

20 A Yes, sir.

21 Q You're Juror No. 20?

22 A Right.

23 Q My question is: In spite of anything that you
24 may have seen or heard in the last couple of weeks,
25 including things you may have heard from family and friends,

1 can you decide this case based only on the evidence
2 presented in court and on my instructions as to the law?

3 A I believe I can.

4 Q Thank you very much.

5 (Juror No. 4 was excused)

6 (Juror No. 5 present)

7 BY THE COURT:

8 Q Good morning.

9 A Good morning.

10 Q Please sit down.

11 You are in seat No. 5, but can I get your juror
12 number?

13 A I beg your pardon.

14 Q Can I get your juror number?

15 A 182.

16 Q My question is: In spite of anything that you
17 may have seen or heard in the last couple of weeks,
18 including anything you may have heard from family and
19 friends, can you decide this case based only on the evidence
20 presented here in court and on my instructions as to the
21 law?

22 A Yes.

23 (Juror No. 5 was excused)

24 (Juror No. 6 present)

25 BY THE COURT:

1 Q Good morning.

2 A Good morning.

3 Q Take a seat.

4 You are in seat No. 6, and it's Juror No. 95?

5 A Yes.

6 Q My question is: In spite of anything that you
7 may have seen or heard in the last couple of weeks,
8 including things you may have heard from family and friends,
9 can you decide this case based only on the evidence
10 presented in here in court and on my instructions as to the
11 law?

12 A Yes, I could.

13 Q Thank you very much.

14 (Juror No. 6 was excused)

15 (Juror No. 7 present)

16 BY THE COURT:

17 Q Good morning.

18 A Hi.

19 Q Have a seat. Hi.

20 You are in seat number 7?

21 A Yes.

22 Q Can I get your juror number?

23 A 200.

24 Q Juror No. 200. The question is: In spite of
25 anything that you may have seen or heard in the last couple

1 of weeks, including things you may have heard from family
2 and friends, can you decide this case based only on the
3 evidence presented in court and on my instructions as to the
4 law?

5 A Yes.

6 Q Thank you very much.

7 (Juror No. 7 was excused)

8 (Juror No. 8 present)

9 BY THE COURT:

10 Q You are in seat number 8?

11 A Yes.

12 Q Can I get your juror number?

13 A 357.

14 Q The question is: In spite of anything that you
15 may have seen or heard in the last couple of weeks,
16 including things you may have heard from family and friends,
17 can you decide this case based only on the evidence
18 presented in court and on my instructions as to the law?

19 A Yes, I can.

20 Q Thank you very much.

21 (Juror No. 8 excused)

22 (Juror No. 9 present)

23 BY THE COURT:

24 Q Good morning.

25 A Good morning.

1 Q Have a seat.

2 You are in seat No. 9?

3 A Nine, right.

4 Q And Juror No.?

5 A 104.

6 Q My question is: In spite of anything that you
7 may have seen or heard in the last couple of weeks,
8 including things you may have heard from family and friends,
9 can you decide this case based only on the evidence
10 presented in court and on my instructions as to the law?

11 A Yes, sir.

12 Q Thank you very much.

13 A OK.

14 (Juror No. 9 was excused)

15 (Juror No. 10 present)

16 BY THE COURT:

17 Q Good morning.

18 A Good morning.

19 Q You are in seat No. 10?

20 A Yes.

21 Q Juror No.?

22 A 101.

23 Q 101?

24 A Yes.

25 Q My question is: In spite of anything that you

1 may have seen or heard in the last couple of weeks,
2 including things that you may have heard from family and
3 friends, can you decide this case based only on the evidence
4 presented here in court and on my instructions as to the
5 law?

6 A Sure, yes, I can.

7 Q Thank you very much.

8 A You're welcome.

9 Q Thank you.

10 (Juror No. 10 was excused)

11 (Juror No. 11 present)

12 BY THE COURT:

13 Q Good morning.

14 A Good morning.

15 Q Have a seat.

16 A I can't sit, your Honor.

17 Q You are Juror No. 2? You sit in seat number
18 11 -- you stand in seat number 11?

19 A Right.

20 Q But you are Juror No. 2.

21 My question is: In spite of anything that you
22 may have seen or heard in the last couple of weeks,
23 including things that you may have heard from family and
24 friends, can you decide this case based only on the evidence
25 presented in court and on my instructions as to the law?

1 A Yes, your Honor.

2 Q Thank you very much.

3 (Juror No. 11 was excused)

4 THE COURT: Off the record.

5 (Discussion off the record)

6 (Juror No. 12 present)

7 BY THE COURT:

8 Q Good morning.

9 A Good morning.

10 Q You are in seat No. 12, right?

11 A Yes.

12 Q And your juror number?

13 A 125.

14 Q My question is: In spite of anything that you
15 may have seen or heard in the last couple of weeks,
16 including things that you may have heard from family and
17 friends, can you decide this case based only on the evidence
18 presented in court and on my instructions as to the law?

19 A Yes.

20 Q Thank you very much.

21 A OK.

22 (Juror No. 12 was excused)

23 (Juror No. 14 present)

24 BY THE COURT:

25 Q Good morning.

1 A Good morning.

2 Q Have a seat.

3 You are in seat No. 14, right?

4 A Yes.

5 Q And your juror number?

6 A 245.

7 Q My question to you is: In spite of anything that
8 you may have seen or heard in the last couple of weeks,
9 including things you may have heard from family and friends,
10 can you decide this case based only on the evidence
11 presented in court here and on my instructions as to the
12 law?

13 A Yes.

14 Q Thank you very much.

15 (Juror No. 14 was excused)

16 (Juror No. 15 present)

17 BY THE COURT:

18 Q Good morning. Come in.

19 Have a seat.

20 A OK.

21 Q You are in juror seat No. 15, but what is your
22 juror number?

23 A 264.

24 Q My question is: In spite of anything that you
25 may have seen or heard in the last couple of weeks,

1 including things you may have heard from family and friends,
2 can you decide this case based only on the evidence
3 presented here in court and on my instructions as to the
4 law?

5 A Yes, sir.

6 Q Thank you very much.

7 (Juror No. 15 was excused)

8 (Juror No. 16 present)

9 BY THE COURT:

10 Q Good morning.

11 A Good morning.

12 Q You are in seat No. 16?

13 A Yes.

14 Q And your juror number?

15 A I'm No. 58.

16 Q My question is, in spite of anything you may have
17 seen or heard in the last couple of weeks, including things
18 you may have heard from family and friends, can you decide
19 this case based only on the evidence presented here in court
20 and on my instructions as to the law?

21 A Yes.

22 Q Thank you very much.

23 A Thank you.

24 (Juror No. 16 was excused)

25 (Juror No. 17 present)

1 BY THE COURT:

2 Q Hi, come in. Have a seat.

3 You are in seat No. 16, I think, right?

4 And your juror number is?

5 A My Juror No. is 159.

6 Q My question to you is: In spite of anything that
7 you may have seen or heard in the last couple of weeks,
8 including things you may have heard from family and friends,
9 can you decide this case based only on the evidence
10 presented here in court and on my instructions as to the
11 law?

12 A Yes.

13 Q Thank you very much.

14 (Juror No. 17 was excused)

15 (Juror No. 18 present)

16 BY THE COURT:

17 Q Hi, come in.

18 A Good morning.

19 Q Good morning.

20 You are in seat No. 18?

21 A Yes.

22 Q And it's Juror No. 358?

23 A 358.

24 Q My question to you is: In spite of anything that
25 you may have seen or heard on the outside in the last couple

1 of weeks, including things you may have heard from family
2 and friends, can you decide this case based only on the
3 evidence presented here in court and on my instructions as
4 to the law?

5 A Yes.

6 Q Thank you very much.

7 (Juror No. 18 was excused)

8 THE COURT: Off the record.

9 (Discussion off the record)

10 THE COURT: You will report to the others?

11 MS. AMSTERDAM: Yes.

12 THE COURT: Thank you.

13 MS. AMSTERDAM: Thank you.

14 MR. MCCARTHY: Thank you, your Honor.

15 MS. STEWART: Thank you, Judge.

16 (Recess)

17 (In open court; jury not present)

18 MR. NOOTER: Your Honor, may I just ask the
19 government that if the name Wahid is used, to make a
20 stipulation. I know there is a Wahid --

21 MR. MCCARTHY: It depends on when it's used.

22 MR. NOOTER: I mean, in whatever he's reading.

23 MR. WASSERMAN: I would ask the same thing for
24 Rashid. I believe that is coming up in the testimony.

25 THE COURT: Obviously, if it is agreed that it is

1 something that does not apply to particular defendants, the
2 government will make that known immediately.

3 MR. WASSERMAN: Thank you, your Honor.

4 THE COURT: That was 747T, Ms. London, that
5 applied to your client?

6 MS. LONDON: That's correct, your Honor.

7 THE COURT: All right.

8 (Jury present)

9 THE COURT: Ladies and gentlemen, before we
10 continue I should mention to you that there was a transcript
11 that was read this morning, 747T, in which there was a
12 mention of the name Tarig. It's been stipulated by everyone
13 that that Tarig is not Tarig Elhassan, the defendant in this
14 case. So if you could note that either on the transcript or
15 in your notes so there is no mistake about that.

16 Again, the Exhibit is 747T.

17 MR. FITZGERALD: Judge, the government calls
18 Ashraf Moneeb.

19 ASHRAF MONEEB,

20 called as a witness by the Government,
21 having been duly sworn, testified as follows:

22 THE WITNESS: I would like an interpreter.

23 THE COURT: The witness has asked for an
24 interpreter.

25 DIRECT EXAMINATION

1 BY MR. FITZGERALD:

2 Q Good morning, Mr. Moneeb.

3 A Good morning.

4 Q Can you tell the jury where you were born.

5 A I was born in Cairo, Egypt.

6 Q If I could ask you to keep your voice up. If you
7 turn the microphone that is directly in front of you towards
8 you and speak into it.

9 Would you like to proceed in English with the
10 assistance of an interpreter when you need him?

11 A Yes, please.

12 Q OK. Mr. Moneeb, can you tell the jury if you're
13 familiar with a location known as 251 Virginia Avenue in
14 Jersey City?

15 A Yes, I'm familiar with it. I lived over there.

16 Q You lived over there?

17 A Yes.

18 Q Can you tell the jury what year or years it was
19 that you lived in the building located at 251 Virginia
20 Avenue in Jersey City.

21 A I think since 1992.

22 Q Can you just describe what type of building 251
23 Virginia Avenue is.

24 A It's a small building. It have three apartments.

25 Q What apartments did you live in in 251 Virginia

1 Avenue?

2 A I lived in Apartment A.

3 Q Did there come a time when you moved out of
4 Apartment A?

5 A Yes.

6 Q Where did you move after you left Apartment A at
7 251 Virginia Avenue?

8 A Apartment C.

9 Q Apartment C in the same building?

10 A Yes.

11 Q OK. Now, at the time you were living in --
12 strike that.

13 Before you moved to 251 Virginia Avenue, did you
14 ever know a person by the name of Mohammed Salameh?

15 A I used to live with him in another location,
16 1990.

17 Q When you lived with Mr. Salameh at another
18 location in 1990, can you tell us that particular address,
19 if you remember?

20 A 283 Harrison Avenue.

21 MR. JACOBS: I lost that.

22 Q 283 Harrison Avenue, is that correct?

23 (Witness nodded)

24 Q Directing your attention to 1992, while you were
25 living at 251 Virginia Avenue, did there ever come a time

1 when Mr. Salameh moved in with you?

2 A Yes.

3 Q Can you tell us approximately when it was that
4 Mr. Salameh moved in with you at 251 Virginia Avenue?

5 A September. I don't remember whether it's '92 or
6 '93.

7 Q Let me ask you this: Was it before or after the
8 explosion at the World Trade Center?

9 A Before.

10 Q So the September before the explosion?

11 A Yes.

12 Q When Mr. Salameh moved in with you, which
13 apartment was it at 251 Virginia Avenue?

14 A A.

15 Q When he moved in, did anyone else move in with
16 him?

17 A Yes.

18 Q What was the name of the person who moved in with
19 Mr. Salameh?

20 A Rashed.

21 Q Rashed, is that R-A-S-H-E-D?

22 (Witness nodded)

23 MR. FITZGERALD: For the record, Judge, I will
24 stipulate that Rashed has nothing do with the defendant, and
25 is not the person known as Rashid in the courtroom.

1 Q Let me approach you with what's been received in
2 evidence as Government Exhibit W610.

3 Excuse me, Mr. Ashraf, I just have to remind you
4 that if you nod the court reporter can't write down what you
5 say. So if the answer is yes, please say yes. If you shake
6 your head up and down and side to side, it doesn't show up
7 in the record.

8 A OK.

9 Q Do you recognize the person depicted in
10 Government Exhibit W610?

11 A Yes.

12 Q And who is that?

13 A Rashed.

14 MR. FITZGERALD: Your Honor, I think it's clear
15 that Government Exhibit W610 is a picture of Ramzi Yousef.

16 THE COURT: OK.

17 Q When Mr. Salameh and Mr. Rashed moved in with you
18 in Apartment A at 251 Virginia Avenue, did anyone else live
19 with the three of you at that time?

20 A Yes.

21 Q What do you recall the name of the other person
22 who lived there at that time?

23 A Nabil and Keshk and Regeb and Michael.

24 Q You are going to have to slow down and spell
25 those names for some who didn't catch it.

1 A N-A-B-I-L. K-E-S-H-K.

2 Q And Nabil and Keshk, did they live there before
3 Mr. Salameh and Mr. Rashed showed up, or did they stay when
4 they showed up?

5 A They left and then the new tenant came in.

6 Q OK. So they left and came back?

7 A And Michael he was over there when they came to
8 live.

9 Q You mentioned earlier that after you lived in 251
10 Virginia Avenue, Apartment A, there came a time when you
11 moved to 251 Virginia Avenue, Apartment C.

12 Can you tell us approximately when that was.

13 A November.

14 Q Of the same year?

15 A Yes.

16 Q That would be 1992 if the explosion occurred in
17 1993?

18 A Yes.

19 Q When you moved from Apartment A to apartment C in
20 November of 1992, what did Mr. Salameh and Rashed do?

21 (Witness consulted with interpreter)

22 A They moved with me over there.

23 Q When you were living in apartment C, was there
24 anyone else living there besides yourself, Mr. Salameh, and
25 Mr. Rashed?

1 A No.

2 Q By the way, did you know where Mr. Rashed was
3 from?

4 A No.

5 Q Did he have an accent?

6 A Yes.

7 Q What type of accent did he have?

8 A Not Egyptian accent.

9 Q Did you know what country it belonged to?

10 A No.

11 Q How long did you live with Mr. Salameh and
12 Mr. Rashed in Apartment C at 251 Virginia Avenue?

13 A About four or five months -- four or five months.

14 Q If you moved in there in November of 1992, when
15 did Mr. Salameh and Mr. Rashed move out of Apartment C, 251
16 Virginia Avenue?

17 A Sometime in February.

18 Q That would be February 1993?

19 A Yes.

20 Q When they moved out, Mr. Salameh and Mr. Rashed,
21 did you move out as well, or did you stay in the apartment?

22 A I stayed.

23 Q Did Mr. Salameh and Mr. Rashed move out before or
24 after the explosion at the World Trade Center?

25 A Before.

1 Q During that time, when the three of were you
2 living together in Apartment C at 251 Virginia Avenue, was
3 there a telephone in the apartment?

4 A Yes.

5 Q Whose telephone was it?

6 A Mohammad and Rashed.

7 Q Did you ever use the telephone that belonged to
8 Mohammad and Rashed?

9 A No.

10 Q Did you ever even make a local call?

11 A Some, you know, just one or two calls.

12 Q Did you make any long-distance or overseas calls
13 on the telephone that Mohammad and Rashed had in the
14 apartment?

15 A No.

16 Q Where was it physically located, the telephone?

17 A Inside the bedroom, their bedroom.

18 Q Did they share a bedroom?

19 A Yes.

20 Q Did you know what name the phone was registered
21 under?

22 A No.

23 Q While Mr. Salameh and Mr. Rashed lived in that
24 apartment at 251 Virginia Avenue, did you ever see anyone
25 visit them?

1 A Yes.

2 Q Who do you recall ever coming to visit Mohammad
3 and Rashed at your apartment?

4 A Mahmud Abouhalima, and another two people, but I
5 don't recall their names.

6 Q So Mahmud Abouhalima and two other people whose
7 names you don't recall?

8 MR. STAVIS: Objection as to form, rephrasing the
9 previous answer.

10 THE COURT: Overruled.

11 Q Let me approach you with what's been marked as
12 Government Exhibit 512 and Government Exhibits W630 and
13 W631.

14 Looking at Government Exhibit 512, can you tell
15 us if you recognize the person in that picture.

16 A Yes.

17 Q And who is that?

18 A Mahmud Abouhalima.

19 Q If you could pick the picture up and pass on to
20 the next photograph, which I believe is marked Government
21 Exhibit 630, it will be marked as Government Exhibit W630,
22 do you recognize the person in that picture?

23 A Yes.

24 Q Do you recall the name of the person in that
25 picture?

1 A No.

2 Q How are you familiar with the person depicted in
3 Government Exhibit W630?

4 A He came to the apartment, and I talked to him for
5 a few minutes.

6 Q Is that one of the two people you said earlier
7 came to visit them at the apartment?

8 A Yes.

9 Q Looking at Government Exhibit W631, the picture
10 underneath, do you recognize the person in that picture?

11 A Yes.

12 Q Do you know that person's name?

13 A No.

14 Q How do you know that person?

15 A I talked to him for a few minutes.

16 Q What was he doing in your apartment when you
17 talked to him for a few minutes?

18 A He's coming to visit Rashed and Mohammad.

19 Q Is he the other person you said came to visit the
20 two of them but you did not know his name?

21 (The witness consulted with the interpreter)

22 A Yes.

23 Q Do you know if there is any relationship between
24 the person in Government Exhibit W630 and the person in
25 Government Exhibit W631?

1 A I believe they are brothers.

2 Q Since the time that Salameh and Rashed moved out
3 of the apartment at 251 Virginia Avenue, have you seen
4 either of those two people in person?

5 A No.

6 Q Do you know a person by the name of Nidal Ayyad?

7 A No.

8 Q Did you ever telephone Nidal Ayyad from that
9 apartment?

10 A No.

11 Q You have mentioned that you saw Mahmud
12 Abouhalima, did you ever telephone Mahmud Abouhalima from
13 that apartment?

14 A No.

15 Q Do you know anyone in Texas?

16 A No.

17 Q Did you ever telephone anyone in Texas?

18 A No.

19 Q Do you know Ibrahim El-Gabrowny?

20 A No.

21 Q Did you ever place a telephone call to Ibrahim
22 El-Gabrowny from that apartment?

23 A No.

24 Q Finally, do you know Sheik Omar Abdel Rahman
25 personally?

1 A No.

2 Q Did you ever place a telephone call from that
3 apartment to Sheik Omar Abdel Rahman?

4 A No.

5 MR. FITZGERALD: Your Honor, I have nothing
6 further.

7 I would offer Government Exhibits 512, W630 and
8 W631.

9 MS. STEWART: May I see them?

10 THE COURT: Would you show them to counsel.

11 (Counsel conferred)

12 MR. FITZGERALD: Judge, I believe we have a
13 stipulation that Government Exhibit W630 is a picture of
14 Abdul Rahman Yasin, Y-A-S-I-N, and Government Exhibit W631
15 is a picture of Musab M-U-S-A-B, Y-A-S-I-N, and they are
16 brothers. And Government Exhibit 512 is a picture of Mahmud
17 Abouhalima.

18 THE COURT: OK.

19 MR. FITZGERALD: One second, Judge.

20 (Counsel conferred)

21 MR. FITZGERALD: Finally, Judge, the government
22 stipulates that the person depicted in Government Exhibit
23 W630, Abdul Rahman Yasin, is a fugitive from the World Trade
24 Center indictment.

25 THE COURT: All right. Those exhibits, then, are

1 received with those stipulated facts.

2 (Government's Exhibits 512, W630 and W631 for
3 identification were received in evidence)

4 THE COURT: Cross?

5 MR. STAVIS: Yes, thank you, your Honor.

6 THE COURT: Mr. Stavis, representing Mr. Nosair.
7 Go ahead.

8 CROSS-EXAMINATION

9 BY MR. STAVIS:

10 Q Good afternoon, Mr. Moneeb.

11 A Good afternoon.

12 Q You came to court for the World Trade Center
13 trial, is that correct?

14 A Yes.

15 Q On November 17, 1993 you testified before a jury
16 much like this jury right over here, is that correct?

17 A Yes.

18 Q When you were at the World Trade Center trial,
19 you were asked to look around the courtroom and to identify
20 Mohammad Salameh, is that correct?

21 A Yes.

22 Q After you looked around the courtroom, you
23 pointed out Mohammad Salameh, is that correct?

24 A Yes.

25 Q You gave testimony about Mohammad Salameh that

1 was much the same as the testimony that you gave here,
2 correct?

3 A Yes.

4 Q You were also asked at the World Trade Center
5 trial to look around the courtroom and see if you saw Mahmud
6 Abouhalima, is that correct?

7 A Yes.

8 Q You did that, you looked around, right?

9 A Yes.

10 Q You pointed out Mahmud Abouhalima to the jury in
11 the World Trade Center trial?

12 A Yes.

13 Q Also at that trial you were shown the same
14 photograph that you were shown here, Government Exhibit
15 W610, a photograph of the man that you knew as Rashed, is
16 that correct?

17 A Yes.

18 Q At the World Trade Center trial, you identified
19 Rashid as somebody who had lived with you at that address on
20 Virginia Avenue, is that correct?

21 A Yes.

22 Q Mr. Fitzgerald asked you a question about this
23 fellow Rashed's accent when you spoke to him, do you recall
24 that just a few minutes ago?

25 A Yes.

1 Q You told Mr. Fitzgerald just a few minutes ago
2 that you knew that this fellow Rashed didn't have an
3 Egyptian accent, but you didn't know what kind of accent he
4 had?

5 A Yes.

6 Q Do you recall testifying at the World Trade
7 Center trial on page 2853, line 2, you were asked the
8 question:

9 "Q What type of accent did he have?"
10 And you answered: "He doesn't have Egyptian
11 accent. He doesn't have Arabian accent. He has like Iraq."

12 Do you recall being asked that question and
13 giving that answer at the World Trade Center trial?

14 A I said he doesn't have Egyptian accent, but he
15 could be, have, other country from the same region who speak
16 the same language, Arabic. So it's different accent.

17 Q Your answer now is different than it was at the
18 World Trade Center trial?

19 MR. FITZGERALD: Objection, your Honor, unless we
20 read through the next few lines on that same page.

21 Q Is your answer different now than it was at the
22 World Trade Center trial, sir?

23 THE COURT: Objection sustained, unless you read
24 the additional, including the court's comments.

25 MR. STAVIS: You mean what the court said, your

1 Honor?

2 THE COURT: Yes.

3 BY MR. STAVIS:

4 "Q What type of accent did he have?

5 "A. He doesn't have Egyptian accent. He
6 doesn't have Arabian accent. He has like Iraq.

7 "Q While you were at the apartment, Apartment
8 C --

9 "THE COURT: Wait a second. Would you be good
10 enough to read back the last answer."

11 "THE COURT: And at the end of that the witness
12 said or maybe Afghanistan."

13 When you were asked at the World Trade Center
14 trial --

15 MR. FITZGERALD: Excuse me. If you could
16 continue.

17 MR. STAVIS: (Reading)

18 "THE COURT: OK. We are going to take a morning
19 break."

20 MR. FITZGERALD: Continue.

21 THE COURT: No. The interpreter's comment later
22 on, Mr. Stavis.

23 MR. FITZGERALD: That was after the break.

24 MR. STAVIS: "OK. We are going to take a morning
25 break at this point" --

1 THE COURT: No, Mr. Stavis. Just read the
2 interpreter's comment.

3 MR. STAVIS: "Could I make a correction on behalf
4 of the witness. The witness said 'Egyptian' or 'Jordanian'
5 accent, not Arabian.

6 "THE COURT: Mr. Moneeb, I have a feeling that
7 you would be better off speaking your native language in
8 answering the questions. OK. It would make life a little
9 easier for you and for the jury."

10 Q Did you previously testify at the World Trade
11 Center trial that the man known as Rashed had like an Iraq
12 or maybe Afghanistan accent?

13 A Yes.

14 Q On March 7, of 1993, some FBI agents showed up at
15 your front door, is that correct?

16 A Yes.

17 Q That would be about seven FBI agents, is that
18 correct?

19 A Yes.

20 Q And when they showed up, they had a dog with
21 them, is that correct?

22 A Yes.

23 Q They showed up, the seven FBI agents, and they
24 searched your house, and the dog sniffed around your house,
25 is that correct?

1 A Yes.

2 Q While they were doing that one of the FBI agents
3 pointed a gun at your face, is that correct?

4 A Yes.

5 Q They had you handcuffed at that time, is that
6 correct, sir?

7 A Yes.

8 Q Then, after they got finished with the dog and
9 the seven agents searching your house, with the gun in your
10 face and the handcuffs on, they took you to their
11 headquarters in Newark, is that correct?

12 A Yes.

13 Q When you got there, they took away your green
14 card, didn't they?

15 A Yes.

16 MR. STAVIS: I have no further questions of this
17 witness, your Honor.

18 THE COURT: Mr. Ricco, representing

19 Mr. El-Gabrownny. Go ahead.

20 CROSS-EXAMINATION

21 BY MR. RICCO:

22 Q Good morning, sir.

23 A Good morning.

24 Q Mr. Fitzgerald asked you questions about the use
25 of the telephone at your apartment. Do you recall those

1 questions?

2 A Yes.

3 Q In fact, you don't have any knowledge of how the
4 phone was used by anybody other than yourself, isn't that
5 right?

6 (The witness conferred with the interpreter)

7 A Yes.

8 Q In fact, in the four months that Mr. Salameh was
9 in your apartment, you only used his phone maybe once or
10 twice?

11 A Yes.

12 Q The phone was in the bedroom, isn't that right?

13 A Yes.

14 Q The phone was in someone else's name, it wasn't
15 in your name, isn't that right?

16 A Yes.

17 Q Mr. Salameh, in the time that he was in your
18 apartment, isn't it true that you knew him as Mohammad Amin?

19 A Yes.

20 Q He didn't go by the name of Mohammad Salameh, did
21 he?

22 A Both.

23 Q But mostly he was known to you by the name of
24 Mohammad Amin, isn't that right?

25 A I don't know exactly what to say it, but both of

1 them is the same to me -- or Mohammad Amin, it's better.

2 Q Mohammad Amin is a name that's more familiar to
3 you in describing the person that lived with you, isn't that
4 right?

5 A Yes.

6 Q The man that came with him was known to you as
7 Rashid, isn't that correct?

8 A Rashed.

9 Q He never said to you, "My name is really Ramzi
10 Yousef," did he?

11 A Never.

12 Q In the entire time that he lived with you in the
13 apartment, you had very little conversation with Rashed,
14 isn't that correct?

15 A Yes.

16 Q In fact, Mohammad Salameh would pay for Mohammad
17 Salameh's share of the rent, isn't that correct?

18 (The witness consulted with the interpreter)

19 MR. RICCO: I will rephrase the question, your
20 Honor.

21 Q Rashed never paid you directly his share of the
22 money?

23 A No.

24 Q It was always paid by Mohammad Amin or Mohammad
25 Salameh, isn't that correct?

1 A Yes.

2 Q In fact, Rashed tried to stay as much as possible
3 in the background, isn't that right?

4 A Yes.

5 Q Very secretive, isn't that correct?

6 A Yes.

7 Q Back at that time, you originally met Mohammad
8 Amin or Mohammad Salameh when you lived at Harrison Avenue,
9 isn't that right?

10 A Yes.

11 Q He shared a room with you and some other young
12 men at that address, right?

13 A Yes.

14 Q Then you moved out?

15 A Yes.

16 Q You didn't see Mohammad Salameh anymore until
17 about two years later when he showed up with Rashed at the
18 Virginia Avenue address, isn't that right?

19 A Yes.

20 Q He presented himself as if he was looking for a
21 room to live in, isn't that right?

22 A Yes.

23 Q He wanted a room for himself and he wanted a
24 separate room for Rashed, isn't that right?

25 A Yes.

1 Q You accommodated Rashed, isn't that right -- I'm
2 sorry. Withdrawn.

3 You rented a room to them, isn't that right?

4 A Yes.

5 Q In large part, that was based on your former
6 relationship with Mohammad, isn't that correct?

7 A Yes.

8 Q They had two separate rooms, right?

9 A Yes.

10 Q But the rent for both rooms was paid by Mohammad
11 Amin or Mohammad Salameh, isn't that right?

12 A Yes.

13 Q At some point you moved out of Apartment A,
14 right?

15 A Yes.

16 Q You moved down to Apartment C?

17 A Yes.

18 Q That was a smaller apartment, it was a
19 one-bedroom apartment, right?

20 A Yes.

21 Q When you moved down to the smaller apartment,
22 Mohammad and Rashed moved with you?

23 A Yes.

24 Q The time that they were with you, it was from
25 around September 1992 --

1 A Yes.

2 Q -- until maybe February of 1993?

3 A Yes.

4 Q When Mohammad Salameh came to you at Virginia
5 Avenue, he said to you that he had to move from his old
6 address, isn't that right?

7 A Yes.

8 Q He told you that he was moving out of an address
9 called Kensington, or Lexington, something like that, right?

10 A Yes.

11 Q You, in fact, drove with him over to this
12 address, right?

13 A He waited for me. He needed someone to help him
14 to move the stuff, so he gave me the address, and I went
15 over there and waited for him.

16 Q You extended your friendship to help him move,
17 isn't that right?

18 (The witness consulted with the interpreter)

19 A Yes.

20 Q You went with him over to this address, right?

21 (The witness consulted with the interpreter)

22 MR. RICCO: I will rephrase the question and make
23 it easier.

24 Q You helped him move a bed, some books and some
25 clothes, isn't that right?

1 A Yes.

2 Q Mohammad was living in your apartment during
3 September of 1992, to your knowledge, right?

4 A Yes.

5 Q He was there in October of 1992?

6 A Yes.

7 Q He was there in November of 1992?

8 A Yes.

9 Q December of 1992?

10 A Yes.

11 Q January of 1993?

12 A Yes.

13 Q He moved out sometime in February of 1993?

14 A Roughly, yes. Yes.

15 Q During that time period, you had an opportunity
16 to see three people that came to visit him, and those are
17 the three people that you pointed out in the photographs
18 that Mr. Fitzgerald showed you?

19 A Yes.

20 Q At the time when Mohammad Salameh lived at that
21 address with you at Virginia Avenue, either him or Rashed
22 had an old car, isn't that right?

23 A Yes.

24 Q They used to park the car in your driveway?

25 A Yes.

1 Q Occasionally you had to tell them to move the car
2 because you had to get your car out?

3 A Right.

4 Q At this time period, you yourself were a student,
5 isn't that correct?

6 A Yes.

7 Q Between studying and working, you didn't have
8 much time for anything else, isn't that right?

9 A Yes.

10 Q Mohammad was with you over these months, correct?

11 A Yes.

12 Q You had known him before from Harrison, isn't
13 that correct?

14 A Yes.

15 Q Yet when the FBI told you that he was arrested in
16 connection with the World Trade Center bombing, you were
17 very surprised to hear that, isn't that correct?

18 A I didn't believe it.

19 Q You did not believe it, isn't that right?

20 A Yes.

21 Q You thought maybe they had him mixed up with
22 someone else by the same name, isn't that right?

23 A That's true.

24 MR. RICCO: One further question.

25 I'm sorry. Excuse me, your Honor.

1 (Pause)

2 Q Slightly different question: In Afghanistan
3 people don't speak Arabic, do they, if you know?

4 (The witness consulted with the interpreter)

5 A I don't know.

6 MR. RICCO: I have no further questions.

7 Thank you, your Honor.

8 THE COURT: Mr. Jacobs, representing Mr. Mohammad
9 Saleh.

10 CROSS-EXAMINATION

11 BY MR. JACOBS:

12 Q Mr. Moneeb, this fellow Rashed or Rashid, over
13 these four months he on occasion would shave his beard off
14 and grow his beard back again, correct?

15 A Yes.

16 Q Over these four months, would I be correct in
17 stating that you never ate meals with Rashed or Mohammad, is
18 that correct?

19 A No.

20 Q You never ate out with them, correct, out at a
21 restaurant with them?

22 (The witness consulted with the interpreter)

23 A No, I never went to a restaurant.

24 Q Did you ever eat with them in your apartment?

25 A No, I don't recall.

1 Q When you were going to school during these four
2 months, about how many hours a day were you outside the
3 apartment would you say? About 11 to 5?

4 A From 11 to about -- I came back 9 o'clock. 8:45
5 the class ends.

6 Q On numerous occasions did you leave them alone in
7 the apartment?

8 A Yes.

9 Q In your apartment, did you have a computer?

10 A Yes.

11 Q Was that your computer?

12 A Yes.

13 Q Did that computer use diskettes that would go
14 into the computer?

15 (The witness consulted with the interpreter)

16 A Yes.

17 Q Did you show Rashed the computer?

18 A Yes.

19 Q During the period of time that Rashed was in the
20 apartment, do you know if he worked for a living or did
21 anything?

22 A Yes.

23 Q What did he do?

24 A He was handing out flyers.

25 Q Do you know what kind of flyers?

1 A I only recall the colors. It was green colors,
2 and it was about credit cards or something.

3 Q I'm sorry?

4 A I don't know what type of flyers.

5 Q Do you know if he ever used your computer?

6 A No.

7 Q You don't know or -- you wouldn't be able to tell
8 us? If you know?

9 A If I am out of the apartment, I don't know if he
10 used it or not. I don't know.

11 Q But he had access to the computer, is that
12 correct?

13 A Yes.

14 MR. JACOBS: I have nothing further.

15 THE COURT: Mr. Wasserman, representing
16 Mr. Hampton-El. Go ahead.

17 CROSS-EXAMINATION

18 BY MR. WASSERMAN:

19 Q Good afternoon.

20 A Good afternoon.

21 Q Are you aware that Abdel Rahman Yasin, that is
22 the man that the government has identified in Exhibit 630, I
23 believe, as the fugitive from the Trade Center, you are
24 aware that he is Iraqi, are you not?

25 A I know that they wanted him for the case, but I

1 don't know if he was Iraqi.

2 Q You do not know that he is Iraqi?

3 A No.

4 Q Did you have a conversation with him when he
5 would visit the apartment?

6 A Yes.

7 Q When he had a conversation with you, did he speak
8 Arabic?

9 A Yes.

10 Q Did he speak with an Iraqi accent?

11 A I don't know Iraqi accent. I don't know. I
12 cannot recognize Iraqi accent.

13 Q You cannot recognize -- you cannot recognize it?

14 A No.

15 Q Are you aware that there is a \$2 million reward
16 for this fugitive?

17 A One million. That is what I heard.

18 Q All right. \$1 million.

19 Are you aware that he is in Baghdad?

20 A No.

21 MR. WASSERMAN: Thank you. No further questions.

22 THE COURT: Anyone else?

23 Any redirect?

24 MR. FITZGERALD: Just very brief.

25 THE COURT: Go ahead.

1 REDIRECT EXAMINATION

2 BY MR. FITZGERALD:

3 Q Mr. Moneeb, Mr. Salameh, was he Egyptian?

4 A No.

5 Q Where was he from?

6 A Jordanian.

7 Q He was from Jordan.

8 Did he get along OK with Mr. Yasin and his
9 brother? As far as you could tell were they friends?

10 A Yes.

11 MR. FITZGERALD: Thank you. Nothing further.

12 THE COURT: Anything else?

13 Thank you very much. You are excused.

14 (Witness excused)

15 THE COURT: All right.

16 Ladies and gentlemen, we are going to break for
17 lunch. Please leave your notes and other materials behind.
18 Please don't discuss the case, and we will resume after
19 lunch. Just for your own scheduling purposes, I should tell
20 you a couple of things: First, tomorrow we are going to
21 break in the middle of the day. We are going to sit a
22 little bit longer than 12:30, but we will break in the
23 middle of the day.

24 Also, a week from today -- that is, May 9 -- we
25 will not sit in this case. We will not sit on that day. We

1 will sit the other days that we usually sit, but not that
2 day. So we have tomorrow afternoon and May 9 that we won't
3 be sitting.

4 Thank you.

5 (The jury was excused)

6 (Jury not present)

7 THE COURT: Yes?

8 MR. STAVIS: Your Honor, I was informed by the
9 government that they intend this afternoon to introduce the
10 new-and-improved version of Government Exhibit 508, which we
11 discussed yesterday as the --

12 THE COURT: Is that the chart?

13 MR. STAVIS: Yes, your Honor.

14 THE COURT: I should tell you I haven't seen it,
15 but I have read Casamento. It says what he says it says. I
16 will look at the new-and-improved version over lunch if you
17 would like. Mr. Jacobs?

18 MR. JACOBS: Your Honor, with respect to the
19 proposed testimony of Haggag, I know Mr. Stavis submitted a
20 letter on the MCC statements this morning, which I guess I
21 am going to join in, because I have an MCC statement as
22 well. Has your Honor thought about scheduling on that
23 matter, what your Honor's thinking is on the subject?

24 THE COURT: It was my understanding, based on a
25 conversation that we had yesterday, that the testimony was

1 going to be carried to the point before the MCC statements
2 were to be introduced, and at that point we would have a
3 Massiah hearing on that subject.

4 I would refer you to three cases: The first two
5 are *Weatherford v. Bursey*, 429 U.S. 545, 558, and *United*
6 *States v. Ginsburg*, 758 F.2d 823, 833, both of which I think
7 stand for the principle that unless there is evidence that
8 the government has placed somebody specifically at a meeting
9 in order to elicit information, there is no violation.

10 I would also refer you to, I think it was Judge
11 Gurfein's opinion in *United States v. Rosner*, 485 F.2d 1213,
12 specifically language at pages 1226 and 1227 that says, "An
13 attorney and his client who meet freely with potential
14 co-defendants in a criminal case always expose themselves to
15 the risk of a subsequent disloyalty by the co-defendant whom
16 they might have been better advised to examine through his
17 own attorney without the risk of unwitting disclosure."

18 MR. JACOBS: Unless I am missing something, I
19 don't think that the government's allegation, at least with
20 respect to my client, is that these are co-counsel meetings
21 or anything like that. I mean, I am somewhat familiar with
22 *Rosner*, but I don't think these are co-defendants' meetings
23 or anything like that.

24 THE COURT: If two co-defendants got together,
25 then by definition it is a co-defendant meeting.

1 MR. JACOBS: I mean with counsel, your Honor.

2 THE COURT: Whether it is with counsel or not,
3 the thrust of this I think is that lawyers are often well
4 advised to tell their clients not to talk to co-defendants.

5 MR. JACOBS: That I agree with.

6 THE COURT: That wisdom is as true today as when
7 Judge Gurfein uttered it, if it was he in fact who uttered
8 it.

9 MR. JACOBS: I have no objection to the way your
10 Honor is scheduling the proceedings to do the Massiah
11 hearing at that point.

12 THE COURT: OK. Thank you.

13 (Luncheon recess)

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A F T E R N O O N S E S S I O N

Time noted, 2:10 p.m.

(In open court; jury not present)

MR. STAVIS: Prior to the lunch break, I had asked your Honor to look through the new-and-revised Government Exhibit 508. I don't know if you have had an opportunity to do so.

THE COURT: I have.

MR. STAVIS: I had an opportunity to --

THE COURT: I'm sorry. Yes?

MR. STAVIS: I looked at Casamento over the lunch break, your Honor. In Casamento, the charts were not introduced into evidence. They were used as an aid to the jury to summarize very, very complex testimony.

THE COURT: Right. And they were permitted to be taken into the jury room.

MR. STAVIS: That's correct, your Honor. They were permitted to be taken into the jury room at the specific request of the jury and at the conclusion of the case.

A point that I wish to make, your Honor, which was a point that Judge Weinstein makes in his treatise, is that summaries of evidence must be distinguished from what Judge Weinstein refers to as pedagogical devices to summarize or organize testimony or documents which have

1 themselves been admitted in evidence.

2 The prior charts concerning the telephone records
3 or, for example, the Attica visits, are, under Rule 1006,
4 summaries of complex voluminous records. What we have in
5 Government's Exhibit 508 is what Judge Weinstein referred to
6 as a pedagogical device, and Judge Weinstein --

7 THE COURT: You have now segued from Casamento to
8 Judge Weinstein. How did that happen?

9 MR. STAVIS: Because I first distinguished
10 Casamento by telling your Honor that Casamento was at the
11 request of the jury at the end of the case and was not
12 introduced --

13 THE COURT: Mr. Stavis. Stop.

14 They had seen the document before. They didn't
15 conceive this document themselves.

16 MR. STAVIS: Your Honor, and when they had seen
17 it, they received an instruction --

18 THE COURT: Right.

19 MR. STAVIS: -- from Judge Leval that it was not
20 in evidence.

21 THE COURT: No. Not that it is not in evidence,
22 but that it is not evidence, which is an instruction I would
23 propose to give them. We haven't discussed limiting
24 instructions that would go along with the exhibit. We have
25 simply discussed the exhibit.

1 I think the important thing to tell them is that
2 the exhibit is not evidence. It simply summarizes certain
3 evidence, and whether there are relationships among the
4 items listed in the exhibit is for them to determine, and
5 also whether there are other things that they should
6 consider along with the things that have been put on that
7 chart is for them to determine.

8 MR. STAVIS: It was my understanding that
9 Government Exhibit 508 was sought to be introduced as
10 evidence. If I may go back to what Judge Weinstein said
11 about pedagogical items such as Government Exhibit 508, he
12 recommends in his treatise that they should not be allowed
13 in the jury room without the consent of all parties, since
14 they are more akin to argument than evidence.

15 THE COURT: To the extent --

16 MR. STAVIS: If your Honor will permit me to just
17 finish my thought, it is our position that this purported
18 chart of telephone activity is argument.

19 THE COURT: I know. Mr. Stavis, your thought was
20 clear about five minutes ago.

21 MR. STAVIS: Yes. It assumes --

22 THE COURT: Sit down.

23 MR. STAVIS: I haven't been speaking for five
24 minutes. If your Honor will allow me to complete my
25 thought --

1 THE COURT: I will not. You are entitled to talk
2 until your thought is clear. It is clear. I understand it,
3 and I am overruling your objection.

4 MR. STAVIS: I have another thought, your Honor,
5 which is directed toward this exhibit specifically, not my
6 legal objection, which your Honor --

7 THE COURT: Has overruled.

8 MR. STAVIS: Yes.

9 THE COURT: Thank you.

10 MR. STAVIS: It is labeled a chart of telephone
11 activity, and it includes things other than telephone
12 activity.

13 THE COURT: Then it is mislabeled, and it is
14 going to have to be relabeled before it gets introduced
15 because there is more on there than telephone activity. So
16 to the extent that that is an objection, it is sustained. I
17 suggest you strike out the word "Telephone."

18 MR. FITZGERALD: Yes, Judge.

19 THE COURT: Now, although there's been no
20 specific request for a limiting instruction, I assume you
21 want one along the lines we discussed or along the lines
22 that I discussed.

23 MR. STAVIS: I believe that the Second Circuit
24 precedents would require such an instruction.

25 THE COURT: Me, too.

1 MR. STAVIS: I would ask specifically that your
2 Honor give one.

3 THE COURT: Mr. Jacobs?

4 MR. JACOBS: Is there a witness that is going to
5 be called to put this document in?

6 THE COURT: I should think not.

7 MR. FITZGERALD: A witness is going to
8 authenticate it.

9 THE COURT: Fine.

10 MR. FITZGERALD: Ms. Fugger.

11 THE COURT: Fine.

12 MR. JACOBS: Your Honor, in front of the jury I
13 would ask that when it's offered that our objections be
14 stated in front of the jury that we object. We wouldn't
15 want the jury to think we are not objecting.

16 MS. STEWART: You might give an instruction at
17 the time it comes in -- I'm sorry.

18 THE COURT: I intend to. I intend to tell them
19 that this chart, although they may look at it is not in and
20 of itself independent evidence. What it does is to
21 summarize certain other items, but by no means all of the
22 items, that have been received in evidence. And I also plan
23 to tell them that whether there is or isn't a relationship
24 among the things listed on the chart is for them to decide,
25 and also whether there may be other events that should also

1 go on the chart that have not been put on the chart is for
2 them to decide. But this is just an aid to them in
3 following some of the evidence that has been received
4 already, period.

5 MR. JACOBS: This is a government aid.

6 THE COURT: A government aid to them, fine. A
7 government-sponsored -- I am not going to say "sponsored,"
8 but the government is introducing this. Just so they
9 understand the sponsorship of it. If you want them to
10 understand that you have an objection, that's fine.

11 Do you want to get up and simply say "Objection"
12 at the time, Mr. Jacobs?

13 MR. JACOBS: Yes, sir. I think there will be a
14 voir dire, and then I assume there will be an objection, but
15 I prefer to state at least in front of the jury the word
16 "objection."

17 THE COURT: Just the word "objection."

18 MR. JACOBS: Obviously, you don't want argument
19 in front of the jury.

20 THE COURT: That is right. I don't.

21 MR. JACOBS: I would want the jury to know that
22 defense counsel objected to the exhibit.

23 THE COURT: They will know that.

24 MS. STEWART: If I may, Judge, my understanding
25 from Mr. Khuzami is that Mr. Nalu will discuss a document

1 called "A Master of the Islamic Call," is that correct?

2 MR. KHUZAMI: No, that's Mr. Feghali.

3 MS. STEWART: I am sorry.

4 MR. KHUZAMI: He will be the third witness, or
5 the second.

6 MS. STEWART: Are they going to be commenting on
7 the documents that the witness intends to put in, the next
8 witness, is that --

9 MR. KHUZAMI: Just authenticating a translation.

10 MS. STEWART: Of what is my question.

11 MR. KHUZAMI: A document that will be entered
12 into evidence through the following witness.

13 MS. STEWART: That is my objection. The
14 documents --

15 THE COURT: You two understand what you are
16 talking about, I don't.

17 MS. STEWART: My objection, Judge, is to having
18 translators placed on the stand to talk about documents that
19 have not even been introduced into evidence at this point.
20 They will be introduced, as I understand it, through
21 Mr. Haggag.

22 THE COURT: No. We have a chicken-egg problem.
23 Now I understand it. They can testify to the translation,
24 and if it comes in, it comes in. If it doesn't, it will
25 simply have been a magical mystery bus ride.

1 MS. STEWART: It certainly has a chilling effect
2 on the cross-examination, however.

3 THE COURT: Of whom?

4 MS. STEWART: If they are talking about a
5 document that we are endeavoring to keep out of evidence,
6 you certainly do not want to present to the jury -- I don't
7 see why Mr. Haggag could not be interrupted, if their
8 problem is that they want him to talk about the document,
9 they could certainly introduce the document, the other
10 witness can be called, and he could resume the stand.

11 MR. McCARTHY: Your Honor, Ms. Stewart has done
12 this kind of cross throughout the trial, and we haven't
13 really objected to it. But when the translator is offered,
14 he's offered as a translator. If she chooses in her
15 cross-examination to read the document to the witness to put
16 her slant on it or her interpretation on it, that's one
17 thing, but that's not really impeaching the translation.

18 There is no problem with impeaching the
19 translation through that kind of a cross-examination and
20 then doing whatever other kind of cross is appropriate at
21 the time the thing comes into evidence. But the translator
22 is only offered for the words on the page.

23 THE COURT: What is in the document?

24 MS. STEWART: This particular one, Judge, happens
25 to be something that is signed with Dr. Abdel Rahman's name.

1 THE COURT: What is it?

2 MS. STEWART: It is an indictment of Saudi Arabia
3 with a lot of aspersions to other Middle Eastern countries.

4 THE COURT: That's been the warp and woof of this
5 case. You can do that. These are not the plans for the
6 Normandy invasion. You can cross-examine on this without
7 fear of --

8 MS. STEWART: If it is not going to come in at
9 all because it is not relevant in the sense that it is a
10 self-authored document being offered as something that was
11 written by the sheik but never was, then I think there is a
12 different problem. Then the jury knows about it, it's out
13 there before them --

14 THE COURT: But what is out there before them is
15 only your cross-examination about the translation, which is
16 nothing terribly prejudicial, so I am going to let him do
17 it. Let's go.

18 MS. STEWART: I just would object that it is not
19 in evidence.

20 THE COURT: I understand. Let's proceed.

21 (Continued on next page)

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1 THE COURT: One additional point. We are going
2 to have to stop this afternoon at about ten of or so, just
3 as we did yesterday. So whoever is on his feet at that
4 time, please be aware of that.

5 (Jury present)

6 THE COURT: Good afternoon, ladies and gentlemen.

7 JURORS: Good afternoon.

8 THE COURT: Mr. McCarthy.

9 MR. McCARTHY: The government recalls Frank Nalu.

10

11 FRANK NALU,

12 called as a witness by the government,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. McCARTHY:

16 Q Mr. Nalu, why don't you remind us of what you do
17 for a living?

18 A I am a language specialist with the FBI in
19 Detroit, Michigan.

20 Q Detroit, Michigan?

21 A Yes, sir.

22 Q I placed a few exhibits in front of you. Do you
23 see right in front of you Government's Exhibit 164, a tape,
24 and 164T, a transcript?

25 A Yes, sir, I do.

1 Q Do you recognize 164 and 164T?

2 A Yes, sir.

3 Q What do you recognize them to be?

4 A 164 is AT&T tape, incoming message cassette, and
5 164T is a transcript of the tape.

6 Q Did you make an English transcript, that is,
7 164T, from the messages on one side of that answering
8 machine tape, that is, 164?

9 A Yes, sir, I did.

10 MR. McCARTHY: Your Honor, the government offers
11 164 and 164T.

12 MR. RICCO: May I examine?

13 THE COURT: Mr. Ricco, on voir dire, representing
14 Mr. El-Gabrownny.

15 VOIR DIRE EXAMINATION

16 BY MR. RICCO:

17 Q Good afternoon, sir.

18 A Good afternoon, sir.

19 Q You translated the calls that were made to that
20 tape, isn't that right?

21 A Yes, sir, I did.

22 Q Some of the calls were in English, so you didn't
23 have to translate those?

24 A Right. I transcribed it.

25 Q One of the calls that was on the tape was from a

1 person who identified themselves as Mohammad Amin, isn't
2 that right?

3 A That's correct, sir.

4 Q There were no calls from anyone who identified
5 themselves as Mohammad Salameh, isn't that right?

6 A No.

7 Q The person who identified --

8 MR. McCARTHY: Objection. Your Honor, could we
9 just make it clear whether he means no, there weren't or --

10 THE COURT: The answer was ambiguous. .

11 Regardless of what you said, was there anybody
12 who identified themselves as Mohammad Salameh?

13 THE WITNESS: No, sir.

14 Q The person identified themselves as Mohammad
15 Amin?

16 A That's true.

17 Q And what that person said was, in Arabic, Ibrahim
18 El-Gabrowny, this is Mohammad Amin me calling. Please
19 return my call when you are back, God willing. May peace be
20 upon you.

21 A That's absolutely right, sir.

22 Q And there were several other callers that left
23 recordings on the tape, isn't that correct?

24 A That's correct, sir.

25 Q And one of those callers was Mrs. Khadijah

1 Nosair, isn't that correct?

2 A Right.

3 Q And she left a message to a person named Amina,
4 isn't that correct?

5 A That's true.

6 Q She basically asked Amina to give her a call,
7 isn't that correct?

8 Withdrawn.

9 She said Amina, peace be upon you. This is
10 Khadigjah. I don't know if this is your answering machine
11 or something going crazy on your phone. Anyway, if this is
12 your answering machine, call me back, peace be upon you.

13 A That's right, sir.

14 Q And then also on the tape there was also a sort
15 of like a broadcast recorded onto the tape, isn't that
16 correct?

17 A Yes, in the beginning, right.

18 Q And it was some kind of promotional giveaway,
19 that if the person called in, they could call up the number
20 and get something free, or something of that sort?

21 A Yes, that's right.

22 MR. RICCO: I have no further questions. I have
23 no objection.

24 THE COURT: 164 and 164T received.

25 (Government Exhibits 164 and 164T were received

1 in evidence.)

2 MR. RICCO: One second.

3 (Conference between Mr. Ricco and Mr. McCarthy.)

4 DIRECT EXAMINATION (Continued)

5 BY MR. McCARTHY:

6 Q Mr. Nalu, Mr. Ricco pointed out to you that the
7 person named Mohammad who left a message on that tape gave
8 his name as Mohammad Amin, is that correct?

9 A That's correct, sir.

10 Q Did you have a chance this morning to compare
11 that message, that is, the message that was left by this
12 person who identified himself as Mohammad Amin, to the voice
13 of a person who identified himself as Mohammad on
14 Government's Exhibit W736 in evidence, which I think is also
15 before you?

16 A That's true, sir.

17 Q What was the result of your comparison?

18 A It was the same person.

19 Q That is, the person identified as Mohammad on
20 W736 is the same person who leaves the message and
21 identifies himself as Mohammad Amin on the answering machine
22 tape?

23 A That's right, sir.

24 MR. McCARTHY: Your Honor, may I advise the Court
25 counsel and the jury of the stipulation.

1 THE COURT: Yes.

2 MR. McCARTHY: With respect to Government's
3 Exhibit 164, the witness has made a transcript of one side
4 of the tape, which is side 1 of that exhibit. The parties
5 stipulate that at the time this tape was seized from
6 Mr. El-Gabrowny's home, side 2 was the side that was up and
7 taking messages on the answering machine at that time.

8 Your Honor, I propose at this point to play a
9 brief portion of the answering machine tape, side 1, that
10 is, the initial message, the first two messages. The second
11 message is the one from the person who identifies himself as
12 Mohammad Amin, and I believe that Ms. Schwartz has placed on
13 each juror's chair a one-page exhibit that is 164T.

14 THE COURT: 164T.

15 THE COURT: They will need headsets for this?

16 MR. McCARTHY: Yes.

17 (Tape played)

18 MR. McCARTHY: I have no further questions, your
19 Honor.

20 THE COURT: Cross? Ms. London, representing
21 Mr. Elhassan.

22 CROSS-EXAMINATION

23 BY MS. LONDON:

24 Q Good afternoon, Mr. Nalu.

25 A Good afternoon, ma'am.

1 Q Sir, are you a member of the American Translators
2 association?

3 A No.

4 Q Have you ever been to any of their conferences?

5 A Say that again, please? I couldn't hear you.

6 Q Have you ever been to any of their conferences?

7 A No, not for the translators.

8 Q I am sorry, I didn't hear you.

9 A Not for translators. Is that American
10 Translators Society?

11 Q Correct. Have you been to American Translator
12 Association conferences or meetings?

13 A No.

14 Q Have you ever attended any of their courses?

15 A No.

16 Q Do you receive their publications?

17 A No.

18 Q Have you ever taken courses on translation?

19 A Yes.

20 Q With whom?

21 A With the academy.

22 Q I am sorry?

23 A The FBI Academy in Quantico, Virginia.

24 Q And were these courses on translating the written
25 word to the written word?

1 A Translating everything.

2 Q I am sorry, I didn't understand you.

3 A Translating of everything.

4 Q Well, my question is: translating the written
5 word to the written word. Did you have courses in that?

6 A No, not that.

7 Q Did you have courses in translating the spoken
8 word to the written word?

9 A No.

10 Q What kind of courses did you have?

11 A The courses we had is, it is on the job training.

12 Q I am sorry, on the job?

13 A On the job training, plus the seminars we took at
14 FBI, they go into everything, like the written material,
15 interviews, how to translate to different language.

16 Q When you talk about how to translate different
17 stuff to a different language, are you talking about how to
18 translate a written language into another written version of
19 a different language?

20 A In my case it is Arabic and English, so most of
21 the time we translate from Arabic to English language.

22 Q Did you have courses in translating spoken Arabic
23 to writing out the translation in English?

24 A We did that, the same thing too, in the academy.

25 Q Now, you testified that you made a transcript of

1 tape 164. When you did that, did you listen to the tape in
2 Arabic and first make an Arabic transcription of what you
3 heard?

4 A That's right.

5 Q And then you took your Arabic transcript and made
6 an English transcript from that, is that right?

7 A The way I do it, I listen to the tape, and I
8 write it with my own handwriting and have somebody from the
9 steno pool type it into English. And then I go over it one
10 more time to make sure every word is in the right place.

11 Q My question is, when you listened to tape 164 and
12 you heard and you heard Arabic, did you first make an Arabic
13 transcription or an Arabic writing of what you heard before
14 you translated it into English?

15 A No, I don't need that. I don't do that.

16 Q You do it in a one-step process?

17 A Right.

18 Q Have you ever spoken to Mohammad Amin in person?

19 A No.

20 Q Have you ever taken courses in voice analysis?

21 A No.

22 Q Do you know anything about the physics of voice
23 analysis?

24 A No.

25 Q So when you testified here that it was the same

1 person whose voice was on, I believe, Government Exhibit
2 W736 and Government Exhibit 164, you are basing that on just
3 listening to the tape, is that correct?

4 A Ma'am, I have been doing this for a long time.

5 Q No --

6 THE COURT: She is asking you whether you based
7 it simply on listening to the tapes.

8 THE WITNESS: Yes.

9 Q And those were the only two samples of the voice
10 that you had to listen to?

11 A I think so, but I am not sure.

12 MS. LONDON: No further questions.

13 MR. RICCO: Your Honor?

14 THE COURT: Mr. Ricco, representing
15 Mr. El-Gabrowny.

16 MR. RICCO: Your Honor, for the purposes of this
17 exhibit, the government and Mr. El-Gabrowny stipulate that
18 the voice of Mohammad Amin is the voice of Mohammad Salameh.

19 THE COURT: But that stipulation is binding only
20 on the government and Mr. El-Gabrowny, correct?

21 MR. RICCO: That's correct.

22 THE COURT: Anyone else?

23 MR. McCARTHY: No, your Honor.

24 THE COURT: Thank you, Mr. Nalu. You are
25 excused.

1 THE WITNESS: Thank you, your Honor.

2 (Witness excused)

3 MR. KHUZAMI: The government calls Mike Feghali
4 to the stand.

5 THE COURT: Excuse me, when somebody is being
6 sworn, please don't talk or shuffle papers. Thank you.

7

8 MIKE FEGHALI,

9 called as a witness by the government,
10 having been duly sworn, testified as follows:

11 MR. KHUZAMI: May I proceed, your Honor?

12 THE COURT: Please.

13 DIRECT EXAMINATION

14 BY MR. KHUZAMI:

15 Q Mr. Feghali, you testified before in this case,
16 is that correct?

17 A Yes, sir, I did.

18 Q And you are an Arab language specialist with the
19 Justice Department, is that correct?

20 A Yes, sir.

21 Q In your previous testimony you described your
22 educational background and your training?

23 A Yes, sir.

24 Q And your prior experience as a translator?

25 A Yes, sir, I did.

1 MR. KHUZAMI: Your Honor, may I approach?

2 THE COURT: Yes.

3 Q Mr. Feghali, let me show you what has been marked
4 as Government Exhibit 808 and 808T for identification and
5 ask you to take a look at them.

6 A Yes, sir.

7 Q Do you recognize Government Exhibit 808?

8 A Yes, sir, I do.

9 Q Was Government Exhibit 808 translated by you?

10 A Yes, sir, I did.

11 Q And is 808T a translation of your Government
12 Exhibit 808?

13 A Yes, sir.

14 Q Is Government Exhibit 808T, the English, a fair
15 and accurate translation of Government Exhibit 808?

16 A Yes, sir, it is.

17 Q How do you recognize those two items as the items
18 translated?

19 A They have my initials on both of them.

20 MR. KHUZAMI: I offer Government Exhibit 808T
21 subject to connection.

22 MR. JABARA: We object to the admission of this,
23 but we will not cross.

24 THE COURT: You are going to await the actual
25 offer of the exhibit?

1 MR. JABARA: Yes.

2 THE COURT: Fine. So it will be received subject
3 to connection.

4 MR. KHUZAMI: No further questions.

5 THE COURT: Any cross of this witness?

6 MR. JABARA: Yes.

7 CROSS-EXAMINATION

8 BY MR. JABARA:

9 Q Good afternoon, Mr. Feghali.

10 A Good afternoon, sir.

11 Q Mr. Feghali, in the Arabic language, are there
12 capital letters?

13 A No.

14 Q So wherever capital letters are used in your
15 translation here, those are capital letters that you have
16 put in there, is that correct?

17 A Yes, sir, I would say so.

18 Q And you did that on your own without it being a
19 capital letter appearing in Arabic, is that correct?

20 A Well, usually if it's a proper name. Sometimes
21 if it's in larger letter, I probably would use capital
22 letters, yes, sir.

23 Q I would like to have you look at Government
24 Exhibit 808, if you will.

25 A Yes, sir.

1 Q Look at the Arabic translation that you have
2 here. I notice in the complete translation, Mr. Feghali,
3 that you have a number of items that have been placed in
4 brackets during the English translation, is that correct,
5 sir?

6 A I am not sure.

7 MR. JABARA: May I approach the witness, your
8 Honor?

9 THE COURT: He has the exhibit in front of him.
10 Just indicate where on the exhibit.

11 Q Let's take the first line.

12 A Yes, sir.

13 Q All right?

14 A Yes.

15 Q Where it says the Saudi regime is -- and then you
16 have a parentheses, is that correct?

17 A I think this is the final version, if I may, sir,
18 and there are no parentheses or brackets on them.

19 Q Fine. Now, when did you prepare this final
20 version?

21 A When I prepared what? I am sorry.

22 Q The final version.

23 A I went over this today, this morning.

24 Q And you had prepared another version prior to
25 that?

1 A Yes. I had a version which I had brackets in it
2 also to explain what this meant to be there. And then I
3 thought that it is probably more appropriate to delete
4 everything. I took it just as is.

5 Q Did you prepare this final version on your own or
6 did you do it with some assistance from someone else?

7 A No, sir. I did it on my own.

8 Q You did not consult anyone about that?

9 A I consulted dictionaries.

10 Q All right.

11 A Yes, sir.

12 Q Did you consult any members of the prosecution?

13 A No, I did not consult anybody.

14 Q After you prepared your first document
15 translation --

16 A Yes, sir.

17 Q -- did you submit the first translation with the
18 brackets in it to the prosecution?

19 A Yes, as a, like, proof.

20 Q Was it a draft?

21 A Was it what?

22 Q Was it a draft of your translation?

23 A I think so, yes, sir.

24 Q And then did you have some discussion with the
25 prosecution about the translation after that?

1 A Not that I recall.

2 Q You don't recall whether you discussed it.

3 A Right.

4 Q You could have discussed it with them; is that
5 your testimony here?

6 A I don't think so, no, sir.

7 Q I notice one word here that you do put in
8 brackets, and it is in the fourth paragraph down,
9 Mr. Feghali. I call your attention to it.

10 A All right.

11 Q And it is the word "uncle."

12 A Yes, sir.

13 Q Does the word "uncle" appear in Arabic?

14 A No, it appeared in Arabic as dog. Dog Sam.

15 Q Dog Sam.

16 A Right.

17 Q So uncle is -- you put the word "uncle" in there,
18 is that correct?

19 A Yes, sir. That's to explain that means Uncle Sam
20 that is referred to as dog Sam.

21 Q But that is your interpretation, isn't it?

22 A Well, it is --

23 Q That word did not appear? Yes or no.

24 MR. KHUZAMI: Objection, your Honor.

25 THE COURT: Let him answer the question, please,

1 Mr. Jabara. Don't shout at him. Thank you.

2 A Sir, as an interpreter, as a translator, I have
3 the obligation to -- that the words I am translating make
4 sense. To make sure that I am honest in my translation, I
5 didn't add the word. I put it in brackets. So my
6 responsibility is being fulfilled, and my honesty and
7 professionalism is being fulfilled by doing so.

8 Q Mr. Feghali, does the word "uncle" appear in the
9 Arabic?

10 A No, sir, it did not.

11 Q So the word is solely your own word, is that
12 correct?

13 A My own explanation, yes, sir.

14 Q So you are not just translating, you are also
15 interpreting, is that correct?

16 A No, sir. When I interpret, I put it in brackets,
17 and I said that the first day in court.

18 THE COURT: No, his question is: To the extent
19 that there is something in brackets, it is, in essence, an
20 interpretation and not strictly a translation; is that
21 right?

22 THE WITNESS: If you say so, yes, sir.

23 THE COURT: No. The question is not what I say.

24 THE WITNESS: Yes, sir.

25 THE COURT: Is that so?

1 THE WITNESS: Yes, sir. I said that the first
2 day in court, that when it is in brackets it is my
3 interpretation.

4 Q But you took out all of the other interpretations
5 that you had in brackets, did you not?

6 A Yes, sir, I did.

7 Q Why is it you left this one interpretation in?

8 A Well, I think I felt that it wouldn't be
9 understood at all if I didn't put it there.

10 Q So you want to make certain that they understood
11 it in the way that you understood it. Is that correct?

12 A Yes.

13 Q Now, Mr. Feghali, is it your testimony that
14 everything else in there is understandable without the
15 brackets?

16 A I think so, yes, sir.

17 Q Mr. Feghali, you don't know who actually signed
18 this document, do you?

19 A No, I don't. I just read that it is signed by
20 Dr. Abdel Rahman.

21 Q But you don't know for certain?

22 A No, sir. I wasn't there. I don't know.

23 Q When did you first make your translation of this
24 document, Mr. Feghali?

25 A I don't precisely recall, but I think it was

1 about a couple of weeks ago. I don't recall the dates.

2 Q After you made that translation, you submitted it
3 to the prosecutors?

4 A Yes, sir.

5 Q U.S. Attorneys?

6 A Yes, sir.

7 Q After you submitted it to them, did you have a
8 meeting with them?

9 A Yes.

10 Q How many meetings did you have with them about
11 this translation, Mr. Feghali?

12 A Well, not just about this. I have met with them
13 repeatedly.

14 Q How many meetings did you have with them in which
15 you discussed this translation?

16 A Just once.

17 Q All right.

18 A Twice maybe.

19 Q When were those meetings?

20 A Last week.

21 Q In each and every one of your translations you
22 meet with them before you prepare a final version?

23 A Not necessarily, but sometimes we do.

24 Q Under what circumstances is it that you do meet
25 with them and discuss a translation, Mr. Feghali?

1 A I don't have any specific reason to answer. I
2 don't know exactly what you mean, sir.

3 Q Well, sometimes you sit and meet with the U.S.
4 Attorney to discuss the translation that you are preparing,
5 is that correct?

6 A Yes, sir.

7 Q You don't submit to them a final translation and
8 say, this is a final translation, and that is the end of it?

9 A No. Before we come to court, usually, the
10 prosecutor would show me the things that he is going to
11 present to court, and make sure that I agree that the copy
12 is for the translation original, the translation is for the
13 original paper.

14 Q And in this case you met with them and discussed
15 this twice before you prepared this final version, is that
16 correct?

17 A I think so, yes, sir.

18 Q And all the other brackets that you prepared and
19 that you thought would enhance the understanding of the
20 jury, you removed that material, is that correct?

21 A Yes.

22 Q Except for one?

23 A Yes.

24 MR. JABARA: Thank you. I have nothing further.

25 THE COURT: Anyone else?

1 MR. KHUZAMI: Yes, your Honor.

2 THE COURT: Redirect, by Mr. Khuzami.

3 REDIRECT EXAMINATION

4 BY MR. KHUZAMI:

5 Q Mr. Feghali, has anyone from the United States
6 Attorney's Office ever told you what to put in a
7 translation?

8 A No, sir.

9 MR. KHUZAMI: Your Honor, at this time I would
10 like to offer Government Exhibits 808T, the draft
11 translation referred to by Mr. Jabara.

12 MR. JABARA: We object for the reasons previously
13 stated, Judge.

14 THE COURT: Those reasons didn't have to do
15 with -- it was subject to connection.

16 MR. JABARA: Yes.

17 THE COURT: Subject to connection, it is
18 received.

19 (Government Exhibit 808T was received in
20 evidence.)

21 MR. KHUZAMI: No further questions.

22 THE COURT: You are excused. Thank you.

23 (Witness excused)

24 MR. FITZGERALD: Your Honor, at this time the
25 government offers the following exhibits: Government

1 Exhibit 510A, B and C, Government Exhibit 511, Government
2 Exhibit W808, and Government Exhibits W2805 and Government
3 Exhibit 2805T.

4 MR. SERRA: Your Honor, could we have a moment
5 with Mr. Fitzgerald?

6 THE COURT: Yes.

7 (Pause)

8 THE COURT: There has been an offer of several
9 exhibits. Hearing no objection --

10 MR. STAVIS: No objection.

11 THE COURT: -- 510A, B and C, 511, W808, W2805,
12 and W2805T are received without objection.

13 MR. FITZGERALD: Thank you, Judge.

14 (Government Exhibits 510A, 510B, 510C, 511, W808,
15 W2805 and W2805T were received in evidence.)

16 The government calls Avril Fugger.

17
18 AVRIL FUGGER,

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 Good afternoon, Ms. Fugger?

24 A Good afternoon.

25 Q Are you still a legal assistant with the U.S.

1 Attorney's Office?

2 A Yes, I am.

3 Q Let me approach you with what has been premarked
4 as Government Exhibits 508 and 513.

5 Q Now, Ms. Fugger looking at Government Exhibit
6 508, have you reviewed that exhibit at my request prior to
7 coming to court?

8 A Yes, I have.

9 Q At the time you reviewed it did you have a number
10 of exhibits available to you as referred to in the chart?

11 A Yes.

12 Q Does that exhibit include a number of phone calls
13 between different telephones?

14 A Yes, it does.

15 Q Is it fair to say that within the chart marked
16 Government Exhibit 508, which spans about 11 pages, it
17 doesn't include all the phone calls reflected in all the
18 phone records that have been received in evidence? Is that
19 correct?

20 A That's correct.

21 Q But those phone calls that are reflected in the
22 chart you have verified by going to the original records to
23 make sure that those phone calls appear on those phone
24 records.

25 A Yes.

1 Q And where a phone number appears, you have
2 indicated on the chart, indicated that telephone number by
3 using the word and the key on the first page. Is that
4 correct?

5 A Yes.

6 Q So that if the number (201) 762-7436 appears, you
7 put Nidal Ayyad phone. Is that correct?

8 A Yes.

9 Q Is it also fair to say that, as you sit here
10 today, you do not know who made the phone call from any
11 particular location or who picked up the phone on the other
12 end?

13 A That's correct.

14 Q And you don't know if, whoever spoke, you don't
15 know what they said?

16 A That's right.

17 Q You simply know that the phone records indicate
18 they called from a particular identified phone to another
19 particular identified phone?

20 A Yes.

21 Q Is it also fair to say that there are some
22 references within the chart to items other than phone
23 activity?

24 A Yes.

25 Q Have you verified that those items are accurate,

1 where it refers to a document in evidence and a date?

2 A Yes, I have.

3 Q Based on that, do the entries on Government
4 Exhibit 508 fairly and accurately reflect the underlying
5 documents, in the sense that nothing appears on here except
6 what are reflected in the underlying records you examined?

7 A That's right.

8 MR. FITZGERALD: Your Honor, I would offer
9 Government Exhibit 508, with an appropriate instruction as
10 an aid to the jury.

11 MR. STAVIS: May I have a voir dire, your Honor?

12 THE COURT: Yes, you may.

13 VOIR DIRE EXAMINATION

14 BY MR. STAVIS:

15 Q Good afternoon, Ms. Fugger.

16 A Good afternoon.

17 Q When were you asked to create this chart?

18 A I didn't create it, but I verified a draft of the
19 chart. But last Friday.

20 Q Do you have it in front of you?

21 A Yes, I do.

22 Q Drawing your attention to page 2, there is an
23 entry for September 1, 1992. Do you see that one?

24 A Yes, I do.

25 Q It says that Ramzi Yousef and Ahmad Ajaj entered

1 the United States?

2 A Yes.

3 Q You weren't there when they entered the United
4 States, I take it?

5 A No, I wasn't.

6 Q And you got that information from somewhere else?

7 A Yes, I did.

8 Q Who told you to include that information on this
9 chart?

10 MR. FITZGERALD: Objection to form.

11 THE COURT: Sustained as to form. Who drafted
12 the chart, do you know?

13 THE WITNESS: I don't know. I received the chart
14 from Mr. Fitzgerald.

15 THE COURT: All right.

16 MR. JACOBS: I would object to the witness then
17 testifying.

18 THE COURT: That objection is overruled.

19 Q Turning your attention to page 4, on the bottom
20 there is an entry for November 30, 1992, that says "Space
21 Station contract opened."

22 A Yes.

23 Q You weren't there, I take it, when the Space
24 Station contract was opened?

25 A No, I wasn't.

1 Q What if anything did you review with regard to
2 that entry?

3 A I reviewed a document, whose exhibit number I
4 can't recall, it was something I had from the Space Station,
5 indicating that a contract was opened on that day.

6 Q Did you put that government exhibit number next
7 to the entry for 11/30/92, "Space Station contract opened"?

8 A No, I didn't.

9 Q You did with regard to several of the other items
10 on this chart, did you not?

11 A Yes.

12 Q I call your attention to page 5. On December 6,
13 1992, there is an entry "El-Gabrownny visits Nosair at
14 Attica." I take it you weren't at Attica that day?

15 A No, I wasn't.

16 Q What did you review with regard to that entry on
17 this Government Exhibit 508?

18 A I reviewed the prisoner visitor logs from Attica
19 for Mr. Nosair.

20 Q And you previously testified concerning those
21 logs, is that correct?

22 A That's correct.

23 Q And there were many, many, many visits, is that
24 correct?

25 A To Mr. Nosair?

1 Q Yes.

2 A Yes.

3 Q You didn't include all the visits to Mr. Nosair
4 on this chart, isn't that correct?

5 A That's correct.

6 Q Who picked out for you the visits between
7 Mr. Nosair and others that are included on this chart?

8 MR. FITZGERALD: Objection to form.

9 THE COURT: Sustained as to form.

10 Q When you received the chart in order to verify
11 the information, who did you receive the chart from?

12 A Mr. Fitzgerald.

13 Q Turning your attention to page 7 -- withdrawn.

14 Turning your attention to page 8, there is an
15 entry for January 14, 1993, "El-Gabrownny visits Nosair at
16 Attica."

17 A Yes.

18 Q Did you review the Attica records with regard to
19 that entry?

20 A Yes, I did.

21 Q Did you make a note on this exhibit, Government's
22 Exhibit 508, what Attica records you viewed with regard to
23 that entry for January 14, 1993?

24 A Not on this chart, no.

25 Q When you reviewed the chart, were there other

1 people who visited Mr. Nosair with Mr. El-Gabrowny on
2 January 14, 1993?

3 A I don't know.

4 Q On the bottom of page 8 there is a -- withdrawn.
5 On the bottom of page 10, 2/26/93, at 12:17 p.m.,
6 it says "World Trade Center explosion." Is that correct?

7 A Yes.

8 Q How did you verify that information?

9 A Well, I'm familiar with the date, the time. I
10 didn't verify the time.

11 Q You didn't verify the time?

12 A No.

13 Q Did you do anything to verify the date?

14 A No. Just my familiarity with the date.

15 Q Based on your work with the U.S. Attorney's
16 Office?

17 A Yes.

18 Q Was that date on there when Mr. Fitzgerald gave
19 you this chart and asked you to verify some of the
20 information?

21 A Yes, it was.

22 MR. STAVIS: I have an objection as previously
23 stated to Government Exhibit 508, your Honor.

24 THE COURT: That objection is overruled.

25 Mr. Jacobs? Ms. Amsterdam?

1 MR. JACOBS: She is first.

2 MS. AMSTERDAM: May I just have one moment with
3 the Assistant?

4 THE COURT: Yes.

5 (Pause)

6 VOIR DIRE EXAMINATION

7 BY MR. AMSTERDAM:

8 Q Hi. How are you?

9 A Fine. Thank you.

10 Q The front page of the chart which lists certain
11 phone numbers and addresses, was that sheet already prepared
12 when it was given to you?

13 A It was prepared in a draft form. Certain things
14 were blank and were later filled in.

15 Q Now, I note that there are two phone numbers
16 attributed to 34 Kensington. Do you see that on the first
17 sheet?

18 A Yes, I do.

19 Q One is (201) 435-2732, and one is (201) 435-7501.
20 Are those the only telephone records pertaining to 34
21 Kensington that you reviewed?

22 A Yes.

23 Q Was there an additional Kensington phone record
24 to Mohammad Salameh which was Government Exhibit W824 that
25 you reviewed?

1 A I may have reviewed 824. It was in the series of
2 exhibits that I looked at, but off the top of my head I
3 can't say whether or not I reviewed it.

4 MS. AMSTERDAM: I think that, your Honor,
5 Government Exhibit 824 we believe is in evidence. In any
6 event, the government would stipulate that they are the
7 phone records of Mohammad Salameh, 34 Kensington Avenue,
8 Jersey City, New Jersey, for the time period of June through
9 July 1992, and the phone number on those records are (201)
10 451-3614. Right?

11 MR. FITZGERALD: Yes, Judge. The only correction
12 is, it is Government Exhibit W.

13 MS. AMSTERDAM: W824. Thank you.

14 THE COURT: All right.

15 Q Would I be fair in saying that you were not asked
16 to review any phone records of phone calls originating to a
17 phone attributed to Mr. Mohammad Salameh to Baghdad, Iraq?
18 Would that be a fair statement?

19 A Yes.

20 Q The chart, after the first page, the second page
21 and thereafter goes on to set a chronology of events
22 beginning in August of 1992. Whose decision was it to begin
23 the chart, if you know, in August of 1992?

24 A I don't know.

25 Q But it was not your decision. Would that be a

1 fair statement?

2 A That's correct.

3 Q And any activity, be it events or telephone
4 activity, in June or July of 1992, you were not asked to
5 check for purposes of verifying this chart. Correct?

6 A Correct.

7 Q Lastly, you indicated that you were aware of the
8 date February 26, 1993 from your work on this case and from
9 your own basic knowledge. Is that correct?

10 A Yes.

11 Q Were you asked to ascertain, either by research
12 or through your own knowledge, whether or not that date had
13 any other historical significance?

14 A No, I was not.

15 MS. AMSTERDAM: Thank you.

16 THE COURT: Mr. Jacobs? Mr. Ricco, representing
17 Mr. El-Gabrownny.

18 VOIR DIRE EXAMINATION

19 BY MR. RICCO:

20 Q Good afternoon.

21 A Good afternoon.

22 Q I notice that on page 5 of the document you have
23 for December 6, El-Gabrownny visits Nosair at Attica. And
24 then on page 8 of the document, which is January 4, 1993,
25 you have El-Gabrownny visits Nosair at Attica. Is that

1 correct?

2 A Yes, on the 14th of January, yes.

3 Q If you go back to page 5, at the top of the page
4 you have listed a telephone call that is being made. Right?

5 A Yes.

6 Q And then after that telephone call you have a
7 listing El-Gabrowny visits Attica. Correct?

8 A Correct.

9 Q And then after that notation you have Virginia
10 Avenue phone calls El-Gabrowny's phone. Correct?

11 A Yes.

12 Q And then after that you have Virginia Avenue
13 calls Nidal Ayyad phone?

14 A Yes.

15 Q You are not trying to make any connections, are
16 you, between El-Gabrowny's visits to Attica and these phone
17 calls?

18 MR. McCARTHY: Objection to form, Judge.

19 THE COURT: Sustained.

20 Q I notice in your document -- withdrawn, your
21 Honor.

22 When you testified before, you testified to
23 certain Attica visitation records, is that correct?

24 A Yes, I did.

25 Q Do you remember me cross-examining you about

1 that?

2 A Yes.

3 Q And what we were able to determine was that
4 Mr. Nosair had several visits to Attica by several
5 individuals in December and January of 1993, isn't that
6 correct?

7 A '92?

8 Q December 1992 and January 1993, isn't that
9 correct?

10 A Yes.

11 Q But you didn't put any of those visits in this
12 document, isn't that right?

13 A There are a few listings of visits to Mr. Nosair
14 at Attica, but not all of the visits are listed in this
15 document.

16 Q You have the El-Gabrowny visits to Attica?

17 A Yes.

18 Q But not the others?

19 A That's correct.

20 Q Just Mr. El-Gabrowny's visits to Attica are
21 listed in this document.

22 A I believe that's correct, yes.

23 Q You reviewed phone records of Mr. El-Gabrowny to
24 verify the telephone calls that were put in this document?

25 A Yes, I did.

1 Q And the telephone records that you had for
2 Mr. El-Gabrownny covered a period of August 1992 to sometime
3 in April of 1993, isn't that correct?

4 A Yes, that's correct.

5 Q Did you have Mr. El-Gabrownny's phone records from
6 1991?

7 A I didn't review them.

8 Q Did you have them?

9 A I don't believe so.

10 MR. RICCO: I have no further questions.

11 THE COURT: Ms. Stewart?

12 VOIR DIRE EXAMINATION

13 BY MS. STEWART:

14 Q Good afternoon. I think you told Mr. Stavis that
15 this chart was basically your review of something that was
16 handed to you by Mr. Fitzgerald, is that right?

17 A That's correct.

18 Q I would like you to look at the page that starts
19 at 2/12/93, I think it is page 10. Would you just read to
20 yourself the entry for 2/17/93?

21 A Yes.

22 Q It says, does it not, "Abdel Rahman phone talks
23 to someone in England who asks about Abdel Sattar and
24 "Nidal." Is that right?

25 A Yes.

1 Q Now, the four entries preceding that, for
2 2/15/93, 2/16/93, 2/16/93 again, and 2/16/93 again, all
3 involve the defendant Nidal Ayyad from the World Trade
4 Center, is that right?

5 A Yes.

6 Q And the entries succeeding 2/17, that for 2/22,
7 twice, and then again 2/23 -- each of those referred to
8 Nidal Ayyad of the World Trade Center, is that right?

9 A Yes.

10 Q But you have no way of knowing if that Nidal, in
11 quotation marks, refers to Ayyad or anyone else in the whole
12 wide world of Nidals, do you?

13 A No, I don't.

14 MS. STEWART: No further questions.

15 THE COURT: Mr. Jacobs, representing Mr. Mohammed
16 Saleh.

17 VOIR DIRE EXAMINATION

18 BY MR. JACOBS:

19 Q Ma'am, do you have the document in front of you?

20 A Yes, I do.

21 Q Concerning the phone records from August 1992
22 until February 1993, on the front page you list Mahmud
23 Abouhalima, with two phone numbers. You refer to Government
24 Exhibits W808 and W809. Is that correct, ma'am?

25 A Yes.

1 Q Let me show you copies of Government's 808 and
2 809.

3 MR. JACOBS: May I approach, your Honor?

4 THE COURT: Yes.

5 Q Do you see the documents in front of you?

6 A Yes, I do.

7 Q Those are phone records from telephone companies,
8 correct?

9 A Yes, they are.

10 Q Is that phone registered in the name of Mahmud
11 Abouhalima? Yes or no.

12 A No.

13 Q So (908) 382-9726, which you list as the
14 telephone of Mahmud Abouhalima, is not registered under his
15 name. Is that correct, ma'am?

16 A Yes.

17 Q And the same goes for (908) 499-0635. Is that
18 correct?

19 A Yes.

20 Q And throughout this document you list, five, ten,
21 fifteen times Mahmud Abouhalima phone calls Emad Salem,
22 things like that, you list that as that phone number,
23 correct, those two phone numbers, one of the two?

24 A Yes.

25 MR. JACOBS: May I just confer with Ms. Stewart

1 for a moment, your Honor.

2 Q Ma'am, on the front page you list some
3 individuals named "Said Mansour (Denmark)." And you have a
4 number and you list Government Exhibit No. 406. Have you
5 ever examined phone records from Denmark that list someone
6 by the name of Said Mansour with that phone number, ma'am?

7 A No.

8 Q So when you list various times and dates where
9 phone calls are made or calls to Said Mansour (Denmark) two
10 times, and things like that, you have no phone records to
11 support that, do you, that that phone is listed to someone
12 by the name of is Said Mansour in Denmark, do you?

13 A No.

14 Q Concerning the compilation of this document, you
15 were given this document in draft form a couple of days ago,
16 correct?

17 A Correct.

18 Q And it was given to you by, I think, an Assistant
19 United States Attorney Fitzgerald, correct?

20 A Yes.

21 Q And would I be correct in stating that it was
22 given to you all typed up already? Is that fair to say?

23 A Yes.

24 Q In other words, Mr. Fitzgerald didn't ask you to
25 plug in phone numbers. It had been given to you pretty much

1 in the same form that it exists now, with some changes made.

2 Correct?

3 A Basically the same form, yes.

4 Q So the decision to create this document was made
5 by one of the Assistant United States Attorneys in this
6 case, to your knowledge; is that correct?

7 A Yes.

8 Q The FBI didn't make that; one of the prosecutors
9 did. Correct?

10 A I assume so.

11 Q And would I be correct in stating, other than a
12 function of you checking phone numbers, that was your
13 assignment with respect to this document? Is that fair to
14 say?

15 A To verify all the information that is in it,
16 dates, times, number of times, number of calls.

17 Q There were documents in evidence in this case,
18 11/30/92, Space Station contract opened. That is a document
19 that is in evidence in this case, is that correct?

20 A Yes.

21 Q So, in other words, the government, Mr.
22 Fitzgerald, gave you the document and said to you: Just
23 check it out, make sure I have the correct date. Is that
24 fair to say? Something like that?

25 A Right. Make sure that it is correct.

1 Q But the decision to include Space Station
2 contract, that was made by Mr. Fitzgerald with other members
3 of the prosecution team. Correct?

4 A That was made by somebody else, yes.

5 Q I understand. And the order in which these
6 matters proceed, these were again made by the prosecutors,
7 correct?

8 A Yes.

9 Q You were just asked to verify the information,
10 correct?

11 A Yes.

12 Q But with respect to, for example, Mahmud
13 Abouhalima, you do agree with me that that phone is not
14 listed in his name; correct?

15 A That's correct.

16 Q So if the chart were to be completely accurate,
17 the telephone would be listed under somebody by the name of
18 Weber, correct, at that address?

19 MR. McCARTHY: Objection.

20 Q Government Exhibit 808 and 809. Correct, ma'am?
21 With the Court's permission, take a look at the documents.
22 Wouldn't that be correct?

23 MR. McCARTHY: I have an objection.

24 MR. JACOBS: I will reframe the question.

25 THE COURT: Go ahead.

1 Q Well, Emad Salem, 362-0099. Do you know if that
2 phone is listed in his name?

3 A I don't know. I didn't review any bills with his
4 name on them.

5 Q Government Exhibit 140, correct?

6 A Correct.

7 MR. JACOBS: Mr. Fitzgerald, may I have
8 Government Exhibit 140, please.

9 (Produced)

10 MR. JACOBS: May I approach, your Honor?

11 THE COURT: Yes.

12 Q Would you take a look at 140 and tell us if that
13 is a phone number from the telephone company.

14 A No, it is not.

15 Q What is it?

16 A It is a personal phone book, phone and address
17 book.

18 Q I am sorry?

19 A I said phone and address book.

20 Q Whose?

21 A I can't recall.

22 Q You list Emad Salem on your cover sheet. There
23 is a key, (212) 362-0099, Government Exhibit 140.

24 A Yes.

25 Q Did you ever look at a phone record to see if

1 Salem is registered under that phone number?

2 A No.

3 Q For example, Nidal Ayyad, which you list under
4 Government Exhibit W812, in fact if you looked at Government
5 Exhibit 812, he is actually listed as the person who has the
6 phone registered in his name. Isn't that correct?

7 A Yes.

8 Q N. Ayyad, and I believe his records at the
9 chemical company also list his work number as that number.
10 Isn't that correct?

11 A Right, with his name, correct.

12 Q With his name, correct. So, with respect to the
13 entries for Ayyad, you looked at a phone record. The phone
14 record had the name N. Ayyad, and you put it down, correct?

15 A Yes.

16 Q But under Abouhalima you didn't put down Weber,
17 you put down Mahmud Abouhalima; correct?

18 A Yes.

19 Q And that was because Mr. Fitzgerald had already
20 given it to you with the name Mahmud Abouhalima on it,
21 correct?

22 A Yes, and by looking at 140, it lists that number
23 to Mr. Mahmud Abouhalima.

24 Q In fact, Weber is his wife, isn't that correct?
25 Would you know that?

1 A No, I don't know.

2 Q When you list all these telephone calls, you
3 don't know if Mrs. Abouhalima was calling somebody on
4 particular dates, do you?

5 A No.

6 Q I think Mr. Fitzgerald ask asked you this, but
7 with respect to other items listed here, you don't know if
8 these events actually occurred, where it says 8/13/92, Abdel
9 Rahman receives a fax transmission. You don't know if he
10 ever got the fax and read it, do you, ma'am?

11 A I don't know.

12 Q You don't know that, do you?

13 A No. I saw the fax.

14 Q You saw the fax, but you don't know if he ever
15 looked at the fax and read it?

16 MS. STEWART: I know he didn't.

17 THE COURT: Or had it read to him?

18 MR. JACOBS: Pardon me, your Honor?

19 THE COURT: I said "or had it read to him."

20 Q In connection with the preparation of this
21 document, did you look at any computer records of Ramzi
22 Yousef?

23 A No.

24 Q Were you asked to review any phone records of
25 Ramzi Yousef?

1 MR. FITZGERALD: Objection to the form.

2 Q Did you ever see any phone record of Ramzi
3 Yousef?

4 MR. FITZGERALD: Objection to form.

5 THE COURT: You may answer.

6 A No, I didn't review any phone records with his
7 name on it.

8 MR. JACOBS: I have nothing further of the
9 witness, your Honor. I object to the offer of 508.

10 THE COURT: Are there any further questions?

11 MR. FITZGERALD: Briefly, your Honor.

12 MR. WASSERMAN: Your Honor, if I may, I have one
13 question.

14 THE COURT: Mr. Wasserman representing
15 Mr. Hampton-El.

16
17 (continued on next page)

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1 VOIR DIRE EXAMINATION

2 BY MR. WASSERMAN:

3 Q Were there other people who visited Attica who
4 were on the chart?

5 A I would have to look through to double check. If
6 you want me to right now --

7 Q Please.

8 A Sure.

9 (Pause)

10 A There is a visit by Mahmud Abouhalima, visiting
11 Nosair at Attica.

12 MR. WASSERMAN: Your Honor, just one moment,
13 please. I'm sorry.

14 (Pause)

15 MR. WASSERMAN: Your Honor, may I approach the
16 witness.

17 THE COURT: Yes.

18 MR. WASSERMAN: Thank you, Judge.

19 THE COURT: With what exhibit?

20 MR. WASSERMAN: What's been admitted as W824,
21 your Honor.

22 THE COURT: All right.

23 Q I am showing you -- I'm sorry. If you turn to
24 the front page, you will see it's W824.

25 A Yes.

1 Q Could you then turn to page 5, the page that I
2 had shown to you when I approached you.

3 Can you tell me, would it be fair to say that
4 there were approximately 43 phone calls from Mohammed
5 Salameh's phone number to Iraq between June 10 and June 17,
6 1992?

7 A That's correct.

8 Q Would it be fair to say that in your chart you
9 have Ramzi Yousef coming into the United States on September
10 1, 1992, is that correct?

11 A Yes.

12 Q Are you aware that Ramzi Yousef came into the
13 United States with an Iraqi passport?

14 A I am not aware of that, no.

15 MR. WASSERMAN: No further questions, thank you.

16 THE COURT: Mr. Fitzgerald.

17 MR. FITZGERALD: Yes, Judge.

18 DIRECT EXAMINATION (Continued)

19 BY MR. FITZGERALD:

20 Q Ms. Fugger, looking at the key on the first page,
21 Mr. Jacobs asked you some questions about the two entries
22 for Mahmud Abouhalima.

23 A Yes.

24 Q Looking at the first one, where it says
25 908-382-9726, Mr. Jacobs, if you recall, asked you to look

1 at W808 and asked you if Mahmud Abouhalima's name appeared
2 on that, is that correct?

3 A Yes.

4 Q Do you have W808 in front of you?

5 A Yes, I do.

6 Q Can you tell us what name and what address
7 appear?

8 A Mrs. M. Weber. 1811 Colonial Gardens Drive,
9 Avenel, New Jersey, 07001-1611.

10 Q Have you ever been on 1811 Colonial Gardens?

11 A No, I haven't.

12 Q Were you present for the testimony concerning the
13 search of 1811 Colonial Gardens?

14 A No, I wasn't.

15 Q On page 1, next to Mahmud Abouhalima, there are
16 two references GX W808 and also GX 140, is that correct?

17 A Yes.

18 Q Now, when he asked you about Mr. Mahmud's
19 Abouhalima's phone number, did Mr. Jacobs ask you to look it
20 up in GX 140?

21 A No.

22 Q Were you present for the search of Ibrahim
23 El-Gabrownny's apartment?

24 A No.

25 Q Have you looked at GX 140 and looked up Mahmud

1 under M, Mahmud Abouhalima?

2 A Yes, I have.

3 Q What might the phone number be listed for Mahmud
4 Abouhalima in GX140?

5 A 908-382-9726.

6 Q And that's the number you verified on this key as
7 Mahmud Abouhalima?

8 A Yes.

9 Q You were asked questions about the phone number
10 of Said Mansour in Denmark toward the bottom of the page.

11 A Yes.

12 Q You have never looked at any Danish phone books,
13 is that correct?

14 A That's correct.

15 Q Under "Source," do you list the Danish phone book
16 as the source for that number?

17 A No, I don't.

18 Q What do you list as the source for that number?

19 A GX 406.

20 Q Were you present for the search of defendant
21 Abdel Rahman's apartment?

22 A No, I wasn't.

23 Q Have you had an opportunity to look at a copy of
24 Government Exhibit 406?

25 A Yes, I have.

1 Q Let me approach you with a copy of Government
2 Exhibit 406. I ask you to take a look at that exhibit, and,
3 starting with the first page, tell us the first time you see
4 a reference to Said Mansour.

5 A On the first page.

6 Q Does it list an address for Said Mansour?

7 A Yes, it does.

8 Q What address might that be?

9 A I'll have to spell it.

10 Q OK.

11 A 59, and then it's spelled,
12 B-O-E-S-L-E-N-D-E-V-E-J, and the next line reads 2700
13 B-R-O-N-S-H-O-J, Denmark, spelled D-A-N-M-A-R-K.

14 Q Taking that address, page through Government
15 Exhibit 406 and see if you see that address and a phone
16 number listed on any of the papers.

17 A The address appears on the second page, and then
18 the address with a phone number appears on page 3.

19 Q Is that the basis for the entry Said Mansour with
20 a phone number on the key?

21 A Yes.

22 Q You were asked about Emad Salem's phone number,
23 also appearing on the key, 212-362-0099.

24 Did you have occasion to take the personal phone
25 book, GX 140 to your left, and look up Emad Salem?

1 A Yes.

2 Q What number appears there?

3 A 212-362-0099.

4 Q You did not check the New York Telephone Company
5 for that record?

6 A No.

7 Q What is listed as the source for the phone number
8 of Emad Salem on the key?

9 A GX 140.

10 Q Now, with regard to the entry on page 2 of this
11 chart, under August 13, 1992, where it indicates that Abdel
12 Rahman receives a fax transmission from "S.A. Mansour," does
13 that entry indicate that it was read to him, or does it just
14 indicate he received it?

15 A It just indicates it was received.

16 Q How do you know that the fax transmission came
17 from "S.A. Mansour."

18 A Because it says so on the top line of the fax
19 transmission.

20 Q Is that the cover line where it says where the
21 fax came from?

22 A Yes.

23 Q And those words appear, "S.A. Mansour"?

24 A Yes.

25 MR. FITZGERALD: Thank you, Judge.

1 I would renew my offer of Government Exhibit 508.

2 THE COURT: Why don't I rule on that and give
3 whatever instruction I have to give after the break.

4 Ladies and gentlemen, we are going to take a
5 break now. Please leave your notes and other materials
6 behind. Please don't discuss the case and we will resume in
7 a few minutes.

8 (The jury was excused)

9 THE COURT: You may step down.

10 (Witness excused)

11 MR. JACOBS: Your Honor, with respect to 508, I
12 assume your Honor is going to rule it admissible and that it
13 may be given to the jury.

14 I would move for a mistrial on the grounds that I
15 think at this time, with the government being in the middle
16 of their case, that it creates unfair prejudice under Rule
17 403. It gives the government an opportunity to sum up their
18 points to the jury at this time without defense counsel
19 being given an opportunity to submit a similar document at
20 this time. On behalf of my client, I move for a mistrial at
21 this time. I think this document should be given to them,
22 if at all, at the time of summation, not at this time.

23 MS. AMSTERDAM: I would join that application
24 your Honor.

25 MS. STEWART: I would join that application.

1 THE COURT: Is there anyone who doesn't join in
2 the motion?

3 OK. I assume everybody does.

4 MS. STEWART: I would add, Judge, that I think it
5 puts an unfair burden on the defense to produce evidence
6 when they are not given that burden under the law.

7 THE COURT: All right. Any evidence that anybody
8 wants to answer puts a burden on them to answer it I
9 suppose.

10 The mistrial motion is denied. I will give an
11 instruction to the jury of the sort that we previously
12 discussed after the break.

13 MR. BERNSTEIN: Judge, is there going to be a
14 change in title of this?

15 THE COURT: There will be a change of title.

16 MR. FITZGERALD: It was changed.

17 MR. STAVIS: The title has been changed, your
18 Honor.

19 MR. BERNSTEIN: What is it now?

20 MR. STAVIS: It is just "Chart of Activity."

21 THE COURT: Activity?

22 MR. STAVIS: It's labeled "Summation." It is,
23 "Chart of activity from August 1992 to February 1993."

24 THE COURT: OK.

25 MR. STAVIS: The "summation" is in parentheses.

1 (Recess)

2 AVRIL FUGGER, resumed.

3 THE COURT: Before we start, may I see Ms.
4 Stewart briefly at the side.

5 (At the side bar)

6 THE COURT: The next witness is going to be
7 Haggag, I believe.

8 MS. STEWART: Right.

9 THE COURT: The last time we had a problem with
10 some people making faces in the crowd.

11 MS. STEWART: I know.

12 THE COURT: It is not your responsibility --

13 MS. STEWART: I hear you.

14 THE COURT: -- but you have contact with some of
15 them. I see Sattar, for example, back there, and if we can
16 make sure they have their facial muscles under control, so
17 we don't have a scene like we did the last time.

18 MS. STEWART: Why don't I just go in the back
19 right now.

20 THE COURT: Good.

21 (In open court)

22 (Jury present)

23 MR. FITZGERALD: May I proceed, Judge.

24 THE COURT: Mr. Fitzgerald, go ahead.

25 MR. FITZGERALD: Your Honor, at this time, the

1 government would offer by stipulation Government Exhibits
2 409A, 409B, and 409C, referring to three passports.

3 THE COURT: All right. Since it is by
4 stipulation, I assume there is no objection.

5 MR. FITZGERALD: Judge, that was Ms. Stewart's
6 stipulation.

7 THE COURT: 409 A, B, and C?

8 MS. STEWART: Correct, Judge.

9 THE COURT: OK.

10 MR. FITZGERALD: And these are three Republic of
11 Egypt passports of defendant Abdel Rahman.

12 THE COURT: All right. Those are received.

13 (Government's Exhibits 409A, 409B and 409C for
14 identification were received in evidence)

15 MR. FITZGERALD: Thank you, Judge.

16 Q Ms. Fugger, I have placed before you Government
17 Exhibit 513, I believe.

18 A Yes.

19 Q Have you reviewed Government Exhibit 513 for
20 accuracy prior to coming to court?

21 A Yes, I have.

22 Q Does it contain entries for just four different
23 days in December of 1990?

24 A Yes, it does.

25 Q Have you verified the information contained in

1 those four entries for December of 1990 to make sure that
2 they are accurate by comparing it to the underlying
3 documents referred to?

4 A Yes, I have.

5 MR. FITZGERALD: Your Honor, the government would
6 offer Government Exhibit 513 as an aid to the jury.

7 MR. JACOBS: Voir dire, your Honor?

8 THE COURT: Go ahead.

9 MR. JACOBS: May I see the document?

10 MR. FITZGERALD: Yes.

11 (Pause)

12 (Counsel conferred)

13 MR. JACOBS: Your Honor, are previous objections
14 by all counsel noted on this document as well, 513?

15 THE COURT: Same objection?

16 MR. JACOBS: Same objection.

17 THE COURT: All right.

18 MR. FITZGERALD: Your Honor, at this time I think
19 your Honor was going to give an instruction with regard
20 to --

21 THE COURT: With regard to both 508 and 513?

22 MR. FITZGERALD: Yes, Judge.

23 THE COURT: Let me explain something about the
24 two exhibits that are about to be received. Both of them
25 are charts reflecting information contained in certain other

1 exhibits. A couple of things: First off, they are not
2 independent evidence in and of themselves. They simply
3 summarize certain information that's contained in other
4 exhibits that have been received in evidence, principally
5 telephone calls and some other events that are listed on
6 here.

7 These telephone calls and other events that are
8 listed on these exhibits are being proffered by the
9 government. The defendants have objected. Whether there is
10 in fact any relationship between and among the telephone
11 calls and various other matters listed on these charts is
12 for you and you alone to decide based on the exhibits on
13 which they are based and also on other evidence that you
14 have seen and that you may yet see.

15 Whether there should be other information on here
16 that's not listed is also a matter for you to decide; that
17 is, whether there should be other information considered in
18 connection with what is listed here is a matter for you to
19 decide. So this is simply a summary to help you review
20 other evidence, if you find it helpful. It is not
21 independent evidence in and of itself.

22 MR. FITZGERALD: Thank you, Judge. I have no
23 further questions of Ms. Fugger.

24 Is there any cross in addition to the voir dire?
25 No? You are excused, Ms. Fugger.

1 (Witness excused)

2 MR. FITZGERALD: At this time, Judge, I would
3 like to just read from Government Exhibit 513 and from
4 portions of Government Exhibit 508.

5 MR. STAVIS: I object to Mr. Fitzgerald reading
6 from portions of Government Exhibit 508 and 513 at this
7 time, your Honor.

8 MR. JACOBS: I would join in that.

9 THE COURT: May I see counsel briefly at the
10 side.

11 (At the side bar)

12 MR. STAVIS: Your Honor, I object to the
13 prosecutor reading this. If it was a summary that's been
14 provided to the jury in order to aid them in reviewing the
15 evidence, then they can have it and they can have it as an
16 aid, whatever aid, and whatever use it is to them.

17 THE COURT: What is the purpose of reading it
18 now, or reading a portion of it now?

19 MR. FITZGERALD: Just to direct their attention
20 to certain portions. The events of the World Trade Center
21 are being left so to speak as part of the evidence, and we
22 are moving to a different area of testimony.

23 THE COURT: Is it necessary to make this
24 witness's testimony comprehensible?

25 MR. FITZGERALD: You mean to make her testimony

1 comprehensible?

2 THE COURT: I am talking about the next witness.

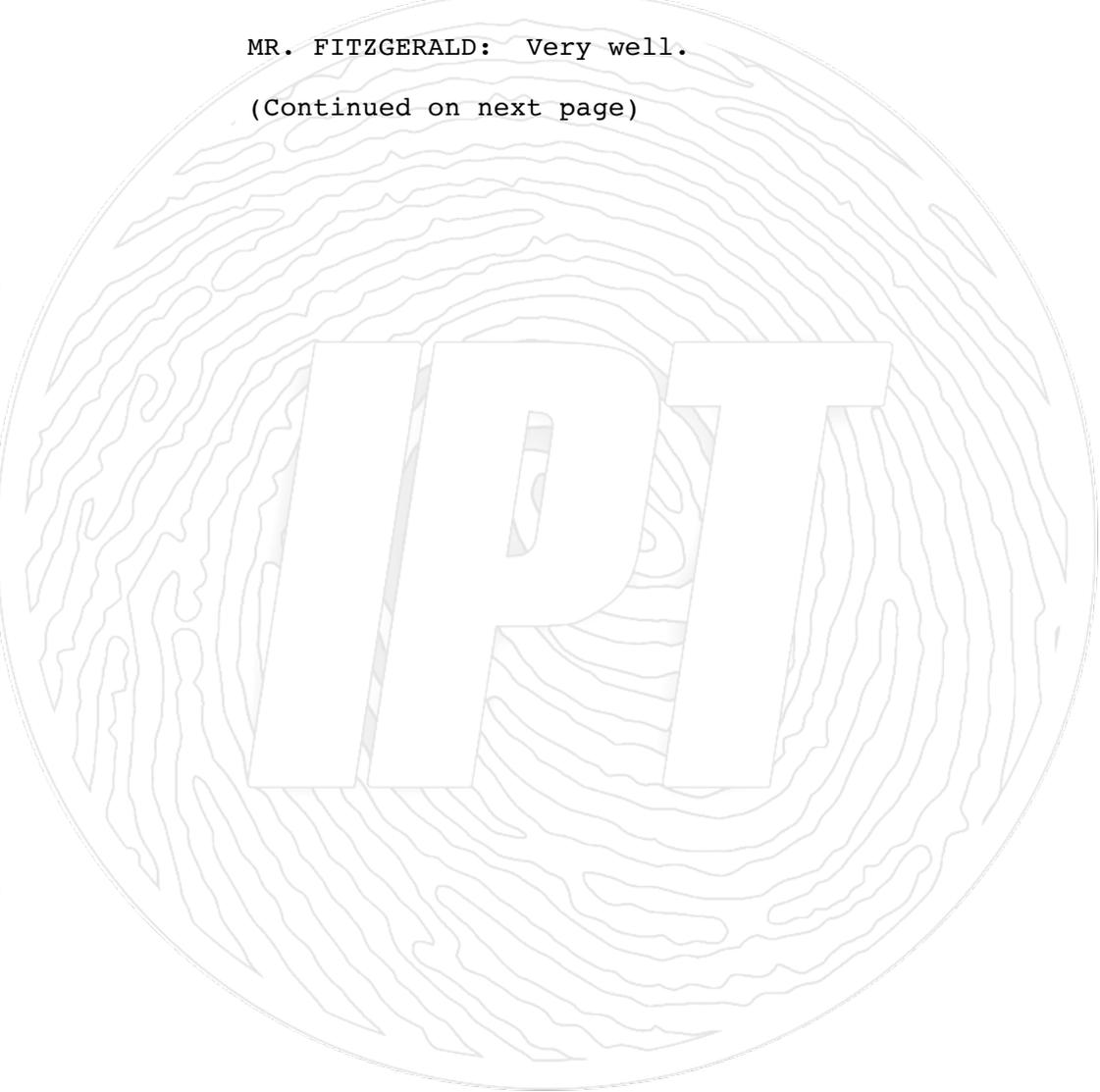
3 MR. FITZGERALD: No, the next witness is a
4 different topic.

5 THE COURT: Then you may not.

6 MR. FITZGERALD: Very well.

7 (Continued on next page)

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1 (In open court)

2 MR. KHUZAMI: Your Honor, the government calls as
3 its next witness Abdo Mohammad Haggag.

4 ABDEL-RAHMAN MUHMAD HAGGAG,

5 called as a witness by the Government,

6 having been duly sworn, testified as follows:

7 THE COURT: Go ahead.

8 MR. KHUZAMI: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MR. KHUZAMI:

11 Q Mr. Haggag, your name is Abdel-Rahman Mohammad
12 Haggag, is that correct?

13 A Yes, sir.

14 Q Is that the name you were given at birth?

15 A Yes, sir.

16 Q Do you go by any other name?

17 A Yes, sir.

18 Q What name is that?

19 A Abdo Rahman Haggag, or Abdo Haggag.

20 Q Abdo Rahman Haggag, is that another name you go
21 by?

22 A Yes, sir.

23 Q Mr. Haggag, do you understand that there is a
24 translator available if you don't understand any question?

25 A Yes, sir.

1 Q If you could, speak clearly, slowly, and into the
2 microphone so everyone can hear you.

3 A Yes, sir.

4 Q Mr. Haggag where were you born?

5 A Born in Cairo.

6 Q How long did you live in Cairo?

7 A Twenty-one years.

8 Q Is Arabic your first language?

9 A Yes, sir.

10 Q Did you attend school in Cairo?

11 A Yes, sir.

12 Q How far did you get in school?

13 A I finished high school.

14 Q What did you do after high school?

15 A I served in the Army. Then I work in
16 construction company, American Egyptian Construction.

17 Q What type of construction company was it?

18 A It was building new homes.

19 Q How long did you do that?

20 A I worked over there for five months.

21 Q Five months?

22 A Yes, sir.

23 Q Did you serve in the military at all while in
24 Egypt?

25 A Yes, sir, I did.

1 Q For how long?

2 A Eighteen months.

3 Q What did you do in the military during those 18
4 months?

5 A Actually, I was playing sports in the military,
6 boxing.

7 Q Boxing?

8 A Yes, sir.

9 Q Did you do that for the entire time?

10 A Yes, sir. Almost.

11 Q What did you do after the five months that you
12 were working for the company?

13 A I get recommendation for -- recommendation letter
14 from the American engineer I'm working with, to the embassy,
15 and I give it to the embassy, and I get the visa to come to
16 America.

17 Q If you could pull the microphone a little closer
18 to you, if possible, so everyone can hear. There is also
19 one on your right if you need that.

20 What did this letter from the engineer state?

21 A The recommendation letter, it said I, Abdo Rahman
22 Mohammad Haggag, a very hard-working man, very honest, very
23 sincere, and I wish to give him visa to come and visit me in
24 America.

25 Q Did you, in fact, come to America?

1 A Yes, sir, I did.

2 Q Do you recall what year that was?

3 A September 1981.

4 Q What kind of visa did you have when you came to
5 the United States in September 1981?

6 A Tourist visa.

7 Q Were you married or single at that time?

8 A Single.

9 Q Do you remember where you arrived in the United
10 States first?

11 A Yes, sir, I do.

12 Q Where was that?

13 A Washington Airport.

14 Q Where did you go after you arrived at Washington
15 Airport?

16 A I come to Manhattan, then, to look for a job.

17 Q The visa that you had, how long did that permit
18 you to stay in the United States?

19 A 30 days.

20 Q Did you leave at the end of 30 days?

21 A No, sir, I didn't.

22 Q Did you ever return to Egypt to live permanently
23 after your arrival in September 1981?

24 A No, I didn't. I did not.

25 Q Now, what kind of work did you have when you

1 first came here in September 1981?

2 A I worked in the restaurant business.

3 Q I'm sorry?

4 A In the restaurant business.

5 Q Did you work in restaurants for the entire period
6 from September 1981 until the present?

7 A No, sir. I worked from -- from 1981 until 1990,
8 1991.

9 Q From 1981 until 1991 you worked in restaurants?

10 A Yes, sir, I did.

11 Q Approximately how many different restaurants did
12 you work in?

13 A Five, six restaurants.

14 Q What was your job in those various restaurants?

15 A Cook.

16 Q Were you employed continuously throughout that
17 entire time?

18 A No, sir. I have a lot of -- I have sometime
19 unemployment.

20 Q Did there come a time when you got married?

21 A Yes, sir I did.

22 Q Do you recall when that was?

23 A In 1983.

24 Q Did you apply for a green card when you got
25 married?

1 A Yes, sir, I did.

2 Q Do you recall when that was?

3 A Same year, I believe.

4 Q Did you ever have any children?

5 A Yes, sir.

6 Q A son or a daughter?

7 A I have one son.

8 Q Do you recall when he was born?

9 A December 13, 1984.

10 Q Did there come a time where you and your wife
11 separated?

12 A Yes, sir.

13 Q When was that?

14 A Two months after the baby is born.

15 Q Did you eventually get divorced?

16 A Yes, sir.

17 Q When was that?

18 A 19 -- I applied for it 1986.

19 Q Do you recall when it was final?

20 A Yes, I believe it was 1987 when I get divorce.

21 Q Did you ever get your green card as a result of
22 your marriage?

23 A No, sir, I didn't.

24 Q So you were here illegally from the time your
25 visa expired until the time that you later got a green card?

1 A Yes, sir.

2 Q Do you recall when you got your green card?

3 A Yes, sir.

4 Q When was that?

5 A I applied for 1987, under amnesty, and I get it
6 1989.

7 Q Did you get a temporary green card before you got
8 the permanent one?

9 A Yes, sir.

10 Q Do you remember when you got the temporary one?

11 A I believe when I applied for in 1987.

12 Q What happened to your son after you and your wife
13 were separated?

14 A I take him from -- I take him -- I take him to,
15 from his mother, and I sent him to my parents.

16 Q Where is that?

17 A In Egypt.

18 Q Did you seek custody of your child in the
19 divorce?

20 A Yes, sir, I did.

21 Q Were you awarded custody?

22 A The judge gave me the custody, yes.

23 Q Did you ever assist anyone else in taking their
24 child to Egypt?

25 A Yes, sir, I did.

1 Q When was that?

2 A Sometime in, I believe, 1989 or '88.

3 Q How did you assist that to happen?

4 A A friend of my, a friend of mine, he come to me,
5 and when I was in -- when I was in working in Marmalade Park
6 Restaurant.

7 Q I'm sorry. Let me interrupt you?

8 When you were working in the Marmalade Park
9 Restaurant?

10 A Yes, sir.

11 Q OK.

12 A He come with his son, and he was very nervous,
13 and he said he take his son from his mother, and I asked him
14 to go to my home to stay awhile there.

15 MR. BERNSTEIN: Judge, I'm sorry. The witness is
16 speaking too quickly for me.

17 THE COURT: Please try to speak more slowly.

18 THE WITNESS: OK.

19 THE COURT: Thank you.

20 Q Why don't you start over again with that answer.

21 A A friend of man, his name Osama Omasha --

22 Q Osama, O-S-A-M-A?

23 A Omasha.

24 Q O-M-A-S-H-A?

25 A Yes, sir.

1 Q OK. Continue.

2 A He come with his son, he was five years or six
3 years old, and he tell me he's taking his son, he's going
4 back to Egypt with his son. I tell him, "Stay in my home
5 until I come, until I finish work."

6 And he went. He wait for me in the home. His
7 son slept. They have some two hours' sleep. Then I drive
8 him, me and my roommate, to the border of Canada.

9 Q You and your roommate drove him to Canada?

10 A Yes, sir.

11 Q Did you know before Mr. Omasha showed up that he
12 in fact was going to take his child and take him back to
13 Egypt?

14 A Yes, sir. He tell me before.

15 Q Did you start working as soon as you arrived in
16 September 1981?

17 A Yes, sir, I did.

18 Q You indicated you worked in restaurants until
19 approximately 1991.

20 A Yes, sir.

21 Q What did you do at that time?

22 A Until 1991?

23 Q After 1991, for employment.

24 A After, I work in -- I get share in Main Street
25 Cafe in Denville, New Jersey.

1 Q After you finished in 1990 -- withdrawn.

2 Did there come a time where you worked for
3 Prudential Securities.

4 A Yes, sir.

5 Q When was that?

6 A 1992.

7 Q During the years 1981 to 1983, did you file your
8 tax returns?

9 A Yes, sir, I did.

10 Q That's from 1981, when you first arrived, until
11 1983?

12 A From '81 to '83 I didn't file for income tax
13 because I didn't have any Social Security.

14 Q You didn't file any taxes at all?

15 A No, sir.

16 Q Did that change in 1984?

17 A Yes, sir.

18 Q What happened then?

19 A I filed for income tax from '84 until up --

20 Q Until when?

21 A Up until 1993.

22 Q Until 1993? OK.

23 During the years 1984 to 1993, did you report all
24 of the income that you earned?

25 A No, sir.

1 Q What income did you report and what income didn't
2 you report?

3 A I worked for the money and the check, and I get
4 some money in the check and some money cash, and I reported
5 the money in the check. The cash money, I didn't report it.

6 Q How was it that you were paid at your various
7 jobs during that time?

8 A Like sometimes they pay \$200 by check and \$200
9 cash. And that's a common act in the business, in the
10 business -- in the restaurant business.

11 Q You got paid in cash and in check, is that
12 correct?

13 A Yes, sir.

14 Q You declared on your income tax the money you got
15 paid in the check, and did not declare the money you got
16 paid in cash, is that correct?

17 A Yes, sir.

18 Q On average how much money did you get in cash as
19 opposed to the amount of money you got in check during that
20 time?

21 A Almost half.

22 Q When you went to work for Prudential Securities,
23 did you file taxes then?

24 A Yes, sir, I did.

25 Q Why was that?

1 A I get all my money in a check.

2 Q Did you file taxes for 1993?

3 A No, sir.

4 Q How about 1994?

5 A No, sir.

6 Q Why not?

7 A My lawyer took care of it.

8 Q OK.

9 A Because I was arrested and my lawyer take care of
10 it.

11 Q When were you arrested?

12 A In July 1993.

13 Q One of the restaurants that you worked at was one
14 called the Main Street Cafe?

15 A Yes, sir, I did.

16 Q For what period of time did you work at the Main
17 Street Cafe?

18 A 1991.

19 Q Where is that restaurant located?

20 A In Denville, New Jersey.

21 Q What was your job there?

22 A I was co-partner and chef.

23 Q Co-partner?

24 A Yes, and the chef.

25 Q What percentage of that restaurant did you own?

1 A 25 percent.

2 Q How much money did you invest for that 25
3 percent?

4 A 11,000.

5 Q I'm sorry?

6 A 11,000.

7 Q Did there come a time when you discussed burning
8 down that restaurant?

9 A Yes, sir.

10 Q Tell me about that discussion.

11 A One of the partner, one of the partner in the
12 restaurant, he look at the restaurant, and he said with one
13 match and a little bit gas we could earn \$140,000.

14 Q I'm sorry. You said with one match and gas, we
15 can get \$140,000?

16 A From the insurance, yes.

17 Q From the insurance, OK.

18 That was one of your partners?

19 A Yes.

20 Q Continue.

21 A He said, if you can find somebody to do it, and
22 we'll give him some money, and we could -- we could earn
23 this money for -- we could earn this money for us, and I
24 agreed to do it.

25 Q You agreed to do it.

1 Did you agree to find someone to do it, or did
2 you agree to do it yourself?

3 A I agreed -- at the beginning I agreed to find
4 somebody to do it. Then I decided to do it myself.

5 Q Was there any arrangement as to how much money
6 you would receive if this restaurant burned down?

7 A Yes, sir.

8 Q What was that?

9 A He said if I did it, if I -- if I did it myself
10 or if somebody else did it, he's going to give him -- it's
11 going to be \$3,000. And if the insurance is paid complete,
12 \$10,000 for me, and he's going to pay his brother off the
13 money he paid.

14 Q Was the arrangement also that you would get 25
15 percent of the amount that the insurance company paid off?

16 A If the insurance pay, I am only going to get the
17 25 percent. The 25 percent only.

18 Q Did you in fact burn down this restaurant?

19 A Yes, I did.

20 Q How did you do that?

21 A After they closed down, I was -- I went over
22 there and I put some gas, some gas and some match in the
23 garbage can, and I left.

24 Q What happened after that?

25 A The restaurant burned down.

1 Q Did you get any money?

2 A No, sir.

3 Q Did you get any money from one of your partners?

4 A Yes, I get money, the \$3,000 for doing.

5 Q While you were in the United States, did you
6 drive an automobile?

7 A Yes, sir.

8 Q The car that you drove, was that car always
9 properly insured?

10 A No, sir.

11 Q Tell us how it was that it was not properly
12 insured.

13 A I make insurance for six months, then after this,
14 I pay the man \$50 just to give me the card.

15 Q You paid \$50 to get the insurance card?

16 A The insurance card, yes.

17 Q Was there real insurance behind that card or not?

18 A There is no real insurance, but the agreement
19 between me and the man is, if anything happen, you call me
20 24 hours and -- you call me and inform me 24 hours, and he's
21 going to take care of it.

22 Q Did you in fact ever make any claim on that
23 insurance?

24 A No, sir, I didn't.

25 Q Did there come a time where you were arrested for

1 the conspiracy to murder President Mubarak of Egypt?

2 A Yes, sir.

3 Q When was that?

4 A July 17, 1993.

5 Q Did you go to jail at that time?

6 A Yes, sir.

7 Q How long did you stay in jail?

8 A Eight months, five days.

9 Q What happened after you were released from jail?

10 A I then, I get into the Witness Protection
11 Program.

12 Q Did there come a time where you began to
13 cooperate with the government?

14 A Yes, sir.

15 Q When was that?

16 A Starting November '93.

17 Q Did there come a time when you entered into an
18 agreement with the government?

19 A Yes, sir.

20 Q When was that?

21 A April '95.

22 Q Was that agreement oral or was it in writing?

23 A In writing, sir.

24 MR. KHUZAMI: Your Honor, may I approach.

25 THE COURT: Yes.

1 Q Mr. Haggag, let me show you what's been marked as
2 Government Exhibit 35119Y and ask you to take a look at it.

3 Do you recognize that?

4 A Yes, sir.

5 Q What is it?

6 A That is an agreement between me and the
7 government.

8 Q Do you recognize your signature on the last page?

9 A Yes, sir.

10 Q Do you recognize the signature of your lawyer?

11 A Yes, sir.

12 MR. KHUZAMI: Your Honor, at this time I would
13 offer Government Exhibit 35119Y.

14 MR. PATEL: Your Honor, could we be heard briefly
15 at the side?

16 THE COURT: Sure.

17 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Let me shorten this. As I understand
3 the latest catechism on this, this thing doesn't come in
4 until his credibility is attacked, isn't that right?

5 MR. KHUZAMI: That is correct under Constantino,
6 your Honor, but the government's position is his credibility
7 was attacked in the openings when Ms. Stewart suggested that
8 he was motivated by hatred and by allegiance to the Egyptian
9 government.

10 THE COURT: Did you say that?

11 MS. STEWART: I said he was motivated by
12 personal --

13 THE COURT: Animus?

14 MS. STEWART: Hatred.

15 THE COURT: That's sort of an attack on his
16 credibility, isn't it?

17 MS. STEWART: It is certainly not evidence,
18 Judge.

19 MR. NOOTER: The agreement wasn't signed at the
20 time of the opening.

21 MR. PATEL: It didn't exist. May I make a
22 suggestion?

23 THE COURT: Go ahead.

24 MR. PATEL: He's authenticated this. Why don't
25 we wait until, either we offer it -- let us caucus a little

1 about this.

2 THE COURT: That I am not going to let happen.
3 Do you want to object to it? I may sustain it.

4 MR. PATEL: At this time, I would object to it,
5 but I may withdraw that objection later.

6 THE COURT: All right.

7 MR. STAVIS: I think that is an objection, your
8 Honor.

9 THE COURT: I think it is an objection.
10 Understand that I am not going to let any defense
11 counsel offer it without making it crystal clear, in
12 Technicolor, that that is the strategy.

13 MR. PATEL: I don't understand your Honor's --

14 THE COURT: What I am saying is you can't object
15 now and try to offer it yourself.

16 MR. PATEL: May we just have a minute.

17 (Counsel conferred)

18 MR. LAVINE: We changed our mind.

19 MR. PATEL: No objection.

20 (Continued on next page)

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1 (In open court)

2 MR. PATEL: No objection, your Honor.

3 THE COURT: 35119Y is received without objection.

4 (Government Exhibit 35119Y for identification was
5 received in evidence)

6 Q Mr. Haggag, what is your understanding of what
7 you are obligated to do under that agreement?

8 A My understanding of what to do for the government
9 is first apply guilty for the mail fraud.

10 Q OK. By "mail fraud" are you referring to --

11 A The arson.

12 Q The arson?

13 A Yes, sir.

14 Second, to testify truthfully, a hundred percent
15 truthfully.

16 Q What is your understanding of what the government
17 is required to do under the agreement?

18 A My understanding is that the government will send
19 a letter for the judge to -- consideration letter to say
20 what I did, at the time, at the time when I have to -- I
21 have to be sentenced.

22 Q What else?

23 A Also, if I decide under any circumstances, under
24 any circumstances I decide to leave the country, the
25 government going to pay one-way ticket to -- one-way ticket

1 for whichever, I believe for any country.

2 Q A one-way airline ticket?

3 A One-way airline ticket.

4 Q For you and your family?

5 A For me and my family. They are going to give
6 \$5,000 for expense.

7 Q Anything else?

8 A No, sir.

9 Q Mr. Haggag, did you in fact plead guilty to mail
10 fraud?

11 A Yes, sir, I did.

12 Q That was in connection with the arson of the Main
13 Street Cafe?

14 A Yes, sir.

15 Q Do you know how much time in jail you face?

16 A Up to five years.

17 Q Do you know who is going to sentence you?

18 A Yes, sir.

19 Q Who is that?

20 A The judge here.

21 THE COURT: Let the record reflect the correct
22 identification of the judge.

23 Q Mr. Haggag, did there come a time where you began
24 to attend the El Salaam mosque?

25 A Yes, sir.

1 Q When was that?

2 A 1987.

3 Q Where is the El Salaam mosque?

4 A 2824 Kennedy Boulevard.

5 Q I'm sorry? Kennedy?

6 A 2824 Kennedy Boulevard, Jersey City.

7 Q Is that Kennedy Boulevard?

8 A Yes, sir.

9 Q Prior to that time, had you attended a mosque
10 regularly?

11 A Yes, sir.

12 Q Where was that?

13 A From '87 until 1993.

14 Q From '87 to '93 you attended the El Salaam mosque
15 regularly?

16 A Yes, sir, I did.

17 Q Before 1987 did you attend any mosque regularly?

18 A No, sir.

19 Q Why was it that you started to attend in 1987?

20 A After my mother die, I decided to become good
21 Muslim to pray for her.

22 Q Approximately, during that period, 1987 to 1993,
23 how often did you attend the mosque?

24 A At least two, three times. Two, three times a
25 week.

1 Q Did you ever meet a man named El Sayyid Nosair at
2 the mosque?

3 A Yes, sir, I did.

4 Q How often did you meet him?

5 A I met him four, five times in the mosque.

6 Q Do you recall when it was that you first met him?

7 A Yes, sir.

8 Q When was that?

9 A The first time I met him person to person, he
10 come to me and sheik --

11 MR. PATEL: Objection. Not responsive.

12 MR. KHUZAMI: I will withdraw the question, your
13 Honor.

14 Q Mr. Haggag, do you recall when it was that you
15 first met Mr. Nosair?

16 A 19 -- around '88.

17 Q Where was it that you first met him?

18 A El Salaam mosque.

19 Q Who was present?

20 A It was me, Sheik Boker, and El-Sayyid.

21 Q Sheik Boker?

22 A Ibrahim Boker.

23 Q Did Mr. Nosair speak to you?

24 A Yes, sir.

25 Q What did he say?

1 A He come to me and Sheik Boker, and he asked us to
2 attend some meeting he had after evening prayer, to come to
3 secret meeting, and we should not say anything to anybody
4 about it.

5 Q I'm sorry. He asked you to attend a meeting
6 after what?

7 A After evening prayer.

8 Q The evening prayer?

9 A Yes.

10 Q He said that you should keep it secret?

11 A Yes, sir.

12 Q Did he say anything else?

13 A He said, "Don't tell anybody else. It's going to
14 be a secret between us."

15 Q What did you say in response?

16 A I didn't say anything for a response.

17 Q Did you in fact attend any secret meeting with
18 him?

19 A No, sir.

20 Q Mr. Haggag, do you know a man named Sheik Omar
21 Abdel Rahman?

22 A Yes, sir.

23 Q For how long have you known him?

24 A From 1990 until 1993.

25 Q Did there come a time at the mosque where you

1 heard tape recordings of his voice being played?

2 A Yes, sir.

3 Q How many times did you hear that?

4 A I hear it twice.

5 Q Twice.

6 Do you recall what years you heard those tape
7 recordings, or year?

8 A 1988.

9 Q The first time you heard that tape recording, do
10 you know what it was a tape recording of?

11 A Yes, sir.

12 Q What was it a tape recording of?

13 A A phone call conversation between Sheik Omar
14 Abdel Rahman and Sayyid Nosair.

15 MS. AMSTERDAM: I'm sorry?

16 A The phone call between, talking between Sheik
17 Omar Abdel Rahman and El Sayyid Nosair.

18 Q Do you know where Mr. Nosair was when the phone
19 call was made?

20 A Yes, sir.

21 Q Where?

22 MS. STEWART: Objection.

23 A It was --

24 THE COURT: Sustained.

25 Q Did Mr. Nosair indicate on the tape where it was

1 that he was located when he had this telephone conversation?

2 A Yes, sir.

3 Q Where?

4 MR. PATEL: Objection, your Honor.

5 A It is --

6 THE COURT: What is the date?

7 MR. KHUZAMI: 1988.

8 MR. JACOBS: Objection.

9 THE COURT: Sustained. May I see counsel at the
10 side.

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1 (At the side bar)

2 THE COURT: What is the theory? Is this a
3 statement in furtherance?

4 MR. KHUZAMI: Yes, your Honor. It is also
5 admissions.

6 THE COURT: Pardon?

7 MR. KHUZAMI: Admissions of two defendants.

8 MR. JACOBS: The conspiracy is '89, I think.
9 Anyway, just to clarify it, isn't that the date, '89?

10 THE COURT: First of all, destroy the suspense.
11 Where was he?

12 MR. KHUZAMI: Mr. Nosair was in the United States
13 and the sheik was in Egypt.

14 MR. JACOBS: Under 801(d)(2)(E), it can't be.
15 The conspiracy in the indictment is, I believe, '89. This
16 is a conversation in '88. I would object.

17 THE COURT: You are proffering it to show the
18 truth, aren't you?

19 MR. KHUZAMI: First of all, why wouldn't it be an
20 admission?

21 MS. STEWART: What is it?

22 MR. KHUZAMI: Statements of two defendants.

23 THE COURT: Before the time of the conspiracy?

24 MR. KHUZAMI: I hesitate only because I'm not
25 sure of the law in this area. I don't know whether or not

1 an admission is restricted by the same time period.

2 THE COURT: I also don't see how it is an
3 admission that somebody is in one place and somebody else is
4 in another.

5 MR. KHUZAMI: I am sorry. Maybe I'm being
6 confusing. I'm referring to the substance of the
7 tape-recorded conversation, not where they were.

8 THE COURT: The substance of the conversation is
9 a whole different matter. Has that already been played?

10 MR. KHUZAMI: It was played in the mosque. He'll
11 testify about what he heard.

12 THE COURT: Has it already been played here?

13 MR. KHUZAMI: I can't tell you whether it was the
14 same tape.

15 MS. STEWART: You dated it as 1990.

16 MR. JACOBS: I thought so.

17 MR. KHUZAMI: Like I said, there is no way of
18 knowing whether we are talking about the same tape. There
19 was taping with some regularity here. I will withdraw the
20 question about where the parties were.

21 THE COURT: The question about where the parties
22 were is hearsay. As far as the conversation, you can offer
23 it to show it was said, not for the truth.

24 MS. LONDON: One other thing, we are having a
25 great deal of difficulty hearing him when he says more than

1 three or four words. He's either going to have to speak
2 slower or --

3 THE COURT: We will give him slow-talking
4 lessons. In any event, we are going to break right now so
5 we will deal with that problem, too.

6 MR. JACOBS: Thank you, Judge.

7 (In open court)

8 THE COURT: Ladies and gentlemen, we are going to
9 break for the day. Please leave your notes and other
10 materials behind. Please don't discuss the case. Have a
11 pleasant evening, and we will see you tomorrow at 9:30.

12 Remember, we are not sitting tomorrow afternoon.
13 We are going to sit somewhat later in the morning and then
14 break for half a day. Have a good night.

15 (Jury not present)

16 THE COURT: You may step down, sir.

17 THE WITNESS: Thank you, sir.

18 (Witness excused)

19 THE COURT: Mr. Patel?

20 MR. PATEL: Your Honor, this witness has
21 testified about a secret meeting, or being invited --

22 MS. AMSTERDAM: We can't hear you.

23 MR. PATEL: The witness has testified to being
24 invited to a secret meeting by Mr. Nosair. I assume that
25 was the groundwork of something, and I didn't object to it.

1 I was assuming that he was going to talk about that meeting.
2 He then said that he didn't attend the meeting, so I don't
3 understand the relevance of that comment, and, unless it
4 hooks up to something, I would move to strike it.

5 MR. KHUZAMI: I don't think that one has to
6 attend the meeting for it to be relevant. The fact that he
7 made the offer and invited him is relevant to the conduct
8 that's been proved in this courtroom, Mr. Patel is free to
9 put an innocent spin on it if he chooses.

10 MR. JACOBS: I move to strike that under
11 801(d)(2)(E) because it is not a statement made in
12 furtherance of the conspiracy charged in this case, and I
13 ask for an instruction to the jury.

14 THE COURT: If that is not going any further than
15 where it is now, I am going to strike it. I gather it is
16 not going any further?

17 MR. KHUZAMI: It is not, your Honor, but there's
18 been a significant amount of evidence concerning secret
19 activities, encampments, training, in which there was a
20 concerted effort not to allow others not within the
21 conspiracy to go.

22 THE COURT: All you are inviting them to do is to
23 speculate on what it might have been called for.

24 MR. KHUZAMI: If Mr. Patel wants to pursue that
25 on cross, he can say he has no idea what the nature of the

1 secret meeting was.

2 THE COURT: Again, leaving them to speculate on
3 what it was. I am not going to permit it.

4 Mr. Jacobs, did you want to say something else?

5 MR. JACOBS: Nothing.

6 THE COURT: Good.

7 MR. JACOBS: I am not getting up.

8 THE COURT: All right.

9 As far as the chart, if at some point you want
10 them to peruse that chart, I would be happy to give them
11 some time to do that, but I am not going to permit you to
12 get up, and I was the totally unaware that you intended to
13 get up and read not only -- forget reading the chart,
14 reading excerpts from it. That I would definitely not
15 permit. If you want them to peruse it at some point, I will
16 let them peruse it, but not otherwise.

17 OK. Thank you very much.

18 I will see you tomorrow morning.

19 (Proceedings adjourned to Wednesday, May 3, 1995
20 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)

CORRECTED

May 3, 1995
9:35 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

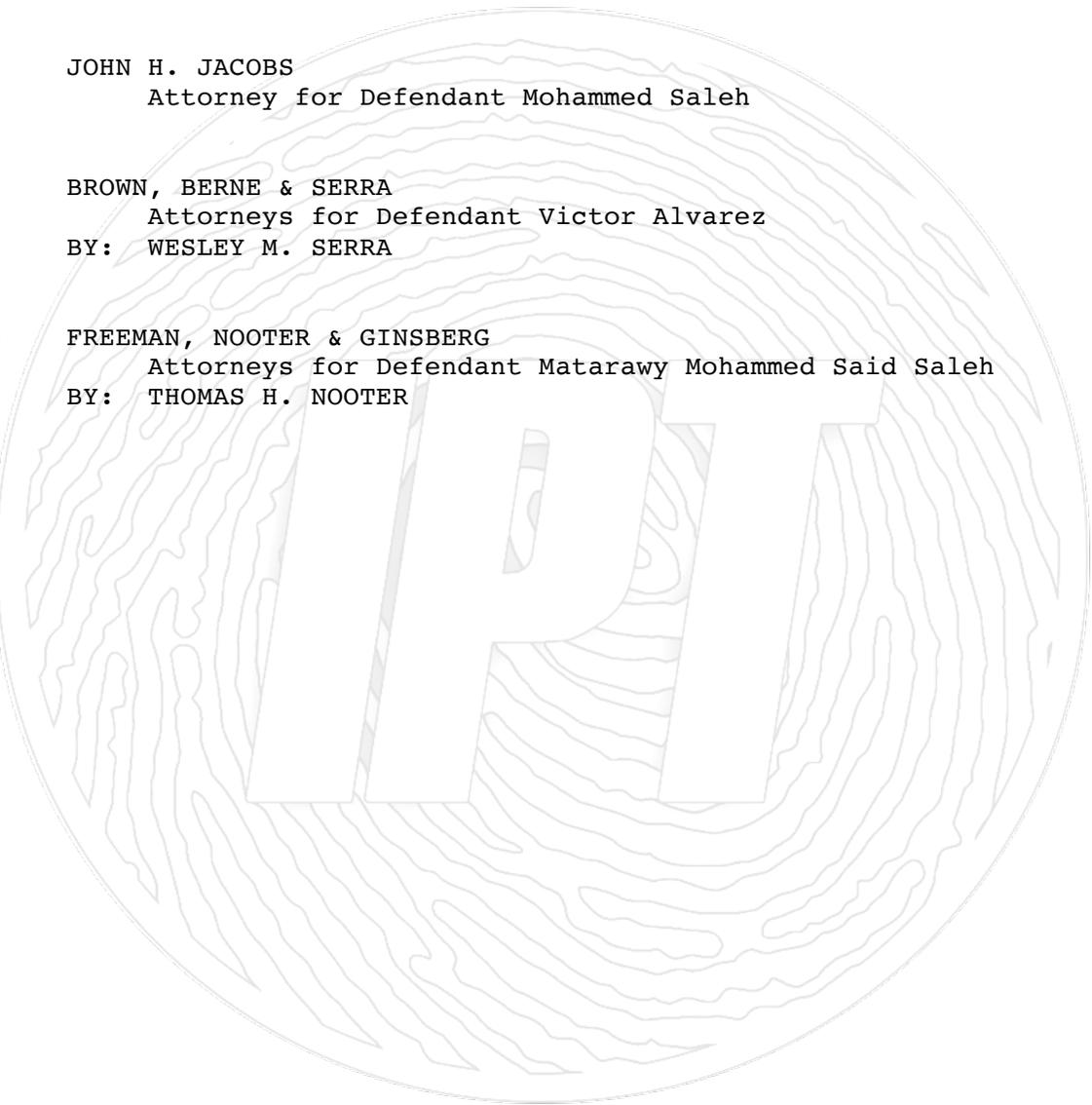
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Pages 9894 through 9902 sealed)

2 (In open court; jury not present)

3 THE COURT: Good morning.

4 MR. KHUZAMI: Your Honor, just three items before
5 we begin. First regarding the proposed redactions submitted
6 by the government in the 3500 material, I think that perhaps
7 I am guilty of not putting my best foot forward, but I think
8 that in addition to the fact that they are relating to
9 certain investigations, I think that those matters are not
10 properly 3500 material in the first instance because they do
11 not relate to the subject matter of this witness' testimony.

12 THE COURT: That is your best foot. Mr. Jacobs.

13 MR. JACOBS: Your Honor, there is no privilege on
14 ongoing investigations that exist. If the witness is
15 cooperating in investigations, as part of his cooperation
16 agreement that has been signed by the government, it is in
17 writing, we are entitled to debriefing on those subjects.

18 THE COURT: No you are not. I understand your
19 position, you understand my ruling.

20 MR. JACOBS: Can we preserve it for the Second
21 Circuit --

22 MS. STEWART: Objection. I am objecting to
23 preserving it for the Second Circuit, as a matter of fact.

24 THE COURT: Do you dispute his position?

25 MS. STEWART: No.

1 THE COURT: If it is not the subject of his
2 direct testimony, then it is not properly in the 3500
3 material.

4 MR. BERNSTEIN: Judge, I want to comment on that
5 and add another thing for the record. My concern is that
6 because the ongoing investigations may be quote, related
7 investigations, I presume, to, quote, terrorist activity in
8 the United States, the problem is that we may have a witness
9 who may not be telling the truth about matters on other
10 investigations that are so intertwined and so related that
11 we have no means of investigating that to show that he is
12 not a truth teller. If they were completely discrete and
13 separate matters they may be a different aspect, but where
14 it is potentially and probably related to this trial and
15 these types of matters, that is my concern, that we are
16 being denied the right to at least see if there is
17 independent proof that he is not telling the truth about
18 those other matters.

19 The other thing that I wanted to raise with the
20 court was, there are aspects of the 3500 material that make
21 it pretty clear that there was contact between Mr. Haggag
22 and the FBI in March of 1993, and I have asked the
23 government whether or not and where is the 3500 material
24 that relates to those earlier contacts. The government has
25 taken a position that there is absolutely no paperwork

1 relating to, or prearrest of Haggag contacts between him and
2 the FBI. I just want the record clear on that in case some
3 day in the future it turns out to be different.

4 THE COURT: Do you want to respond with regard to
5 the connection or lack of it between other investigations in
6 this case?

7 MR. KHUZAMI: Your Honor, off the top of my head,
8 one of them, I know, is unconnected to this case. The
9 second one, the redaction was more in the line of a
10 characterization than it was in terms of an active
11 investigation, but I can't speak to the second one because I
12 am less certain about that.

13 I would also note, while again we are talking
14 about a third-party characterization of the witness'
15 statement, I think for that reason, even though we generally
16 turn 302's over --

17 THE COURT: I know that. The redactions will
18 stand.

19 MR. KHUZAMI: The second matter, your Honor,
20 concerns a discussion at the end of yesterday's testimony
21 concerning the striking of the reference by Mr. Haggag to a
22 statement by Mr. Nosair about a secret --

23 THE COURT: About having a secret meeting?

24 MR. KHUZAMI: Yes. I would just make an
25 application that perhaps we reserve ruling on that motion

1 until we hear the remainder of this witness' testimony. I
2 speak in particular to the statements that may be the
3 subject matter of the hearing later this afternoon, further
4 conversations between the witness and Mr. Nosair which
5 relate back to the events of the time period of that
6 statement, and perhaps that might provide the context which
7 would allow the jury to draw the inference that the
8 government was suggesting yesterday, and not speculate.

9 MR. STAVIS: That is a different representation
10 than the one Mr. Khuzami made at the side bar yesterday,
11 which was that it didn't link up with anything --

12 THE COURT: I don't recall that it was at the
13 side bar, I recall that it was afterwards. However, it is
14 different. Do you want to cross-examine Mr. Khuzami on
15 whether he is changing his testimony? Let's go forward and
16 I will reserve on instructing --

17 MR. WASSERMAN: Whether the other
18 investigative --

19 THE COURT: Why don't you inquire of them on your
20 own time because if they refuse to tell you, I am not going
21 to make them tell you.

22 MR. WASSERMAN: Your Honor, I think we can
23 resolve the issue in terms of disclosure at this point, and
24 if we have to respond at a later point at least it would
25 give us a heads up.

1 THE COURT: Do you want to respond?

2 MR. KHUZAMI: Not really, your Honor.

3 THE COURT: Then don't. Let's proceed.

4 MR. KHUZAMI: Third item, we also had discussion
5 about dates that the witness testified about hearing tape
6 recordings in the mosque and there was some discussion about
7 whether or not those were proper statements. I would note
8 that the indictment charges a conspiracy in the case that
9 goes at least as far back as 1989 and also involves Sheik
10 Rahman in the early 1980's. For that purpose I think that
11 it is within the scope of the stated time of the conspiracy.
12 In addition, I think it would be relevant background
13 information on the conspiracy.

14 More importantly, I played a tape this morning
15 for the witness, Government's Exhibit 850T, which is one of
16 the Sheik Rahman and Mr. Nosair phone conversations. That
17 tape, I think, refreshed his recollection and he will now
18 testify that those tapes that he heard were more likely in
19 early 1990 or late 1989.

20 THE COURT: The only statement, I believe, that I
21 kept out was the statement about where he heard people were,
22 correct?

23 MR. KHUZAMI: That is correct.

24 THE COURT: I don't see how that is in
25 furtherance of anything, where people were. It may be

1 background. I don't see, on the other hand, that it is
2 harmful. What is the prejudice? That is the only statement
3 that I kept out. We are really haggling over a detail.

4 MS. STEWART: Judge, being familiar with 850, I
5 don't see how playing the tape would have refreshed his
6 recollection. There is a notation on the outside of the
7 tape, but no one knows who wrote that, when, where or how.

8 THE COURT: How it refreshed his recollection,
9 that is something you can get into. I am interested in your
10 view on the statement about where people were, which is the
11 only thing that I kept out.

12 MS. STEWART: I thought you kept out the entire
13 business about the phone conversation being in 1988. I
14 thought that was out.

15 MR. KHUZAMI: My only proffer on relevance, your
16 Honor, is that it shows that individuals here in the United
17 States were contacting him for information, instructions,
18 and soliciting how they should conduct their activities
19 while he is in Egypt and they are in the United States.

20 THE COURT: It is not incriminating background.
21 It is certainly not directly incriminating background, and I
22 am going to allow it.

23 MR. WASSERMAN: Judge, would the government at
24 least inform your Honor as to the subject matter of the
25 investigations, because this witness Haggag is going to be

1 testifying, I think extensively, based upon the 3500
2 material, about Ubaidah. Based on the government's
3 unwillingness to say to say on the record what their
4 investigation is, your Honor can then relate that to what
5 the witness does testify about and then make a decision
6 about whether they are entitled to the redacted material.

7 MS. AMSTERDAM: I understand Mr. Wasserman's
8 concern, your Honor. I don't know how familiar your Honor
9 is with the Ubaidah investigation.

10 THE COURT: I am innocent of knowledge of the
11 Ubaidah investigation.

12 MS. AMSTERDAM: In truth, it is sometimes very
13 hard to know if your Honor is making your rulings fully
14 informed or if you have all the relevant information to make
15 those rulings. Ubaidah is someone who is supposed to have
16 done the training, to which I presume this witness is going
17 to testify very extensively, who only recently was indicted
18 as to weapons charges and who I believe is a coconspirator
19 in this case. If it is not Ubaidah, I am not rising to Mr.
20 Wasserman's proposition but if it is, I would like --

21 MR. KHUZAMI: Your Honor, the issue here is the
22 3500 material as part of the 302, but in any event, it does
23 not involve Mr. Ubaidah.

24 MS. AMSTERDAM: It does not?

25 THE COURT: Does not, D-O-E-S-N apostrophe T.

1 Let's go.

2 MR. KHUZAMI: Your Honor, did you indicate that
3 you were or were not going to allow the testimony about
4 where Mr. Nosair --

5 THE COURT: I am going to.

6 MR. KHUZAMI: You are. Thank you.

7 THE COURT: Which I think is admissible under
8 United States versus Reyes, 1994, in any event.

9 ABDO MOHAMMED HAGGAG, resumed.

10 (Jury present)

11 THE COURT: Good morning, ladies and gentlemen.

12 JURORS: Good morning.

13 THE COURT: Again we are getting started later
14 than I like, but I think once more this comes under the
15 heading of spending some time to save more time.

16 Mr. Haggag, you are still under oath.

17 THE WITNESS: Yes, sir.

18 THE COURT: Mr. Khuzami.

19 (Continued on next page)

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1 DIRECT EXAMINATION continued

2 BY MR. KHUZAMI:

3 Q. Mr. Haggag, yesterday when I was questioning you,
4 we spoke about an incident where you drove a friend of yours
5 named Osama with his son to the Canadian border. Do you
6 recall that?

7 A. Yes, sir, I do.

8 Q. When you did that, you knew that he was taking
9 his child without permission, is that correct?

10 A. Yes, sir.

11 Q. Yesterday also you testified about two tapes that
12 you heard played at the El Salaam mosque, is that correct?

13 A. Yes, sir, I did.

14 Q. You testified that you heard those tapes around
15 1988, is that correct?

16 A. Yes, I did.

17 Q. Did you have an opportunity this morning before
18 court to listen to a tape?

19 A. Yes, sir.

20 MR. KHUZAMI: Your Honor, may I approach?

21 THE COURT: You may.

22 Q. Mr. Haggag, let me show you what has been marked
23 Government's Exhibit 850 in evidence --

24 MR. PATEL: Objection, your Honor. There is no
25 lack of recollection here.

1 THE COURT: That is true, but that doesn't bar
2 the question. Overruled.

3 Q. Let me show you what has been marked as
4 Government's Exhibit 850 in evidence and ask you to take a
5 look at that. When you testified that you heard those tapes
6 played in 1988, were you certain of that date?

7 MR. PATEL: Objection.

8 THE COURT: Overruled.

9 A. No, sir, I wasn't certain.

10 Q. Did Government's Exhibit 850, did you listen to
11 that this morning?

12 A. Yes, sir, I did.

13 Q. How do you know that is the tape that you
14 listened to this morning?

15 A. It is the same tape I heard in El Salaam Mosque.

16 Q. Let me ask the question, how do you know that 850
17 is the same tape that you listened to this morning?

18 A. I put my initial on it and the date on it.

19 Q. Do you see your initials on it?

20 MR. BERNSTEIN: Your Honor, I am sorry. I can't
21 hear.

22 THE COURT: Could you try to speak slower and a
23 little bit louder.

24 THE WITNESS: OK, sir. Sorry.

25 THE COURT: Thank you.

1 Q. Do you see your initials on Government's Exhibit
2 850?

3 A. Yes, sir, I see it.

4 Q. Did that help refresh your recollection --

5 MR. PATEL: Objection, your Honor.

6 THE COURT: Why don't you rephrase it in terms of
7 does that make you change your view.

8 MR. KHUZAMI: Thank you, your Honor.

9 Q. Mr. Haggag, having heard that tape, does that
10 change your testimony as to when it is that you think you
11 heard the two tapes at the El Salaam Mosque?

12 A. Yes, sir.

13 Q. Having heard that tape, what date do you now
14 place having heard those two tapes?

15 A. I believe it is early 1990.

16 Q. The first of the two tapes that you heard, do you
17 have an understanding -- withdrawn.

18 Who do you recall being the participants or the
19 people you heard on the first tape that you heard in the El
20 Salaam Mosque?

21 A. Sayyid Nosair and Omar Abdel Rahman.

22 Q. Do you have an understanding where Mr. Nosair was
23 when that tape recorded conversation was made?

24 MR. PATEL: Objection.

25 THE COURT: You will have to elicit source of the

1 understanding.

2 Q. Do you have an understanding where Mr. Nosair was
3 when he had that telephone taped conversation with Sheik
4 Rahman?

5 A. Yes, sir.

6 Q. What is the basis of that understanding?

7 A. The basis of the understanding is he is talking
8 from New Jersey, talking to Egypt.

9 Q. How do you know that, Mr. Haggag?

10 A. During the talking he said we talking to you from
11 Jersey City, we talking to you from America, from Jersey
12 City, introduced himself.

13 Q. How do you know that Sheik Rahman was in Egypt
14 when that conversation was taped?

15 A. Sheik Omar Rahman was talking about he was in
16 Egypt and he is under harassing from Egyptian government.

17 Q. Do you recall the subject matter, what was talked
18 about on the first tape that you heard at the El Salaam
19 Mosque?

20 A. First tape was talking about what happened to
21 Sheik Omar over in Egypt, and how the government coercing
22 him and how they harassing him, how they harass everybody
23 around him.

24 Q. Was Mr. Nosair present in the mosque when the
25 tape was played?

1 A. Yes, sir.

2 Q. Before the tape was played, did he make any
3 statements?

4 A. Yes, sir.

5 Q. What statement did he make?

6 A. He talk about the Egyptian government and how
7 the, how the, what they doing to the Islam, and American
8 government, how they are supporting the Egyptian regime and
9 how they running by the Jewish lobby, and that.

10 Q. Is that everything that he said?

11 A. I could -- I write it down in my book, if you --

12 Q. Is there anything that would help you refresh
13 your recollection as to other things that he said before the
14 tape was played?

15 A. Yes, sir.

16 Q. What would that be?

17 A. Myself in the book, I write it down and I gave it
18 to the government.

19 MR. KHUZAMI: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q. Mr. Haggag, let me show you what has been marked
22 Government's Exhibit 35119-FF, and in particular, I believe,
23 page 5 of the Arabic, and ask you to take a look at that.

24 (Pause)

25 Q. Have you had an opportunity to look at that?

1 A. Yes, sir.

2 Q. Remembering not from what you read but from your
3 memory, do you remember anything else that Mr. Nosair said
4 when he introduced the tape of Sheik Rahman?

5 A. When he introduce the tape of Sheik Omar Rahman,
6 he introduce the one saying the truth, he is the only one
7 saying the truth in Egypt --

8 Q. If you could slow down and speak a little louder.

9 MS. STEWART: I can't hear that, I am sorry.

10 THE COURT: You will have to speak slower and
11 louder. I know it is an effort but otherwise you can't be
12 heard or understood.

13 A. First when he introduce Sheik Omar he introduce
14 him as the only one saying the truth in Egypt, and the rest
15 of the religious scholars just working for the government
16 and saying what the government want him to say, and he is
17 the only one saying what. God -- what satisfy God, what God
18 ask him to say in the Koran. And he talk about the American
19 government and the Egyptian government following the
20 Egyptian regime, following American diplomats, and doesn't
21 have, Mubarak doesn't have any personality or doesn't have
22 any, doesn't have enough personality to fight for his
23 benefit or his people, just to doing what American
24 government want us to do, and the boss country Egypt and
25 America is afraid of the Sheik Omar because he the one who

1 speak about the jihad and the practice of sharia or practice
2 of Islamic law in the country, and he is the one -- he is
3 the one responsible to say, to say, to raise the jihad, to
4 raise the jihad wherever he went, wherever he be.

5 Q. I am sorry. Can you repeat the last statement
6 that you made --

7 MR. PATEL: Objection.

8 MR. KHUZAMI: I am not sure everyone heard it.

9 MR. PATEL: Objection, your Honor.

10 THE COURT: Sustained.

11 Q. Mr. Haggag, having reviewed that document, does
12 that refresh your recollection as to any statements Mr.
13 Nosair made concerning America and Islam?

14 A. Yes, sir.

15 MR. PATEL: Objection, your Honor. Asked and
16 answered.

17 THE COURT: Overruled.

18 Q. What do you now remember, not from the document
19 but from your memory about what he said about America and
20 Islam?

21 A. He said that Islam and America, they cannot be
22 together, the Islam is doing for the benefit of the Muslim,
23 the American is doing for the benefit of the American people
24 and they cannot be together, they are against each other.

25 Q. Mr. Haggag, did there come a time where you heard

1 the second tape played in the mosque?

2 A. Yes, sir.

3 Q. How soon after the first tape did you hear the
4 second tape?

5 A. Around months or so.

6 Q. One month or so?

7 A. Yes, one month or so, maybe.

8 Q. Do you remember who it was that played the tape
9 in the mosque?

10 A. Sayyid Nosair.

11 Q. Do you recall what was said on the tape, what was
12 the subject matter of the tape?

13 A. It was request or the Sheik Omar ask him request,
14 requested for the people in the mosque El Salaam to vote for
15 the people in the Jihad Office.

16 Q. And again if I could ask you to slow down and
17 speak a little louder.

18 Was there any reference to who it was that the
19 sheik was referring to by the people in the Jihad Office?

20 A. The sheik referring to Sayyid Nosair and the
21 other people in Jihad Office.

22 Q. What is the Jihad Office?

23 A. Jihad Office is branch of refugee office in
24 Brooklyn. Jihad Office was downstairs office of El Salaam
25 Mosque.

1 Q. When you say the refugee from, you mean the
2 Alkifah Refugee Center?

3 A. Alkifah Refugee Center in Brooklyn.

4 Q. Was there an office at the El Salaam Mosque?

5 A. Yes, sir, it was downstairs from the El Salaam
6 Mosque.

7 Q. Mr. Haggag, did you have a position in the El
8 Salaam Mosque?

9 A. Yes, sir, end of 1990-91, yes.

10 Q. What was your position?

11 A. One of the board of trustees.

12 Q. What does a member of the board of trustees of
13 the mosque do?

14 A. We try to run the mosque, pay any bills for the
15 mosque, invite some scholars, religion scholar to give some
16 speech, doing some activity in the mosque for the public,
17 open school, weekend school for the kids.

18 Q. Mr. Haggag, did you ever obtain any audiotapes or
19 videotapes from Sheik Rahman?

20 A. Yes, sir, I have some.

21 MS. STEWART: Time frame, Judge?

22 THE COURT: Yes.

23 Q. Over what period of time did you obtain these
24 audiotapes or videotapes?

25 A. Since they been, they come to America to stay in

1 1990, during time to 1993.

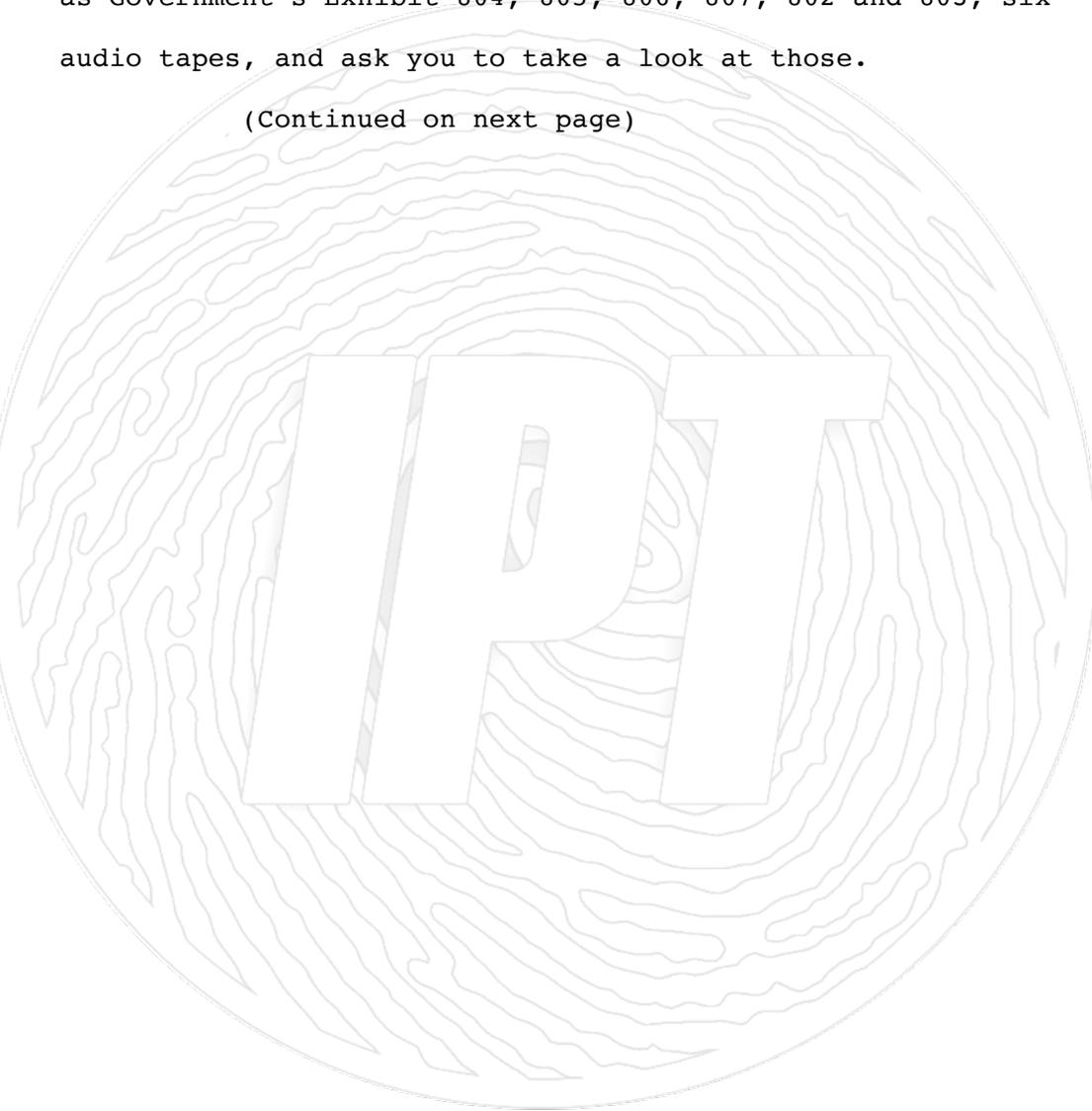
2 MR. KHUZAMI: Your Honor, may I approach?

3 THE COURT: Yes.

4 Q. Mr. Haggag, let me show you what has been marked
5 as Government's Exhibit 804, 805, 806, 807, 802 and 803, six
6 audio tapes, and ask you to take a look at those.

7 (Continued on next page)

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1 MR. KHUZAMI: Your Honor, while the witness is
2 examining those audios, may we approach at side bar for a
3 moment?

4 THE COURT: Yes.

5 (At the side bar)

6 MR. KHUZAMI: Your Honor, Mr. McCarthy just
7 mentioned to me that he is a little concerned that the jury
8 is not understanding much of what the witness is saying. I
9 wonder whether or not if everyone has that view it is
10 appropriate to try this with the translator.

11 THE COURT: I think what I am going to do is, I
12 am going to ask the jurors if at any point they don't
13 understand what he is saying, just raise their hand.

14 MR. KHUZAMI: Do you want me to do anything to
15 repeat a question?

16 THE COURT: If they do raise their hands, I will
17 ask you to repeat your question. If it starts to get to be
18 too much, I will ask the interpreter to translate.

19 MR. MCCARTHY: At the point where Mr. Khuzami
20 asked him to repeat the answer, I heard a couple of the
21 jurors say to each other something along the lines of
22 "What," as if they hadn't heard what he said.

23 THE COURT: I am not suggesting it was in bad
24 faith. I am just saying I heard it and other people heard
25 it.

1 MS. STEWART: I think they were turning their
2 heads to each other and I think.

3 THE COURT: In any event I will do what I said I
4 was going to do.

5 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, I'm going to
3 ask you if at any point during the witness' testimony you
4 can't understand something that he says, just raise your
5 hands.

6 MR. KHUZAMI: Your Honor, may I approach.

7 THE COURT: Yes.

8 Q. Mr. Haggag, have you had an opportunity to review
9 those audiocassettes?

10 A. Yes, I have.

11 Q. Starting with Government's Exhibit 803, let me
12 ask you if you know where you got that tape.

13 A. Yes, sir.

14 Q. Where did you get that tape?

15 A. From the Sheik Omar.

16 Q. When did you get that tape from Sheik Omar?

17 A. Around 1991, '92.

18 Q. Can you describe the circumstances when you got
19 it from him?

20 A. One time he told me he made copy of this tape to
21 sell it, and I buy some of them.

22 Q. You purchased it from him?

23 A. Yes, sir.

24 Q. Do you recall how much you paid?

25 A. Yes, \$2 for each tape.

1 MS. AMSTERDAM: I'm sorry, I didn't hear that.

2 THE COURT: \$2 for each tape.

3 Q. Have you had an opportunity to listen to that
4 tape before your testimony today?

5 A. Yes, I did.

6 Q. Did you recognize it as a tape you had purchased
7 from the sheik?

8 A. Yes, I did.

9 Q. At the time of your arrest in July 1993, did you
10 have that tape in your possession?

11 A. Yes, sir. I have it in my house.

12 Q. Did you later give permission for representatives
13 of the government to get that tape from your house?

14 A. Yes, I did.

15 Q. Let me show you now what's been marked as
16 Government's Exhibit 806 for identification and ask you if
17 you recognize what that tape is.

18 A. Yes, sir.

19 Q. What is that?

20 A. That's -- he answered some scholar, he give
21 answer back to some scholar in Egypt when the scholar said
22 jihad is limited.

23 THE COURT: When he said that jihad is --

24 THE WITNESS: The jihad is -- the scholar said
25 the jihad is limited.

1 THE COURT: Jihad is what?

2 MR. KHUZAMI: Limited.

3 THE INTERPRETER: There are laws and rules that
4 limit and bound jihad.

5 THE COURT: Excuse me. If you don't talk into
6 the microphone, you can't be heard.

7 THE INTERPRETER: There are laws that limit
8 jihad.

9 THE COURT: The scholar said that?

10 THE WITNESS: Yes, sir.

11 THE COURT: And this was his response.

12 THE WITNESS: That's his response for the jihad
13 scholar.

14 Q. Is that one of the tapes you purchased from Sheik
15 Rahman?

16 A. Yes, sir.

17 Q. Did you have an opportunity to listen to that
18 tape before today?

19 A. Yes, I have.

20 Q. Do you see your initials on that tape?

21 A. I see my initials in my handwriting.

22 Q. Is this one of the tapes you gave permission for
23 the government to obtain from your house after your arrest?

24 A. Yes, sir.

25 Q. Let me show you what's been now marked as

1 Government's Exhibit 850 -- I'm sorry, wrong tape --
2 Government's Exhibit 804 and ask you if you recognize that
3 tape.

4 A. Yes, sir.

5 Q. Is that one of the tapes you purchased from Sheik
6 Rahman?

7 A. Yes, sir.

8 Q. Did you have an opportunity to listen to it
9 before today?

10 A. Yes, sir.

11 Q. When you heard it did you recollect it as one of
12 the ones you had purchased from Sheik Rahman?

13 A. Yes, sir.

14 Q. Do you have your initials on that tape?

15 A. Yes, I wrote my initials on the tape.

16 Q. Is that one of the tapes you gave the government
17 permission to pick up from your house after your arrest in
18 July 1993?

19 A. Yes, sir.

20 Q. Let me show you Government's Exhibit 807 and ask
21 you if you recognize that.

22 A. Yes, sir.

23 Q. Is that one of the tapes you purchased from Sheik
24 Rahman?

25 A. Yes, sir.

1 Q. Did you listen to it before today?

2 A. I did.

3 Q. Did you recognize it as one of the ones you had
4 purchased from him?

5 A. Yes, sir.

6 Q. Are your initials on that tape?

7 A. Yes, sir, my initials are on it.

8 Q. Is that one of the tapes you gave the government
9 permission to obtain from your house after your arrest in
10 July 1993?

11 A. Yes, sir.

12 Q. Let me show you Government's Exhibit 805 and ask
13 you if you recognize that tape.

14 THE COURT: Show him 802 also.

15 MR. KHUZAMI: I'm sorry, your Honor?

16 THE COURT: Show him 802 as well, if it's in the
17 same category.

18 Q. Let me show you 802 as well, Mr. Haggag.

19 With regard to both of those tapes, are those
20 both tapes you purchased from Sheik Rahman?

21 A. Yes, sir.

22 Q. Did you listen to them before your testimony
23 today?

24 A. Yes, sir.

25 Q. Did you recognize them as tapes you had purchased

1 from him?

2 A. Yes, sir.

3 Q. Are your initials on both?

4 A. Yes, sir.

5 Q. Did you give the government permission to obtain
6 that tape from your house after your arrest?

7 A. Excuse me, this one I taped it myself in early
8 '89, sometime in '89.

9 THE COURT: Back up. One of them he said he
10 taped himself back in '89. Which one was it?

11 Q. Which one are you referring to, Government's
12 Exhibit 802?

13 A. Yes, sir.

14 Q. When you say you taped that yourself, what is
15 that a tape of?

16 A. First time Sheik Omar came to America.

17 Q. And you taped it yourself?

18 A. Yes, sir.

19 MR. JABARA: I didn't hear that.

20 THE COURT: It is a tape of the first time Dr.
21 Abdel Rahman came to America.

22 Q. You heard it and recognized it as the tape you
23 taped?

24 A. Yes, sir.

25 Q. Let me show you what's been marked as

1 Government's Exhibit 815, a videotape, and ask you if you
2 recognize that.

3 A. Yes, sir.

4 Q. And what is it?

5 A. That's the videotape I bought it from Sheik Omar
6 Rahman.

7 Q. Do you recall when you bought it?

8 A. Yes, sir.

9 Q. When was that?

10 A. End of '92.

11 Q. Is that a tape that you had in your possession
12 when you were arrested and you gave the government
13 permission to obtain?

14 A. Yes, sir.

15 Q. Mr. Haggag, when was the first time that you
16 personally met Sheik Rahman?

17 A. First time I personally met Sheik Omar Rahman was
18 in Mustafa Shalabi's house.

19 Q. Mustafa Shalabi?

20 A. Yes.

21 THE COURT: Could I see counsel briefly at the
22 side.

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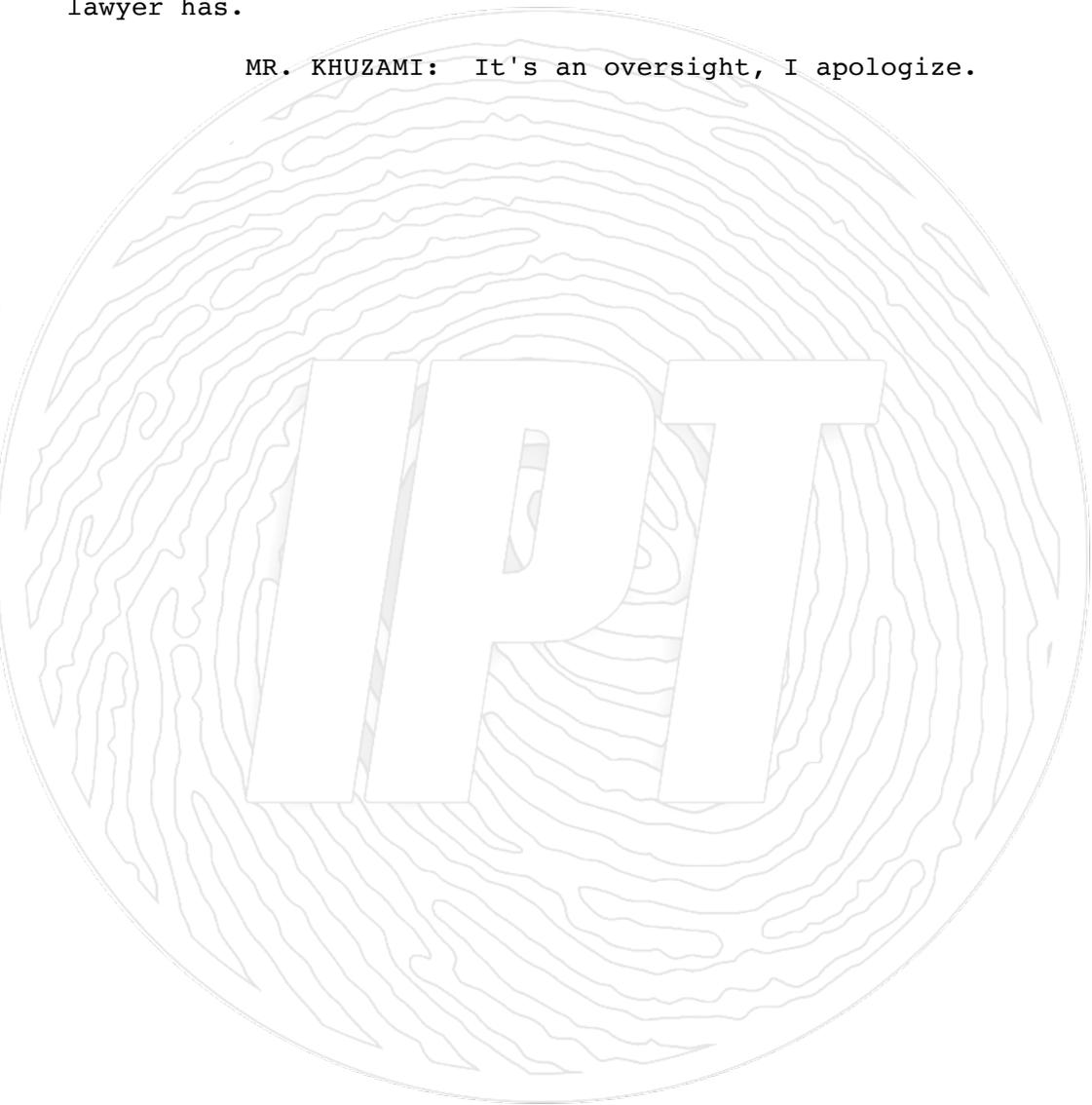
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1 (At the sidebar)

2 THE COURT: The man's name is Abdel Rahman. It's
3 not Rahman. He's made an issue of it and his lawyer has
4 made an issue of it. I don't know whether he has, but his
5 lawyer has.

6 MR. KHUZAMI: It's an oversight, I apologize.

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1 (In open court)

2 Q. Mr. Haggag, do you recall when it was that you
3 first met Sheik Omar Abdel Rahman, what time period?

4 A. Around 1990 when he come to America.

5 Q. How was it that you came to meet Sheik Omar Abdel
6 Rahman personally?

7 A. My friend, he invite me to go see the great
8 scholar that's coming to America and we went by his car to
9 Brooklyn mosque.

10 Q. Could you speak a little louder and a little
11 slower. You went with a friend to a Brooklyn mosque?

12 A. A friend of mine, we went to Farooq mosque in
13 Brooklyn and while we was there we changed the car, got to
14 somebody else's car, they drive us to Mustafa Shalabi's
15 house.

16 Q. What happened when you got to Mustafa Shalabi's
17 house?

18 A. I see the sheik, he see the sheik, I see Mustafa
19 Shalabi and they have some talking, they have some private
20 conversation, they sit down on the side.

21 Q. You mentioned that someone else drove you from
22 the Brooklyn mosque to Mustafa Shalabi's apartment, is that
23 correct?

24 A. Yes, sir.

25 Q. Can you describe this person who drove you?

1 A. He's six foot, 180 pound, red hair, some freckles
2 on his face.

3 Q. Did you know his name at that time?

4 A. In that time I don't know his name.

5 Q. Did you later come to know who that was?

6 A. Yes, sir.

7 Q. Who was that?

8 A. Mohammed Abouhalima.

9 Q. Did there come a time when you learned that
10 Mustafa Shalabi was murdered?

11 A. Yes, sir.

12 Q. Do you recall when that was?

13 A. Actual time I'm not sure.

14 Q. At the time of his death, do you know whether or
15 not he was the head of the Alkifah refugee center?

16 A. As far as I know, before he -- soon before he
17 arrived, the sheik --

18 MS. STEWART: Objection.

19 THE COURT: The question was simply: Was he the
20 head of Alkifah refugee center?

21 A. As far as I know, no, he wasn't.

22 Q. Prior to his death did you see any writings
23 indicating that he should not be head of the Alkifah refugee
24 center?

25 MS. STEWART: Objection.

1 THE COURT: Sustained.

2 Q. Prior to his death, did you see any or did you
3 hear any -- withdrawn.

4 A. Yes, sir.

5 Q. Wait for the question.

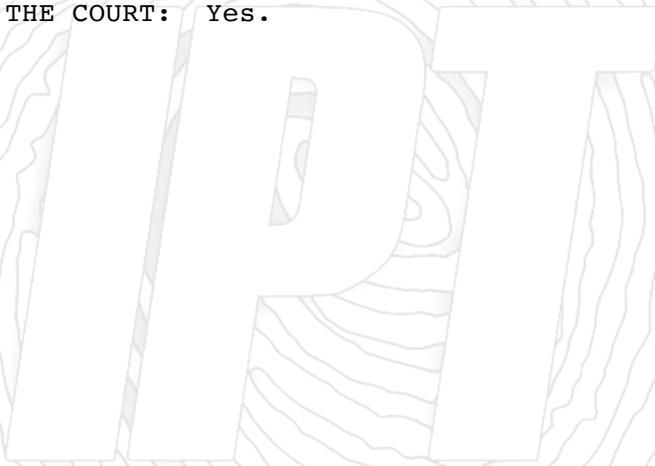
6 THE COURT: There is no question.

7 Q. Prior to his death, did you see anything
8 regarding Mustafa Shalabi in the name of Sheik Omar Abdel
9 Rahman?

10 MS: STEWART: May we approach.

11 THE COURT: Yes.

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1 (At the sidebar)

2 THE COURT: Where is this going?

3 MR. KHUZAMI: I apologize. It has nothing to do
4 with the murder, he's just going to testify.

5 MS. STEWART: Except that you prefaced it by the
6 murder.

7 MR. KHUZAMI: I was trying to put a time
8 clarification on it which you often requested.

9 MS. STEWART: Time is not murder.

10 THE COURT: You've got in the record Mustafa
11 Shalabi murdered. Then you asked: Did you then see some
12 literature attributable to the sheik saying he should not be
13 head of the Alkifah refugee center? Draw your own
14 conclusions.

15 I'll let you lead him as to the date. Let's get
16 rid of the rest. Do you want an instruction or not?

17 MS. STEWART: I think we do.

18 THE COURT: An instruction saying what?

19 MS. STEWART: That sometimes lawyers ask
20 questions in proximity to each other.

21 THE COURT: No, no.

22 MS. STEWART: -- that other lawyers don't want to
23 object to.

24 MR. PATEL: How about no one in this case has
25 been charged with the murder of Mustafa Shalabi.

1 MS. STEWART: It's not part of this case at all.

2 MR. KHUZAMI: That's fine. I don't care.

3 Let me bring out what it is I'm going to say, in
4 case there are other things he's going to testify to, that
5 Shalabi should no longer be head of the refugee center and
6 that Abouhalima should take his place.

7 THE COURT: Shalabi has been opposed by the
8 sheik?

9 MR. KHUZAMI: And that it has been signed by the
10 sheik.

11 MS. STEWART: They have a million things. They
12 have a bank account, they have the Sheik at this meeting. I
13 don't see that they need to put this in.

14 THE COURT: The balance between the fact that
15 Shalabi is murdered, which is now on the record, and the
16 conclusion the jury could draw, particularly in a setting
17 like this case, that's out.

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1 (In open court)

2 THE COURT: There was reference to the murder of
3 a man named Mustafa Shalabi. Nobody in this case is charged
4 with that crime and that crime is not part of this case.

5 Let's move on.

6 MR. KHUZAMI: Thank you.

7 Q. Mr. Haggag, did there come a time when you helped
8 Sheik Rahman find an apartment?

9 A. Yes, sir.

10 Q. How many times did you do that?

11 A. Twice.

12 Q. When was the first time?

13 A. First time after, after -- before.

14 Q. Remember it was approximately early 1991?

15 A. I believe it was early 1991, yes, or very late
16 1990.

17 Q. Do you recall where Sheik Omar Abdel Rahman was
18 living before you helped him find an apartment at that time?

19 A. Yes, sir.

20 Q. Where was he living?

21 A. He live in Brooklyn mosque.

22 Q. And where was the apartment that you helped him
23 find?

24 A. 91 Jordan Avenue, Jersey City.

25 Q. What did you do in helping him --

1 MS. AMSTERDAM: Excuse me, your Honor. A couple
2 of jurors raised their hands.

3 Q. Where was the apartment, Mr. Haggag?

4 A. 91 Jordan Avenue.

5 Q. Jordan Avenue.

6 THE COURT: Jordan Avenue?

7 THE WITNESS: Yes.

8 THE COURT: Go ahead.

9 Q. What did you do in helping Sheik Omar Abdel
10 Rahman find that apartment?

11 A. I talk to Sheik Abdel Khaliq.

12 Q. A-B-D-E-L K-H-A-L-I-Q?

13 A. Yes, sir.

14 Q. Go on.

15 A. And I tell him the condition the sheik living in
16 in Brooklyn mosque and I talk to Sheik Omar and I told Sheik
17 Omar I look for him for apartment here in Jersey City, and I
18 checked myself for the apartment for him.

19 Q. Did Sheik Omar Abdel Rahman move into that
20 apartment at 91 Jordan Avenue?

21 A. Yes, sir.

22 Q. Did there come a time when you helped him find
23 another apartment?

24 A. Yes, sir.

25 Q. When was that?

- 1 A. That's also, I believe, end of '91.
- 2 Q. And where was that apartment?
- 3 A. 115 Fairview Avenue.
- 4 Q. Fairview Avenue?
- 5 A. Yes, sir.
- 6 Q. Where did you live at that time?
- 7 A. Same building, two door from him.
- 8 Q. Two doors from Sheik Omar Abdel Rahman?
- 9 A. Yes, sir.
- 10 Q. And what was your apartment number?
- 11 A. I believe it's 46.
- 12 Q. Do you know what his apartment number was?
- 13 A. 48.
- 14 Q. What did you do to help him find that apartment,
15 the one on Fairview Avenue?
- 16 A. I asked around for the Rahman and I fine one next
17 of me and I talked to the super to get him into the building
18 and I make arrangement between the super and the sheik to
19 sign the lease.
- 20 Q. Were you there, were you present when Sheik Omar
21 Abdel Rahman signed the lease?
- 22 A. Yes, sir.
- 23 Q. And was he present when the lease was signed?
- 24 A. Yes, sir.
- 25 Q. Was there anyone else present when the lease was

1 signed?

2 A. Yes.

3 Q. Who was that?

4 A. Siddig Ali.

5 Q. Now, is it correct that it's your recollection
6 that Sheik Omar Abdel Rahman lived on Jordan Avenue for most
7 of 1991, is that correct?

8 MS. STEWART: Objection.

9 THE COURT: Sustained.

10 Q. What is your recollection of the period of time
11 Sheik Omar Abdel Rahman lived on Jordan Avenue?

12 MS. STEWART: Objection.

13 THE COURT: Overruled. You can answer.

14 A. He lived around over there the second half of
15 '91.

16 Q. Do you recall how long he lived in the apartment
17 at Fairview Avenue?

18 A. Yes, sir.

19 Q. How long?

20 A. From end of '91 until we get arrested.

21 Q. Until you got arrested?

22 A. Yes, sir.

23 Q. That was in July 1993?

24 A. Yes, sir.

25 Q. Can you describe your relationship with Sheik

1 Omar Abdel Rahman starting in 1991?

2 A. We was in Jordan Avenue and beginning I have no
3 relationship with him, very light.

4 Q. Very light?

5 A. Very light. I pray in the mosque, I pray in the
6 mosque after him. He's a leader and we pray after him. I
7 listen to some of his speech in the mosque.

8 Q. I'm sorry, you hear some of his speech in the
9 mosque?

10 A. Yes. Then after this, then after this our
11 relationship become stronger little bit.

12 Q. As it became stronger, what sort of things did
13 you do with Sheik Omar Abdel Rahman?

14 A. He start inviting me to his house, he start to
15 invite me to do some stuff for him. He start to invite me,
16 to ask me to take him around from mosque to mosque, place to
17 place. He start inviting me to paying some bills for him,
18 start helping financial.

19 Q. Aside from taking him around and helping him with
20 bills, did you do other things for Sheik Omar Abdel Rahman?

21 A. Yes, sir.

22 Q. What is that?

23 A. I did some reading for him, some writing for him.

24 Q. Now, how about your wife; did your wife do
25 anything for Sheik Omar Abdel Rahman?

1 A. Yes, she cook a lot for him.

2 Q. For how long did you do these things for Sheik
3 Omar Abdel Rahman?

4 A. From the time he been in, from our relation
5 starting getting tougher, when he was in 91 Jordan Avenue
6 until, until mid of '92.

7 Q. Did Sheik Rahman refer to you by any name other
8 than your name?

9 A. Yes, sir.

10 Q. What name is that?

11 A. I believe Peaceful Dove.

12 Q. Peaceful Dove?

13 A. Peaceful Dove, yes.

14 Q. Is that a name you're also known as in the
15 community?

16 A. No, that's the only name he give me, or he call
17 me.

18 Q. You indicated that you heard speeches or lectures
19 given by Sheik Omar Abdel Rahman, is that correct?

20 A. Yes, sir.

21 Q. And for what period of time did you hear his
22 speeches and lectures?

23 A. From when he was in Brooklyn mosque until he
24 moved to Jersey City and he stay in Jersey City during this
25 time, 1991, 1992, and the summer of 1990.

1 Q. And which mosques did you hear him speak at?

2 A. Farooq mosque and Salam mosque and the one mosque
3 in Philadelphia.

4 Q. Can you estimate the number of times that you
5 heard him speak at mosques during this time period?

6 A. Around 15 time.

7 Q. Now, during any of these speeches, did you hear
8 him make any statements concerning attacks or bombings in
9 America?

10 A. Yes, sir.

11 Q. And how many times did you hear him make such
12 statements?

13 A. I remember two time.

14 Q. When was the first time that you remember?

15 A. First time I remember was his first ceremony
16 heard from him in Farooq mosque.

17 Q. Do you know approximately when this was?

18 A. I believe end of 1990, I'm not good with the
19 dates.

20 Q. What was the occasion of this speech or lecture?

21 A. He was giving religion ceremony, religion speech.
22 And after his speech there comes a time when somebody asks
23 the question and he answer.

24 Q. And do you recall any specific questions during
25 that time?

1 A. Yes, sir.

2 Q. What are those?

3 A. One question he was asking, if the jihad
4 permissible in America.

5 Q. Is the jihad --

6 A. Is the jihad permissible in America, are we
7 allowed to do jihad in America.

8 Q. Did Sheik Omar Abdel Rahman respond?

9 A. Yes, sir.

10 Q. What did he say?

11 A. He say yes. He said yes, but don't to do, don't
12 to let the water run, don't to let the water run.

13 THE COURT: The last part was not understandable.

14 Q. Don't let the water run?

15 MS. STEWART: Objection, Judge, to the prosecutor
16 repeating the answer.

17 THE COURT: Just ask him to repeat it, okay.

18 MR. KHUZAMI: Your Honor, I'm sorry.

19 Q. Mr. Haggag, can you repeat what you heard the
20 sheik say?

21 A. He say an expression by Arabic, don't to let the
22 water run. Go blow some military bases or go steal some
23 bank. When I say don't to let the water run, it's an
24 expression meaning don't do children stuff.

25 Q. Can you repeat what you said about what you

1 understood him to mean when you said don't let the water
2 run?

3 A. When he say don't let the water run, so it mean
4 don't to do children stuff. Don't to let the water run and
5 raise the bill for the company. No, don't to do boys'
6 stuff.

7 THE COURT: What was the last part?

8 (Record read)

9 THE WITNESS: To raise the bill for the company.
10 When you let the water run, you're going to be paying some
11 bill.

12 Your Honor, if you want me to speak louder?

13 THE COURT: It's not a question of the loudness.
14 Move away from the microphone again.

15 I'm going to ask you whether you've meant a
16 certain thing by that or not. Just answer whether I've got
17 it accurately. Are you saying don't let the water run
18 simply so as to raise the bill for the company; in other
19 words, so as to raise the water bill?

20 THE WITNESS: Yes, sir.

21 THE COURT: That means don't do children's stuff.

22 THE WITNESS: Yes, sir.

23 Q. Mr. Haggag, do you recall any other statements by
24 Sheik Omar Abdel Rahman when you heard his speeches or
25 lectures in mosques concerning bombings in America?

1 A. I know he said, I remember he said several time,
2 he said it a few time, but I cannot remember exactly what
3 time he said.

4 Q. When you say it, what do you mean by it?

5 A. He said do something against the American
6 government and the public, yes. He said it a few time, but
7 actually not the date, what date.

8 THE COURT: What was the last part?

9 THE WITNESS: I cannot remember the date.

10 (Record read)

11 THE COURT: But not the date, meaning you can't
12 remember the date exactly.

13 THE WITNESS: I apologize for my broken English.

14 THE COURT: There is no need to apologize.

15 Q. You don't remember the specific dates. Do you
16 remember the span of time during which you recall you heard
17 these statements made?

18 A. During the time he was, when he was in Jersey
19 City, giving lecture in the Salam mosque and the other
20 mosque.

21 Q. Again, what period of time was he living in
22 Jersey City?

23 A. 1991, 1992.

24 Q. Now, Mr. Haggag, were you present when Sheik Omar
25 Abdel Rahman spoke to someone overseas about jihad in

1 America?

2 A. Yes, sir.

3 Q. Do you recall the date that you were present for
4 that conversation?

5 A. It was in early 1992.

6 Q. Where were you when you heard this conversation?

7 A. I was in his apartment.

8 Q. Where is that located?

9 A. 115 Fairview Avenue, Jersey City.

10 Q. Were you involved in placing this telephone call?

11 A. Yes, sir.

12 Q. What did you do?

13 A. I pick his phone book and he ask me for certain
14 name and I give him the name. I give him the number under
15 the name, and he dial it.

16 Q. Do you remember the name or the phone number that
17 you gave him?

18 A. I believe, yes.

19 Q. What do you remember the name to be?

20 A. Isaam something.

21 Q. Isaam?

22 A. Yes.

23 Q. Do you remember the phone number?

24 A. No.

25 Q. What happened after you gave Sheik Omar Abdel

1 Rahman the name and the phone number?

2 A. He dialed the number and he start talking to who
3 is it. And in one part of the conversation he said, hold
4 it. He tell him hold it and he put the speaker on.

5 Q. The speaker phone?

6 A. The speaker of the phone on, and he ask him to
7 repeat what he say.

8 Q. When you say he asked him to repeat what he say,
9 who is the first he?

10 A. The Sheik Omar Rahman, to repeat what his
11 question is.

12 Q. Was the question repeated?

13 A. Yes, sir.

14 Q. What was the question?

15 A. His question is when we going to hear about jihad
16 in America.

17 Q. And what happened after that question was asked?

18 A. He tell him, let these guys listen to it.

19 Q. Who is it that said let these guys listen to it?

20 A. Sheik Omar. I saw him to let us to listen to his
21 question.

22 MS. STEWART: Objection to us.

23 THE WITNESS: Us meaning me and two other or
24 three other in the room.

25 THE COURT: Objection overruled.

1 Q. What happened after the Sheik said that?

2 A. He said, he tell him when we going to hear about
3 jihad? The Sheik Omar tell him we going to hear about jihad
4 in America when these guys stop living like a lady.

5 Q. Can you repeat that?

6 A. When these guys, mention us, when these guys stop
7 living like a lady around me.

8 Q. Did there come a time when the telephone
9 conversation ended?

10 A. Yes, sir.

11 Q. What happened after it ended?

12 A. Sheik Omar tell us, you guys make me ashamed,
13 ashamed of you, and you guys embarrass me.

14 Q. Mr. Haggag, were there also any times when you
15 heard Sheik Omar Abdel Rahman speak about America in
16 general?

17 A. Yes, sir.

18 Q. Do you recall on how many occasions you heard him
19 speak about America?

20 A. Majority of his speech, majority of his speech,
21 if I heard him 15 times at least ten times he speak of
22 America.

23 Q. You're referring to occasions when you heard him
24 speak in the mosque?

25 A. Yes, sir.

1 Q. Did you ever hear him speak about America when
2 you were in the apartment as well?

3 A. Yes, sir.

4 Q. Do you recall specifically any occasions in the
5 mosques when you heard him speak about America?

6 A. He showed us in the morning his copy of speech,
7 and he repeat what he say. I cannot actually say the date
8 for this because he repeat what he say all the time.

9 MR. JABARA: I'm sorry, Judge. I didn't catch
10 that.

11 THE COURT: He repeated what he said all the
12 time.

13 THE WITNESS: I'm sorry.

14 THE COURT: That's all right.

15 Go ahead.

16 Q. During these speeches or lectures that you heard,
17 can you describe what you recall Sheik Omar Abdel Rahman
18 saying about America?

19 A. Yes, sir. He said like America is the big evil,
20 fiercest enemy of Islam. It is -- the White House, the
21 White House has become black from what -- from all the big
22 damage they did to Islam. The White House turning to be
23 black house from bad thing he did to the Islam.

24 Q. Did you hear during these occasions any
25 discussions from Sheik Omar Abdel Rahman about President

1 Mubarak of Egypt?

2 A. Yes, sir.

3 Q. Can you describe what you recall?

4 A. He called him name, al-Baqara al-Dahika, laughing
5 cow, and he call him like --

6 THE COURT: I'm sorry, he called him --

7 THE WITNESS: The laughing cow.

8 THE COURT: The laughing cow?

9 THE WITNESS: Yes.

10 A. And he call him the enemy of the Islam and the
11 enemy of the people who believe in the God, and they call
12 him all kind of stuff.

13 Q. Did you hear during these speeches or lectures
14 any statements by Sheik Omar Abdel Rahman concerning
15 America's relationship with President Mubarak of Egypt?

16 A. Yes. Egyptian regime is against Islam and they
17 support him to destroy the Muslim people over there, destroy
18 the country. They call him American puppet, he's following
19 the American diplomat, wherever the American diplomat goes.
20 He called, the man has no personality, referring to
21 Mr. Mubarak.

22 Q. During these speeches and lectures do you recall
23 any discussions by Sheik Omar Abdel Rahman concerning the
24 state of Israel?

25 A. Yes, sir.

1 MS. STEWART: Objection, objection.

2 Q. What do you recall him saying?

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

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1 (At the sidebar)

2 THE COURT: Unless this involves U.S. policy
3 toward Israel, so what?

4 MR. KHUZAMI: The follow-up question is whether
5 or not they talked about the relationship between the United
6 States and Israel.

7 THE COURT: That is the question, not the
8 follow-up question.

9 MR. KHUZAMI: I'm sorry. America's
10 responsibility, in other words, that he conceived of Israel
11 as an enemy of Egypt and was America responsible for its
12 existence.

13 THE COURT: I want the focus of the question to
14 be the United States policy towards Israel, not Israel's
15 responsibility.

16 MR. KHUZAMI: Fine.

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1 (In open court)

2 Q. Mr. Haggag, during these speeches and lectures by
3 Sheik Omar Abdel Rahman, do you recall the statements by him
4 concerning American policy toward the state of Israel?

5 A. He's against American policy to support Israel.
6 He's against use of all kind of weapon because these weapon
7 they going to use --

8 Q. Sorry, could you please repeat that answer and
9 speak a little slower?

10 A. He's against American policy to support Israel,
11 he's against American policy to provide Saudi Arabia with
12 any weapon and technology because this weapon and technology
13 is going to be used against the Muslim army.

14 Q. Now, Mr. Haggag, did you ever do any writing for
15 Sheik Omar Abdel Rahman?

16 A. Yes, sir, I did.

17 Q. What kind of writing did you do?

18 A. Yes, I did. His speech against Saudi Arabia
19 regime, Saudi Arabia policy.

20 Q. Do you recall when it is that you wrote that item
21 concerning Saudi Arabia?

22 A. In '91 when he was in Jordan Avenue, 1991.

23 Q. Can you describe how it is that you came to write
24 something for him about Saudi Arabia?

25 A. Yes, sir. I went to -- he invite me to his

1 house, it was Sheik Omar Abdel. When I went over there, it
2 was Sheik Omar and three other people from the mosque. And
3 he was -- he was -- one of the guys, he was writing what the
4 sheik tell him about Saudi Arabia government. He was
5 writing Sheik Omar's speech against the government, and when
6 he tell him, when he try to read for him again --

7 Q. I'm sorry, when who tried to read it for who
8 again?

9 A. When the guy, he was writing the stuff for the
10 sheik, read for the sheik again, the sheik, Sheik Omar
11 doesn't like it. And I'm the person, I don't like it either
12 and I tell him why I don't like. Why it better in Arabic,
13 better language.

14 Q. Can you repeat that?

15 A. I ask him to rewrite it by better Arabic
16 language.

17 Q. You asked him whether or not you could?

18 A. Yes.

19 Q. And did you in fact rewrite it?

20 A. Yes, sir. I did write it for him.

21 Q. Can you describe how it is you went about
22 rewriting this document about Saudi Arabia?

23 A. I write each sentence and I talk with him about
24 it. Sometime he correct it, sometime he like it.

25 Q. Who is the he?

1 A. The Sheik Omar, Sheik Omar, sometime he like what
2 I write and sometime he correct it. And then I read it for
3 him again. Then I make new -- I make new draft, new copy
4 and I read for him again.

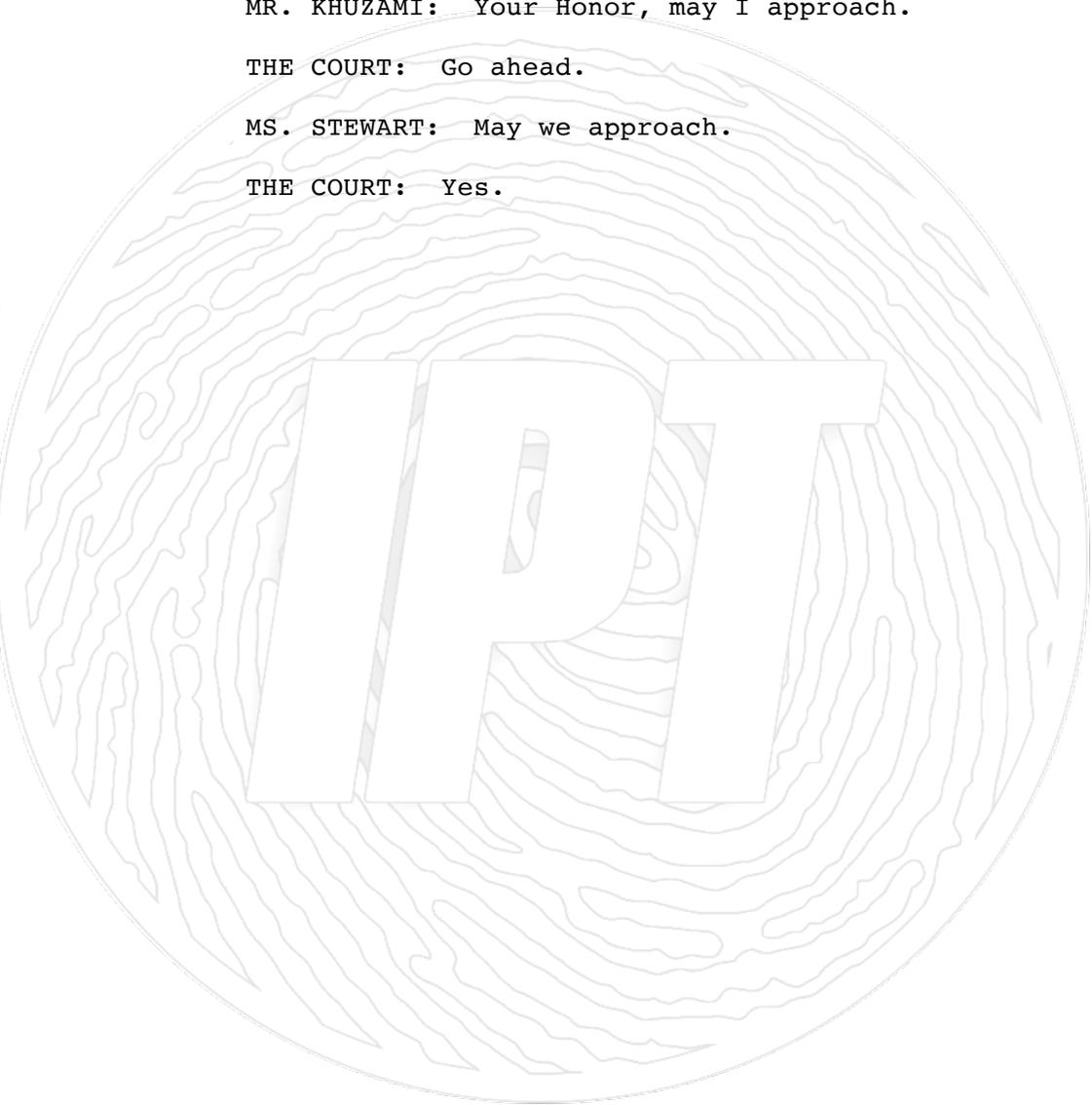
5 MR. KHUZAMI: Your Honor, may I approach.

6 THE COURT: Go ahead.

7 MS. STEWART: May we approach.

8 THE COURT: Yes.

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1 (At the sidebar)

2 MS. STEWART: I'm questioning the relevancy of
3 this.

4 THE COURT: I don't see it. There is a little
5 nugget buried in here where he says he's tightening the grip
6 of the Egyptian regime on the country, his lowly expertise
7 as well as his master's expertise, meaning the Americans, in
8 an attempt to exterminate the Muslims; i.e., that somebody
9 is acting in the United States' behest to exterminate the
10 fundamentalists.

11 MR. KHUZAMI: He refers, your Honor,
12 to permitting in the country the monkeys' and the pigs'
13 grandchildren of the Americans and the Jews. Then he refers
14 later on to --

15 THE COURT: No.

16 MR. KHUZAMI: Your Honor, this is --

17 THE COURT: This is what?

18 MR. KHUZAMI: This is directly related to the
19 sheik's views toward the United States that the Americans,
20 having been permitted to come into the Muslim holy lands,
21 developed relationships with Israelis. This is directly
22 related to what his views are, right out of the Sheik's
23 mouth.

24 MS. STEWART: It's out of Mr. Haggag's pen.

25 THE COURT: Under 403 it's out.

1 (In open court)

2 THE COURT: Move on to something else.

3 Q. Mr. Haggag, did there come a time when you
4 discussed with Sheik Omar Abdel Rahman whether he would seek
5 political asylum in the United States?

6 A. Yes, sir.

7 Q. Do you recall when that was?

8 A. I believe in '92.

9 Q. Do you recall where that discussion took place?

10 A. In his apartment in 115 Fairview Avenue.

11 Q. Do you recall how it was that you happened to be
12 at the sheik's apartment on that date?

13 A. He invite five people from the people who, people
14 he trust, he invite them to discuss --

15 THE COURT: He invited five people from where?

16 THE INTERPRETER: People he trusts.

17 THE WITNESS: The people he trusts.

18 THE COURT: He invited five people that he
19 trusted.

20 THE WITNESS: Yes.

21 THE COURT: Go ahead.

22 A. -- to discuss the matter that he should get
23 political asylum or not.

24 Q. Can you describe the conversation that occurred
25 that day?

1 A. He opened the subject and he tell them, he tell
2 everybody, Sheik Omar said, you know the American government
3 want to, the immigration want to put him out of the country
4 and they rejected to give him back his green card. And the
5 only way for him to stay in the country is to apply for
6 political asylum and we know, he know, the Sheik Omar said
7 the political asylum has a lot of -- doesn't go, doesn't go
8 with the Islamic law and he suggested to see what I should
9 do, I should go apply for it or I should just back off from
10 it.

11 And after this, everybody give his opinion and
12 everybody's opinion was go with the sheik, to apply for the
13 political asylum and to stay here because in here Allah come
14 to work for you and here you are safe, good living, good
15 money, and come to America.

16 I wait until the end and I tell him you cannot
17 apply for political asylum under any circumstances. If
18 you -- the only way by Islam law for you to give political
19 asylum is to apply in Muslim country first. If the Muslim
20 country reject you, you come to America to apply for
21 political asylum because you are raising trouble, and
22 raising jihad here on the one hand and the other hand you
23 come, you say please give me protection, cannot go together,
24 it's only problem.

25 Q. And --

1 A. And everybody knows my opinion and they know it
2 now.

3 Q. Did there come a time that you learned that Sheik
4 Omar Abdel Rahman applied for political asylum?

5 A. Yes, sir.

6 Q. Did there come a time when your relationship with
7 Sheik Omar Abdel Rahman began to change?

8 A. Yes, sir.

9 Q. And do you recall when this was?

10 A. Yes, sir.

11 Q. When was that?

12 A. After the political asylum discussed, after the
13 meeting about the political asylum.

14 Q. Can you describe how it changed?

15 A. Because I disagree with him, he come in the
16 mosque, he come, Sheik Omar come in the mosque and he said
17 the Peaceful Dove we know in the mosque, the Peaceful Dove
18 we know everything good about him, we know him, he become
19 hypocrite, hypocrite, hypocrite. He become hypocrite.

20 Q. Can you describe the difference between your
21 relationship with him before this and after this?

22 A. Before this I was giving him a lot of help. I
23 refer him to my kids, myself, and my wife, me and my family
24 did anything to support him and to help him by anyhow.

25 Q. And afterwards?

1 A. And afterwards, and afterwards I got very slowly
2 from him, I cannot go to his house until he says three time
3 at least, I not do anything until he ask for it.

4 Q. After this time did you continue to see him at
5 115 Fairview Avenue?

6 A. I see him a few times when he ask me, once every
7 week or once every couple week if he needs something.

8 THE COURT: Mr. Khuzami, could you come to a
9 convenient breaking point?

10 MR. KHUZAMI: Certainly, your Honor.

11 Q. Did you continue after this time to read for him
12 or pay his bills or do the things you had been doing before?

13 A. No, sir.

14 MR. KHUZAMI: Your Honor, this would be a
15 convenient time.

16 THE COURT: We're going to take our break now,
17 ladies and gentlemen. Please leave the notes and other
18 materials behind. Please don't discuss the case and we'll
19 resume in ten minutes.

20 (Jury excused)

21 THE COURT: You may step down.

22 (Witness excused)

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1 (In open court; jury present)

2 THE COURT: Mr. Khuzami.

3 MR. KHUZAMI: Thank you.

4 BY MR. KHUZAMI:

5 Q. Mr. Haggag, did there come a time when you began
6 to write a book?

7 A. Yes, sir.

8 Q. What was the subject of this book?

9 A. Sheik Omar, the fabrication of the Sheik Omar.

10 Q. I am sorry. Could you repeat that, please.

11 A. (Consults translator) The falsehood and the
12 untruthful in the Sheik Omar's personality.

13 Q. Please one more time, as slow as you can.

14 A. The fabrication of the Sheik Omar, the untruth of
15 the Sheik Omar.

16 Q. When was it that you began to write the
17 fabrication or the untruths of Sheik Omar Rahman?

18 A. End of '92.

19 Q. For how long did you continue to write it?

20 A. Until I was, until I get arrested.

21 Q. Why is it that you wrote this book?

22 MR. PATEL: Objection.

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

24 MR. KHUZAMI: Your Honor, I will withdraw the
25 question.

1 THE COURT: OK.

2 Q. Mr. Haggag, do you recall how much of this book
3 you completed?

4 A. I believe around 100 pages or less, little less.

5 Q. How much of it did you have when you were
6 arrested?

7 A. It was in my home around 25 pages, 30 pages.

8 Q. What happened to the remainder?

9 A. I gave it to my wife. I gave the important part
10 of it to my wife when I meet my wife in Jordan after the
11 pilgrim, after the hajj.

12 Q. After the hajj?

13 A. Yes.

14 Q. Do you know what she did with it?

15 A. Yes, sir.

16 Q. What?

17 MR. JACOBS: Objection.

18 THE COURT: Sustained.

19 Q. Did you ever see it again?

20 A. No, sir.

21 Q. Did there ever come a time when you contacted
22 someone about publishing this book?

23 A. Yes, sir.

24 Q. When was that?

25 A. When I was in first one, when I was in the

1 custody.

2 Q. When you were in jail?

3 A. Yes, when I was in the jail.

4 Q. Who did you contact, do you recall?

5 A. Some agent to contact some publisher.

6 Q. At the time that you contacted the person, did

7 you reach an agreement to publish this book?

8 A. No, sir.

9 Q. What did you do after you contacted this person?

10 A. I tell the government, I tell my lawyer, and they
11 ask me not to speak to anyone.

12 Q. Did you ever contact this agent or publisher
13 again at a later date?

14 A. Yes, sir.

15 Q. When was that?

16 A. Two week, two week ago.

17 Q. Did you reach an agreement of any kind at that
18 time?

19 A. No, sir, I didn't.

20 Q. Did there come a time where you took a book from
21 the office of the Alkifah Refugee Center?

22 A. The one in Jersey City, yes, I did.

23 Q. Do you recall what kind of book it was?

24 A. It was explosive book, book about bombing
25 explosive.

1 Q. Do you recall how many copies were there when you
2 took the book from the office?

3 A. Around 400 copy.

4 Q. What did you do with the book?

5 A. I kept it in my home.

6 Q. Did you later give it to anyone?

7 A. Yes, sir.

8 Q. Who was that?

9 A. Ahmed Muaih.

10 Q. That is M-U-A-I-H?

11 A. Yes, sir.

12 Q. Why did you give it to him?

13 A. I tell him simple-ize it, make it simple.

14 Q. Why did you want to make it simpler?

15 A. To send it to Bosnia. I am not sure to send it
16 to Bosnia only or to send it to Egypt, but I believe is only
17 Bosnia.

18 Q. Did you ever get the book back in a simpler form?

19 A. No, sir, I get the book same like I gave it to
20 him.

21 Q. What did you do at that point?

22 A. I kept it in my house.

23 Q. Do you still have it today?

24 A. No, sir. Later on after the World Trade Center,
25 I burn it. Me and Amir in my house, I burned the book.

1 Q. Do you mean Amir --

2 A. Abdelgani.

3 Q. What is the last name?

4 A. Amir Abdelgani.

5 Q. Did there come a time when you met a man named
6 now Mahmoud Tarig?

7 A. Yes, sir.

8 Q. When did you meet him?

9 A. In '92.

10 Q. Where did Mr. Tarig work in 1992?

11 A. He work in the presidential office in Egypt. In
12 this time I know he is working for the UN, Egyptian Mission
13 for UN.

14 Q. He was here in the United States when you met
15 him?

16 A. Yes, sir, I did.

17 Q. Did you ever agree to do anything for Mr. Tarig?

18 A. Yes, sir, I did.

19 Q. What is that?

20 A. To give him information, to say, as long as they
21 help Islam and the Muslim people.

22 Q. What kind of information did you give Mr. Tarig?

23 A. I gave information about the killing, about the
24 conspiracy of Mubarak.

25 MS. STEWART: I object, Judge.

1 THE COURT: May I see counsel at the side
2 briefly.

3 (At the side bar)

4 THE COURT: The jurors are starting to make faces
5 and shake their heads, and at this point I think I am going
6 to direct that he use the translator.

7 MS. STEWART: I would also say that at the break
8 the press said they were not getting any of it. They are
9 further removed, they are not close. Frankly I don't care.

10 THE COURT: I don't want to say something I am
11 going to regret. I am going to tell him to use the
12 translator.

13 MR. KHUZAMI: OK.

14 (In open court)

15 THE COURT: At this point I am going to direct
16 that you answer in Arabic to the translator and that the
17 translator render your answers in English.

18 THE WITNESS: OK.

19 (Continued on next page)

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1 BY MR. KHUZAMI:

2 Q. Mr. Haggag, again, do you recall what type of
3 information or what information you gave to Mr. Mohammed
4 Tarig?

5 A. Yes, I do.

6 Q. What information is that?

7 A. The operation to assassinate Mubarak.

8 Q. Did you give him any other information?

9 A. Yes, sir.

10 Q. What was that?

11 A. Some of it on Mahmoud Abouhalima.

12 MR. KHUZAMI: If I could ask the translator to
13 speak into the microphone.

14 THE COURT: Now the translator can't be heard.
15 Let's go.

16 MS. LONDON: Your Honor, could the witness also
17 speak his Arabic into the microphone?

18 THE COURT: If you would answer when you respond
19 in Arabic, if you would talk into the microphone. Thank
20 you.

21 Q. Let me repeat the question. Do you recall what
22 other information you gave Mr. Tarig?

23 A. The relationship of Mahmoud Abouhalima to the
24 World Trade Center.

25 Q. Do you remember any other information you gave

1 him?

2 A. Yes.

3 Q. What was that?

4 A. I tell him Mahmoud Abouhalima was in Egypt and
5 that he was hiding -- excuse me. Sorry.

6 THE COURT: That's all right. Go ahead.

7 THE WITNESS: Your Honor, it is hard to look at
8 the government and talk in Arabic.

9 THE COURT: Do your best.

10 A. The relation of Mahmoud Abouhalima with the World
11 Trade Center case and that he was in Egypt as a fugitive,
12 and some things on Omar Abdel Rahman.

13 Q. What things about Sheik Omar Abdel Rahman did you
14 give Mr. Tarig?

15 A. I gave him the letter of appeal that he sent to
16 the judge in order to stay in America, a letter of request
17 that he sent to the judge in order for him to be able to
18 stay in America. I gave him a copy of his green card. I
19 gave him the telephone bill that was in my home, which is
20 the sheik, Sheik Omar's telephone bill.

21 MR. BERNSTEIN: I am sorry, Judge. I can't hear
22 the interpreter.

23 A. I gave him the telephone bill that was in my
24 house and that was Sheik Omar's telephone bill.

25 Q. Mr. Haggag, did the government ask you in the

1 past whether or not you had an agreement with Mr. Mohammed
2 Tarig?

3 A. Yes.

4 (Continued on next page)

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1 MR. PATEL: Objection.

2 THE COURT: May I see counsel at the side
3 briefly.

4 (At the side bar)

5 THE COURT: Who is Mohammed Tarig and what is
6 this about?

7 MR. KHUZAMI: Mohammed Tarig is the person he
8 testified to previously that he was giving this information
9 to. The reason I am soliciting this, it is part of the
10 government's obligation because, A, he lied when he told us
11 in the past that he had no agreement with him, and B, that
12 he never got paid.

13 THE COURT: An agreement to do what?

14 MR. KHUZAMI: To provide information.

15 THE COURT: And to get paid.

16 MS. STEWART: We have no objection, Mr. Khuzami.

17 (In open court)

18 MR. PATEL: Objection withdrawn.

19 (Continued on next page)

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1 BY MR. KHUZAMI:

2 Q. Mr. Haggag, the Mohammed Tarig that you provided
3 information to at the Egyptian Mission?

4 A. Yes, sir.

5 Q. That is somebody different than Tarig Elhassan,
6 is that correct? It is not the same person, is that right?

7 A. Yes. It's a different person.

8 Q. Again, did the government ask you, prior to a
9 couple weeks ago, whether or not you had an agreement with
10 Mr. Mohammed Tarig to provide some information?

11 A. Yes.

12 Q. What did you tell the government when you were
13 asked that question?

14 A. I said that there is no agreement.

15 Q. That was a lie, is that correct?

16 A. Yes.

17 Q. Why did you say that?

18 A. It was something shameful. When you write
19 something and you are convinced by it, it was like a
20 contract, it's shameful. And I am convinced that this is
21 for the interests of the Muslims in the first place, and not
22 in the interests of one individual. To write an agreement,
23 so it's just sufficient, that the principles, the person's
24 principles are just enough.

25 Q. Did you get paid any money for the information

1 that you provided to Mr. Mohammed Tarig?

2 A. Yes.

3 Q. How much, approximately, did you get paid?

4 A. Approximately \$1,500.

5 MS. AMSTERDAM: Excuse me, your Honor. How much
6 was that? 1,500?

7 Q. For how long a period of time did you meet with
8 Mr. Mohammed Tarig?

9 A. I meet -- after my brother get killed in Egypt in
10 around almost 1992 --

11 MR. PATEL: Objection.

12 THE COURT: It was sometime in 1992?

13 A. In August 1992.

14 THE COURT: Go ahead.

15 A. Possibly a little bit before that.

16 Q. When did you stop meeting with him?

17 A. I believe before the pilgrimage, May 1993.

18 Q. Prior to a week or so ago, had the government
19 asked you whether or not you ever got paid by Mr. Mohammed
20 Tarig?

21 A. Yes.

22 Q. What did you say when you were asked that
23 question?

24 A. No.

25 Q. That was a lie, is that correct?

1 A. Yes.

2 Q. Why did you lie about that?

3 A. I believe that I did what I believed in and I did
4 what I was convinced with, and it wasn't right for me to
5 accept any money from him even after he pressed me, or
6 pressured me.

7 Q. Mr. Haggag, did there come a time that you met a
8 man named Wahid?

9 A. Yes.

10 Q. How many times did you meet a man named Wahid?

11 A. A few times.

12 Q. Do you see in the courtroom today the man that
13 you know as Wahid?

14 A. Yes.

15 Q. Would you please point him out and describe what
16 he is wearing.

17 A. The second person from the end.

18 THE COURT: Indicating Mr. Wahid Saleh. Go
19 ahead.

20 Q. Do you recall when it was, the first time that
21 you met Mr. Wahid?

22 A. Yes.

23 Q. When was that?

24 A. In a fish shop in Jersey City.

25 Q. Were you with anyone else?

1 A. Myself and Siddig.

2 Q. Did you have a conversation with Wahid at that
3 time?

4 A. Yes.

5 Q. Can you describe it?

6 A. He came right after we left the shop. The first
7 thing he said is that you guys are just, you know, sitting
8 there, sitting around, doing nothing, like women, and you
9 call yourselves jihad. So we just asked him what do you
10 want, what do you want to say? The matter ended by that he
11 saying that he wanted to transport RPG's from Jordan to
12 Egypt through somebody in the Palestine Liberation
13 Organization, but that we ourselves get it and receive it in
14 Egypt, in Sinai. It's a condition in order that he would
15 give Siddig weapons.

16 Q. It was a condition to give Siddig weapons, is
17 that correct?

18 A. Yes.

19 Q. Was there any discussion about giving Siddig
20 weapons?

21 A. There was a question from Siddig.

22 Q. What was that question?

23 A. Do you know anybody who can get us weapons?

24 Q. Was that question directed to Wahid?

25 A. Yes.

1 Q. What was his response?

2 A. His response, his direct response was that we
3 transport these weapons to Egypt, to people in Egypt, that
4 we receive these things from him after he transports them to
5 Egypt, and we receive them from him in Egypt, and based on
6 that condition, he would give the weapons to Siddig.

7 Q. What are the weapons that he would give to
8 Siddig?

9 A. It wasn't determined, the kinds of weapons.

10 THE COURT: Can you get a time for this, Mr.
11 Khuzami?

12 Q. Do you recall when this conversation took place,
13 Mr. Haggag?

14 A. At the end of 1992.

15 Q. And the weapons that Siddig may get from Wahid,
16 were those supposed to be the same weapons that would be
17 transported to Egypt?

18 A. No, a different weapons, ones going from the PLO
19 to Egypt are different weapons. What we understand from the
20 weapons that Siddig wanted was machine guns and handguns.

21 Q. Mr. Haggag, did there come a time when you met a
22 man named Rashid?

23 A. Yes.

24 Q. Do you recall when that was?

25 A. In '92, in the middle of '92.

1 MR. BERNSTEIN: Your Honor, can I ask the
2 interpreter to speak a little further away from the
3 microphone? It is coming in unclearly.

4 Q. Do you see the man that you know as Rashid in the
5 courtroom today?

6 A. I do.

7 Q. Can you point out the one and what he is wearing?

8 A. The fourth one from the side.

9 THE COURT: Indicating Mr. Hampton-El. Go ahead.

10 Q. Where were you when you first met the man you
11 know as Rashid?

12 A. He was driving Siddig to my house, to the front
13 of my house.

14 Q. Where were you at that time?

15 A. I was waiting, waiting for Siddig at the door of
16 my house.

17 THE COURT: Can we find out when this was, Mr.
18 Khuzami?

19 Q. When did this meeting occur?

20 A. The latter part of 1992.

21 Q. Did you have a conversation with Rashid at that
22 time?

23 A. I invited him to come and drink tea, and he
24 refused. He said he didn't want to go upstairs to the
25 sheik, because everything is monitored and everything is

1 recorded, but just to send my greetings to the sheik.

2 Q. Did there come a time that you attended a
3 military or training camp in Pennsylvania?

4 A. Yes.

5 Q. When was that?

6 A. The end, by the end of 1992.

7 Q. How many times did you go?

8 A. One time, one time to Pennsylvania.

9 Q. How is it that you decided to go to this training
10 camp?

11 A. After the first meeting with Rashid, myself and
12 Siddig, Siddig said that Rashid will provide us with
13 training and the money if we need, there is money coming to
14 Rashid from Saudi Arabia, for the training of jihad, for the
15 people who are wanting to go to Bosnia. Siddig started
16 talking to the people, and he offered this to me, and I
17 agreed.

18 Q. When you went to Pennsylvania, who else was there
19 that time?

20 A. There was Amir Abdelgani, Fadil Abdelgani, a
21 person named Omar the Sudani, Emad Abdou, Fadl Elmasry --

22 MR. JACOBS: I couldn't hear that.

23 THE COURT: Fadl Elmasry.

24 A. Fadl Elmasry --

25 Q. Did you know Fadl Elmasry by any other name?

1 A. I don't know his last name, but he is around the
2 sheik.

3 Q. Was he referred to by any other name?

4 A. Mohammed Fadl. And Hamdi Ali.

5 Q. Hamdi Ali is another person, he is not the way
6 that Fadl Elmasry was referred to, is that right?

7 A. Fadl Elmasry -- Hamdi Ali is with us in the
8 training.

9 Q. Anybody else that you remember at the training
10 that day?

11 A. No, I don't believe so.

12 Q. Was Siddig Ali there?

13 A. Excuse me. Myself and Siddig were there, and
14 Ubaidah, Abu Ubaidah, and then the people who are in charge
15 of the training.

16 Q. Who was your understanding were the people in
17 charge of the training?

18 A. The people who run the camp, the owners of the
19 camp.

20 Q. Do you remember any of their names?

21 A. Abdul Mohaimon, the owner of the camp, and Khidr,
22 K-H-I-D-R, who was in charge of the training.

23 Q. Mohaimon is M-O-H-A-I-M-O-N?

24 A. Yes.

25 Q. How long did this training last on the one

1 occasion that you went?

2 A. When I went to the training, it lasted two
3 nights.

4 Q. What day of the week did you go and what day of
5 the week did you return?

6 A. We went Friday night and we came Sunday, by the
7 end of the day.

8 Q. By the way, do you see the persons you know as
9 Amir Abdelgani and Fadil Abdelgani in the courtroom today?

10 A. Yes.

11 Q. Could you please point them out and describe what
12 they are wearing.

13 A. Fadil is the fourth one from the left.

14 THE COURT: Indicating Mr. Fadil Abdelgani. Go
15 ahead.

16 A. And Amir is the last one.

17 THE COURT: Indicating Mr. Amir Abdelgani. Go
18 ahead.

19 Q. Can you describe what happened when you arrived
20 at the training camp the time you attended?

21 A. First we got there and familiarized ourselves
22 with the place. Abdul Mohaimon came after awhile and spoke
23 about the camp and the training, and spoke about the
24 situation that you will encounter in Bosnia, and the
25 situation over there in Bosnia will be difficult, and we

1 will try to make some of this, create some of this
2 difficulty here in the training. He showed us papers that
3 this camp is legal and that the weapons there are legal, and
4 he spoke about what we may see in Bosnia, and we have to be
5 prepared in ourselves for anything that we might encounter.

6 Q. Was there any discussion about the weapons that
7 were going to be used there?

8 A. Yes.

9 Q. What was that?

10 A. He said that the weapons we have, they are old, a
11 little bit old, and the ones we are going to get tomorrow we
12 are going to use, and they had some --

13 MS. LONDON: I am sorry, your Honor. I am unable
14 to understand what the interpreter is saying.

15 THE COURT: Would you repeat the answer you just
16 gave. Will the interpreter please repeat.

17 MR. KHUZAMI: Perhaps I can repeat the question.

18 THE COURT: Why don't we ask the reporter to read
19 it back.

20 (Record read)

21 THE INTERPRETER: Should I complete, your Honor?

22 THE COURT: Please.

23 A. -- and they had some flaws in the weapons, the
24 ones that we are going to use tomorrow, but then Rashid in
25 the future will try to bring us new weapons.

1 Q. During the training, did you make any runs or
2 excursions to a power plant?

3 A. We did some light jogging, jogging, but the basic
4 training was that we were going to run to the electrical
5 center, the power plant, and we are going to imagine that
6 this power plant is in Serbian territory, and until we reach
7 there we are not supposed to be seen by anybody, because of
8 the snipers, and your mission is to go and explode this
9 power plant in Serbian territory. Must be very careful that
10 no one sees you, because anybody could be a sniper.

11 Q. Can you describe how it is that you ran to this
12 power plant?

13 A. We made two rows, for two columns, and we made
14 two rows and we began to run in the fields. At the
15 beginning, some of us were going to faint from the running
16 and becoming very tired, and then after I vomited. Then we
17 continued till the end. We continued until the end, until
18 we got to the power plant.

19 At the power plant, Mohaimon was waiting for us
20 at the side of the street, and we were hiding underneath the
21 tower of the power plant until he gives us the signal for us
22 to run and get to his car.

23 It was a training that would be similar to the
24 type of situation you would see in Bosnia.

25 Q. Did Mohaimon or anyone else indicate what it is

1 that you were practicing to do when you got to this power
2 plant?

3 A. I said at the beginning it was to explode the
4 power plant, as if it were in Serbian territory.

5 Q. Were the persons who were at the training camp
6 referred to by names other than their names, real names?

7 A. We all had different names.

8 Q. Who gave you those names?

9 A. Siddig and Abu Ubaidah.

10 Q. What name were you given?

11 A. At the beginning it was Abu Said, and then after
12 that they changed it and he made it Abu Suliman.

13 Q. Do you recall the names that were given to any of
14 the other people that were at the camp?

15 A. Yes.

16 Q. What was that?

17 A. Siddig called himself Khalid. Amir called
18 himself Abu Muhammed. Omar the Sudani called himself Bilal.
19 The rest of them, I don't know. I can't remember the names.

20 Q. Did there come a time during that training camp
21 that you had firearms practice?

22 A. Yes.

23 Q. When was that?

24 A. The second day we arrived.

25 Q. Can you describe how that was?

1 A. Rashid came in his car -- excuse me. Abdul
2 Mohaimon, not Rashid. Abdul Mohaimon came in his van and he
3 had the weapons. We began training on the pistols or the
4 small, very small handguns. And then we changed from the
5 small handguns to rifles, and then the rapid fire rifles
6 after that.

7 Q. Was there any other exercises using guns at the
8 training camp?

9 A. Yes.

10 Q. What was that?

11 A. Besides hitting the moving target, and to climb
12 an elevated plot of land or piece of land, and being shot
13 at, and then you go down and then you penetrate, penetrate
14 two of the people who are at the camp, and training on long
15 distance shooting.

16 MR. KHUZAMI: Your Honor, may I approach?

17 THE COURT: Yes.

18 Q. Mr. Haggag, let me show you what has been marked
19 as Government's Exhibit 812A and ask you if you recognize
20 any of the people depicted in that photograph?

21 A. The first person in this picture is Amir. Behind
22 him is Abu Ubaidah. Next to Abu Ubaidah, Siddig. After
23 Siddig, Fadil, Fadil Abdelgani.

24 Q. Mr. Haggag, I might ask you if you would please
25 take this pen and mark next to the person you see the

1 initials of that person. Take it out of the plastic.

2 A. Write the initials?

3 Q. Just write the initials of the persons that you
4 recognize.

5 Mr. Haggag, answering yes or no, do you know
6 whether or not the training continued beyond the one time
7 that you went?

8 A. Yes.

9 Q. During the with time that you were there on that
10 one occasion, was there ever any testing of any explosive
11 devices?

12 A. No.

13 Q. Mr. Haggag, do you recall whether or not there
14 were ever any disputes concerning money arising out of a van
15 rented to go to the training camp?

16 A. Yes.

17 Q. Do you recall when that was?

18 A. In '93, at the beginning of '93.

19 Q. Did you take part in a conversation about that?

20 A. Yes.

21 Q. Where was that?

22 A. At the El Salaam mosque.

23 Q. Did you later go somewhere else?

24 A. Siddig and Amir came to me and told me about the
25 money owed by Abu Ubaidah.

1 THE COURT: His question was simply whether after
2 the dispute started at the mosque you then went somewhere
3 else.

4 A. Yes.

5 Q. Where did you first have a discussion about this?

6 A. At the El Salaam mosque.

7 Q. Who was there?

8 A. Siddig, Amir, and I.

9 Q. And? I am sorry.

10 A. Siddig, Amir, and I.

11 Q. Can you tell us what that conversation was about?

12 A. About the rent of the van that Amir has rented
13 and took to the camp, and Rashid and Ubaidah has not paid
14 that up till that point.

15 Q. Did Amir ask you to do anything at that time?

16 A. Amir told me come with me and tell Rashid to pay
17 this money.

18 Q. Did you do that?

19 A. Yes.

20 Q. Where did you go?

21 A. I went with Siddig and Amir to a club that Siddig
22 has rented for training.

23 THE INTERPRETER: Interpreter stand corrected,
24 your Honor. Rashid.

25 A. We went, three of us --

1 THE COURT: Wait a second. Rashid is substituted
2 for who?

3 THE WITNESS: Rashid is substituted for Siddig.

4 THE COURT: Was it someplace that Rashid had
5 rented for training?

6 THE INTERPRETER: Yes, your Honor.

7 Q. Do you know where this place was?

8 A. In Brooklyn, but I don't know where exactly.

9 Q. What happened when you arrived at this location?

10 A. When we went to this place, we met Rashid and Abu
11 Ubaidah. We told him we have a subject we would like to
12 talk about. I spoke with Rashid and told him that the money
13 he paid for the car, the money that Amir paid for the car
14 should be repaid to him because he has responsibilities and
15 a family. At the same time while you are spending money
16 like crazy, without any limits, and you do not pay this poor
17 man his money.

18 Q. Was the dispute over the money ever resolved?

19 A. Rashid said that the money was Abu Ubaidah, and
20 Rashid said that he is keeping the money because there is a
21 dispute between him and the company about the figures --
22 Ubaidah is keeping the money --

23 THE INTERPRETER: Interpreter is standing
24 corrected, your Honor.

25 A. Ubaidah said that he is keeping the money because

1 there is a dispute between him and the company with regard
2 to the amount, but when this problem is resolved he will
3 give Amir his money. It was clear that Ubaidah is playing a
4 game to himself and he does not want to give the money to
5 Amir, and I opened the discussion saying I heard that you
6 getting \$100,000 for the training for the jihad.

7 THE INTERPRETER: Excuse me, your Honor. Could
8 you please instruct the witness to give one sentence at a
9 time.

10 THE COURT: The interpreter is having a difficult
11 time interpreting your answers, so you have to speak one
12 sentence at a time. Thank you.

13 MS. AMSTERDAM: Your Honor, could the interpreter
14 be asked to move the microphone a little closer? He is
15 sitting down and it is very hard to hear.

16 A. I told him there is \$100,000 that comes to you
17 every month. That is what I heard from Siddig and from you.
18 And now you want to photograph these people with a video, in
19 order to send this video to Saudi Arabia and get more money,
20 and until this moment you have not sent one person to
21 Bosnia, and the money that has been spent, spent all of it
22 on Abu Ubaidah and the things that he want.

23 THE COURT: And who were you saying this to?

24 THE WITNESS: I am talking to Rashid. I told
25 him, here is Amir, you owe him money, you did not pay it.

1 Siddig is not working and he has no income coming, and this
2 money goes where? I don't know. This money belongs to the
3 Muslims, it is not for you to just control it. Rashid
4 stopped me, and he told me that the money of Amir is with
5 Ubaidah and Ubaidah will pay it. As for Siddig, I am paying
6 him money, I am compensating him for the period in which he
7 is sitting idle, or unemployed.

8 Q. Let me just ask a question. After this
9 conversation inside, did you have another conversation with
10 Rashid outside?

11 A. Yes.

12 Q. Was anyone else present with this second
13 conversation with Rashid?

14 A. No, there was nobody.

15 Q. What did Rashid say to you and what did you say
16 to him?

17 A. Rashid took me aside, and he told me that the
18 money we are not wasting, you know Mahmoud the Red,
19 Al-Ahmar, Mahmoud the Red --

20 THE INTERPRETER: Excuse me, your Honor. I am
21 not sure whether he is using that as an adjective or as a
22 last name.

23 THE COURT: Would you clarify that, Mr. Khuzami.

24 MR. KHUZAMI: Yes.

25 Q. Mr. Haggag, was it you or was it Rashid that

1 referred to Mahmoud the Red?

2 A. Rashid now is talking to me. He is telling me
3 who is Mahmoud.

4 Q. Did you have an understanding of who Mahmoud the
5 Red was?

6 A. Yes.

7 Q. Who was that?

8 A. Mahmoud Abouhalima.

9 Q. Continue.

10 A. He told me we are not sitting idle, at one time
11 we were going to kill him because he have committed a
12 mistake.

13 MR. PATEL: Objection.

14 THE COURT: Overruled.

15 Q. Did Rashid tell you what the mistake was that
16 Mahmoud Abouhalima had committed?

17 MR. PATEL: Objection, your Honor. 801(b)(2)(E).

18 THE COURT: Overruled.

19 A. He said that Mahmoud was waiting in a taxi in the
20 wrong place --

21 (Continued on next page)

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1 MR. PATEL: Your Honor, could we approach?

2 THE COURT: Come on up.

3 (At the side bar)

4 MR. PATEL: Your Honor, this is double hearsay at
5 best, not in furtherance of the conspiracy.

6 THE COURT: It certainly is in furtherance --

7 MR. KHUZAMI: I think it certainly is in
8 furtherance of the conspiracy, one member confiding in
9 another member to convince him that activities that are
10 going on currently are proper and that money is being spent
11 for them.

12 MR. STAVIS: Your Honor, the statement is, so
13 that we have it clear for the record, that Mahmoud told
14 Rashid who told Haggag who is now on the stand -- excuse me.
15 Please allow me to finish. We cannot confront Rashid
16 concerning the accuracy of what --

17 THE COURT: I know what hearsay is, all right? I
18 don't need to learn a lesson, what hearsay is. It's a
19 statement by Rashid telling this witness that money is being
20 spent properly by Mahmoud Abouhalima, it is going to Mahmoud
21 Abouhalima, who was once out on the hook because he was
22 waiting in the wrong place.

23 MR. STAVIS: It refers to the Kahane homicide,
24 you recognize.

25 THE COURT: I know precisely what it refers to.

1 MR. PATEL: I don't think there is any discussion
2 about money being spent on Mahmoud.

3 MR. KHUZAMI: I think the witness' testimony is
4 that to prove that we are conducting proper jihad
5 activities, let me tell you about what happened in the past,
6 we almost killed Mahmoud because he wasn't in the right
7 place to pick up Mr. Nosair at the Kahane murder, to show
8 the legitimacy of the organization. It is not a statement
9 by Mahmoud to this witness, it is a statement by Rashid to
10 this witness.

11 MR. WASSERMAN: One point of clarification from
12 your Honor, since my client is not charged in any conspiracy
13 with reference to Kahane and since the Kahane murder was
14 taken out as an overt act vis-a-vis the seditious
15 conspiracy, what conspiracy are we talking about here --

16 THE COURT: The conspiracy that goes beyond even
17 the seditious conspiracy charged in Count 1. The theory of
18 conspiracy is agency. If people are involved with one
19 another in a large group of activities, some of which are
20 seditious and others of which are not, the fact that those
21 acts may not be charged as part of the seditious conspiracy
22 doesn't make it any less an agreement.

23 MR. STAVIS: The confrontation problem remains,
24 your Honor. My client is being implicated by a third-party
25 hearsay statement and we are unable to confront it.

1 THE COURT: Yes. Well, people should be careful
2 with whom they associate.

3 MS. AMSTERDAM: Your Honor, could we ask the
4 interpreter to stand up? I think everybody else is having a
5 hard time hearing him. I want you to speak five words at a
6 time -- excuse me.

7 THE COURT: There is not a large market for
8 Egyptian interpreters. What can I tell you.

9 MS. AMSTERDAM: Apparently that is true.

10 (In open court)

11 THE COURT: The objection is overruled. Do you
12 want to reframe the question.

13 MR. KHUZAMI: Sure.

14 (Continued on next page)

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1 BY MR. KHUZAMI:

2 Q. Mr. Haggag, did Rashid describe to you the
3 mistake that Mahmoud the Red had made when he was talking to
4 you that day?

5 A. Yes.

6 Q. What was that?

7 A. He waited at the wrong place, while he was
8 waiting for El Sayyid. El Sayyid jumped in another taxi.
9 Mahmoud was supposed to wait for him in a taxi, but he stood
10 at the wrong place.

11 Q. Did you have an understanding of where it was
12 that Mahmoud had waited in the wrong taxi?

13 MR. PATEL: Objection.

14 THE COURT: Sustained, unless you get the source.

15 Q. Did Rashid indicate to you at what event Mahmoud
16 had been in the wrong place and Sayyid had gotten in the
17 wrong taxi?

18 MR. PATEL: Objection.

19 A. In the killing of Kahane.

20 Q. Mr. Haggag, did there come a time when Siddig Ali
21 spoke to you about testing an explosive device?

22 A. Yes.

23 Q. Do you recall when that conversation occurred?

24 A. Yes.

25 Q. When?

1 A. Early in 1993.

2 Q. Was it a conversation between you and Siddig
3 alone or were others involved?

4 A. Siddig and I only.

5 Q. Where did this conversation take place?

6 A. In my house.

7 Q. What did Siddig say to you and what did you say
8 to him?

9 A. He came and asked me about the explosives book.
10 I told him I lost it. He asked me do you know anybody who
11 knows about explosives? I said no. I asked then what is
12 the reason, said that he met Mahmoud in front of the El
13 Salaam mosque today, and he asked him if he knows anybody
14 that knows about explosives. I told him I believe that
15 Mahmoud is a liar, Mahmoud is jealous because his brother is
16 willing to go to Bosnia while he is sitting, don't believe
17 him and ignore him.

18 THE COURT: Can we get the timing on this?

19 MR. KHUZAMI: Yes.

20 Q. Do you recall when this conversation took place?

21 A. The beginning of 1993.

22 Q. Did you help Siddig Ali to test an explosive
23 device?

24 A. No.

25 Q. Did he indicate to you that he was going to make

1 other efforts to find someone to help test an explosive
2 device?

3 A. Yes.

4 Q. What did he say?

5 A. He said he will go and he will see Sheik Rashid,
6 Sheik Rashid has experience in these matters. I told him
7 don't waste Sheik Rashid's time, and don't believe Mahmoud.

8 Q. By Sheik Rashid, do you mean the same person that
9 you referred to as Rashid earlier?

10 A. Yes, sir.

11 THE INTERPRETER: Excuse me, your Honor.
12 Instruct him not to speak in two languages.

13 THE COURT: All right, let's go.

14 Q. Mr. Haggag, did you later have a conversation
15 with Siddig Ali about Rashid and the test explosive?

16 A. Yes.

17 Q. How long after the first conversation did the
18 second one occur?

19 A. When Mahmoud was arrested in Egypt --

20 Q. Do you recall --

21 A. Excuse me. When Siddig was trying to prove to me
22 that Mahmoud is the one who did it, who did the explosion at
23 the World Trade Center.

24 Q. Do you recall the month, approximately, when it
25 is you had this conversation about Rashid and the test

1 explosion?

2 A. The beginning of April or the end of March.

3 Q. That is 1993?

4 A. Yes.

5 Q. What did Siddig tell you about Rashid and the
6 test explosives?

7 A. He said do you remember when I told you about the
8 explosion test or the test of explosions, and I said yes --

9 THE INTERPRETER: Excuse me, your Honor. Please
10 instruct the witness to give me one sentence at a time,
11 because he keeps saying he said, he answered, he said, he
12 answered.

13 THE COURT: Please give only one sentence at a
14 time.

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 A. Siddig said, do you remember when I talked to you
18 about the test of Mahmoud, and that I will go to Siddig to
19 ask him about it, and I will go to Rashid and ask him if he
20 knows someone. What he said to me exactly is that this test
21 they did. He did it in a far-away place in Pennsylvania.
22 Afterwards, in another day, he came and told me that no,
23 they did not do the test. So he said it twice. Once he
24 said they did it, Rashid and Mahmoud, and in another time he
25 said no, they did not do it.

1 Q. When you had this first conversation with Siddig,
2 when he told you about going to Rashid for the test
3 explosion, did Siddig tell you what Rashid's response was
4 when Siddig asked him about it?

5 A. Yes.

6 Q. What was that?

7 A. Rashid told him that he does not understand
8 explosives, this type of explosives, he understands mines
9 and hand grenades, but he will look for someone who knows
10 about it, if he saw what they want.

11 Q. Did Siddig tell you that Rashid had actually
12 participated in the test explosion?

13 A. The concept of what was said, that Mahmoud and
14 Rashid did it once.

15 Q. Mr. Haggag, did there come a time when you talked
16 to Siddig Ali about who was responsible for the bombing of
17 the World Trade Center?

18 A. Yes.

19 Q. When did you have that conversation with Siddig?

20 A. A week after the arrest of Salameh.

21 Q. Do you recall where it is this conversation took
22 place?

23 A. After we left the mosque in downtown New York.

24 Q. Was there anyone else present?

25 A. No.

1 Q. What did Siddig say to you and what did you say
2 to him?

3 A. Siddig told me, do you know who did it? And I
4 said, did what? He said the one who did the explosion at
5 the World Trade Center. I said who? He said Mahmoud. I
6 told him, is it possible that Mahmoud would do something
7 like that? I told him, this is a crime. Mahmoud is a
8 religious man, he would not do such a thing. He kept
9 repeating, he did it, he did it, God is great, he did it. I
10 told him, are you hallucinating? He told me, listen, don't
11 you believe me? I am going to prove it to you.

12 Q. Did there come a time when you had a second
13 conversation with Siddig Ali about this?

14 A. Yes.

15 Q. Where was that?

16 A. In his house, in the house of Siddig.

17 Q. Was anyone else present?

18 A. Yes.

19 Q. Who?

20 A. Mohammed Abouhalima.

21 Q. Mohammed is Mahmoud's brother, is that correct?

22 A. Yes.

23 Q. How soon after the conversation inside the mosque
24 did this one occur?

25 A. I believe two days.

1 Q. What was said at this meeting?

2 A. In this meeting Mohammed Abouhalima told Siddig,
3 can you trust him so much that you can tell him?

4 Q. Who?

5 A. Means me.

6 Q. The "him" means you?

7 A. Yes.

8 Q. OK.

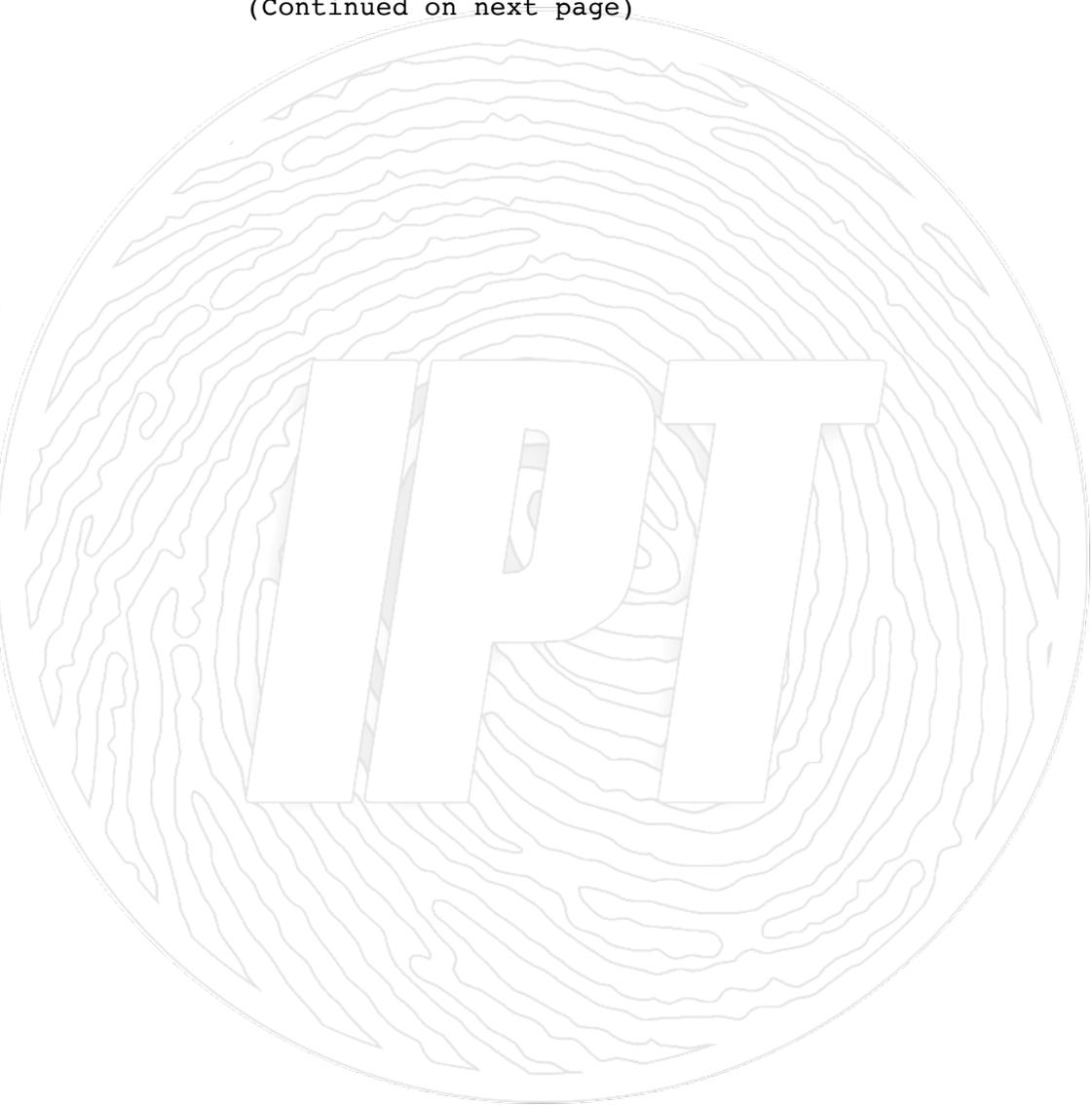
9 A. He said yes, I trust him. Siddig said that.
10 Then Siddig directed the discussion to me, and he told me
11 yes, Mahmud did it, and I have just taken him to the
12 airport, and I gave him letters to El Turabi --
13 T-U-R-A-B-I -- and the people in the Sudan, and some
14 officials in the Sudan, in order to help him. I told him
15 where did you take him to? He said he is gone to Saudi
16 Arabia.

17 I looked at Mohammed Abouhalima and told him,
18 what Siddig is saying is correct? He said, he participated
19 in this operation. I told him, what is the motive behind
20 it? I said, he is crazy, crazy, he doesn't know what he is
21 doing. I told him, do you know according to Islam what will
22 happen to this guy? He said what? I said, they would kill
23 him and confiscate all his money to pay, to compensate
24 people for the losses. He said, what will I do now? I must
25 help him. I told him, he is staying in Saudi Arabia, and is

1 he in contact with you? He said yes, he contacts me on the
2 telephone, public telephone. I told him OK, next time give
3 me his telephone number and his address, and let us see if
4 we can see somebody to help him.

5 (Continued on next page)

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1 THE COURT: Could you come to a convenient break
2 point in the next five minutes.

3 MR. KHUZAMI: I think this would be fine right
4 here, your Honor.

5 THE COURT: Ladies and gentlemen, we are going to
6 break, from your standpoint, for the day. Please leave your
7 notes and other materials behind. Please don't discuss the
8 case and we will see you tomorrow morning at 9:30.

9 (Jury excused)

10 (Witness excused)

11 THE COURT: Mr. Stavis had raised the question of
12 a Massiah hearing, which I discussed briefly with Miss
13 Stewart in the robing room and with the government. I guess
14 my question is whether, notwithstanding that we are not
15 supposed to sit this afternoon, are there any counsel
16 immediately involved in that issue that would be available
17 at some point late this afternoon, and if so when?

18 MR. SERRA: Your Honor, I take it that the ball
19 is first in the government's court as to against whom they
20 intend to offer statements which arguably violate Massiah.

21 THE COURT: It seems to me the ball is first
22 in -- you don't know against whom the statements are being
23 offered?

24 MR. SERRA: Your Honor, I had a conversation with
25 Mr. Khuzami on Saturday. I am just being sure. As I

1 understand it, the government's present intention is not to
2 offer any statements Mr. Alvarez made in the MCC. I just
3 want to confirm that before answering the court's question.

4 MR. KHUZAMI: The two statements which the
5 government would solicit concern statements made by Mr.
6 Nosair, which also refer to Sheik Omar Abdel Rahman, and the
7 statement by Mr. Mohammed Saleh.

8 MR. SERRA: Thank you, Judge.

9 THE COURT: Mr. Jacobs, you had raised your hand.

10 MR. JACOBS: I am always ready to proceed
11 whenever your Honor wants, but I don't know where the
12 cross-examination is going to go. If your Honor wants to
13 conduct it this afternoon, that is fine with me, is what I
14 meant.

15 THE COURT: Miss Stewart?

16 MS. STEWART: Mr. Khuzami had also made known
17 orally to us what he believed the statement would be, which
18 was that Mr. Nosair had told him he had sworn fealty, I
19 think was the word, F-E-A-L-T-Y, to Sheik Omar, but that the
20 government did not consider that a criminal act subject to a
21 Bruton ruling by your Honor. Since the government did not
22 consider that a criminal act, I then withdrew any Bruton
23 consideration.

24 THE COURT: Right.

25 MR. KHUZAMI: I don't want to be laboring under

1 the misimpression that the government won't be arguing that
2 is significant in summation. The government was saying that
3 it wasn't incriminating on its face for Bruton purposes.

4 THE COURT: In any event, would you be available
5 at 4:00?

6 MS. STEWART: Would I, your Honor?

7 THE COURT: Yes.

8 MS. STEWART: I don't know the answer to that,
9 Judge, to be very candid with you. I don't think appellate
10 courts sit much after 4.

11 THE COURT: Do you know where on the calendar
12 this matter is?

13 MS. STEWART: I have no idea.

14 THE COURT: And they start at what time?

15 MS. STEWART: 2.

16 MR. RICCO: It is different from the Court of
17 Appeals, your Honor. You don't know where you are arguing
18 until you get to the Appellate Division.

19 THE COURT: I would like to try to do it if you
20 can be here.

21 MR. SERRA: Your Honor, from the context of this
22 conversation, is the court suggesting that counsel against
23 whose clients the government does not intend to offer such
24 statements should be present also?

25 THE COURT: Should not?

1 MR. SERRA: Should be.

2 THE COURT: That is your option. I don't see the
3 need at a Massiah hearing to have any lawyers present other
4 than those representing clients against whom the statements
5 are offered.

6 MR. SERRA: Frankly, your Honor, if I were
7 present and I stood up to cross-examine a witness, I suppose
8 your Honor would ask me why I thought I had standing to do
9 that.

10 THE COURT: I would probably put it even more
11 sharply than that.

12 MR. SERRA: Thank you, Judge.

13 THE COURT: Mr. Jacobs?

14 MR. JACOBS: No.

15 THE COURT: What is the outcome? Available at 4?

16 MR. STAVIS: No, I don't believe Miss Stewart is
17 available.

18 MS. STEWART: No. We were trying to see when we
19 would be available. I can't answer the court affirmatively.

20 THE COURT: I would like to make a try at 4. I
21 would ask you perhaps when you get uptown and find out when
22 this is being argued, if you could perhaps call -- I will
23 give you a number -- and let me know. But I would like to
24 try for 4:00 or as close as we can get. OK?

25 MS. STEWART: I guess.

1 THE COURT: OK or not, we will try for 4.

2 MS. AMSTERDAM: Just so the marshals understand,
3 the defendants who are not involved, including my client,
4 would like to absent themselves to the MCC.

5 THE COURT: The only clients that have to be
6 here -- again it is their option, but the clients affected
7 by this are Mr. Nosair, Dr. Abdel Rahman, and Mr. Mohammed
8 Saleh. Those are the three.

9 MS. AMSTERDAM: Thank you.

10 THE COURT: Obviously if any of those people
11 would prefer not to be here, that is their choice.

12 MS. STEWART: Yes, Judge, the sheik would waive
13 his presence.

14 THE COURT: May I ask him through the interpreter
15 whether that is satisfactory?

16 DEFENDANT ABDEL RAHMAN: Yes.

17 MR. JACOBS: May I confer with counsel for a
18 minute?

19 THE COURT: Yes.

20 MR. JACOBS: Your Honor, I am not sure how the
21 government intends to proceed at 4:00, but I want to call
22 the witness Haggag and ask him some questions, since he is
23 the one testifying to the statements.

24 THE COURT: Understand this, there are discrete
25 issues involved here.

1 MR. JACOBS: I understand.

2 THE COURT: The issue that I would like to hear
3 first is the question of whether he was or wasn't an
4 informant at the time the statements were made. That is the
5 issue I would like to hear first.

6 MR. STAVIS: That depends somewhat on, to
7 paraphrase Senator Baker, what Mr. Haggag knew and when he
8 knew it.

9 THE COURT: No, it doesn't.

10 MR. STAVIS: Under Henry, I submit to the court
11 that it does.

12 THE COURT: I read Henry.

13 MR. JACOBS: My position is when did he first
14 have contacts with law enforcement, what the contacts were,
15 and did he go back to MCC on the base of those contacts and
16 have conversations. I don't care what the agents say, I
17 would like to hear Haggag on the point so we can have
18 appropriate rulings. We have indications that this person
19 had a lot of contacts with the FBI and I think we have a
20 right to hear his testimony under oath, when he had this
21 conversation with my client what his belief was that the FBI
22 wanted, and I don't think having hearsay from some case
23 agent is going to resolve that issue.

24 THE COURT: I didn't say it did. I was focusing
25 your attention on what the issue is.

1 MR. JACOBS: My position is, understanding
2 Massiah and the other cases, I want Haggag to testify.

3 MR. STAVIS: The other issue, Mr. Haggag
4 testified this morning that he wasn't good with dates and
5 there is an issue as to when the statement was made in
6 relation to when Mr. Haggag became an agent, your Honor,
7 which is another reason that we would want to call Haggag as
8 a witness.

9 MR. JACOBS: The representation I have is that it
10 was certainly made after the first proffer session. With
11 that in mind, Massiah would tick in, since the
12 representation was made after the first proffer session -- I
13 am not saying that was his first contact with the Department
14 of Justice, but at least the government is being told
15 formally it is after the first proffer session. So my
16 position is that I would like to hear Haggag's testimony.

17 MR. KHUZAMI: Mr. Haggag will be available if his
18 testimony is relevant.

19 THE COURT: See you at 4:00.

20 (Luncheon recess)

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AFTERNOON SESSION

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4:00 p.m.

(In open court; jury not present)

THE COURT: What is the order of battle?

MR. KHUZAMI: The order, your Honor, is, the government will call Abdo Mohammed Haggag as its first and perhaps only witness.

MR. PATEL: Your Honor, we may call Mr. Schoenbach, who is present in the courtroom, as a witness. I have no objection and apparently the government has no objection to his remaining in the courtroom.

THE COURT: Does anybody have any objection to Mr. Schoenbach remaining in the courtroom?

MR. KHUZAMI: No objection.

ABDO MOHAMMED HAGGAG, resumed.

THE COURT: You are still under oath. Go ahead, Mr. Khuzami.

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Haggag, what date were you arrested?

A. July 17, '93.

Q. The day before you were arrested, did you meet with any representatives of the government?

A. Yes, sir.

Q. Where was that?

1 A. In the attorney's office, USA's office, Mr. Andy
2 McCarthy's office.

3 Q. During that meeting, did the government ask you
4 questions and did you provide answers?

5 A. Yes, sir, I did.

6 Q. At the conclusion of that meeting, had you
7 reached any agreement with the government to be an
8 informant?

9 A. No, sir.

10 MR. JACOBS: Object, your Honor, did he reach an
11 agreement to be an informant. I object to that.

12 THE COURT: You do?

13 MR. JACOBS: Yes.

14 MR. STAVIS: It's a legal conclusion.

15 MR. JACOBS: It is a legal conclusion as to when
16 he becomes an informant.

17 THE COURT: It goes to his state of mind anyway.
18 I am going to overrule the objection. But thank you.

19 Q. Mr. Haggag, had you reached any understanding
20 that you would provide information to the government from
21 any of the other defendants in the case as of July 16?

22 A. No, sir.

23 MR. JACOBS: Object to the word understanding,
24 because he was provided with information. That is again a
25 legal conclusion.

1 THE COURT: Mr. Jacobs --

2 MR. JACOBS: I am sorry, your Honor. I object to
3 the characterization.

4 THE COURT: Thank you. Overruled.

5 Q. Prior to July 16, had you had any discussions
6 with any members of the FBI?

7 A. Yes, sir.

8 Q. At any time prior to July 16, had you been asked
9 by any member of the government to provide information on
10 other defendants in the case?

11 A. No, sir.

12 Q. Did you agree to work, at any point prior to July
13 16 did you agree to work from that point forward to collect
14 information from other defendants in the case?

15 A. No, sir.

16 Q. Did there come a time where you had a second
17 meeting in the United States Attorney's Office?

18 A. Yes, sir.

19 Q. Were you represented by counsel at that time?

20 A. Yes, sir.

21 Q. Who was that?

22 A. Mr. -- I forgot the name -- London.

23 Q. Mr. London?

24 A. Yes, sir.

25 Q. Where did you meet with Mr. London and the

1 government?

2 A. In Mr. Andy McCarthy's office.

3 Q. At the conclusion of that meeting, had you been
4 told --

5 THE COURT: Can we establish when that took
6 place?

7 MR. KHUZAMI: Sure. I am sorry, your Honor.

8 Q. How soon after the first meeting in the United
9 States Attorney's Office was the second one with Mr. London?

10 A. I believe it was a week or 10 days after I was
11 arrested.

12 MR. STAVIS: We will stipulate it was July 23.

13 MR. KHUZAMI: July 23, fine.

14 MR. STAVIS: 26.

15 MR. KHUZAMI: 26.

16 Q. At the conclusion of that meeting, had you
17 reached any agreement with the government to provide any
18 information from that point forward on any of the defendants
19 in the case?

20 A. No, sir.

21 Q. Did you in fact agree to provide any information
22 from that point going forward on defendants in the case?

23 A. No, sir.

24 Q. Do you recall having a discussion in the MCC with
25 Mohammed Saleh?

1 A. Yes, sir.

2 Q. Do you recall when that discussion took place?

3 A. Sometime before my indictment.

4 Q. Do you recall the date of your indictment?

5 A. I believe it is August 25.

6 Q. Where in the MCC was this conversation with
7 Mohammed Saleh?

8 A. It was in the cage.

9 Q. The cage?

10 A. Yes, where we have recreation.

11 Q. What did you say to Mohammed Saleh and what did
12 he say to you?

13 A. I was talking about how Siddig, how Siddig stupid
14 and how this Emad Salem human being was no -- was nothing
15 good inside him, and Mohammed Saleh tell me word by word,
16 they tell me this man, this Siddig, and Emad Salem, when
17 they come to me, I take Siddig, I take him on the side and I
18 tell him I was very suspicious about Emad Salem and I tell
19 him this guy is look like informer, and Siddig tell him
20 trust him, like you trust him, he is -- (Indicating)

21 Q. You made a gesture with your thumb up. Is that a
22 gesture that Mr. Mohammed Saleh made when he was speaking
23 with you that day?

24 A. This what Mohammed Saleh said when Siddig tell
25 him about Emad Salem, he said he's (indicating) OK.

1 Q. Did you have this conversation with Mohammed
2 Saleh as a result of any request by the government?

3 A. No, sir. It was normal talking between
4 everybody.

5 Q. Did there come a time that you had a conversation
6 with Mr. Nosair?

7 A. Yes, sir.

8 Q. Do you recall when that was?

9 A. I believe it is a week, week or so after my
10 indictment.

11 Q. Where was that conversation?

12 A. On the top of the roof.

13 Q. That is at MCC?

14 A. In MCC, yes.

15 Q. Can you describe what you said to Mr. Nosair and
16 what he said to you?

17 A. It was me and Nosair and Mohammed Abouhalima, and
18 I tell him how in the world did you guys help Omar Rahman to
19 come in here and do you know he has the worst reputation,
20 any worst reputation among the scholars.

21 Q. Continue.

22 A. And Mr. Nosair tell me is not, the story behind
23 this is long story, I'm going to tell you sometime in the
24 future, but when he come in here, when he come in here we
25 went and we get him from the airport where they came to the

1 home. I know is going to happen between him and Moustafa
2 Shalabi, they going to happen some problem between him and
3 Moustafa Shalabi because each one has different ideology.
4 Each one of them has different view for Islamic war and they
5 going to have clash some day. And I decide not to involve
6 in this clash.

7 Q. When you say I, who is the I that did not want to
8 be involved?

9 A. That is Nosair talking just now. After we we get
10 him to home I went to his house I give him baya'a --

11 THE COURT: First can we get a spelling. Will
12 the translator spell the word.

13 THE INTERPRETER: B-A-Y-A apostrophe A.

14 A. I give him baya'a and I tell him you guys, I am
15 taking care of the military wing, and I have nothing to do
16 with your problem between you, between each other, I know I
17 have nothing to do to involve between you.

18 Q. What does it mean to give baya'a?

19 A. That mean to give baya'a is to -- the
20 understanding of the baya'a is to make swearing you going to
21 give him like you going to give your blood, you going to
22 give your life for him or for what he think. That's the
23 understanding, baya'a, in Arabic.

24 Q. During the conversation did Mr. Nosair indicate
25 that he had some sort of title?

1 A. Yes, sir.

2 Q. What was that?

3 A. That I am going to take care of the military
4 wing, military wing in the gamiya, and I don't have any
5 involvement in your problem, I don't have anything to do
6 with any problem between you guys.

7 Q. Mr. Haggag, did he refer to himself as having any
8 title in this conversation?

9 A. He refer to himself like he has, the title is he
10 taking care of the military wing. It's the same like the
11 head of the military wing.

12 Q. Did you have this conversation with Mr. Nosair as
13 a result of any request by the government to collect
14 information on any of the defendants?

15 A. No, sir.

16 Q. As of the date of this conversation, did you
17 consider yourself to be an informant for the government?

18 A. No, sir. I was under indictment and I was trying
19 to help --

20 Q. As of the date of this conversation, had you
21 reached any agreement with the government, written or
22 otherwise, to provide information on the defendants?

23 A. No, sir.

24 Q. After this conversation, did you later have
25 another meeting in the United States Attorney's Office?

1 A. Yes, sir.

2 Q. Do you recall when that was?

3 A. The actual date I cannot remember, but --

4 Q. Do you remember the date that you were taken out
5 of the MCC?

6 A. I believe sometime in November '93.

7 Q. Do you recall how long before you were taken out
8 of the MCC that you had this meeting in the United States
9 Attorney's Office?

10 A. Two weeks before.

11 Q. Who was at this meeting in the United States
12 Attorney's Office?

13 A. Mr. Andy McCarthy, Mr. Robert Khuzami, and my
14 lawyer, and others.

15 Q. Who was your lawyer at that time?

16 A. Mr. Larry Schoenbach.

17 Q. As a result of that meeting or afterwards, were
18 you given any instructions regarding contact with the
19 defendants in the MCC?

20 A. Yes, sir.

21 Q. What were you told?

22 A. Not to talk about the case to anyone, not to ask
23 questions about the case with anyone, not to involve with
24 any discussion about the case.

25 Q. Did you later reach an agreement with the

1 government to cooperate?

2 A. Yes, sir.

3 Q. When in your mind did you begin to cooperate with
4 the government?

5 A. I believe when I was in Otisville, I believe that
6 in November 1993 when I was in Otisville.

7 Q. Did you go to Otisville directly from MCC?

8 A. Yes, sir.

9 MR. KHUZAMI: No further questions, your Honor.

10 THE COURT: Mr. Patel.

11 CROSS-EXAMINATION

12 BY MR. PATEL:

13 Q. Mr. Haggag, when was the first time you spoke
14 with the FBI?

15 A. In April 1993.

16 Q. Where was that?

17 A. Was front of my job, in Prudential Security.

18 Q. Down on Gold Street here in Manhattan?

19 A. Yes, sir.

20 Q. It was out on the street?

21 A. Yes, sir.

22 Q. Did they take you anyplace?

23 A. No, sir.

24 Q. After you met with the FBI, you called an
25 attorney, is that fair to say?

1 A. Yes, sir.

2 Q. You called your immigration attorney?

3 A. Can you repeat, please.

4 Q. Did you call the attorney that you had consulted
5 about immigration matters?

6 A. I believe I called Mr. Kuby.

7 Q. Mr. Kuby?

8 A. Yes.

9 Q. Did Mr. Kuby go with you to meet the FBI?

10 A. Excuse me, sir. I call Mr. Kuby after the FBI
11 called me by the phone.

12 MR. PATEL: I am sorry. I didn't understand the
13 answer.

14 THE COURT: He said, "I called Mr. Kuby after the
15 FBI called me by the phone," I think meaning by the
16 telephone. I think he means some other occasion but you can
17 explore that.

18 MR. PATEL: Thank you, your Honor. I will
19 explore that a little bit.

20 Q. You spoke to the FBI agents on the street.

21 A. Yes.

22 Q. How long did you talk to them?

23 A. They come and they asking me, they say there is
24 mess going around and to please we need your help. I tell
25 him it is against my religion to deal with you, and I try to

1 be nice but not to talk with them.

2 Q. So the FBI told you that they needed your help in
3 April of '93?

4 A. Yes, sir.

5 Q. You understood by them when they said that they
6 needed your help, that they wanted you to cooperate with
7 them?

8 A. My understanding that they need my help anyhow,
9 my understanding that they need me to work for them, and I
10 cannot work for them.

11 Q. You work for them now, though.

12 A. No, sir, I am not working for them now.

13 Q. You work for the government now.

14 A. I am testifying to say the truth, that's all.

15 Q. It is not against your religion now to cooperate
16 with the government.

17 MR. KHUZAMI: Objection.

18 THE COURT: Sustained.

19 Q. The FBI called you at home at some point after
20 this?

21 A. That's before this. They call me first in the
22 home.

23 Q. When was the first time you spoke with an FBI
24 agent either in person or over the telephone?

25 A. By the phone it was early April, maybe early

1 April, somebody called me on the phone.

2 Q. Sometime around the first week in April of 1993,
3 an FBI agent calls you at home on the telephone?

4 A. Yes, sir.

5 Q. And he asked you to come down and speak with him
6 in the office?

7 A. Yes, sir.

8 Q. Did you tell him that you would come down and
9 meet him?

10 A. I tell him I come down and I meet him, yes.

11 Q. You never went down and met him, though?

12 A. No, sir.

13 Q. You called Mr. Kuby, correct?

14 A. Yes, sir.

15 Q. After you got off the phone with the FBI agent,
16 you called Mr. Kuby?

17 A. Yes, sir.

18 Q. And you never went down to speak with the FBI
19 agent?

20 A. Yes, sir.

21 Q. But they came to talk to you, what, two weeks
22 later?

23 A. Yes, sir.

24 Q. And they met you outside your job?

25 A. Yes.

1 Q. When you spoke to them the first time, did you
2 tell them where you worked?

3 A. Where I am working?

4 Q. Yes.

5 A. No, sir.

6 Q. In July 16, 1993, you went to Mr. McCarthy's
7 office, is that correct?

8 A. Yes, sir.

9 Q. That is the first time you went to Mr. McCarthy's
10 office?

11 A. Yes, sir.

12 Q. Had you been to the FBI office at any time prior
13 to that?

14 A. No, sir.

15 Q. Did Mr. McCarthy call you up and ask you to come
16 to his office?

17 A. No, sir.

18 Q. Did some agents come to your home and ask you to
19 go to Mr. McCarthy's office?

20 A. Yes, sir.

21 Q. Did they take you to Mr. McCarthy's office?

22 A. Yes, sir.

23 Q. Did they take you in handcuffs?

24 A. No, sir.

25 Q. Did you voluntarily agree to go with them?

1 A. Yes, sir.

2 Q. Before you voluntarily agreed to go with them,
3 did they tell you that you can either come with us
4 voluntarily or that they were going to arrest you?

5 A. No, they don't mention anything about arrest.

6 Q. They say could you please just come with us?

7 A. He said the USA attorney want to see you.

8 Q. Did you ask to call Mr. Kuby?

9 A. No, sir.

10 Q. Did they tell you that you had the right to call
11 Mr. Kuby?

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 Q. When these agents -- by the way, how many agents
15 brought you to Mr. McCarthy's office on the 16th?

16 A. Two.

17 Q. Do you know who they are?

18 A. Yes, sir.

19 Q. Who are they?

20 A. I believe it's Steve and David.

21 Q. Do you know their last names?

22 A. No, sir.

23 Q. They picked you up at work?

24 A. No, from home.

25 Q. And you were living in Jersey City at that time?

1 A. Yes, sir.

2 Q. On Fairview Avenue?

3 A. Yes.

4 Q. When you got to Mr. McCarthy's office, did Mr.
5 McCarthy tell you you could call a lawyer?

6 MR. KHUZAMI: Objection.

7 THE COURT: Sustained.

8 Q. Did you have a lawyer with you at the time you
9 met with Mr. McCarthy?

10 A. No, sir.

11 Q. Mr. McCarthy gave you a form to sign, did he not?

12 A. Yes, sir.

13 Q. Did you read that form?

14 A. I ask him to translate it.

15 Q. Was there an interpreter there?

16 A. They get some interpreter on the phone.

17 Q. On the phone?

18 A. Yes.

19 Q. How did that work? How do you translate a
20 document --

21 MR. KHUZAMI: Objection, relevance.

22 THE COURT: Sustained.

23 Q. Someone translated the document for you?

24 A. Yes.

25 Q. They hadn't given you a subpoena to come to Mr.

1 McCarthy's office, had they?

2 A. No.

3 Q. Did Mr. McCarthy tell you that you were in a lot
4 of trouble?

5 A. No, sir.

6 MR. KHUZAMI: Objection.

7 THE COURT: Sustained.

8 Q. Mr. McCarthy asked you questions about this case?
9 Yes?

10 A. Yes, sir.

11 Q. And he asked you about the activities of other
12 people? He asked you about Mr. Nosair?

13 A. Yes, sir.

14 Q. He asked you about Dr. Abdel Rahman? Sheik Omar?

15 A. Yes, sir.

16 Q. He asked you about Siddig?

17 A. Yes.

18 Q. He asked you about Ibrahim El-Gabrowny?

19 A. I believe not.

20 Q. He asked you about other defendants in the room?

21 MR. KHUZAMI: Objection to form.

22 THE COURT: Sustained.

23 Q. He asked you about Mohammed Saleh?

24 A. No, sir.

25 Q. Did Mr. McCarthy tell you that he wanted you to

1 cooperate with the government?

2 A. No, sir.

3 Q. Is it fair to say that you understood after
4 speaking with Mr. McCarthy that they were interested in the
5 information that you could provide about codefendants?

6 A. No, sir.

7 Q. You didn't understand that?

8 A. No.

9 Q. Why do you think Mr. McCarthy had you in his
10 office?

11 MR. KHUZAMI: Objection.

12 THE COURT: I will allow that. You can answer.

13 A. I know his -- this minute I know he just wanted
14 to --

15 THE COURT: Don't tell us what you know now.
16 Tell us what you thought then.

17 THE WITNESS: Yes, that's what I mean.

18 THE COURT: I see, at that moment.

19 A. At that moment when I in his office I know he
20 asking about what happened with the Mubarak plot.

21 Q. He wanted information from you?

22 A. Yes.

23 Q. And you knew he wanted information from you.

24 A. Yes.

25 Q. And he wanted information not only about you but

1 about other people too, right?

2 A. He asking me all the information about myself and
3 my involvement in this matter.

4 Q. And he also asked you about other people.

5 A. Yes.

6 Q. So you knew he wanted information about other
7 people on July 16.

8 A. Yes.

9 Q. After you left Mr. McCarthy's office, you were
10 arrested, right?

11 A. Yes, sir.

12 Q. Right there in Mr. McCarthy's office you were
13 arrested, is that fair to say?

14 A. Yes, sir.

15 Q. You were not formally arrested until the 17th,
16 the next day, is that correct?

17 A. Yes, sir.

18 Q. That means that you weren't processed by the
19 marshals until the 17th, is that correct?

20 MR. KHUZAMI: Objection, relevance.

21 THE COURT: Sustained.

22 Q. Where did you spend the night of the 16th?

23 A. Spent in the jail.

24 Q. Which jail?

25 MR. KHUZAMI: Objection, relevance.

1 THE COURT: I will allow that. Which jail?

2 A. MCC.

3 Q. What time did you leave Mr. McCarthy's office
4 with these two agents?

5 MR. KHUZAMI: Objection, relevance.

6 THE COURT: Sustained.

7 Q. How much time did you spend with the agents
8 without Mr. McCarthy's presence on the 16th?

9 A. How much time? I believe it's very little time.

10 Q. They brought you from Mr. McCarthy's office in
11 One St. Andrews Plaza and they brought you across the bridge
12 to the Marshal Service, right?

13 A. Yes.

14 Q. And they brought you inside the Marshal Service,
15 right, inside past the room with the mirrored door?

16 A. To me, I have no difference between the marshal
17 office and the U.S. Attorney's Office. To me is all
18 government and U.S. Attorney's Office.

19 Q. Did they take you to their office, to the FBI
20 office?

21 A. They take me to conference room.

22 Q. So after you left Mr. McCarthy's office you were
23 brought to a conference room?

24 A. Yes.

25 Q. In the same building?

1 A. Yes.

2 Q. And they spoke to you there?

3 A. No.

4 Q. How long were you in the conference room?

5 A. Around half an hour.

6 Q. Who was with you at that time?

7 A. Two agents.

8 Q. And you were handcuffed?

9 A. Yes.

10 Q. And they were talking to you about the case, were
11 they not?

12 A. No.

13 Q. They were asking you questions?

14 A. No.

15 Q. Just sitting there staring at you?

16 A. They went and they buy some food and this minute
17 I get very sick from the nerves.

18 Q. Did they get you a doctor?

19 A. No. It was nerves, stomach nervousness.

20 Q. Did they advise you that you had the right to
21 have an attorney?

22 MR. KHUZAMI: Objection.

23 THE COURT: Sustained.

24 Q. Did they tell you that you didn't have to talk to
25 them?

1 A. Excuse me.

2 MR. KHUZAMI: Objection.

3 THE COURT: Sustained.

4 Q. Did they tell you that you were in a lot of
5 trouble now?

6 A. No.

7 Q. Did they tell you that you were now being
8 arrested by the federal government?

9 A. No.

10 Q. Did they tell you that you were facing the
11 possibility of spending the rest of your life in jail?

12 A. No.

13 Q. Did they tell you that the only way to get out of
14 this trouble was to work with the government?

15 A. No, sir.

16 Q. Mr. McCarthy was in the room when you were
17 arrested, is that fair to say?

18 A. Yes.

19 Q. Did he tell you not to talk to any of your
20 codefendants when you went to jail?

21 A. No.

22 Q. Did he tell you that you could think about it for
23 awhile and you could come back and talk to him another time?

24 A. No.

25 Q. Sometime soon thereafter, you met your second --

1 excuse me.

2 You met Stuart London prior to July 26?

3 A. Yes.

4 Q. Do you remember the first time you met
5 Mr. London?

6 A. Yes.

7 Q. When was that?

8 A. I believe when I was going to the court.

9 Q. They brought you into Judge Mukasey's courtroom?
10 Not this one, the other one, the smaller one.

11 MR. KHUZAMI: Objection, relevance.

12 THE COURT: Sustained.

13 Q. Do you remember telling Mr. London the very first
14 time you met him that you wanted to cooperate with the
15 government?

16 A. Yes.

17 Q. That was prior to your July 26 meeting with Mr.
18 McCarthy?

19 A. Yes.

20 Q. How long prior to that?

21 A. Two weeks, week to two weeks.

22 Q. Mr. London discussed the charge against you,
23 didn't he?

24 A. Yes.

25 Q. And he told you that you had been arrested by the

1 federal government, didn't he?

2 A. Yes.

3 Q. And he told you you were facing the possibility
4 of spending the rest of your life in jail?

5 A. Yes.

6 Q. And he told you that cooperation was probably
7 your only way out of this problem, didn't he?

8 A. Yes.

9 Q. You knew at that time that they were interested
10 in having you cooperate.

11 A. Yes.

12 Q. And you knew that they were interested in having
13 you provide information about other defendants in this case.

14 A. Yes.

15 Q. And you knew who those other defendants were at
16 that time, didn't you?

17 A. Yes.

18 Q. On August 2, you met Mr. Schoenbach, is that
19 correct?

20 A. Yes.

21 Q. And on August 3 you started keeping a diary of
22 activities inside the MCC.

23 A. I believe I write my diary before this.

24 Q. I am sorry. I didn't understand the answer.

25 A. I believe I start writing my diary since I been

1 in MCC for myself.

2 Q. So your diary goes back to July?

3 A. Yes.

4 Q. July 17?

5 A. Yes, sir.

6 Q. When you met Mr. Schoenbach -- by the way, on the
7 26th when you met with Mr. McCarthy, did he tell you to stay
8 away from the codefendants in the case?

9 A. On the 26th of what?

10 Q. July. The second meeting with Mr. McCarthy when
11 you went in with Mr. London, did Mr. McCarthy tell you not
12 to speak to any of your codefendants?

13 A. Mr. McCarthy in this time, we are against each
14 other. He the government and I am --

15 THE COURT: OK, but his question was simply,
16 whether you were against each other or for each other or
17 something else, did he tell you at that meeting don't talk
18 to the other codefendants?

19 A. No.

20 MR. PATEL: Just a minute, Judge, if I may.

21 Q. The diary that you kept included written
22 notations about codefendants in this case, isn't it correct?

23 A. Yes, sir.

24 Q. Is it fair to say that you kept that diary so you
25 could remember what was going on with people inside the MCC?

1 A. Yes.

2 Q. When did you turn the diary over to the
3 government?

4 MR. KHUZAMI: Objection.

5 THE COURT: Sustained.

6 Q. When Mr. Schoenbach began to represent you, that
7 was August 2 of 1993, is that correct?

8 A. Yes.

9 Q. Did he discuss a codefendant, a codefendant
10 agreement with you?

11 A. No.

12 MR. PATEL: Your Honor, may I approach the
13 witness?

14 THE COURT: Is that the agreement?

15 MR. PATEL: That is the joint defense agreement.

16 THE COURT: I haven't seen that document in a
17 long time.

18 MR. PATEL: An oldie but a goodie.

19 (Pause)

20 THE COURT: There is one ruling that I made a
21 couple minutes ago that I want to change. You asked when
22 the diary had been turned over?

23 MR. PATEL: Yes, your Honor.

24 THE COURT: That objection is now overruled.

25 When did you turn the diary over to the

1 government?

2 THE WITNESS: I believe in Otisville, sir,
3 November 1993.

4 MR. KHUZAMI: Your Honor, I am going to object to
5 the use of the document on relevance grounds, and this line
6 of inquiry regarding the joint defense agreement.

7 THE COURT: I am not sure what the line of
8 inquiry is. So far the line of inquiry is a dot.

9 MR. PATEL: I was just going to refresh his
10 recollection, your Honor. Mr. Khuzami is correct that I
11 haven't elicited failure of recollection. I am happy to
12 attempt to do that. I was skipping a step.

13 THE COURT: Fine. Skip the step, show him the
14 document, and let's see what happens.

15 MR. PATEL: Thank you.

16 Q. Mr. Haggag, can you take a look at this.

17 THE COURT: Your objection was on what?

18 MR. KHUZAMI: Relevance.

19 THE COURT: What is the relevance of it?

20 MR. PATEL: Can I --

21 THE COURT: You want a side bar?

22 MR. PATEL: Yes.

23 (At the side bar)

24 MR. STAVIS: Your Honor, the joint defense
25 agreement is dated September blank 1993. What we are

1 attempting to do is to fix the date of his cooperation.
2 Mr. Haggag's signature is conspicuously absent from the
3 joint defense agreement and it is our contention that the
4 reason he didn't sign it was because he was cooperating at
5 that time, which would push up the date of his cooperation
6 to an earlier date than has been established thus far.

7 MR. KHUZAMI: There are too many possibilities
8 for why the joint defense agreement wasn't signed by him,
9 including the fact that there is no evidence that he saw it
10 or had anything to do with it.

11 THE COURT: He can push, he can probe. That's
12 why people ask questions.

13 (In open court)

14 BY MR. PATEL:

15 Q. Mr. Haggag, you never signed this document, did
16 you?

17 A. No, sir. I signed it. I withdraw my answer
18 before.

19 Q. You signed it and took your signature off it?

20 A. No, no. You are asking me does Mr. Lawrence
21 Schoenbach showing you something like that and I said no.
22 Now when I see it, I say yes.

23 Q. So you did discuss this with Mr. Schoenbach?

24 A. Yes.

25 Q. And you did not sign this?

1 A. No, I did sign it.

2 Q. You signed the joint defense agreement?

3 A. I believe so.

4 Q. Do you see your signature on this document?

5 A. No.

6 Q. In fact, your signature and your attorney's
7 signature is the only codefendant that are absent from this
8 document, is that correct?

9 A. Yes, sir.

10 MR. PATEL: Your Honor, I would offer this
11 document for the purpose of this hearing.

12 MR. KHUZAMI: There is not much of a foundation
13 for this document, your Honor.

14 THE COURT: No, there isn't. There is no
15 foundation at all. But I have seen it before. I assume all
16 you are offering it to show is that he didn't sign it.

17 MR. KHUZAMI: He didn't sign that particular one.

18 THE COURT: That particular one of Mr. Patel. As
19 I also recall it, that agreement had a number of
20 incarnations.

21 MR. PATEL: Your Honor is correct. This is, I
22 believe, the final version -- but whatever.

23 MR. KHUZAMI: I thank Mr. Patel for his
24 testimony.

25 Q. Mr. Haggag, do you recall when Mr. Schoenbach

1 reviewed there document with you?

2 A. We discuss this together and he asking me what he
3 want to do.

4 Q. That was when you were still in the MCC?

5 A. Yes, sir.

6 Q. This is a document that was in August or
7 September of 1993?

8 A. Yes, sir.

9 Q. And at that time you decided not to sign this
10 agreement?

11 A. Yes, sir.

12 Q. And you decided not to sign this agreement
13 because you were cooperating with the government?

14 A. No, sir.

15 Q. You intended to cooperate with the government?

16 A. Yes, sir.

17 Q. It was your hope to cooperate with the
18 government? You wanted to cooperate with the government?

19 A. It's not my hope. Yes, I wanted, but not my
20 hope.

21 Q. You wanted to cooperate with the government in
22 August of 1993?

23 A. Yes, sir.

24 Q. You met with Mr. Nosair and, was that Mohammed or
25 Mahmoud Abouhalima?

1 A. Mohammed.

2 Q. Mahmoud's brother?

3 A. Yes.

4 Q. That was on the roof at the MCC?

5 A. Yes, sir.

6 Q. That was in late August, it was a week after the
7 indictment.

8 A. Yes.

9 Q. Do you recall what the weather was like?

10 A. Excuse me, sir.

11 Q. Was it cold --

12 MR. KHUZAMI: Objection, relevance.

13 THE COURT: Sustained.

14 Q. Were the three of you alone at the time you had
15 this conversation with Mr. Nosair?

16 A. There is some other inmates that have some
17 activity.

18 Q. There were other inmates?

19 A. They have some activity. We were only me and
20 Mohammed and Sayyid Nosair.

21 Q. Were you the only Arabic-speaking people on the
22 floor, to your knowledge?

23 A. I believe not.

24 Q. There were other people who spoke Arabic at the
25 time?

1 A. Yes.

2 Q. So other codefendants were on the roof at this
3 time?

4 A. Yes.

5 Q. But they were not part of this conversation?

6 A. No.

7 Q. At that time Mr. Nosair told you that he picked
8 the sheik up from the airport when he arrived in the United
9 States?

10 MR. KHUZAMI: Objection.

11 THE COURT: I am sorry. May I hear the question
12 again.

13 (Record read)

14 THE COURT: Sustained.

15 Q. Mr. Nosair said that he believed that Mr. Shalabi
16 and Sheik Omar had different views on Islamic works, is that
17 correct?

18 MR. KHUZAMI: Objection.

19 THE COURT: Sustained.

20 Q. What did Mr. Nosair tell you?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 (Pause)

24 Q. Mr. Haggag, when you met with Mr. London and Mr.
25 McCarthy on the 26th, did Mr. McCarthy tell you not to meet

1 with the codefendants?

2 A. No, sir.

3 Q. Did Mr. London tell you to stay away from the
4 codefendants?

5 A. No, sir.

6 Q. In fact, you attended a codefendant meeting on 9
7 South in the MCC, didn't you?

8 A. Yes, I did.

9 Q. That was in late August after the indictment,
10 wasn't it?

11 A. Yes, sir.

12 Q. Miss London was there and Mr. Elhassan was there
13 and Mr. Nosair was there, right?

14 A. Yes, sir.

15 Q. I was there?

16 A. Yes.

17 Q. At that time you were interested in cooperating
18 with the United States government?

19 A. Yes.

20 Q. Mr. Haggag, you began having regular meetings
21 with various representatives of the government in the fall
22 of 1993, is that correct?

23 A. Can you repeat the question, please.

24 Q. You began having regular meetings with
25 representatives of the government, agents, assistants, in

1 the fall of 1993.

2 A. Can you describe what you mean by regular
3 meeting?

4 Q. You would have a meeting in Otisville, in
5 Fairton, New Jersey. In various places around the country
6 you would meet with your lawyer and either Mr. Khuzami or
7 Mr. Fitzgerald, Mr. McCarthy, members of the prosecution
8 team and various agents, and these meetings would last one
9 day, two days, sometimes three days.

10 A. Yes, sir.

11 Q. And at those meetings, you discussed the
12 activities of various codefendants.

13 A. Yes.

14 MR. KHUZAMI: Objection, relevance.

15 THE COURT: He already answered, but sustained.

16 Q. Did you discuss with the prosecutors and with the
17 agents conversations that you had with people you met in the
18 MCC after August 1993?

19 MR. KHUZAMI: Objection.

20 THE COURT: Sustained.

21 MR. PATEL: Judge, could we just approach
22 briefly?

23 THE COURT: Yes.

24 (At the side bar)

25 MR. STAVIS: I know that your Honor is familiar

1 with United States against Ginsberg, 758 F.2d 823, having
2 cited it yesterday in court. What has been elicited from
3 this witness is that he did attend joint defense meetings
4 after he was cooperating. Ginsberg says that is --

5 THE COURT: I don't know that is what he
6 elicited.

7 MR. STAVIS: After he had intended to cooperate
8 and after he had met with the government.

9 THE COURT: There is a difference, isn't it?

10 MR. STAVIS: Ginsberg says there is nothing wrong
11 with attending a defense meeting even after you cooperate,
12 so long as you do not pass on that information to the
13 government. That is why we felt it incumbent upon us in
14 making the Sixth Amendment argument under Ginsberg to elicit
15 from this witness whether or not he had brought the
16 information back to the government.

17 THE COURT: The information being information
18 discussed at codefendant meetings?

19 MR. STAVIS: Correct.

20 THE COURT: That isn't what he asked.

21 MR. PATEL: That's where I was getting, Judge.
22 If I took an inartful route, I apologize.

23 THE COURT: That is not what you asked.

24 How much longer do you have?

25 MR. PATEL: I am just about done.

1 THE COURT: Do you know how much you have?

2 MR. JACOBS: Ten minutes.

3 THE COURT: I need to take a break after he
4 finishes for 5 or 10 minutes and then I would like to
5 finish.

6 (In open court)

7 BY MR. PATEL:

8 Q. Mr. Haggag, did you discuss what happened at the
9 codefendant meeting or your meetings with your
10 codefendants --

11 THE COURT: No. We have to be very specific,
12 please.

13 MR. PATEL: Withdrawn.

14 THE COURT: Thank you.

15 Q. Did you discuss with the prosecutors or with the
16 agents what happened at the codefendant meeting that you
17 attended?

18 A. No, sir.

19 Q. Did you discuss with the prosecutors or the
20 agents conversations that you had with the codefendants?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 MR. PATEL: Your Honor, if I can have a minute, I
24 think --

25 THE COURT: Yes, you may.

1 (Pause)

2 Q. Mr. Haggag, in your meetings with the government,
3 agents or prosecutors, did you discuss any conversations
4 that you had prior to or after the codefendant meeting?

5 MR. KHUZAMI: Objection.

6 THE COURT: Sustained.

7 MR. PATEL: I am done now, Judge. Thank you.

8 THE COURT: I need to take a break and talk to
9 some people for 5 or 10 minutes. I will be back.

10 (Recess)

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

12 THE COURT: Please.

13 CROSS-EXAMINATION

14 BY MR. JACOBS:

15 Q. Mr. Haggag, my name is John Jacobs. I represent
16 Mohammed Saleh.

17 Mr. Haggag, when you were approached by the FBI
18 on July 16, what did they tell you, when they came up to
19 you? What did they tell you?

20 A. They tell me the U.S. Attorney want to talk to
21 you.

22 Q. What did you say?

23 A. I said OK.

24 Q. Did the question come up with the FBI about why
25 the U.S. Attorney wanted to see you, what subject or

1 anything?

2 A. No.

3 Q. In other words, you didn't ask the FBI as to what
4 the subject matter was?

5 A. No.

6 Q. Did you think in your own mind you knew what it
7 was about?

8 A. No.

9 Q. I assume that nothing was discussed about why you
10 were going down to the U.S. Attorney's Office until you got
11 there.

12 A. Yes.

13 Q. You got there, you went to Mr. McCarthy's office,
14 correct?

15 A. Yes.

16 Q. Several agents present?

17 A. Yes.

18 Q. What did Mr. McCarthy tell you?

19 A. He start talking about myself, asking me
20 questions about myself, then ask me questions about the plot
21 for Mubarak.

22 Q. When you sat down, you had never met Mr. McCarthy
23 before, correct?

24 A. Yes.

25 Q. He introduced himself as an assistant United

1 States attorney, correct?

2 A. Yes.

3 Q. Did he tell you that you were a target of a
4 criminal investigation?

5 A. No.

6 Q. Did he tell you why he wanted to see you?

7 A. Yes.

8 Q. What did he tell you?

9 A. He tell me we investigate what's going on in --
10 what's going on in --

11 Q. Take your time.

12 A. Excuse me. (Consulting interpreter)

13 He said that they were having an investigation
14 about what's going on around, after the World Trade Center
15 happen, I believe.

16 Q. So he mentioned the World Trade Center to you,
17 correct?

18 A. Yes.

19 Q. Did he mention any other -- when he first told
20 you why you were there, any other subjects besides the World
21 Trade Center?

22 A. No. I believe -- he ask me did you attend
23 Nosair's trial with Kahane.

24 Q. Right, and there came a point where you signed an
25 agreement, on July 16, 1993, isn't that correct?

1 A. Yes.

2 Q. Just quickly, this is the agreement that you
3 signed on July 16, 1993?

4 THE COURT: 35 which?

5 MR. JACOBS: 119-B, your Honor.

6 Q. Did Mr. McCarthy tell you what this document
7 means?

8 A. They get translator on the phone and they tell me
9 actually what this document mean.

10 Q. In other words, the government put an
11 Arabic-speaking translator on the phone and this document
12 was translated to you, correct?

13 A. Yes, sir.

14 Q. Did Mr. McCarthy tell you what he thought it
15 meant? Did you have a conversation about it?

16 A. Yes, sir.

17 Q. What did he tell you it meant?

18 A. He tell me anything you said cannot be used
19 against you and you have, I believe it is humi --

20 Q. Immunity?

21 A. Immunity.

22 Q. Did you ask him any questions about what this
23 agreement was about?

24 A. Yes, sir.

25 Q. What did you ask him?

1 A. I ask him -- this minute I cannot trust the
2 government, I cannot trust the government, I tell him I need
3 somebody translate it by Arabic, what's it meaning, what I
4 am signing on.

5 Q. Did the word "cooperation" come into the
6 conversation between you and Mr. McCarthy?

7 A. The word "cooperation," I cannot remember the
8 word "cooperation" come or not come.

9 Q. Pardon me.

10 A. I cannot remember.

11 Q. Did the word "deal" come up? Did you say you
12 were interested in making a deal with the government?

13 A. No, sir.

14 Q. Did Mr. McCarthy use that type of word, "deal"?

15 A. No, sir.

16 Q. In other words, you had this conversation, you
17 signed the agreement, and they asked you questions?

18 A. Yes, sir.

19 Q. Agents asked you questions or just Mr. McCarthy?

20 A. The agent also.

21 Q. They asked you questions about the World Trade
22 Center? Yes?

23 A. Yes.

24 Q. They asked you questions about Mubarak? Yes?

25 A. Yes.

1 Q. They asked you questions about Siddig Ali,
2 correct?

3 A. Yes.

4 Q. They asked you questions about Nosair, correct?

5 A. Yes.

6 Q. Did they discuss with you what they thought you
7 did in connection with Mubarak, for example?

8 A. No.

9 Q. Did you discuss what your role was or what you
10 did in connection with this Mubarak matter? Yes or no.

11 MR. KHUZAMI: Objection, relevance.

12 THE COURT: Sustained.

13 Q. Did you tell the government that you were working
14 with the Egyptian authorities at that time on July 16?

15 MR. KHUZAMI: Objection.

16 THE COURT: Sustained.

17 Q. Did Mohammed's name, Mohammed Saleh's name come
18 up on July 16?

19 A. No, sir.

20 Q. There came a point in the meeting where somebody
21 told you you were being placed under arrest, is that
22 correct?

23 A. Yes.

24 Q. Did you ask them why?

25 A. Yes.

1 Q. Were there further conversations about
2 information after you were being told you were being placed
3 under arrest?

4 A. No.

5 MR. KHUZAMI: Objection to form.

6 MR. JACOBS: I will rephrase the question.

7 Q. Who told you you were being placed under arrest?

8 A. I believe Mr. McCarthy tell me.

9 Q. Did you protest that?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q. Did you say you wanted to discuss cooperation
13 further, after being told you were being placed under
14 arrest?

15 A. No.

16 MR. KHUZAMI: Objection to form.

17 THE COURT: Sustained as to form.

18 Q. Did you offer to do anything when you were told
19 you were being placed under arrest?

20 A. No.

21 Q. Did they ask you to do anything after you were
22 being placed under arrest?

23 A. No.

24 Q. Did they tell you that they wanted to meet with
25 you again after you were placed under arrest?

1 A. No.

2 Q. Did you ask to meet with them after they placed
3 you under arrest?

4 A. No.

5 Q. There came a point where you went back to the
6 U.S. Attorney's Office about a week or so later, is that
7 correct?

8 A. Yes.

9 Q. Do you know how that meeting was arranged?

10 A. Yes.

11 Q. How was it arranged?

12 A. Through my attorney and the U.S. Attorney's
13 Office.

14 Q. At that meeting, the same type of agreement was
15 signed?

16 A. Yes.

17 Q. And you had an attorney present at that time,
18 correct?

19 A. Yes.

20 Q. You were under arrest at that time, correct?

21 A. Yes.

22 Q. You were brought over from MCC, correct?

23 A. Yes.

24 Q. You were on 9 South at the time, correct?

25 A. Yes.

1 Q. Am I correct, just so the record is clear, before
2 July 16, 1993, you had never met my client Mohammed Saleh
3 before, is that correct?

4 A. Yes.

5 Q. Between July 16 and July 26, the date of the
6 second meeting, did you meet Mohammed in 9 South, if you can
7 recall?

8 MR. KHUZAMI: Objection.

9 THE COURT: Sustained.

10 Q. Did you have any conversations with Mohammed
11 Saleh between July 16 and July 26, 1993?

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 Q. Were you with other defendants in connection with
15 this investigation on 9 South between July 16 and July 26?

16 MR. KHUZAMI: Objection.

17 THE COURT: Sustained.

18 Q. On July 26, what was the subject matter that was
19 discussed?

20 A. A plot to -- Mubarak's plot.

21 Q. Any other matters discussed besides Mubarak's
22 plot?

23 A. Yes.

24 Q. Generally, what were the other subject matters?

25 A. To sign guilty for Mubarak, Mubarak's plot.

1 Q. I am sorry, to what?

2 A. To sign guilty for Mubarak's plot.

3 Q. Sorry. Perhaps you can use the interpreter.

4 THE COURT: I believe he means to plead guilty.

5 THE WITNESS: (Through interpreter) To plead
6 guilty for Mubarak's plot.

7 Q. In other words, there were -- you don't
8 understand the word negotiations going on between yourself
9 and your attorney and the United States Attorney's Office on
10 July 26?

11 MR. KHUZAMI: Objection to form.

12 THE COURT: Sustained as to form.

13 Q. There were discussions about your pleading guilty
14 at that time?

15 A. Yes.

16 Q. Did you make an offer to cooperate with the
17 government on or about July 26?

18 A. Repeat your question, please.

19 Q. Sure. Did you offer to cooperate and to testify
20 against other people on or about July 26 when you had the
21 second meeting, with your attorney?

22 MR. KHUZAMI: Objection to form, compound.

23 MR. JACOBS: I will break it down.

24 Q. Did you tell Mr. McCarthy, I would like to
25 cooperate with the government? Yes or no.

1 A. No.

2 Q. Did you say I will agree to testify?

3 A. No.

4 Q. Did they ask you to testify?

5 A. No.

6 Q. Did they ask you to cooperate on July 26, at the
7 second meeting with your lawyer present?

8 A. If you mean by cooperate -- what you mean by
9 cooperate? To plead guilty?

10 Q. Let's start with that. Did they ask you to plead
11 guilty?

12 A. Yes.

13 Q. Did they ask you to testify?

14 A. No.

15 Q. What was your understanding the purpose of the
16 meeting was on July 26, if you know?

17 A. No, I am sure. When I went Mr. McCarthy's
18 office, I thought the government put me under punishment
19 because I am against Omar Abdel Rahman, not because of
20 Mubarak.

21 (Record read)

22 Q. At the conclusion of the meeting, how did you
23 leave off with the government? Had you agreed to plead
24 guilty?

25 A. No.

1 Q. Had they asked you to plead guilty?

2 A. Yes.

3 Q. Did they ask you to cooperate at the conclusion
4 of the meeting?

5 A. Yes.

6 Q. Did they ask you to testify?

7 A. Excuse me, sir. When they said to cooperate,
8 they said you plead guilty.

9 Q. Right.

10 A. When you mean by cooperate plead guilty, I said
11 no.

12 Q. Forgetting the question of pleading guilty, did
13 they ask you would you be willing, Mr. Haggag, to testify
14 against the sheik, for example? Did they ask you that?

15 A. No.

16 Q. Did they ask you whether you would be willing to
17 testify against anybody?

18 A. Not talking about testifying at all.

19 Q. It was never raised in the conversation on July
20 26 about testifying?

21 A. No.

22 MR. KHUZAMI: Objection, asked and answered.

23 THE COURT: I will allow it once more.

24 Q. Was the discussion of testimony involved in your
25 meeting on July 26, the first time with your lawyer?

1 A. No, sir.

2 Q. During the course of that meeting, did Mohammed
3 Saleh's name come up?

4 A. No, sir.

5 Q. You said there came a point before you were
6 indicted, I think you said the end of August, that you spoke
7 with Mohammed Saleh, is that correct?

8 MR. KHUZAMI: Objection to form. The date for
9 the statement or the date --

10 MR. JACOBS: I will withdraw it.

11 Q. You spoke to my client about something to do with
12 Siddig and Salem. When did that conversation occur?

13 A. I believe it was before that time.

14 Q. Is there any way you know that? Are you
15 guessing, Mr. Haggag?

16 A. I am not guessing. I know it is before --

17 MR. KHUZAMI: Objection, cutting off the witness.

18 Q. I am sorry, please.

19 THE COURT: Go ahead. Do you want to finish your
20 answer.

21 A. We, or I know, I am sure it is before the
22 indictment.

23 Q. Any particular -- I didn't mean to cut you off.

24 A. As simple as that.

25 Q. When you say as simple as that, is there any

1 particular reason why the indictment is a definitive line as
2 to when the statement occurred a week before as opposed to a
3 week later?

4 A. I am sure it is before the indictment. The
5 indictment is big thing.

6 Q. Pardon me.

7 A. The indictment is big event.

8 THE COURT: He said the indictment is a big
9 thing.

10 MR. STAVIS: Conceded, your Honor.

11 Q. You saw Mohammed almost every day during that
12 period of time, isn't that correct? You saw Mohammed almost
13 every day?

14 A. No.

15 Q. Was this the only time you ever spoke with him?

16 MR. KHUZAMI: Objection.

17 THE COURT: Sustained.

18 MR. JACOBS: I would ask your Honor to be
19 permitted. I think this goes to whether a statement was
20 made. This court has to make a ruling under Massiah as to
21 the circumstances of the making of the statement. I think I
22 should be permitted under the brief cross-examination to
23 bring it out.

24 THE COURT: I know you think that. Sustained.

25 Q. Did the FBI at any time before you met with my

- 1 client and had this conversation ever offer you any money?
- 2 A. During what time?
- 3 Q. Any time. Before you had the conversation with
4 my client, did the Federal Bureau of Investigation offer you
5 money?
- 6 A. Yes.
- 7 Q. How much money was offered to you?
- 8 A. No amount.
- 9 Q. What was the money offered to you for?
- 10 A. They offer me help, not offer me money. They
11 offer me financial help.
- 12 Q. When did that occur?
- 13 A. That's in April, sometime in April.
- 14 Q. Do you remember the name of the agent?
- 15 A. Yes.
- 16 Q. Who was that?
- 17 A. Tom Corrigan and Don Coleman.
- 18 Q. They wanted you to work for the FBI as a paid
19 informant, correct?
- 20 A. They said they ask me for -- we need your help.
- 21 Q. And they offered you money, correct?
- 22 A. They offered me financial help.
- 23 Q. Did you ask them what that meant?
- 24 A. I didn't ask.
- 25 Q. Did they offer you other things besides money?

- 1 A. Yes.
- 2 Q. What did they offer you?
- 3 A. To help me to get my wife's visa.
- 4 Q. Get your wife's visa?
- 5 A. Yes.
- 6 Q. Anything else?
- 7 A. I believe, I believe not.
- 8 Q. How many times did they make this offer to you?
- 9 Was it more than once that they met with you?
- 10 A. Only one time.
- 11 Q. Only one time. You are sure about that?
- 12 A. I believe so, yes. Pretty sure.
- 13 MR. JACOBS: May I approach the witness briefly?
- 14 Q. 35119-KK I will show him the English, page 4, Mr.
- 15 Khuzami.
- 16 Q. Can you look at the green highlights -- I think
- 17 your original Arabic is behind it.
- 18 A. I cannot read the Arabic xerox. I am not looking
- 19 for the English. I cannot read the xerox.
- 20 Q. Did you read the English that is highlighted in
- 21 green?
- 22 A. Yes.
- 23 Q. Did you meet with the FBI concerning these offers
- 24 of money and visas more than once or just once?
- 25 A. Once.

1 Q. When you spoke to Mr. McCarthy on July 16 and
2 July 26, did Mr. McCarthy or any other FBI agents offer you
3 money again?

4 A. No, sir.

5 MR. KHUZAMI: Objection.

6 Q. Was there any discussions on July 16 or July 26
7 about visas for your wife?

8 A. No.

9 Q. After July 26, when was the next time you met an
10 FBI agent or an assistant United States attorney?

11 A. With Mr., with my lawyer sometime, I believe,
12 in -- I am not sure, September, October. I believe October.

13 Q. But it was after the indictment?

14 A. Yes.

15 Q. Mr. Haggag, getting back back to the July 26
16 meeting with Mr. London was present and Mr. McCarthy and the
17 agents, did anybody take notes that day, from the government
18 side, if you know?

19 A. No.

20 Q. You have a distinct recollection of that?

21 A. Yes.

22 Q. Did Mr. McCarthy tell you he wasn't taking notes?

23 A. No.

24 Q. But you were able to look and see that during the
25 course of the meeting nobody was taking notes?

1 A. Yes.

2 Q. In connection with this diary, am I correct that
3 you started writing this diary on or about August 3, 1993?

4 A. When I was in the MCC, not from specific date,
5 without any specific date.

6 Q. Could it possibly have been in July?

7 A. I believe I write about what happened to me since
8 I enter the MCC.

9 Q. In connection with your diary, did the
10 government, meaning the assistant U.S. attorneys or the FBI,
11 tell you to go back and make this diary?

12 A. No.

13 Q. Were there any discussions by Mr. McCarthy, the
14 other prosecutors or agents, that you should make some notes
15 about what had happened back with the Mubarak plot and
16 things like that?

17 A. No, sir.

18 Q. So the decision to do the diary was a decision
19 you made on your own, is that correct?

20 A. Yes. Yes.

21 MR. JACOBS: This is my last subject of inquiry,
22 your Honor. Let me show him in English, maybe we can move
23 it along.

24 Q. Let me show you this one particular page, Mr.
25 Haggag, 35119-II, page 15, the entry for Thursday, August

1 26. Just read it to yourself.

2 (Pause)

3 Q. Just the first few lines, Mr. Haggag, is what I
4 want to ask you about.

5 A. Yes.

6 Q. Do you see the reference there to an attorney
7 coming to see you at 8 in the morning, and he told me that
8 the general attorney called him and told him that he
9 considers himself my attorney? Would you tell him what that
10 means, the general attorney? What does that mean?

11 A. The U.S. Attorney.

12 Q. In other words, in your diary you made an entry
13 on August 26 that the prosecutors called your attorney and
14 told your attorney that they consider, or he considered
15 himself your attorney? Maybe I am misunderstanding you.
16 Why don't you tell me what you meant in that first line.

17 A. What I meant my attorney, my attorney tell me --

18 Q. That is Mr. Schoenbach?

19 A. Yes, Mr. Schoenbach. He is legal, he is my
20 attorney now legal, until we are going to be present in
21 front of the judge.

22 Q. In other words, the prosecutors were telling Mr.
23 Schoenbach that they understood that Mr. Schoenbach was
24 going to be appointed to represent you? Is that what you
25 mean?

1 A. Yes.

2 MR. JACOBS: I have nothing further.

3 THE COURT: Miss Stewart, anything?

4 MS. STEWART: No, Judge. I have argument.

5 THE COURT: Right. Anyone else? Anything else?

6 MR. KHUZAMI: No redirect, your Honor.

7 THE COURT: You are excused.

8 (Witness excused)

9 MR. KHUZAMI: No further witnesses, your Honor.

10 (Pause)

11 MR. PATEL: Your Honor, we rest.

12 THE COURT: Miss Stewart?

13 MS. STEWART: I think my issue is shorter, or I
14 am going to make it as short as I possibly can. I think
15 that the government is disingenuous when they say this is
16 not an on-its-face criminal act when they have brought an
17 indictment which claims that my client is the emir and --

18 THE COURT: You are arguing the Bruton point?

19 MS. STEWART: Bruton issue.

20 THE COURT: Go ahead.

21 MS. STEWART: I don't think I have standing to
22 argue the jailhouse issue.

23 THE COURT: The Bruton, go ahead.

24 MS. STEWART: Since they say that he was the emir
25 and people owed him loyalty and he demanded loyalty and they

1 deferred to him and gave him deference. I don't have the
2 indictment in front of me but I know that is one of the
3 overt acts.

4 THE COURT: The testimony as it came out was
5 simply that he told this witness that he understood that
6 your client and Shalabi were at loggerheads over some
7 doctrinal issue, that he understood that it was going to
8 come to nothing good and that he was staying out of it, he
9 had said he was going to deal with the military matters,
10 whatever they were, and wasn't going to get into the
11 doctrinal matters. You have argued and certainly other
12 counsel have argued that any military matters in this case
13 relate to Bosnia. I didn't hear anything in there even
14 about military matters relating to anything other than --
15 military matters in general. So I don't see how, as Bruton
16 has been explained -- or limited, depending upon your point
17 of view -- later on that can be considered to raise a Bruton
18 problem.

19 MS. STEWART: I would raise Mr. Jacobs' analogy
20 in his opening. If he is claiming that the sheik is the
21 godfather, certainly any claim that I was initiated and
22 swore my fealty to the godfather would go to whether or not
23 that person was a member of the organization and whether
24 this person was indeed a godfather. It just seems to me
25 that they want to keep it out as a Bruton issue but then

1 they want to be able to argue that to the jury. I think
2 that is unfair. I think that if it is not a Bruton issue,
3 then it shouldn't be argued to the jury. If it is a Bruton
4 issue, we should redact the statement and take it out.

5 THE COURT: If that is what Bruton meant it would
6 be a point, but I don't think it is.

7 MS. STEWART: I can't confront Mr. Nosair on the
8 statement.

9 THE COURT: Understood. I don't think it is a
10 Bruton issue.

11 Anyone else? Mr. Patel, Mr. Stavis? Mr. Stavis.

12 MR. STAVIS: Yes, your Honor. Essentially the
13 Massiah, Henry line of cases and the latest Second Circuit
14 case, which I believe is United States versus Rossa, state
15 the test is whether the government action was designed
16 deliberately to elicit incriminating remarks. Clearly,
17 based on the testimony of Mr. Haggag, Mr. McCarthy and
18 company did not send Mr. Haggag out and say go get some
19 statements for us. In the October proffer session, when it
20 became clear to them that they were going to have a formal
21 agreement, they told him not to speak to anyone. But when
22 they were going through the proffer sessions, which I would
23 submit to the court are the precursors and part and parcel
24 of negotiation with the government, Mr. Haggag was not told
25 not to speak to the defendants. The statement that he

1 alleges Mr. Nosair made was made one week after the
2 indictment in the case, which I believe was the 25th, or
3 maybe Mr. Nosair came down from Attica on the 26th, brings
4 us into September. By September, you had had the two
5 proffer sessions, and Mr. Haggag made it clear that he, the
6 testimony this afternoon was, he wanted to cooperate with
7 the government by August. So here he was sent back without
8 an instruction not to speak to people, and knowing, without
9 them explicitly telling him so, that the more that he could
10 get when he is thrown back in, the better it would make his
11 deal, which while not consummated was already in the works,
12 so to speak.

13 THE COURT: Let's assume everything you said is
14 accurate, and what was going through his mind was accurate,
15 not only the desire to cooperate but the belief that
16 everything he could get, in your phrase, makes it easier for
17 him to do that. How does that turn him into an actor on
18 behalf of the government, and how does it turn their conduct
19 into a Massiah violation, their conduct being the
20 government's conduct?

21 MR. STAVIS: In the Henry case at page 271, your
22 Honor, the court there said that the agent "must have known
23 that such propinquity likely would lead to the result of a
24 statement being made."

25 THE COURT: That was a person, however, who was

1 already an informant.

2 MR. STAVIS: That is correct, but I don't know if
3 he was an informant with regard to that particular
4 defendant. He had an ongoing relationship with the Federal
5 Bureau of Investigation whereby he would be paid for
6 information that he got --

7 THE COURT: As I recall, he was working on a
8 commission.

9 MR. STAVIS: Yes, and he was told not to elicit a
10 statement by the agents in that case, and then he did so.
11 Here Mr. Haggag wasn't told not to speak to them or
12 anything, but he was thrown back, and the testimony of Mr.
13 Haggag, I submit to the court, shows that he was looking to
14 cooperate. His first meeting with Mr. London in your
15 Honor's courtroom he said I want to cooperate, and by
16 sending a person who the FBI had seen, the testimony this
17 afternoon was, as early as April of '93 and said we want
18 you, we will give you money, then you have him being
19 arrested, then you have him proffering twice and then
20 getting thrown back in, I submit to the court, creates a
21 situation where he was likely to elicit this kind of
22 statement.

23 That is the grounds under which we would submit
24 to the court there is a Massiah violation, a Sixth Amendment
25 violation, and it is on those grounds that we ask the court

1 to suppress the statements elicited by Mr. Haggag from Mr.
2 Nosair in September of 1993.

3 MR. JACOBS: Your Honor, I will rest on the
4 general remarks by Mr. Stavis. They will apply to
5 Mr. Saleh.

6 MR. KHUZAMI: Just briefly, your Honor. I
7 believe it is clear there was no agreement with this
8 witness, written or even informal, as to the meetings prior
9 to July 16. The testimony was clear that even though there
10 was an offer made he rejected them and didn't talk to the
11 government. After he met on the two occasions on July 16
12 and July 26, he was arrested after the July 16 meeting,
13 indicted August 25. The most he says is that he had a
14 subjective desire to cooperate, although I think the record
15 is unclear. I believe that given his understanding of what
16 the word cooperate means and his request for a
17 clarification, I believe even when he said that, he meant
18 that he would plead guilty, and under no circumstances did
19 that include an understanding that he would testify against
20 any of his codefendants. The proffer agreements for those
21 days on July 16 and July 26 say nothing about testifying
22 against codefendants. The fact that he may choose later on
23 to broker information that he learned independent of the
24 government does not turn those statements into a Massiah
25 violation.

1 I think it is clear that he was not acting as a
2 government agent or with government prompting and that the
3 statements are admissible.

4 THE COURT: I don't see a Massiah violation here.
5 His conduct as he testified to it and all the evidence --
6 there has been no evidence suggested to the contrary --
7 simply show that prior to the time he concluded an agreement
8 with the government he wanted to conclude an agreement with
9 the government, and that anything that he obtained, even
10 assuming that he elicited it, during the period that he
11 wanted to cooperate before any cooperation agreement was
12 worked out, doesn't become a Massiah violation if the
13 cooperation agreement is later worked out.

14 So far as the government's throwing him back, all
15 the evidence suggests is that they threw him back the way
16 one throws back a fish that one isn't interested in holding
17 on to. He was arrested, as pointed out, after the July 16
18 meeting, and there was no conduct of the sort that would
19 trigger a Massiah violation, nor a Sixth Amendment
20 violation.

21 Accordingly, the motion to suppress is denied.

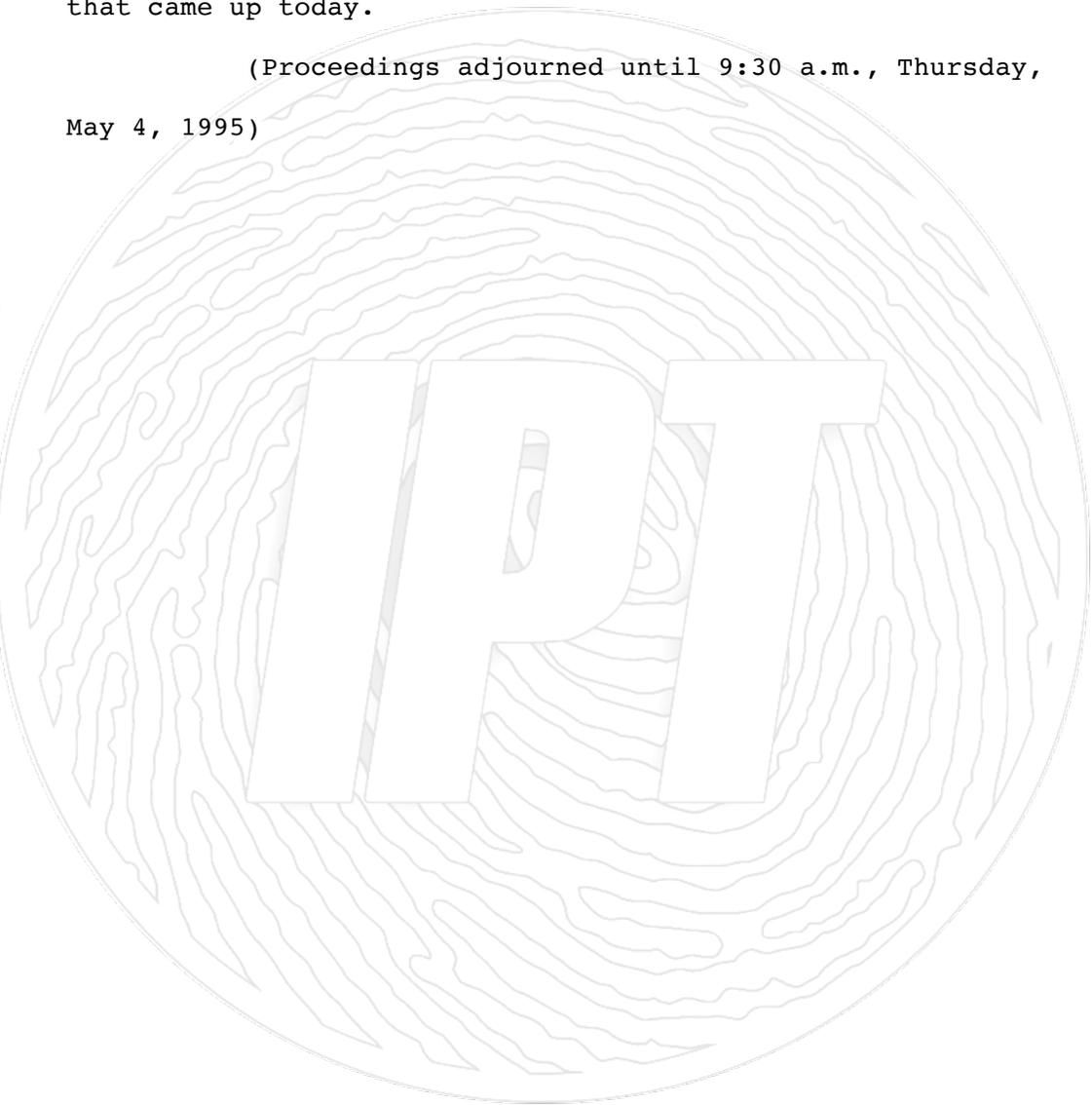
22 Scheduling tomorrow. How much longer do you
23 figure his direct is going to be?

24 MR. KHUZAMI: I think an hour to two, tops, your
25 Honor.

1 THE COURT: We are going to break at the
2 conclusion of his direct, for the day, and we will resume on
3 Monday, just based on a a matter that came up today, and I
4 will simply tell the jury that it is based upon a matter
5 that came up today.

6 (Proceedings adjourned until 9:30 a.m., Thursday,
7 May 4, 1995)

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

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

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

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

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

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

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

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

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

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

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

20 Defendants.

21 -----x

S5 93 Cr. 181 (MBM)

May 4, 1995
9:35 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

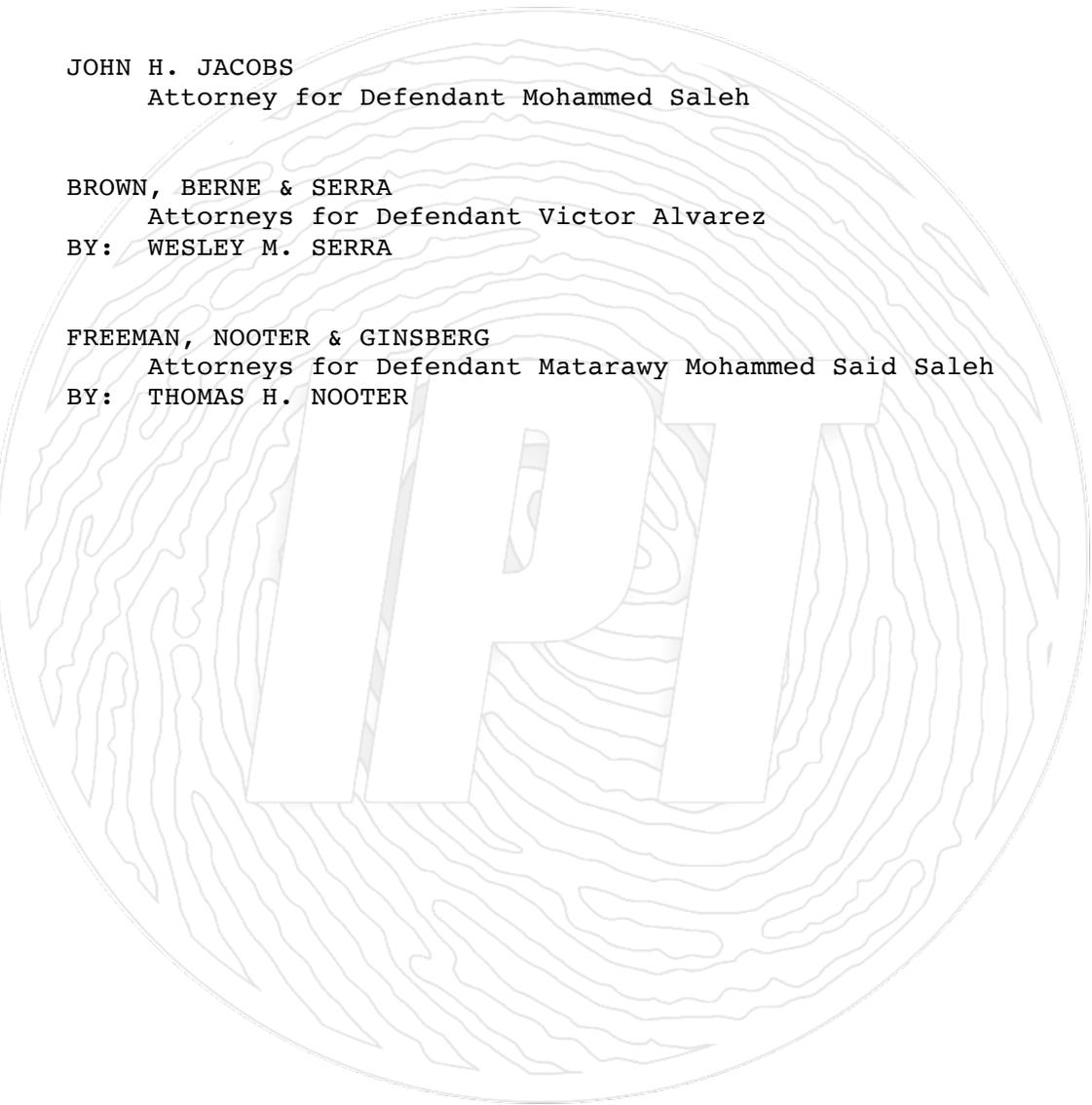
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (Is in the jury room)

3 THE COURT: Sorry to keep invading your space,
4 particularly out of uniform.

5 A JUROR: I didn't recognize you.

6 THE COURT: Just a couple of little schedule
7 changes. First, we are going to break early today, after
8 the direct testimony of the witness who is on now, because I
9 have to deal with something that came up yesterday after you
10 left.

11 Secondly, next week, the day that we are not
12 sitting is going to have to be changed from Tuesday to
13 Wednesday. So we will sit on Tuesday but we won't sit on
14 Wednesday. I hope that doesn't create a problem for
15 anybody. So we will be sitting Monday, Tuesday and Thursday
16 of next week. Sorry for the change.

17 A JUROR: Thank you for the notice.

18 THE COURT: See you in a bit.

19 (In open court; jury not present)

20 THE COURT: While we were waiting I went across
21 the hall and told the jurors about the change in schedule,
22 about which I think you are all aware. Are you?

23 MR. NOOTER: Could you repeat the change of
24 schedule?

25 THE COURT: The change of schedule is that we are

1 going to break today after the direct testimony of the
2 witness on the stand, and the day off next week is Wednesday
3 rather than Tuesday.

4 MS. AMSTERDAM: Wednesday rather than Tuesday?

5 THE COURT: Yes.

6 ABDO MOHAMMED HAGGAG, resumed.

7 (Jury present)

8 THE COURT: Good morning again, ladies and
9 gentlemen.

10 JURORS: Good morning.

11 THE COURT: Mr. Haggag, you are still under oath.

12 MR. KHUZAMI: May I proceed?

13 THE COURT: Mr. Khuzami, please.

14 (Continued on next page)

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1 DIRECT EXAMINATION continued

2 BY MR. KHUZAMI:

3 Q Mr. Haggag, yesterday do you recall testifying
4 about the first time that you personally met Sheik Omar
5 Abdel Rahman?

6 A Yes, sir.

7 Q Do you recall testifying that you drove to
8 Brooklyn and met him?

9 A Yes, sir.

10 Q So the record is clear, did you later learn the
11 name of the person who drove you to meet Sheik Omar Abdel
12 Rahman in Brooklyn?

13 A Yes, sir.

14 Q Who was that?

15 A Mahmoud Abouhalima.

16 Q Right at the break yesterday, we were discussing
17 a meeting that you had with Siddig Ali and Mohammed
18 Abouhalima. Do you recall that?

19 A Yes, sir.

20 Q What was the subject of that meeting?

21 A Siddig wanted to prove to me --

22 THE WITNESS: Excuse me, your Honor.

23 THE COURT: Why don't you continue to talk
24 through the microphone in Arabic and the interpreter will
25 translate. The translator will translate. OK?

1 THE WITNESS: Thank you.

2 A Siddig was trying to prove that Mahmoud
3 Abouhalima was the one responsible -- Siddig was trying to
4 prove that Mahmoud Abouhalima was the one responsible for
5 the World Trade Center.

6 Q When you say sponsored for the World Trade Center
7 --

8 THE INTERPRETER: Responsible. I am sorry. The
9 interpreter's mistake.

10 Q When was this conversation with Mohammed
11 Abouhalima and Siddig Ali?

12 A In Siddig's house in Jersey City.

13 Q Do you recall the date?

14 A One week after the arrest of Mohammad Salameh.

15 Q During this discussion, did you learn where
16 Mahmoud Abouhalima was?

17 A Yes.

18 Q Where was that?

19 A In Saudi Arabia.

20 Q Did either Mohammed Abouhalima or Siddig Ali
21 indicate to you that Mahmoud Abouhalima was headed somewhere
22 else?

23 A Siddig told me that Mahmoud Abouhalima was going
24 to Sudan, and Siddig gave him letters to Turabi and other
25 officials in the country.

1 Q Who is Turabi?

2 A Turabi is the head of the Islamic Party in Sudan.

3 Q During this conversation, did you ask Mohammed
4 Abouhalima or Siddig Ali for any information about Mahmoud
5 Abouhalima?

6 A I asked Mohammed Abouhalima, I asked him where is
7 Mahmud staying at right now, exactly. He said he was
8 staying in Saudi Arabia and he was calling me on a public
9 telephone. I said OK, let him stay in Saudi Arabia, don't
10 let him go to the Sudan.

11 Q Why did you give that advice?

12 A Because I know that if he were to go to Sudan, no
13 one would be able to get him, and the Muslims here would
14 have to pay the price of his mistake.

15 Q Did you get the phone number or address for
16 Mahmoud Abouhalima?

17 A No.

18 Q Why is it that you wanted to know where he was?

19 MR. JACOBS: Objection.

20 THE COURT: Overruled.

21 A The excuse that I gave him was that we are going
22 to look for someone to help him, but in reality, I wanted
23 him to be caught, so that he would face the charges that
24 were against him.

25 Q Did there come a time where you learned that

1 Mahmoud Abouhalima was no longer in Saudi Arabia?

2 A Yes.

3 Q When was that?

4 A Three or four days after that.

5 Q Who did you learn that information from?

6 A From Siddig.

7 Q What did he tell you?

8 A He told me that Mahmoud entered Egypt.

9 Q Did you do anything with that information?

10 A Yes.

11 Q What was that?

12 A I called Tarek and said, are you guys sleeping or
13 what? Tarek, the one who is working at the United Nations.

14 Q Is that Mr. Mohammed Tarek?

15 A Yes.

16 Q You indicated that his response was, what are you
17 guys doing, sleeping, is that correct?

18 A I told him, are you guys sleeping, and Mahmud is
19 already there? There, meaning inside Egypt.

20 THE COURT: This Mohammed Tarek worked for whom
21 at the United Nations?

22 THE WITNESS: The Egyptian Mission.

23 Q Did there come a time after you had this
24 conversation with Mr. Mohammed Tarek that you learned that
25 Mahmoud Abouhalima had been arrested in Egypt?

1 A Two days later, I found out that he was arrested
2 after seven hours.

3 MS. AMSTERDAM: I am sorry.

4 THE INTERPRETER: He was arrested after seven
5 hours.

6 Q Did you give any other information to
7 Mr. Mohammed Tarek concerning the bombing of the World Trade
8 Center?

9 A Yes.

10 Q What was that?

11 A He was also not -- he was in a state of disbelief
12 that Mahmoud could have done something like this, so I
13 talked to him about the test that Mahmoud wanted to do --

14 MR. BERNSTEIN: Objection, relevance.

15 THE COURT: Overruled.

16 A -- with Siddig and Rashid.

17 Q During the first half of 1993, how often did you
18 meet with Mr. Mohammed Tarek?

19 A There was no definite time. There were no
20 definite times.

21 Q Can you estimate the number of times per month
22 that you met with him or spoke with him?

23 A Five, six times during that time.

24 Q Did there come a time after -- withdrawn. Did
25 there come a time where Sheik Omar Abdel Rahman talked to

1 you about the arrest of Mahmoud Abouhalima?

2 A Yes.

3 Q When was that?

4 A I believe the same day that Siddig had told me
5 that Mahmoud is in Egypt, or the day after that.

6 Q Where were you when you had this conversation?

7 A In my home.

8 Q Do you know where Sheik Omar Abdel Rahman was?

9 A In Los Angeles.

10 Q Did he call you by telephone?

11 A Yes.

12 Q What time did he call you?

13 A 2 in the morning.

14 Q What did he say to you?

15 A What happened to Mahmoud? What happened to
16 Mahmoud? Is he arrested? Is he arrested in Egypt?

17 Q What did you say to him?

18 A No, Sheik, I don't know yet, Mahmoud has flown
19 away.

20 Q What did you mean by "flown away"?

21 A I told him that he flew away outside the country.

22 Q Mr. Haggag, are you familiar with the voice of
23 Sheik Omar Abdel Rahman?

24 A Yes.

25 Q How is it that you are familiar with that voice?

1 A I know it very well.

2 Q You have heard him speak a number of times?

3 A Yes.

4 Q Are you familiar with the voice of El Sayyid
5 Nosair?

6 A Yes.

7 Q How are you familiar with that voice?

8 A Very well.

9 Q Is it because you have spoken to him?

10 A Yes.

11 Q How about the voice of Mahmoud Abouhalima? Are
12 you familiar with his voice?

13 A Yes.

14 Q How are you familiar with his voice?

15 A Very well.

16 Q Because you have spoken to him?

17 A Yes.

18 MR. KHUZAMI: Your Honor, may I approach?

19 THE COURT: Yes.

20 Q Mr. Haggag, let me show you what is in evidence
21 as Government's Exhibits 850 and 851 and ask you if you had
22 an opportunity before your testimony this morning to hear
23 those tapes?

24 A Yes.

25 Q Did you recognize any of the voices that you

1 heard on those tapes?

2 MR. PATEL: Objection, your Honor.

3 THE COURT: Overruled.

4 A Yes.

5 Q What voices did you hear?

6 A Mahmoud Abouhalima, Sayyid Nosair, Omar Abdel
7 Rahman, these two tapes.

8 Q Let me show you what is in evidence as
9 Government's Exhibit 852 and ask if you had an opportunity
10 to listen to that tape before your testimony here today?

11 A Yes.

12 Q Did you recognize any of the voices you heard on
13 that tape?

14 A Yes.

15 Q What voices did you hear?

16 A Mahmoud Abouhalima and Omar Abdel Rahman.

17 Q Did you initial all of these tapes?

18 A Yes, sir, I did.

19 Q Mr. Haggag, just so the record is clear, on the
20 first two tapes I showed you, 850 and 851, was it your
21 testimony -- withdrawn -- whose voice did you hear on those
22 two tapes?

23 MR. PATEL: Objection, your Honor.

24 THE COURT: Overruled.

25 A Sayyid Nosair and Omar Abdel Rahman.

1 Q Mr. Haggag, did you ever have any conversations
2 with Siddig Ali about the United Nations as the target of an
3 operation?

4 A Yes.

5 Q Do you recall when that conversation was?

6 A The same time he was trying to prove to me that
7 Mahmoud Abouhalima was the one who did it.

8 Q What do you mean by "it"?

9 A The explosion at the World Trade Center.

10 Q Do you recall where this conversation was again?

11 A I don't recall where it was exactly.

12 Q Who was present?

13 A Myself and him only. Him, Siddig.

14 Q What did Siddig Ali say about the United Nations?

15 A He was saying that he didn't participate with
16 Mahmoud in the World Trade Center. He said that if they had
17 let me in or gotten me involved, I would have let him enter
18 the United Nations and make the explosion there, at the
19 United Nations.

20 Q Do you recall the month that this conversation
21 occurred?

22 A I believe that it was in March or April.

23 Q Did Siddig Ali indicate what he meant when he
24 said that he was upset that he couldn't be a participant in
25 the World Trade Center?

1 A Can you repeat your question, please.

2 Q Yes. Did he indicate what he meant when he said
3 that he wanted to be a participant in the bombing of the
4 World Trade Center?

5 A He was upset that he didn't take part in the
6 operation itself.

7 Q When you say the operation itself, what do you
8 mean?

9 A This operation, I mean the World Trade Center,
10 the bombing of the World Trade Center.

11 Q Did there come a time that you discussed with
12 him, with Siddig Ali a plot concerning President Mubarak of
13 Egypt?

14 A Yes.

15 Q Over what period of time did these discussions
16 take place?

17 A He used to always mention it in the months of
18 January and February, and he spoke about it, started talking
19 about it very seriously when Egypt sent Mahmoud Abouhalima
20 over here.

21 Q When you say he was talking about it in January
22 and February, first of all, what year are you referring to?

23 A '93.

24 Q What was he saying in January and February of
25 1993 concerning President Mubarak?

1 A In January and February, he wanted any top
2 official, top Egyptian official. He wanted to select or
3 kill somebody, an official from Egypt.

4 Q How was that discussion different from the
5 discussion you had with him after Mahmoud Abouhalima was
6 returned from Egypt?

7 A The first one was just general discussion. He
8 didn't know exactly what he wanted. By the end of March and
9 April, it was clear in his eyes that he had decided and it
10 was clear in his voice that he wanted the highest, the top
11 official, and he wanted to punish him for sending Mahmoud
12 over here.

13 Q Did Siddig Ali explain why he wanted to punish
14 President Mubarak for sending Mahmoud Abouhalima to the
15 United States?

16 A Yes.

17 Q What did he say?

18 A He said that at least when you compare Mubarak to
19 Qaddafi, that Mubarak is less than Qaddafi by a lot.

20 Q When you say Qaddafi, what do you mean?

21 A President of Libya. When he refused to hand over
22 the ones accused of the Lockerbie incident to the United
23 States.

24 Q Who was it that refused to hand over the persons
25 related to the Lockerbie incident?

1 A Qaddafi, president of Libya.

2 Q How did Siddig Ali compare him to Mubarak in that
3 respect?

4 A He compared the situation in Libya to the
5 situation in Egypt. He decided that Mubarak is very low and
6 that we must do what the sheik wanted, and we must execute
7 the desire of the sheik.

8 Q When he said execute the desire of the sheik, who
9 was he referring to?

10 A He was talking about Sheik Omar.

11 Q Did he indicate to you what the sheik's desire,
12 Sheik Omar Abdel Rahman's desire was?

13 A The fatwa for the death of Mubarak.

14 Q How many conversations did you have with Siddig
15 Ali concerning a plot to murder President Mubarak?

16 A Around four times.

17 Q Did Siddig Ali indicate where it was that he
18 planned to assassinate President Mubarak?

19 A Yes.

20 Q Where was that?

21 A He said that at the Waldorf Astoria in New York.

22 Q Who was it that first brought up -- withdrawn.

23 Do you recall the first discussion you had with Siddig Ali
24 about this plot?

25 A Yes.

1 Q Where did this occur?

2 A At Siddig's home.

3 Q What did Siddig say to you?

4 A That he wanted to execute the desire of the sheik
5 and take revenge on Mubarak for sending Mahmoud.

6 Q Did he discuss any details of how the plot would
7 be carried out at that time?

8 A Some of the things he said he was going to get
9 information from somebody at the Sudanese embassy. His name
10 is Yousef Ahmed.

11 Q Did he indicate what kind of information he was
12 going to get from Yousef Ahmed?

13 A The place and the time that Mubarak -- the place
14 and the time of Mubarak while he is in New York and during
15 his meetings here.

16 Q What did you say to Siddig Ali when he told you
17 this?

18 A I told him no. I told him how are you going to
19 execute the sheik's desire, and yesterday only, it was only
20 yesterday I told you that this man was just doing things for
21 his own personal interests, meaning Sheik Omar. Sheik Omar
22 does not want Islam or anything, he just wants authority, he
23 wants high position, and now you want to execute his desire?

24 Q Do you recall the next time that you spoke to
25 Siddig Ali about the murder plot?

1 A Yes.

2 Q What was discussed on that occasion?

3 A He said he was still trying to gather the
4 information and put down, lay down his plot.

5 MS. STEWART: Can we get a time frame?

6 THE COURT: Yes. Can we get the timing of this
7 and other details.

8 Q Mr. Haggag, how soon after the first meeting was
9 this second meeting you just testified about?

10 A Two or three days.

11 MR. NOOTER: Could we get the time frame of the
12 first meeting?

13 Q Mr. Haggag, can you tell us roughly the period of
14 time that you had these four or five discussions with Siddig
15 Ali about the plot to murder President Mubarak?

16 A It was in March, after the newspapers had
17 published that Egypt was going to hand over Mahmoud.

18 Q When did your discussions with Siddig Ali about
19 this end?

20 A It ended at the beginning of April.

21 Q 1993?

22 A Yes.

23 Q Were you ever present when Siddig Ali spoke to a
24 person he identified as Yousef Ahmed?

25 A Yes.

1 Q When was that?

2 A In March '93.

3 Q Where did this conversation occur?

4 A At Siddig's home.

5 Q Can you describe the conversation that you heard?

6 A He called him and said, did you get the
7 information that I asked you for? He said no, not yet, not
8 yet, come and we will talk, not over the phone. He told
9 him, when should I come to you?

10 MS. AMSTERDAM: Objection, your Honor, as to what
11 that person on the phone said.

12 THE COURT: Sustained until you get a basis.

13 Q Mr. Haggag, during this conversation, after this
14 conversation what did Siddig Ali tell you?

15 A He said come with me, we will go to him at his
16 home.

17 Q Who is the "him" you are referring to?

18 A Yousef Ahmed's home, the official at the Sudanese
19 embassy -- or the Sudanese mission.

20 Q Did there come a time where Siddig Ali actually
21 sketched or drew out details of the plan to murder President
22 Mubarak?

23 A Yes.

24 Q Where did that occur?

25 A At Siddig's home.

1 Q When did that occur?

2 A By the end of March.

3 Q Who was present during this conversation?

4 A Just him and myself only.

5 Q Can you tell us how he described the plan to
6 murder President Mubarak?

7 A He put down on the paper, he put down on the
8 paper the drawing of the hotel, a car to the side of the
9 hotel from the right and a car to the left.

10 Q Let me stop you there. What you say hotel, what
11 hotel are you referring to?

12 A Waldorf Astoria.

13 Q Did he indicate that there would be any specific
14 type of cars used?

15 A Taxis.

16 Q How many taxis did he say?

17 A Two taxis.

18 Q Where would they be positioned in relation to the
19 front of the hotel?

20 A At the corner, one here and one here.

21 Q When you say "here" --

22 MS. STEWART: Objection. I can't see where he is
23 pointing to.

24 THE COURT: He has his arms apart, indicating --
25 let's see what it indicates. Go ahead.

1 Q Can you describe not with your hands but in a
2 description where in relation to the front of the hotel
3 Siddig Ali said the cabs were to be?

4 MS. STEWART: Objection.

5 THE COURT: Overruled.

6 A One taxi at one corner of the hotel and the other
7 car behind. This way there will be a space for the
8 president's car to come.

9 Q Did Siddig Ali indicate who it was that he wanted
10 to be involved in the plot to murder President Mubarak?

11 A Yes.

12 Q Who was that?

13 A He said Abu Ubaidah, Tarig, Amir, he and myself,
14 Siddig and myself. And he said there were other people
15 but -- and Mohammed Abouhalima.

16 Q When you say Tarig, do you know the full name of
17 the person he referred to as Tarig?

18 A Tarig Elhassan.

19 Q Do you see Tarig Elhassan in the courtroom today?

20 A Yes.

21 Q Can you point him out and describe what he is
22 wearing.

23 A Sitting in the back wearing a white galabia.

24 THE COURT: Indicating Mr. Elhassan. Go ahead.

25 Q Siddig Ali, did he indicate a man named Amir

1 would be a participant as well?

2 A Yes.

3 Q What was the last name of the man he described as
4 Amir?

5 A Amir Abdelgani.

6 Q Did Siddig Ali indicate to you whether or not any
7 of these people were aware of his plan to murder President
8 Mubarak?

9 A Yes.

10 Q What did he say?

11 A He said he won't tell anybody until the zero
12 point, based on my request of him.

13 Q What do you mean by your request of him?

14 A I asked him not to tell anybody of this subject.

15 Q Why did you tell him that?

16 A Because I know that he is crazy and he is going
17 to hurt the guys around him.

18 Q Did Siddig Ali indicate what kind of weapons
19 would be used in connection with this plot?

20 A Yes.

21 Q What did he say?

22 A Hand grenades and machine guns.

23 Q Did he indicate for you how it was that they were
24 actually going to carry out the assassination?

25 A Yes.

1 Q What did he say?

2 A He said that one will come out of the car and
3 throw one or two hand grenades, and all the security guards
4 are going to lie on the ground, and at that time they would
5 fire their machine guns.

6 Q Did Siddig Ali write down on a piece of paper any
7 of the details about the murder plot?

8 A He drew the whole plot on paper, on paper.

9 Q What did he do with the paper when he was
10 finished?

11 A He tore it up and he ate it.

12 Q Mr. Haggag, what was your role to be in the plot
13 to assassinate President Mubarak?

14 A One of the people in the car, waiting for zero
15 point.

16 Q Was that what Siddig Ali understood what you were
17 going to be doing?

18 A Yes.

19 Q Did you in fact intend to participate?

20 A No.

21 Q Did Siddig Ali know that you did not intend to
22 participate?

23 A No.

24 MR. JABARA: Objection.

25 THE COURT: The objection is sustained as to that

1 question, but did you ever tell him that you did not intend
2 to participate?

3 THE WITNESS: No, I did not tell him.

4 Q Did you take any steps to prevent this from
5 happening?

6 A From the beginning, yes, from the beginning.

7 Q What steps did you take?

8 A At the beginning I tried to convince him that
9 this matter, this is a suicide mission, and the result will
10 be that the Egyptian army will destroy Khartoum.

11 Q I am sorry. What is Khartoum?

12 A It's the capital of the Sudan. And then I
13 informed the Egyptian officials of this.

14 Q Which Egyptian officials did you inform of this?

15 A Mohammed Tarek.

16 Q Do you know whether or not President Mubarak ever
17 came to New York City on his scheduled visit?

18 A Yes.

19 Q Did he come?

20 A No.

21 Q Did you ever speak to Amir Abdelgani about Siddig
22 Ali's plot to murder President Mubarak?

23 A I talked to Amir, yes.

24 Q When did you talk to Amir Abdelgani about this?

25 A When I found out that Siddig is taking real steps

1 to implement, to do the assassination operation. At the
2 same time, I thought about it and I found out that the
3 Egyptian government, there is no hope in it. So I went
4 directly to Amir and I talked to him.

5 Q Do you recall, was this in the same time period
6 that you were having the meetings with Siddig Ali about the
7 plot?

8 A Yes.

9 Q Where did you speak to Amir Abdelgani?

10 A At the El Salaam mosque.

11 Q What did you say to him?

12 A I told him, I told him did Siddig talk to you
13 about any operation that he wanted to do?

14 Q What was Mr. Abdelgani's response?

15 A I told him, he didn't -- he told me he didn't
16 talk to me but I am willing, I am ready to do anything he
17 wants.

18 Continue? I told him Siddig is not balanced,
19 Siddig is imbalanced, and don't do anything that he asks.
20 He looked at me in amazement, looked like he didn't believe
21 what I was telling him.

22 Q Just to make it clear, Mr. Haggag, did you make
23 any specific reference in your conversation with Amir
24 Abdelgani about what exactly Siddig Ali was planning?

25 A I talked to him about an operation that Siddig

1 was talking about.

2 Q Did you refer specifically to President Mubarak?

3 MR. BERNSTEIN: Objection, asked and answered.

4 THE COURT: Overruled.

5 A No.

6 THE COURT: The answer was no. Go ahead.

7 Q You indicated Amir Abdelgani said he was ready
8 for any operation, is that correct?

9 A Yes.

10 Q But when he referred to operations, did he refer
11 specifically to President Mubarak?

12 A He didn't know.

13 Q Did there come a time when you were with Siddig
14 Ali when he attempted to obtain weapons to be used in the
15 plot to murder President Mubarak?

16 A Yes.

17 Q Do you recall when that -- withdrawn. Where were
18 you when that happened?

19 A Should I start from the beginning, or --

20 Q Well, who did you meet with in an attempt to
21 obtain weapons?

22 A Siddig went to meet Rashid, and I was with him.

23 Q Do you recall when this occurred?

24 A Yes.

25 Q When?

1 A At the end of March '93.

2 Q Where did this meeting occur?

3 THE INTERPRETER: Excuse me, your Honor. Can you
4 ask the witness to repeat the answer. I did not get the
5 address.

6 THE COURT: What street?

7 THE WITNESS: Court Street, in Brooklyn.

8 Q Who was present during this meeting?

9 A Siddig and Rashid and myself.

10 Q How is it that you happened to be with Siddig
11 that day?

12 A I was responsible before the mosque to contact
13 Abdul Karim, Ali Abdul Karim, to provide, to ask protection
14 for a demonstration, guards for a demonstration,
15 demonstration for the attack of the media. The only one
16 that knows Ali Abdul Karim is Siddig. The president of the
17 mosque, or the head of the mosque, authorized me to talk
18 with Siddig and to go and meet Ali Abdul Karim. On our way,
19 Siddig changed the route and told us to meet Rashid at
20 first.

21 Q Were you present during a conversation between
22 Siddig Ali and Rashid?

23 A Yes.

24 Q What did Siddig Ali say?

25 A He told him, brother, there is an Islamic

1 operation, and we need a group of submachine guns and
2 grenades, and a group of pistols.

3 Q When Siddig Ali referred to an Islamic operation,
4 did he give any more details about what he was talking
5 about?

6 A No.

7 Q What was Rashid's response?

8 A The moment Rashid heard, he said no. The
9 government here is not easy, it will bury you. It will bury
10 you in places you will never see heaven, or afterlife.

11 Q What was Siddig Ali's response?

12 A Siddig told him this is an Islamic operation and
13 you are the only one we can depend on to provide us with
14 weapons and financial help.

15 Q What was Rashid's response to that?

16 A Rashid told him OK, I will try. The pistols and
17 rifles are existing, but the grenades, I might be compelled
18 to make it myself.

19 Q Was there any discussion about payment for these
20 items?

21 A Yes.

22 Q What was that?

23 A Siddig told him financially, you are the one that
24 will pay.

25 Q Did Rashid respond to that?

1 A Yes.

2 Q What did he say?

3 A No problem, talk to me after two days.

4 Q Mr. Haggag, around this time did you get a call
5 from someone identifying themselves as being with the FBI?

6 A Yes.

7 Q Did the person who called you identify
8 themselves?

9 A Yes.

10 Q What did they say?

11 A He said he works for the FBI, and he introduced
12 himself.

13 Q What did he ask you?

14 A He told me come, we want to talk to you in the
15 building.

16 Q What did you say?

17 A I told him OK.

18 Q Did you make arrangements to meet with him?

19 A Yes.

20 Q What did you do after the phone call was
21 finished?

22 A I talked with some people in Jersey. I talked
23 with Sheik Abdel Khalek, Moustafa Habib and Boker,
24 B-O-K-E-R. All the people told me contact Omar Abdel
25 Rahman, and he knows, he knows how to deal with these people

1 more than you.

2 Q Did you in fact speak to Sheik Omar Abdel Rahman
3 about your telephone call from the FBI?

4 A I contacted him, and I went to him.

5 Q What did he say?

6 A He was not happy to hear about the FBI, the news
7 about the FBI.

8 MS. STEWART: Objection, Judge. Move to strike.

9 MR. KHUZAMI: Let me rephrase the question.

10 THE COURT: Please. That is stricken. Just tell
11 us what you said.

12 Q Specifically, what words did Sheik Omar Abdel
13 Rahman say to you when you told him about your telephone
14 call?

15 A He told me, speak with Ahmed Abdel Sattar and
16 take from him the lawyer's number, because nothing comes
17 from these people except evil.

18 (Continued on next page)

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1 Q Did you, in fact, contact the lawyer?

2 A Yes.

3 Q Who was that?

4 A I contacted Kuby, Ronald Kuby.

5 Q Do you know who Mr. Kuby works with?

6 A Yes.

7 MR. PATEL: Objection.

8 THE COURT: Overruled.

9 Q Who is that?

10 A William Kunstler.

11 Q Did Mr. Kuby give you any advice on how to deal
12 with your telephone call from the FBI?

13 A In the first call he told me, "I cannot tell you
14 to deal with them or not to deal with them. But if you do
15 not want to deal with them, I could help you."

16 Q Did there come a time after this that you had
17 actual meetings with representatives of the FBI?

18 A Yes.

19 Q How many meetings did you have?

20 A I believe three times.

21 Q During what time period did these meetings occur?

22 A April '93.

23 Q Did you ever meet with any FBI agents after April
24 1993 but before your arrest?

25 A Yes.

1 Q How many times did you meet with them on these
2 later occasions?

3 A Two or three times, also.

4 Q What did the FBI ask you during any of these
5 meetings?

6 A In the first meeting, in April, he was begging,
7 "We need your help. We need your help."

8 Q Did you agree to help them at that time?

9 A No.

10 Q Why not?

11 MR. JACOBS: Objection.

12 THE COURT: Overruled.

13 A Because there was an incident between one of them
14 and my lawyer on the telephone, and my lawyers told me not
15 to speak with them. At the same time I did not trust them,
16 and I'm not supposed to talk with them, so long as I have
17 not done anything wrong.

18 Q During any of these meetings with the FBI, did
19 they ask you whether or not you had ever attended the
20 training camp in Pennsylvania?

21 A Yes.

22 Q What did you tell them when they asked you that?

23 A I told them no.

24 Q Did you later tell them that you had in fact
25 attended the training?

1 A Before I was arrested, before I was arrested I
2 told them, yes, I went.

3 Q Did there come a time where you spoke to Siddig
4 Ali about your meetings in April with the FBI?

5 A Yes.

6 Q When was it that you spoke to Siddig Ali about
7 that subject?

8 A I talked with him in Jersey City near the PATH
9 train.

10 Q Do you recall when this was?

11 A The beginning of April.

12 Q Where did your discussion take place?

13 A In the street.

14 Q What did you tell him about your meeting with the
15 FBI?

16 A I told you -- I told him, "Those people are
17 following you," or, "They see you."

18 Q Who is the "people" that you're referring to?

19 A "The FBI knows everything, they are surveying our
20 movements, so forget the subject that is in your head."

21 That is the subject of Mubarak.

22 Q Had, in fact, the FBI asked you about President
23 Mubarak when they met with you?

24 A No.

25 Q Why is it that you told Siddig Ali that they had?

1 A At the beginning to stop him, to stop him from
2 committing any crime. Secondly, to remove any suspicion of
3 me. If the FBI knows, it will be better than if the
4 Egyptian intelligence or the Egyptian government knows.

5 Q What suspicion are you referring to when you say
6 telling him would remove suspicion from you?

7 A Suspicion in the sense that I informed Mubarak
8 about this operation. If he knows that the FBI knows, it is
9 OK.

10 Q What did Siddig Ali tell you when you told him
11 that the FBI knew about his plot?

12 A He was confused. He said, "How did they know?
13 How did they know? Nobody knows except you and I."

14 Q At the conclusion of your discussion, did he
15 agree to stop or end his plot to murder President Mubarak?

16 A Yes.

17 Q What did he say?

18 A He said, "Next time when he comes, he will not be
19 able to escape," and he pointed at me, but he said, "Next
20 time you'll not be with me at all."

21 Q Who is the "you" that he said would not be with
22 him?

23 A (In English) Myself.

24 THE INTERPRETER: Myself.

25 Q Did there come a time after that discussion with

1 Siddig Ali that you talked to Sheik Rahman about the murder
2 of President Mubarak?

3 A Yes.

4 Q Do you recall where that discussion took place?

5 A Yes.

6 Q Where?

7 A At the house of the sheik.

8 Q What is it that you said to Sheik Omar Abdel
9 Rahman about that subject?

10 A I told him, "The man is present here, what is
11 your opinion?"

12 Q When you say "the man," who are you referring to?

13 A Referring to Mubarak.

14 Q When you said "here," where were you referring
15 to?

16 A America.

17 Q Was, in fact, President Mubarak in America at
18 that time?

19 A Yes.

20 Q Continue. What else did you say to Sheik Omar
21 Abdel Rahman?

22 A I told him, "What is your opinion? Should I
23 carry out this operation?"

24 MS. STEWART: Can we get a time frame on this,
25 Judge.

1 THE COURT: Can you get a time frame on this?

2 Q Can you recall when this conversation occurred,
3 Mr. Haggag?

4 A At the beginning of April of '93.

5 Q Continue.

6 What else did you say to Sheik Omar Abdel Rahman?

7 A He told me, "Depend on God. Carry out this
8 operation. It does not require a fatwa."
9 He said, "You are ready in training, but do it.
10 Go ahead."

11 Q Did he say anything else?

12 A Yes.

13 Q What?

14 A "Don't tell Siddig anything about it, do it, you
15 and the people of the training."

16 Q What did you say to him when he told you that?

17 A I believe I told him, "OK," and I asked him, I
18 asked him about a recording he will make for my family, and
19 he said, "OK, but after you finish it."

20 Q When you say "recording," what kind of recording
21 are you referring to?

22 A Tape, a speech, a zealous speech to the family,
23 to improve their morale, in case of death.

24 Q When you say "family," whose family did you ask
25 that this tape be made for?

1 A My family.

2 Q Why did you ask for this tape to be made for your
3 family?

4 A (In English) Can you repeat your question,
5 please?

6 Q Why is it that you asked Sheik Omar Abdel Rahman
7 to make this tape for your family?

8 MS. STEWART: Objection, Judge.

9 THE COURT: Overruled.

10 A I want him to be convinced that I -- that there
11 is no suspicion at all that I am helping Mubarak because my
12 family was there in Egypt and I am present here.

13 Q Did there come a time after this conversation
14 that you accused Siddig Ali of being an informant?

15 A Yes.

16 Q Did you do this on one occasion or more than one
17 occasion?

18 A (In English) On one occasion.

19 THE INTERPRETER: On one occasion.

20 Q I'm sorry. I didn't hear the answer.

21 A In one place.

22 Q Where was that?

23 A At the house of Sheik Omar.

24 Q That was in -- what month was that?

25 A In June, 17th of June.

1 Q Who else was present during this conversation?

2 A Sheik Omar, Siddig, Emad Salem, Khalid.

3 Q Prior to this conversation, had you been away
4 from the United States?

5 A Yes.

6 Q For what period of time were you away from the
7 United States?

8 A From the middle of May to the middle of June.

9 Q Where were you?

10 A Performing the pilgrimage.

11 MS. AMSTERDAM: I'm sorry?

12 THE INTERPRETER: Performing the pilgrimage.

13 Q How did you come to be in Sheik Omar Abdel
14 Rahman's apartment on June 17?

15 A Sheik Omar Abdel Rahman sent for me once and a
16 second, and I ignored it. The third time, the third time I
17 came, and I told him "OK."

18 Q When you got there --

19 THE COURT: Could you come to a convenient break
20 point.

21 MR. KHUZAMI: This will be fine, your Honor.

22 THE COURT: This will be all right?

23 MR. KHUZAMI: Yes, your Honor.

24 THE COURT: Ladies and gentlemen, we are going to
25 take a short break. Please leave your notes and other

1 materials behind. Please don't discuss the case, and we
2 will resume in a few minutes.

3 (Recess)

4 THE COURT: Go ahead, Mr. Khuzami.

5 MR. KHUZAMI: Thank you, Judge.

6 Q Mr. Haggag, before the break, we were talking
7 about the June 17 meeting in Sheik Omar Abdel Rahman's
8 apartment. Do you recall?

9 A Yes.

10 Q Before you arrived at the apartment, do you know
11 what was taking place there?

12 A No.

13 Q Was there any press conference going on during
14 that day?

15 A Yes.

16 Q What was that?

17 A Just a press interview with the sheik, a press
18 interview.

19 Q Prior to your testimony today, have you heard a
20 tape recording of your meeting on June 17 with Sheik Omar
21 Abdel Rahman and others?

22 A Yes.

23 Q Did you listen to that tape?

24 A Yes.

25 Q Did you hear a reference on that tape to someone

1 referred to as "the captured brother"?

2 A Yes.

3 Q Are those words that you spoke during that
4 meeting?

5 A Yes.

6 Q Who were you referring to when you made reference
7 to "the captured brother"?

8 A Mahmud Abouhalima.

9 Q Was there a time when Siddig Ali first spoke to
10 you about a man named Emad Salem?

11 A Yes.

12 Q Do you recall when that was?

13 A Yes.

14 Q When?

15 A At his house. Excuse me, by the end of April.

16 Q Do you recall where you were when you spoke to
17 Siddig Ali about Emad Salem?

18 A At Siddig's house.

19 Q What did Siddig Ali tell you about Emad Salem?

20 A He told me he found someone that would, that
21 would be very important, very important to him. The
22 expression he used in English was, "This is my man. This is
23 my man."

24 Q Did there come a time when Siddig called someone
25 on the telephone and asked about Emad Salem?

1 A Yes.

2 Q Were you present when this telephone call
3 occurred?

4 A Yes.

5 Q Did you hear both sides of the conversation?

6 A Yes.

7 Q How were you able to hear both sides?

8 A By way of the speaker.

9 Q Who was it that Siddig Ali was speaking to?

10 A Ali Shinawy.

11 Q What did Siddig Ali say to Ali Shinawy about Emad
12 Salem?

13 A He told him, "Do you know Emad Salem?"

14 He said, "Yes."

15 He told him, "What do you think of him?"

16 He said, "People suspect him, but he's OK."

17 And he said, "He was saying that there is
18 something between you and him."

19 Q Before you go any further, who is the "you" and
20 "him"?

21 A Now the talk is about Ali Shinawy and Emad Salem.

22 Ali Shinawy said, "Yes, there was something
23 between me and him, but we stopped it."

24 Q Did he indicate what it was that was between Ali
25 Shinawy and Emad Salem?

1 A No.

2 Q You testified earlier today that Siddig Ali
3 indicated to you that he was upset that Mahmud Abouhalima
4 did not include him in the World Trade Center operation, is
5 that correct?

6 A Yes.

7 Q Did he tell you specifically what it was that he
8 was upset about?

9 A Yes.

10 Q What was that?

11 A That Mahmud Abouhalima did not involve him
12 realistically in the operation.

13 Q Did he say specifically what parts of the
14 operation he wasn't involved in?

15 A The bombing operation itself, the transport of
16 the bomb, the van.

17 Q Did there come a time you spoke to Siddig Ali
18 about a man named Issam Gilgal?

19 A Yes.

20 Q When did you have this conversation?

21 A I'm not sure if it was at the mosque or on the
22 street.

23 Q Do you recall when it was?

24 A Yes.

25 Q When was that?

1 A The middle of '92.

2 Q What did Siddig Ali tell you about Issam Gilgal?

3 A He told me that he was an Air Force pilot, came
4 from the Sudanese government to assassinate one of the
5 Sudanese opposition people. He came and he wanted to get a
6 fatwa from the sheik, Omar Abdel Rahman.

7 Q Did there come a time when you spoke to Issam
8 Gilgal personally?

9 A Yes.

10 Q How soon after your conversation with Siddig Ali
11 did that occur?

12 A Several days.

13 Q What was your conversation with Mr. Gilgal?

14 MR. JACOBS: Objection.

15 THE COURT: Overruled.

16 A Issam told me he wanted to meet with the sheik
17 for something urgent relating to somebody in the opposition,
18 from the dogs who oppose the Islamic government of Sudan and
19 asked if I can try to arrange for a meeting with the sheik.

20 Q Did you try and do that?

21 A No.

22 Q Do you know whether or not Issam Gilgal later met
23 with sheik Omar Abdel Rahman?

24 MR. JACOBS: Objection.

25 THE COURT: Overruled.

1 A Yes.

2 Q How do you know that?

3 A I saw them as they were leaving Sheik Omar Abdel
4 Rahman's apartment, and they came and knocked on my door.

5 Q Who is "they"?

6 A Siddig and Issam.

7 Q Did you speak to them after they left Sheik Omar
8 Abdel Rahman's apartment?

9 MS. STEWART: Can we have a time frame on this?

10 Q How soon after your personal conversation with
11 Issam Gilgal did they come to your apartment?

12 A A few days.

13 Q Did you speak to them when they came to your
14 apartment?

15 A I greeted -- Issam and Siddig sat down and talked
16 with me.

17 Q Tell us about the conversation.

18 A Siddig told me that Issam came and took a fatwa
19 from the sheik relating to this guy in the opposition and
20 that the sheik gave it to him and he agreed, after he
21 reproached him a little.

22 Q Did there come a time when you spoke to Sheik
23 Omar Abdel Rahman yourself about Issam Gilgal and this
24 fatwa?

25 A Yes.

1 Q How soon after your meeting in your apartment
2 with Mr. Gilgal and Siddig did your meeting with Sheik Omar
3 Abdel Rahman occur?

4 MR. JACOBS: I am going to object to this line of
5 testimony, 801(d)(2)(E).

6 THE COURT: Overruled, 801(d)(2)(E).
7 Go ahead.

8 A A day or two after the meeting.

9 Q Where did your meeting with Sheik Omar Abdel
10 Rahman occur?

11 A At his apartment.

12 Q What was your discussion?

13 A I talked about the Sudanese and they're coming to
14 him, and they're coming to get a fatwa for the people who
15 oppose the Islamic government in Sudan, and these things
16 don't need a fatwa, and that the Sudanese people just are
17 not good for anything except talk.

18 Q Who is it that said, "These things don't need a
19 fatwa"?

20 A Sheik Omar Abdel Rahman said that these things,
21 people who need a fatwa against the Sudanese government --

22 MR. JACOBS: Your Honor, can I join a 403 with my
23 other objection on this line as well.

24 THE COURT: Same ruling.

25 Go ahead.

1 Q Did Sheik Omar Abdel Rahman explain why --
2 withdrawn.

3 What are the "these things" that Sheik Omar Abdel
4 Rahman was referring to when he said, "These things don't
5 need a fatwa"?

6 MS. STEWART: Objection.

7 THE COURT: Overruled.

8 A That you don't need a fatwa, you don't need a
9 fatwa for anybody standing opposed to the -- to an Islamic
10 government -- to kill anyone opposing Islamic government.

11 Q Did Sheik Omar Abdel Rahman indicate for you
12 whether or not he had given a fatwa to Issam Gilgal?

13 A Yes.

14 Q What did he say?

15 A He gave him the fatwa.

16 Q Mr. Haggag, do you know a man by the name of
17 Yousef Hussein?

18 A Yes.

19 Q When did you first meet Yousef Hussein?

20 A At the sheik's house, at Omar Abdel Rahman's
21 house.

22 Q Do you recall when this was?

23 A Yes.

24 Q When was that?

25 A Middle of '92.

1 Q How is it that you first heard his name?

2 A The sheik called me, told me that there's someone
3 that is helping the jihad with a lot of money, and he's
4 coming to visit me and we want to give him a good
5 invitation, a good reception.

6 Q Did he ask you to do anything specifically?

7 A Yes. Make a good meal for him.

8 Q Did you do that?

9 A Yes.

10 Q Do you know at that time where Yousef Hussein
11 lived?

12 A I just know that he was staying in America, and
13 he was a very rich man from the Emirates.

14 Q Did there come a time when you later spoke to
15 Siddig Ali about Yousef Hussein?

16 A Yes.

17 Q When was that?

18 A The beginning of '93.

19 Q What did Siddig Ali say to you about Yousef
20 Hussein?

21 A Siddig said that he called Yousef in the
22 Emirates, and he asked that he provide money for jihad, and
23 that if Yousef does not trust Siddig that he could call
24 Abdel Rahman himself.

25 MS. STEWART: I didn't catch what the translator

1 said.

2 THE COURT: Would you repeat it.

3 A That Siddig called Yousef in the Emirates and
4 asked about, asked him about money for jihad, and if Yousef
5 has any suspicion about Siddig, and that he could call Abdel
6 Rahman and ask him about Siddig.

7 MS. STEWART: Can we get a time frame on the
8 call, Judge?

9 THE COURT: I believe the testimony was beginning
10 of '93.

11 MR. KHUZAMI: What was that?

12 THE COURT: The telephone call.

13 MR. KHUZAMI: Was when, your Honor?

14 THE COURT: The testimony was the beginning of
15 '93.

16 MR. KHUZAMI: I think that's correct, yes.

17 A For the time, by the end of '92, excuse me. By
18 the end of '92.

19 Q During that discussion with Siddig Ali, did he
20 indicate where in the United States Yousef Hussein had lived
21 in the past or was living?

22 A No.

23 Q The dinner that you had made earlier in 1992, did
24 you in fact attend a dinner with Sheik Omar Abdel Rahman and
25 Issam Gilgal with Yousef Hussein?

1 A Yes.

2 Q Mr. Haggag, after your arrest in July of 1993,
3 did you have an occasion to have a conversation with
4 Mohammed Saleh while you were in prison?

5 A Yes.

6 Q Do you recall when that conversation took place?
7 MR. JACOBS: Your Honor, previous objections have
8 been noted?

9 THE COURT: And ruled on.

10 MR. JACOBS: Thank you.

11 A About a week before the indictment.

12 Q Do you recall the date of the indictment?

13 A 25th of August, '93.

14 Q Where were you when you had this conversation?

15 A At the MCC.

16 Q Do you see the man you know as Mohammed Saleh in
17 the courtroom today?

18 A Yes.

19 Q Please point him out and describe what he's
20 wearing.

21 A Third one from the -- behind.

22 THE COURT: Indicating Mr. Mohammed Saleh.
23 Go ahead.

24 Q Can you tell the members of the jury what
25 Mr. Saleh said to you during this conversation.

1 A Mohammed Saleh told me that Siddig and Emad came
2 to him, so when Mohammed saw Emad he got afraid of him, and
3 took Siddig aside and told him, "Why did you bring somebody
4 like this with you? This guy looks like, looks like very
5 suspicious. Looks like a spy, informer."

6 Siddig said, "No. You trust him as much as you
7 trust me, exactly."

8 Then Siddig raised his thumb and did this to him.

9 MR. KHUZAMI: May I have a moment, your Honor.

10 THE COURT: Yes.

11 (Pause)

12 MR. KHUZAMI: No further questions, your Honor.

13 THE COURT: All right.

14 Ladies and gentlemen, as I indicated to you
15 before, we are going to break for the day from your
16 standpoint now and for the week.

17 Please don't discuss the case. Please leave your
18 notes and other materials here, and we will see you on
19 Monday at 9:30, and remember -- I'm sorry?

20 MR. PATEL: Your Honor, may we approach the side
21 bar momentarily.

22 THE COURT: All right. Would you wait there.

23 (At the side bar)

24 MR. PATEL: Your Honor, I made a motion, that
25 your Honor had initially granted, to strike the comment

1 about the secret meeting.

2 THE COURT: Right.

3 MR. PATEL: I would make --

4 THE COURT: You want me to instruct them? I will
5 do it.

6 MR. PATEL: Yes.

7 THE COURT: Fine.

8 MR. PATEL: Also the government brought out some
9 information today about Mr. Ali Shinawy and his dealings
10 with, prior dealings with Mr. Salem. It went absolutely no
11 place, but did by implication hook up to Mr. Salem's
12 testimony that Mr. Shinawy and Mr. Salem had met Mr. Nosair
13 in prison and had been directed to give bombs. This is pure
14 innuendo, and there is nothing in this witness's testimony
15 to --

16 THE COURT: Let me suggest to you that I doubt
17 that they have total recall about that. The part about the
18 secret meeting I can understand. I would like to have a
19 longer discussion about the Ali Shinawy thing.

20 MR. PATEL: OK.

21 THE COURT: But I will give an instruction about
22 the testimony about the secret meeting with Nosair if you
23 want me to.

24 MR. PATEL: I would like you to.

25 THE COURT: OK.

1 MR. JACOBS: While we are here, I would just
2 renew my objection just for a moment on this Gilgal stuff.

3 THE COURT: Why don't we do it after the jury
4 leaves.

5 MR. JACOBS: I was going to ask for a limiting
6 instruction because I don't believe it has anything to do
7 with the conspiracy that is charged. It may be admissible
8 against the sheik, and I am not here to argue his case, but
9 my position is that it should not be admissible against most
10 of the defendants in this case. It may be 404, it may --

11 THE COURT: If you need that instruction, you can
12 get it later.

13 MR. JACOBS: OK. Fine.

14 MR. McCARTHY: Can we be heard on the secret
15 meeting?

16 THE COURT: You have been heard on the secret
17 meeting.

18 MR. McCARTHY: OK.

19 (In open court)

20 THE COURT: Ladies and gentlemen, yesterday
21 during the witness's testimony there was testimony in which
22 he said that he had a conversation with Mr. Nosair in which
23 Mr. Nosair asked to have a secret meeting about an
24 unspecified subject.

25 That testimony will be stricken and is not to

1 form any part of your decision, not to form any basis for
2 any decision in this case. With that I will wish you a
3 pleasant weekend, and we will see you on Monday.

4 (The jury was excused)

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 (In open court; jury not present)

9 THE COURT: Mr. Jacobs?

10 MR. JACOBS: Your Honor, I objected during the
11 course of the witness's testimony concerning this fellow
12 Gilgal when there was these alleged plots in the Sudan.
13 There are no overt acts in the seditious conspiracy that
14 refer to this, and, while I am not going to argue on behalf
15 of the sheik, as to whether it is admissible as to the other
16 defendants in the case, I think I would ask for a limiting
17 instruction that those statements cannot be admissible as in
18 furtherance of the conspiracy as charged in this case.

19 Other than that, as to admissibility it may be
20 different because the sheik may have participated in
21 something. I don't see how that statement becomes
22 admissible in this case against the other defendants who are
23 on trial on the seditious conspiracy. I made the objection.
24 I would ask that your Honor instruct the jury that that
25 statement is not admissible against at least my client in

1 this case.

2 MR. McCARTHY: Your Honor, I think that is a
3 ridiculous application.

4 The fact is that --

5 THE COURT: Why?

6 MR. McCARTHY: Well, the fact is that during
7 Salem's cross-examination, we sat through a long period of
8 time of questioning about Issam Gilgal, and he was plenty
9 relevant then when they wanted to use it for that purpose.

10 THE COURT: No. Whether Salem was cross-examined
11 about Gilgal or not, I want to know what in this indictment,
12 other than 404(b) evidence, and other than possibly proving
13 a conspiracy that's broader than the seditious conspiracy
14 charged in the indictment, what does it relate to that is in
15 the nature of a seditious conspiracy?

16 MR. McCARTHY: There was testimony by Salem
17 during his direct examination that Issam Gilgal was the
18 pilot who was going to do a mission in Egypt against the
19 Egyptian presidential palace and the American mission.
20 There are also conversations on this --

21 THE COURT: This testimony, however, did not
22 relate to that. It related to his doing something against
23 people who oppose the Sudanese government.

24 MR. McCARTHY: Your Honor, the cross-examination
25 of Salem was basically that Issam Gilgal was a figment of

1 Siddig Ali's imagination.

2 THE COURT: I am not saying that the evidence
3 isn't admissible. I overruled the objection for that
4 reason. He asked for a limiting instruction.

5 MR. JACOBS: Right.

6 THE COURT: The question is does he get it or
7 not. The question to you specifically is why not?

8 MR. McCARTHY: I apologize for the hyperbolic
9 reaction to it, but --

10 THE COURT: As it happens, the target of your
11 hyperbole is a worthy target, but anyway go ahead.

12 MR. McCARTHY: I think that given the nature of
13 the way that the evidence about this person shakes out, what
14 our contention is about him, is that he is one of those
15 people who were in this cadre of people that Siddig Ali
16 represented that he could call upon for jihad activities.

17 THE COURT: In the United States?

18 MR. McCARTHY: Certainly affecting the United
19 States, because the proof is that it was going to be a
20 mission against the --

21 THE COURT: That is only to the extent that there
22 is any evidence about him doing anything in direct
23 opposition to the United States.

24 MR. McCARTHY: But Siddig Ali names him in one of
25 the CM's as one of the people that he can call upon for

1 jihad activity.

2 THE COURT: I am not saying that he is not a
3 co-conspirator. All I am saying is that his objection is
4 focused specifically on the testimony about getting a fatwa
5 to go after people who are opposed to the Sudanese
6 government.

7 That's consistent with the allegation in the
8 indictment that there are worldwide contacts that Dr. Abdel
9 Rahman has, that there are jihad organizations in other
10 places and so forth, and that this conspiracy that you
11 charged in the indictment may be part of something larger.

12 But his question is: Since what you charged the
13 defendants in this case with is a seditious conspiracy, how
14 can you use it against them?

15 MR. McCARTHY: I don't think I could argue,
16 particularly in light of your Honor's ruling about Kahane,
17 that an attack on something that's wholly not an American
18 entity could even in theory further a seditious conspiracy.

19 THE COURT: You could, but I don't think you
20 would get very far.

21 MR. McCARTHY: I wouldn't.

22 But, on the other hand, I think that a limiting
23 instruction is certainly confusing inasmuch as there are,
24 first of all, other charges in the indictment besides the
25 seditious conspiracy. For example, there is a bombing

1 conspiracy charge.

2 THE COURT: It doesn't relate to that either.

3 MR. McCARTHY: It is concerted activity, and it
4 is evidence of concerted activity under the umbrella of the
5 organization operating as we've alleged it operates; that
6 is, the sheik in a position of leadership over it.

7 I think that a limiting instruction that in any
8 way indicated to the jury that this evidence couldn't be
9 considered as part of the conspiratorial arrangement as
10 opposed to furthering the conspiratorial arrangements is of
11 such marginal good effect that the proper purpose of the
12 evidence will be lost.

13 The fact is that the evidence can be considered
14 to prove the conspiracy even if it doesn't further the
15 conspiracy. You are also dealing I think in a seditious
16 conspiracy with a conspiracy that doesn't legally need to be
17 furthered at all. So what good does it do to tell the jury
18 that this evidence can't be considered to further the
19 conspiracy that doesn't in the first place have to be
20 furthered.

21 THE COURT: There is another question, and that
22 is a question to Mr. Jacobs. He doesn't say your client was
23 involved in it. He doesn't say anybody else was involved in
24 it.

25 MR. JACOBS: You have Sudanese defendants who are

1 on trial here. I am not here to argue on their behalf, but
2 the point is that, as we have been trying to do, to focus
3 the jury on the charges in this case, I mean, I don't think
4 the defendants in this case should be responsible for
5 alleged conspiracies all over the world wherever they take
6 place or may have been. It may be 404.

7 THE COURT: The time to make sure that doesn't
8 happen is in the charge.

9 MR. JACOBS: All I am saying is, your Honor,
10 there is a lot here to assassinate officials in another
11 country that we're not charged with. The question is, are
12 the defendants in this case entitled to a standard limiting
13 instruction where the government I think may be offering him
14 and, as I say, I am not here to argue for the sheik, maybe
15 there are some admissibility reasons for him, but I don't
16 see how the other defendants in this case are bound under a
17 statement in furtherance of the conspiracy.

18 THE COURT: I will try to craft something over
19 the weekend that gets the job done and doesn't make it
20 worse.

21 MR. JACOBS: The alternative is that, if the
22 government doesn't want a limiting instruction, I think the
23 testimony should be stricken. Because it really I think
24 under 403 creates the unfair prejudice that this jury
25 shouldn't see, that there are other conversations about

1 assassinating other people in the world, and I think under
2 403, your Honor --

3 THE COURT: You made a 403 objection. I
4 overruled it.

5 MR. JACOBS: OK.

6 THE COURT: Pardon?

7 MS. AMSTERDAM: I suggested that perhaps he might
8 quit while he was ahead.

9 THE COURT: Or before he fell further behind.
10 I will see you Monday.

11 MS. AMSTERDAM: Have a good weekend.

12 MR. JABARA: Your Honor, I asked about a subpoena
13 to be issued --

14 THE COURT: May I see you in the robing room
15 about that?

16 MR. JABARA: Yes.

17 (Pages 10132 to 10134 were sealed by order of the
18 Court)

19 (Proceedings adjourned to Monday, May 8, 1995 at
20 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,
16 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)

May 8, 1995
9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

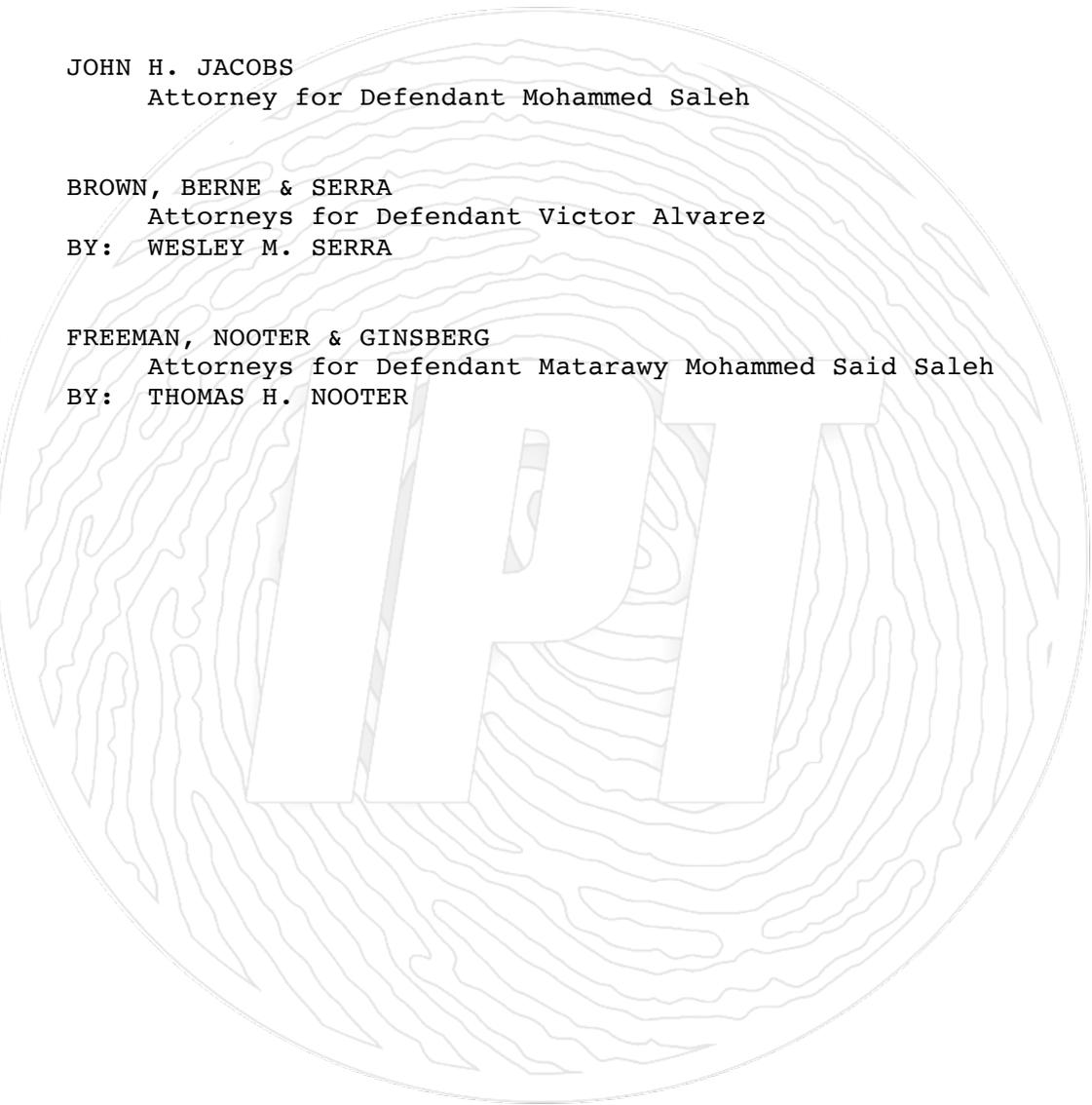
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (In open court; jury present)

3 MR. KHUZAMI: Your Honor, the government would
4 request permission to reopen direct examination for three
5 minor points, probably covering less than five minutes.

6 MR. BERNSTEIN: I am sorry, Judge. I didn't hear
7 that.

8 THE COURT: He needs to cover three things he
9 forgot to cover.

10 Mr. Patel.

11 MR. PATEL: Judge --

12 THE COURT: Miss Stewart.

13 MS. STEWART: When they rested on Thursday we
14 thought that was it. I would object, but --

15 THE COURT: That is ridiculous. You haven't
16 started your cross.

17 MS. STEWART: Right.

18 THE COURT: The objection was in the subjunctive.

19 Mr. Patel?

20 MR. PATEL: Can we go off the record for a
21 minute?

22 THE COURT: No.

23 MR. PATEL: Judge, I am just standing because
24 Miss Stewart is using my chair.

25 Your Honor, if I could speak to your Honor in the

1 robing room at some point about an MCC matter.

2 ABDO MOHAMMED HAGGAG, resumed.

3 (Jury present)

4 THE COURT: Good morning, ladies and gentlemen.

5 JURORS: Good morning.

6 THE COURT: Mr. Khuzami, you have a couple of
7 additional questions?

8 MR. KHUZAMI: Thank you, your Honor.

9 THE COURT: Go ahead.

10 (Continued on next page)

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1 DIRECT EXAMINATION continued

2 BY MR. KHUZAMI:

3 Q. Mr. Haggag, in March of 1993, did you give
4 Mohammed Abouhalima a check?

5 A. Yes, sir.

6 Q. Do you recall how much that check was for?

7 A. \$400, 450, around.

8 MS. STEWART: We can't understand, Judge.

9 A. About 400 to \$450.

10 Q. Why did you give him that check?

11 A. To help the families of the people in jail.

12 Q. Which people are those?

13 A. Mahmoud Abouhalima and Ibrahim El-Gabrownny.

14 Q. Where did you get that check from?

15 A. It was in my mailbox.

16 Q. Was the check made out to you or was it made out
17 to someone else?

18 A. It was in the name of Omar Abdel Rahman, in the
19 account of the Zakat.

20 Q. Do you know how the check got in your mailbox?

21 A. I believe it was a mistake from the postal
22 worker, postal deliverer.

23 Q. What did you do when you got the check?

24 A. I took the check, believing that it was a check
25 made out for the Zakat charity, and I said well, the

1 families of the people in jail take precedence for receiving
2 this money.

3 Q. What did you do when you got the check?

4 A. I signed it in his name, I signed it in the name
5 of Omar Abdel Rahman, and I gave it to Mohammed.

6 Q. The check was not your money, is that correct?

7 A. Yes.

8 Q. You also testified last week that you spoke to
9 Mr. Mohammed Tarek from the Egyptian Mission on a number of
10 different occasions in 1992 and 1993, is that correct?

11 A. Yes.

12 Q. And you testified that one of the subjects you
13 discussed with him was a plot to murder President Mubarak,
14 is that correct?

15 A. Yes.

16 Q. During the course of the discussions about that
17 subject, a plot to murder President Mubarak, did you tell
18 Mr. Mohammed Tarek everything you knew about the details of
19 that plot?

20 A. No. I told him the information which he could
21 use to prevent the crime from happening.

22 Q. But you didn't tell him everything you knew, is
23 that correct?

24 A. Yes.

25 MR. KHUZAMI: Your Honor, may I approach?

1 THE COURT: Yes.

2 Q. Mr. Haggag, let me show you what has been marked
3 Government's Exhibit 815 for identification and ask you to
4 look at the picture in that exhibit.

5 Mr. Haggag, did you have an opportunity to look
6 at that picture before your testimony here this morning?

7 A. Yes.

8 Q. Do you recognize the person whose picture is
9 depicted in Government's Exhibit 815?

10 A. Yes.

11 Q. Who is it?

12 A. Yousef Hussein from the emirates.

13 MR. KHUZAMI: Your Honor, at this time I would
14 move Government Exhibit 815 into evidence.

15 THE COURT: Exhibit 815 is received without
16 objection. Go ahead.

17 (Government's Exhibit 815 was received in
18 evidence)

19 MR. KHUZAMI: No further questions.

20 THE COURT: Miss Stewart, representing Dr. Abdel
21 Rahman.

22 CROSS-EXAMINATION

23 BY MS. STEWART:

24 Q. Mr. Haggag, in the course of your testimony here
25 today, you admitted to Mr. Khuzami that you lied to the

1 government originally about your agreement with the Egyptian
2 government, is that right?

3 A. Yes.

4 Q. And about the money you received from the
5 Egyptian government, is that right?

6 A. Yes.

7 Q. You also had to change your testimony with regard
8 to certain dates on tapes, is that right?

9 A. Which tapes?

10 Q. Do you remember you testified that certain tapes
11 were made in 1988 and you listened to them overnight and
12 came back and said no, they were made in 1990?

13 A. I corrected my dates.

14 Q. You changed your testimony, is that right?

15 A. Yes.

16 Q. In July 17, 1993, you lied to the FBI about never
17 training in Pennsylvania, is that right? You said you had
18 never been there.

19 Q. Can you repeat the question, please.

20 Q. When you spoke to the FBI on July 17, 1993, you
21 lied to them about never training in Pennsylvania, is that
22 right?

23 A. No.

24 Q. Didn't they have to remind you that you showed
25 that you were there three times and then you said oh, yes, I

1 was there once?

2 A. They told me, you were there three times, and the
3 dispute was the number of times. And they said three times?
4 I said one time.

5 Q. You lied it to them about the Mubarak
6 assassination plans on that first occasion, didn't you? You
7 said it was all Siddig Ali and you only gave advice.

8 A. Would you repeat the question, please.

9 Q. I said, you lied to the FBI on that occasion
10 about the Mubarak assassination plot. You said it was all
11 Siddig Ali's plans, and you had only given advice.

12 A. That is not a lie.

13 Q. Didn't you say on a tape recording when you
14 didn't know you were being recorded that the idea originated
15 with you and all the plans were made by you?

16 A. That was a lie.

17 Q. That was a lie?

18 A. Yes.

19 Q. Do you remember on that occasion also lying about
20 who was informing the FBI?

21 A. Yes.

22 Q. Do you remember you were lying to the Muslim
23 community when you told them Siddig Ali was informing the
24 FBI; is that right?

25 A. Yes.

1 Q. Because it was really you who was informing
2 Egyptian intelligence, isn't that right?

3 A. Yes.

4 Q. And having meetings thereafter with the FBI.

5 A. Yes.

6 Q. And in 1991, you lied to a prosecutor in
7 Morristown, New Jersey, about an arson, a fire you set in a
8 restaurant, isn't that true?

9 A. Yes.

10 Q. And you lied about your relationship to the
11 sheik, didn't you?

12 A. How?

13 Q. Didn't you tell us here that in the middle of
14 1992, you were estranged from the sheik and you only would
15 go to his apartment once every two or three weeks?

16 A. That was the truth.

17 Q. Weren't you really presenting one face to him,
18 and that was the same friendly face you had always
19 presented?

20 A. In June '92, the relationship between myself and
21 the sheik was changing, and he knew about this.

22 Q. And it is your testimony that you were no longer
23 friendly with him, is that right?

24 A. The truth.

25 Q. And you were no longer cooking food for him, is

1 that right?

2 A. Yes.

3 Q. No longer giving him the news every day of what
4 was going on?

5 A. Yes.

6 Q. Are you aware that the sheik was wiretapped by
7 the government from February '93 until June of '93, they
8 seized every conversation he had on the phone?

9 MR. KHUZAMI: Objection, form.

10 THE COURT: Sustained.

11 Q. Did you ever have telephone conversations, Mr.
12 Haggag --

13 A. Yes.

14 Q. May I finish? -- between February '93 and June of
15 '93?

16 A. Yes.

17 Q. In those telephone conversations, you called his
18 lawyer for him, didn't you, and translated with his
19 immigration lawyer?

20 A. I don't recall.

21 MS. STEWART: Judge, I have a group of tapes that
22 have been premarked Abdel Rahman M through S, and I have a
23 little tape recorder that maybe I can plug in here somewhere
24 and ask Mr. Haggag to put on the headphones.

25 I would just like to give you what is marked

1 Abdel Rahman O.

2 May we approach, Judge?

3 THE COURT: Yes.

4 (At the side bar)

5 THE COURT: Yes.

6 MS. STEWART: Judge, these are all FISA tapes
7 which were seized by the government initially and supplied
8 to my client on cassettes, with the conversations being end
9 to end. In other words, it was not one cassette per
10 conversation, they were maybe one day's worth of
11 conversations. He in the course of our preparation went
12 through them and culled out all the Haggag conversations in
13 preparation for Mr. Haggag's testimony. He did this because
14 he felt it was not correct to have outsiders listening to
15 many conversations that dealt with personal matters between
16 him and people in the congregation. The translators we use,
17 etc., are people that know people in the community. So he
18 took them outside the reels and put them all on one tape.
19 We yesterday isolated each conversation we intend to ask him
20 about, although I hope maybe after he hears one he will go
21 along with it. I did it because I thought probably he could
22 not read transcripts, which we also made up. Some of them I
23 have the reel numbers and the dates and some of them I
24 don't. But it is not our fault, Judge, it is the way in
25 which they were supplied to us. I can refresh his

1 recollection, I assume, with anything.

2 THE COURT: You can refresh his recollection with
3 anything.

4 MS. STEWART: That is all I intend to do.

5 THE COURT: As long as it doesn't get in
6 evidence.

7 MR. KHUZAMI: Could we get a set of the
8 transcripts? I have no way of following along and I haven't
9 received your transcripts of these conversations.

10 MS. STEWART: It is your witness, it is
11 cross-examination. I don't have another set. I have one
12 set. I will make it up at the break, if I can.

13 THE COURT: Yes, you will. Let's go.

14 (At the in open court)

15 MS. STEWART: May I approach, Judge?

16 THE COURT: Yes.

17 (Pause)

18 MS. STEWART: This is why I have children.

19 (Tape played)

20 Q. Mr. Haggag, does that refresh your recollection
21 as to a conversation which you were translating for the
22 sheik with regard to immigration?

23 A. Yes. There is a note here. This is not a
24 translation for immigration. The sheik is asking me to call
25 his lawyer, and this is what I said before. I wasn't

1 volunteering to do things for him, he would ask me once or
2 twice, three times.

3 Q. You are certain as you sit there that you weren't
4 volunteering to cook things for him or to go to the store
5 and get things for him? You are certain as you sit there
6 right now that in this time period from February '93 to
7 April '93, you were not volunteering, you were only seeing
8 the sheik once every two or three weeks; is that right?

9 A. What I am saying is that I am not volunteering, I
10 wasn't volunteering anything. When asks for something, I do
11 what he wants.

12 Q. Do you remember an occasion when you called him
13 to tell him that someone was loitering outside his door and
14 had just run down the stairs?

15 A. Yes, possibly.

16 Q. Do you remember a number of conversations about
17 sending packages to Pakistan and where were the receipts for
18 the sending of the packages?

19 A. Possibly, once again.

20 Q. Do you remember it or not?

21 A. I don't remember very well, but he could have
22 asked me and I could have done this for him.

23 Q. Do you remember sending a package to Pakistan?

24 A. I recall that I received a package from Pakistan.
25 Several times.

1 Q. Let me see if this will help. This is Abdel
2 Rahman R.

3 (Tape played)

4 Q. Does that refresh your recollection, Mr. Haggag,
5 about whether or not you sent a package to Pakistan for the
6 sheik?

7 A. The package that we sent to Pakistan, we sent to
8 Pakistan and various places in America, was in 1992, the end
9 of 1992, and Omar Abdel Rahman was searching, you know,
10 looking for the receipts for that, and I was helping,
11 helping him out.

12 Q. Isn't it that he was looking for the receipts
13 because the package had not arrived?

14 A. Yes.

15 Q. And it is your testimony that that is late 1992
16 that that is happening?

17 A. Around that time.

18 Q. It is after June of '92, isn't that correct?

19 A. Yes.

20 Q. Are you certain as you sit there that it isn't in
21 February 23, 1993?

22 THE COURT: Are you talking about the sending of
23 the package or the looking for the receipt?

24 MS. STEWART: Looking for the receipt.

25 THE COURT: The question is, were you looking for

1 the receipt in February '93 or not?

2 THE WITNESS: Yes. Thank you, your Honor.

3 A. We were looking for the receipt in '93.

4 Q. Do you recall being asked and answering about
5 when the package had been sent?

6 A. Yes.

7 Q. Isn't it a fact that the package was sent two or
8 three days earlier and it was two weeks since it hadn't
9 gotten there?

10 MR. KHUZAMI: Objection to form.

11 MS. STEWART: Strike that.

12 THE COURT: Sustained.

13 Q. That the package had been sent two weeks earlier
14 and had not arrived yet?

15 A. The package, in order for the package to reach
16 Pakistan, it would take a month or even more, and in this
17 incident, it took more time and it did not arrive.

18 Q. But you were looking for the receipt in February
19 for a package that you say was sent at the end of 1992, is
20 that right?

21 A. As far as I remember.

22 Q. Do you remember leaving messages on the sheik's
23 answering machine?

24 A. Yes.

25 Q. Do you remember when the sheik came back from

1 California on the day of the eed in 1993?

2 A. Yes.

3 Q. Do you remember him calling you on that day?

4 A. Yes.

5 Q. And your asking him are you celebrating the eed
6 today or tomorrow?

7 A. Yes.

8 Q. And he speaks to you about how you are always
9 following Egyptian time, Egyptian nationalism in setting
10 your dates with regard to religious holidays. Do you
11 remember him saying that to you?

12 A. Could you repeat the question, please?

13 Q. Sure. Do you remember in this conversation
14 discussing the eed, the sheik says that you always follow
15 the Egyptian time in setting the holiday?

16 A. Yes.

17 Q. And that refers to the sighting of the new moon,
18 which is necessary for the beginning of the holiday, is that
19 right?

20 A. Yes.

21 Q. And then you discussed with him where this
22 celebration was going to be had, is that correct?

23 A. Yes.

24 Q. And it ended up that it was going to be held in
25 the park, is that right?

1 A. Yes.

2 Q. And you make arrangements to go there with him,
3 isn't that correct?

4 A. What do you mean by arrangement?

5 Q. You are going to drive or you are going to go
6 together in any event?

7 A. He asked me to mediate with the mosque so that he
8 could deliver the speech.

9 Q. Why was that?

10 A. Because he knows, because he knows I was in the
11 mosque, I was mediating in the mosque.

12 Q. And you said to him -- wasn't it because the
13 mosque was under surveillance at this time because it was
14 after the World Trade Center bombing?

15 A. I don't believe so.

16 Q. March of 1993, is that before or after the World
17 Trade Center bombing, if you know?

18 A. After the World Trade Center.

19 Q. Does the sheik tell you to come over and see him
20 after you have a shower?

21 A. Yes.

22 Q. And you say no, I will come right now?

23 A. Yes.

24 Q. Do you remember later that same day calling the
25 sheik because you have a call from your wife in Egypt?

1 A. Yes.

2 Q. Do you remember putting her on the phone to speak
3 with the sheik?

4 A. Yes.

5 Q. This is the time when you say you are estranged
6 and your whole family is estranged from the sheik, is that
7 right?

8 A. Yes.

9 Q. Do you remember putting her on the phone, and she
10 speaks to him about bringing back cookies -- strike that.

11 Were you listening to the conversation as it was
12 being spoken?

13 A. Yes.

14 Q. And do you remember she speaks about going to the
15 best hotel in Cairo and getting cookies to bring back for
16 the sheik?

17 A. Yes, this is the truth.

18 Q. And her sister got on the phone after that, is
19 that right?

20 A. Yes.

21 Q. And both of them wished for the sheik victory in
22 the coming year, did they not?

23 A. Yes.

24 Q. This is at the time that you are mad at the
25 sheik, is that right?

1 A. Yes.

2 Q. Did you lie to your wife, Mr. Haggag?

3 A. No.

4 Q. Are you lying to us when you say you were
5 estranged?

6 A. No.

7 Q. Do you remember if the sheik called you during
8 this period of time to awaken you for the dawn prayer?

9 A. For what?

10 Q. To awaken you for the dawn prayer.

11 A. Possibly.

12 Q. Wasn't this a regular thing, that he would call
13 you because he would be up early and sometimes you would
14 oversleep?

15 A. No, not a regular thing, not a regular thing.

16 Q. Do you remember a time during this period when
17 you had called him because you bought some delicious
18 peaches?

19 A. Possible.

20 Q. At this period of time, March, early April, do
21 you remember if a person named Hamdi was staying with the
22 sheik?

23 A. Yes.

24 Q. That was a person from Los Angeles who had come
25 back with him, is that correct?

1 A. Yes.

2 Q. And he had stayed with him for about two weeks
3 after you returned from Los Angeles, is that right?

4 A. Yes.

5 Q. Do you remember a conversation in which you
6 called the answering machine and then the sheik picked up
7 and said we are going to start to make the beans?

8 A. It's possible.

9 Q. And you replied that, don't do that because I
10 prepared everything yesterday, the only thing left to do is
11 drain them, and I'll do that when I come over?

12 A. Yes, it's possible.

13 Q. It is still your testimony that you were no
14 longer cooking for him or taking care of him?

15 A. Yes, just as it is.

16 Q. So when you said you asked the brothers to put
17 down the newspapers and start getting the bread ready, that
18 was because you weren't cooking for him any more.

19 A. There is the eed here, this is the eed here. We
20 forget our differences and we get together.

21 Q. Do you remember a later conversation where you
22 tell him that you have cooked already and you have spinach
23 and zucchini all ready to come over for him?

24 A. For the same occasion, and it was also for the
25 eed.

1 Q. That was on the same occasion or a different
2 occasion?

3 A. It was the same occasion. It might have been a
4 different day but it was the same occasion.

5 Q. Might it have been into April instead of in March
6 when the eed was?

7 A. No. The eed was in March.

8 Q. The eed is a one-day festival, is that right?

9 A. No, three days.

10 Q. Three days in March on this time in 1993, is that
11 right?

12 A. Yes.

13 Q. Do you remember a conversation where you
14 discussed with him the politics of the mosque, a fellow
15 named Raof who had been acting out at Abu Bakr Mosque?

16 A. Yes.

17 Q. And this was because you were estranged from him
18 and no longer trusted him, is that right?

19 A. Yes.

20 Q. And you also made a call for him with regard to a
21 press conference, did you not?

22 A. Yes.

23 Q. And that press conference was held on April 6,
24 1993, is that correct?

25 A. Yes.

1 Q. And you actually drove him there, is that right?

2 A. Drove --

3 Q. Drove in a car?

4 A. Drove him to where?

5 Q. Did you drive him to the press conference?

6 A. No.

7 Q. The press conference was in his home, is that
8 right?

9 A. Yes.

10 Q. Do you remember a conversation that you had where
11 you said to him the first pictures the press has of your
12 return to New Jersey show you with my car Aziza?

13 A. Yes.

14 Q. And Aziza is a name you gave your car, is that
15 right?

16 A. Yes.

17 Q. And you were laughing because you and the sheik
18 were running towards the car to avoid the press, is that
19 right?

20 A. Yes.

21 Q. Do you remember an interview that the sheik had
22 with Reuters?

23 A. Yes.

24 Q. And you did the translation for that, is that
25 right?

1 A. I helped in it.

2 (Continued on next page)

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1 Q. Later, when a transcript was delivered, you
2 called Gene King or Bill King of Reuters to tell them where
3 they had not faithfully said what the sheik had said, is
4 that right?

5 A. Yes.

6 Q. Do you remember that, that you were annoyed
7 because they said the sheik used the word "Israel" as
8 opposed to using "occupied Palestine"?

9 A. Could you repeat the question, please?

10 Q. Do you remember that you made a point on the
11 phone of saying that they had used the word "Israel" when
12 the sheik had used the word "Occupied Palestine"?

13 A. That's possible.

14 Q. Would it be fair to say, Mr. Haggag, that you
15 were presenting one face to the sheik and another face to
16 the Egyptian intelligence that you were dealing with at that
17 time?

18 A. No.

19 Q. It was the same face? You were not lying to the
20 sheik when you acted friendly toward him?

21 A. No.

22 Q. Do you remember earlier in your life when you
23 obtained a divorce from your first wife?

24 A. Yes.

25 Q. You lied in those papers, too, didn't you?

1 A. What?

2 Q. Did you lie in those divorce papers also?

3 A. No.

4 Q. Did you leave out certain facts when you
5 recounted events from the stand here for this jury in the
6 last few days? Did you leave out certain things?

7 MR. KHUZAMI: Objection to form.

8 THE COURT: Sustained.

9 Q. Do you recall if Mr. Khuzami came back and asked
10 you certain questions about things you had already testified
11 to while you were on the witness stand here?

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 MS. STEWART: Was that sustained, Judge?

15 THE COURT: It was sustained.

16 Q. Did you remember on one occasion Mr. Khuzami
17 asked you about the kidnaping of a child that was taken to
18 Canada with you and your friends?

19 A. Yes.

20 Q. And he came back and asked you the next day if
21 you knew in advance that the child was going to be
22 kidnapped, is that right?

23 A. Yes.

24 Q. That's because you didn't tell us that in your
25 direct testimony, isn't that --

1 MR. KHUZAMI: Objection.

2 THE COURT: Sustained.

3 Q. Are you familiar with an Egyptian expression
4 "dale boker"? Excuse my bad pronunciation. Maybe the
5 translator can do better.

6 A. Yes.

7 Q. Could you explain what that means for us.

8 A. (In English) He says that tale, somebody's name
9 Boker.

10 (Through interpreter) It's the tale, the tale of
11 somebody named Boker.

12 Q. Doesn't it mean an opportunist, someone who is an
13 opportunist who seizes an opportunity and makes the most of
14 it, whatever it is?

15 A. I don't believe it is so.

16 Q. Do you remember in a very, very loud argument
17 that you had with Siddig Ali and Emad Salem in front of the
18 sheik on June 17 that as you were running out of the door
19 you were called a "dale boker"?

20 A. No. What they said was, "You work for Boker."

21 Q. You are not familiar with that expression?

22 A. No.

23 MR. KHUZAMI: Objection to form.

24 THE COURT: Sustained.

25 Q. Do you know the expression "alf laila wa laila"?

- 1 A. (In English) Could you repeat that?
- 2 (Question interpreted)
- 3 A. Yes.
- 4 Q. What does that mean?
- 5 A. It's -- it's an historical tale, T-A-L-E, story.
- 6 Q. Which historical tale is it?
- 7 A. It's a large story, in many stories.
- 8 Q. It's "A Thousand and One Nights," isn't it,
- 9 "Tales of A Thousand and One Nights"?
- 10 A. Yes.
- 11 Q. Told by a slave girl named Schehherazade?
- 12 A. Yes.
- 13 Q. You arrived in the United States, Mr. Haggag, in
- 14 1981, is that right?
- 15 A. Yes.
- 16 Q. 22 years old, is that right?
- 17 A. Yes.
- 18 Q. Not at all religious in the sense of attending a
- 19 mosque on a regular basis, is that right?
- 20 A. Yes.
- 21 Q. You only became religious after your mother
- 22 passed away, is that right?
- 23 A. That's the truth.
- 24 Q. What year was that?
- 25 A. As far as I remember, '87.

1 Q. You can't remember what year your mother died?

2 A. My mother --

3 MR. KHUZAMI: Objection.

4 THE COURT: Sustained.

5 Q. Can you remember the year your mother died?

6 A. Yes.

7 Q. What year was that?

8 A. '86, and I didn't know about it until a year
9 later.

10 Q. You were not in touch with your mother?

11 A. My family kept it from me.

12 Q. So that when you joined the mosque thereafter, it
13 would have been a year later, is that right?

14 A. Yes.

15 Q. Would it have been in '88?

16 A. No.

17 Q. So that when you told the FBI that you joined the
18 mosque in 1988 after your mother died, that would not have
19 been true, it was earlier, is that right?

20 A. It was a mistake, my mistake.

21 Q. You testified about the first time you met Mahmud
22 Abouhalima. Do you remember testifying about that?

23 A. Yes.

24 Q. I think you told us here that you met him as a
25 result of someone telling you that the sheik had arrived and

1 was in Seagate, was in -- strike that.

2 And was going to speak, is that correct?

3 A. No.

4 Q. When did you first meet Mahmud Abouhalima?

5 A. We were going to see sheik, Sheik Omar Abdel
6 Rahman at Mustafa Shalabi's house. We drove the car until
7 Al Farooq mosque in Brooklyn, and then somebody drove the
8 car from Al Farooq mosque to Mustafa Shalabi's house, and
9 then later I found out that the person driving the car was
10 Mahmud Abouhalima.

11 Q. This was in 1990 when the sheik arrived, is that
12 right?

13 A. Yes.

14 Q. So when you told the FBI that you never met
15 Mahmud until January 1993, you never formally met Mahmud,
16 that was not true, isn't that correct?

17 A. It depends on the way you look at it or
18 understand it. At the time I didn't know that his name was
19 Mahmud Abouhalima. I later found out that his name was
20 Mahmud Abouhalima.

21 Q. Do you remember being interviewed by the FBI by
22 Mr. Liguori -- who I think is sitting here -- and
23 Mr. Corrigan in October of '93, in November of '93, and in
24 December of '93? Do you remember being interviewed by them?

25 A. Yes.

1 Q. Do you remember telling them that you had seen
2 Mahmud around the community, but you had never formally met
3 him, is that right?

4 A. Yes.

5 Q. And that the first time you were introduced to
6 him was in January 1993?

7 A. Yes.

8 Q. But the fact is you knew who he was when you were
9 talking to them, didn't you?

10 MR. KHUZAMI: Objection to form.

11 Q. When you spoke to them in the later months of
12 1993, you were aware of who had driven you to Mustafa
13 Shalabi's house, weren't you?

14 A. Yes. When I was talking to him, I knew who was
15 talking to me, who was driving the car. But at the time, in
16 '90, '91, I didn't know who he was.

17 Q. You knew in 1993 who he was, didn't you?

18 A. Yes.

19 Q. When you spoke to these FBI agents, you knew who
20 he was?

21 A. Yes.

22 Q. Instead you told them that you met him when you
23 went with Siddig Ali's to his brother's house?

24 A. Yes.

25 Q. You were first introduced on that occasion?

1 A. That's the truth.

2 Q. You never mentioned this other meeting at all?

3 A. Yes.

4 Q. You turned in Mahmud Abouhalima to the Egyptian
5 authorities, isn't that right?

6 A. Yes.

7 Q. You found out through Siddig Ali and through
8 Mohammed Abouhalima that he was in Saudi Arabia, is that
9 correct?

10 A. Yes.

11 Q. And you knew he was wanted for the World Trade
12 Center bombing, is that correct?

13 A. Yes.

14 Q. You turned him in, notwithstanding the fact that
15 you knew that the Egyptian authorities would torture him,
16 isn't that true?

17 A. Yes.

18 Q. You actually called them and said to your friend
19 at the embassy: "Are you guys asleep? Mahmud is in this
20 country, and you're not doing anything about it. He's in
21 Egypt and you are not doing anything about it."

22 Do you remember that?

23 A. Yes.

24 Q. Do you support the current regime in Egypt?

25 A. I oppose it in certain things, and I agree with

1 it in other things.

2 Q. You worked for it, didn't you? You got money
3 from them, didn't you?

4 A. I volunteered my service, yes.

5 Q. At the same time you were turning in Mahmud
6 Abouhalima you were setting up a committee to defend the
7 brothers in the World Trade Center case, isn't that right?

8 A. Regardless, he still has the right to defend
9 himself.

10 Q. But you were saying that the people accused were
11 innocent, weren't you?

12 A. Everyone in front of the court is innocent until
13 proven guilty in court.

14 Q. Do you remember that you turned over certain
15 documents to the government concerning the founding of a
16 committee, a defense committee for the Muslim cases?

17 A. Yes.

18 Q. In that, you wrote, did you not, "It is our duty,
19 we the Muslims, as well as all those who support the truth
20 everywhere, to support those innocent brethren and to avert
21 oppression to them which the mass media and some other areas
22 want to inflict on them." Is that what you wrote?

23 A. Yes.

24 Q. That was innocent meaning innocent, not innocent
25 before the court, wasn't it?

1 A. Until they were sentenced and -- convicted and
2 sentenced, they were innocent.

3 Q. You turned in Mahmud Abouhalima, is that right?

4 A. Yes.

5 Q. And at the same time you were organizing defense
6 committees, is that right?

7 A. Helping his family is a duty.

8 THE COURT: The question was whether you did it
9 at that time. Did you?

10 THE WITNESS: Yes.

11 Q. You testified this morning about a check that you
12 took out of the mailbox that was addressed to Dr. Abdel
13 Rahman.

14 A. Yes.

15 Q. It was just placed in your mailbox by mistake, is
16 that how you came to have it?

17 A. Yes.

18 Q. When was this? Did you say?

19 I didn't catch the year.

20 A. '93.

21 Q. It was for the families of people in jail, is
22 that right?

23 A. Yes.

24 Q. It just said "charity account" on it, is that
25 correct?

1 A. Yes.

2 Q. You say you signed it and gave it to Mohammed, is
3 that right?

4 A. Yes.

5 Q. Who is Mohammed?

6 A. Mohammed Abouhalima.

7 Q. In 1993?

8 A. Yes.

9 Q. What month in 1993 was this?

10 A. It could have been March or April.

11 Q. So in other words you turned him in in Egypt, is
12 that correct?

13 A. Yes.

14 Q. You know as you sit there that he was tortured in
15 Egypt before he was returned here, is that correct?

16 A. Possible.

17 Q. You know as you sit there that the doctors
18 confirmed it, do you not, Mr. Haggag?

19 A. Yes.

20 Q. You then set up committees to defend the World
21 Trade Center defendants, is that right?

22 A. For their defense, yes.

23 Q. You stole a check from Dr. Rahman -- Abdel Rahman
24 and put it in Mahmud Abouhalima's account, is that right?

25 A. Yes.

1 Q. Going back in time, you testified that you were
2 married in 1983, is that correct?

3 A. Yes.

4 Q. What was the name -- excuse me. What was the
5 name of your wife?

6 A. Evaughan Graves.

7 Q. And she was an American, is that correct?

8 A. Yes.

9 Q. And she petitioned the government to get you a
10 green card, is that right?

11 A. Yes.

12 Q. There was a child born, is that correct?

13 A. Yes.

14 Q. I think you told us he was born in December 1984,
15 is that right?

16 A. Yes.

17 Q. You told us that you took the child to Egypt, is
18 that right?

19 A. Yes.

20 Q. You had no permission from your wife to do that,
21 did you?

22 A. No.

23 Q. You are aware, Mr. Haggag, that it is a crime to
24 take a child for whom you don't have custody and transport
25 him to a foreign country, are you aware of that?

1 A. Yes.

2 Q. At the time that you took the child, he was only
3 six months old, is that right?

4 A. Yes.

5 Q. You sent him to Egypt, is that right?

6 A. Yes.

7 Q. You took him way from Evaughan Graves-Haggag, is
8 that right?

9 A. Yes.

10 Q. Where was she living at that time?

11 A. In Jersey City.

12 Q. You know, do you not, that there is a crime in
13 New Jersey called "interference with custody," is that
14 right?

15 A. I didn't know.

16 Q. Did you know you were doing the wrong thing when
17 you took the child away? You didn't go to any court and get
18 permission to take the child away, did you?

19 MR. KHUZAMI: Objection to form.

20 THE COURT: Sustained.

21 Q. Did you go to any court in New Jersey and get a
22 court order saying it was all right for you to take the
23 child away?

24 A. After taking the child, I did that.

25 Q. You did that a year or so later, is that correct,

1 in 1986, is that right?

2 A. Yes.

3 Q. You went to a county where you did not reside,
4 isn't that correct?

5 A. The same state.

6 Q. The same state, but a different county, isn't
7 that correct?

8 A. Yes.

9 Q. You went to Elizabeth, which is Union County,
10 isn't that right?

11 A. Yes.

12 Q. You gave them a false address, isn't that
13 correct?

14 A. No.

15 Q. You were living in Elizabeth at that time?

16 A. I used the address of her mother.

17 Q. You used the address of her mother?

18 A. (In English) Not me.

19 A. (Through interpreter) I gave her address as
20 residing with her mother as far as I remember.

21 Q. Do you remember signing papers in your lawyer's
22 office where you swore that you were a resident in Union
23 County, New Jersey?

24 A. I don't remember.

25 Q. Give me one minute here.

1 Do you remember that Mr. Agresti in Newark was
2 the lawyer that you used for the divorce?

3 A. Yes.

4 Q. Do you remember telling him that you have resided
5 at your current residence for the last 18 months before July
6 1985?

7 A. I don't recall that.

8 Q. Do you remember telling him that you resided at
9 533 Walnut Street Elizabeth, and that you were a resident
10 there when the action for divorce was started?

11 A. Possibly.

12 MS. STEWART: Let me just mark this. I think we
13 are up to Defendants' --

14 THE COURT: T.

15 MS. STEWART: T.

16 Judge, may I ask the translator to just translate
17 this portion.

18 THE INTERPRETER: Which portion, please?

19 MS. STEWART: Number 4 and 5.

20 THE INTERPRETER: Thank you.

21 (Pause)

22 THE INTERPRETER: I translated 4 and 5.

23 MS. STEWART: Pardon me?

24 THE INTERPRETER: I translated 4 and 5, as you
25 requested.

1 MS. STEWART: Thank you.

2 Q. Do you remember that you told your lawyer that?

3 A. Yes.

4 Q. And that you then swore to it? You signed and
5 swore to that?

6 A. Yes.

7 Q. It wasn't true, was it? You weren't living in
8 Elizabeth.

9 A. Yes, that was not true.

10 Q. Were you aware that Ms. Graves-Haggag had gone to
11 the authorities in Hudson County when you took the child?

12 A. No.

13 Q. Did you know, and do you know as you sit there
14 that there is a warrant for your arrest for taking that
15 child and not coming to court?

16 A. No. I don't know.

17 Q. But you knew enough not to use the address of
18 Third Street, isn't that correct, Third Street, Jersey City,
19 where you had been living when you went to get this divorce?

20 A. I was not at this address at the time of the
21 divorce. Not at Third Street. And the address for the --
22 the Elizabeth address is the address of her godmother. And
23 I got her permission to use her address as my legal address
24 because I was moving around at that time.

25 Q. You said that you had last seen the mother of the

1 child on a railway station or in a train station in New
2 York, is that right?

3 A. Possibly.

4 Q. And you said that she told you she was living in
5 Norfolk, Virginia, is that right?

6 A. Yes.

7 Q. Wasn't it really Newport News she was living in?

8 A. She wrote her address for me.

9 Q. Did she tell you on this occasion that there was
10 a warrant for you in Hudson County to come to court and --

11 A. No.

12 Q. -- explain where this child went?

13 A. No.

14 Q. Did she tell you she had custody of the child by
15 virtue of that proceeding in the Hudson County court where
16 you both had lived?

17 A. No, she didn't tell me.

18 Q. You took this baby to the airport and gave him to
19 someone else to take to Egypt for you, is that right?

20 A. Yes.

21 Q. It wasn't that you wanted to raise the child,
22 isn't that right?

23 A. Yes.

24 Q. You took this child from its mother and sent him
25 to Egypt, is that right?

1 A. Yes.

2 Q. Have you ever seen the mother of this child from
3 the time you saw her at the train station?

4 A. Yes.

5 Q. Is she at all in touch with her child?

6 A. No.

7 Q. You also told us about another occasion -- strike
8 that.

9 After you took this child, this baby, and sent
10 him to Egypt, did you brag about that in the mosques, about
11 how you had done this?

12 A. Possibly.

13 Q. Did you tell the FBI that you bragged about it?

14 A. I told them that I had taken my child.

15 Q. You never told them until August of 1994, did
16 you?

17 A. I told them at the very beginning, not only in
18 August.

19 Q. They were writing things down when you told them,
20 is that right?

21 A. Yes.

22 Q. Did you have occasion to review any of the
23 reports that they had written?

24 A. No.

25 Q. So it is your testimony you told them at the very

1 beginning, is that right?

2 A. Yes.

3 Q. Do you remember -- I'm sorry.

4 THE INTERPRETER: I'm just translating.

5 MS. STEWART: I didn't hear the translation.

6 THE INTERPRETER: Yes.

7 MS. STEWART: I stepped on you.

8 Q. Do you remember that you told them in August of
9 1994 that you had bragged about how you handled the
10 situation?

11 MR. KHUZAMI: Objection.

12 THE COURT: Sustained as to form.

13 Q. Do you remember speaking with the FBI in August
14 1994?

15 A. Yes.

16 Q. Do you remember telling them -- first of all,
17 informing them that prior to getting legal custody you had
18 taken your child from his mother, is that right?

19 A. Yes.

20 Q. And that you thereafter bragged about that to
21 other people in the Muslim community? Do you remember that?

22 A. Possibly.

23 Q. Let me show you 35119F, Mr. Haggag.

24 MR. KHUZAMI: Was that F, Ms. Stewart? F?

25 MS. STEWART: F.

1 Q. Does that refresh your recollection, Mr. Haggag,
2 that you bragged about it in the Muslim community?

3 A. The Muslim community, when somebody asked me
4 about what happened, I told them what happened. If you
5 consider this bragging, it's up to you.

6 Q. You told us you assisted another person in doing
7 the same thing, isn't that right?

8 A. Yes.

9 Q. Only this child was five years old, isn't that
10 right?

11 A. Yes.

12 Q. It was planned in advance, isn't that correct?

13 A. Yes.

14 Q. This time the mother had legal custody, is that
15 right, and the father had only visitation rights, is that
16 right?

17 A. Yes.

18 Q. This friend of yours took the mother out for
19 dinner and drugged her, isn't that correct?

20 A. Yes.

21 Q. You left that out when you told us earlier about
22 this, didn't you?

23 A. (In English) I didn't say it, but --

24 A. (Through interpreter) I did not say it, but I
25 said what I remembered.

1 Q. Do you remember now that this man drugged the
2 mother of this child?

3 A. Yes.

4 Q. And then he stole the child and brought him to
5 you, isn't that right?

6 A. He came with the child to me.

7 Q. With the child after he drugged the mother, isn't
8 that right?

9 A. Yes.

10 Q. Did you have any role in the drugs that he used
11 to drug the mother of this child?

12 A. Yes.

13 Q. What did you do?

14 A. Once I gave him two pills to use and he said,
15 "No, these are not going to be useful."

16 Q. Then did you obtain for him something stronger?

17 A. No.

18 Q. Did he get drugs off the street to use?

19 A. I don't know where he got them from.

20 Q. The child and father came to you, is that right?

21 A. Yes.

22 Q. You let them stay in your home, is that right?

23 A. Yes.

24 Q. That night you and your roommate drove them to
25 Canada so he could take this child to Egypt, is that right?

1 A. Yes.

2 Q. Did you know what you were doing was against the
3 law?

4 A. No.

5 Q. It didn't occur to you that maybe taking a child
6 way from the parent was against the law?

7 A. I did not pay attention to that. The father was
8 taking his child away.

9 Q. Did you ever see that child again in the United
10 States?

11 A. No.

12 Q. Did you ever see the father again in the United
13 States?

14 A. No.

15 Q. You went to New Jersey, is that right, with the
16 child and the father? He met you at work and then you went
17 to your apartment in New Jersey?

18 A. Yes.

19 Q. Do you know that this is a crime of the second
20 degree, to interfere with custody of a child?

21 A. No, I didn't know that.

22 Q. Are you aware that it carries a presumptive term
23 of imprisonment of seven years in New Jersey?

24 A. No, I don't know that.

25 Q. You indicated in your direct testimony that after

1 your relationship with the sheik ended or broke up or you
2 were estranged from him that you had previously given him a
3 lot of help, is that right?

4 Let me rephrase it. Too long a question.

5 On your direct testimony you testified that you
6 were, before he called you a hypocrite, you had been a lot
7 of help to the sheik, is that right?

8 A. Yes.

9 Q. Do you remember saying that you referred him to
10 my kids, myself, my wife, we did anything to support him?
11 Do you remember testifying to that?

12 A. Yes.

13 Q. Did you ever have children living with you here
14 in the United States?

15 A. Not at that time. At that time I didn't have any
16 children. But we were expecting a baby.

17 Q. So it was an exaggeration when you said that your
18 kids were also being supportive of the sheik, is that right?

19 A. That was not an exaggeration because there was
20 already, there was a pregnancy already. There was a fetus
21 already.

22 Q. Was the fetus helping the sheik like you were?

23 A. At that time I was putting the sheik above myself
24 and my wife and my child to be.

25 THE COURT: Ms. Stewart, could you come to a

1 convenient break point in the next five minutes.

2 MS. STEWART: Right now is good, Judge.

3 THE COURT: Right now? All right.

4 Ladies and gentlemen, we are going to take a
5 short break. 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 can step down.

10 (Witness excused)

11 (Recess)

12 (Continued on next page)

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1 MR. SERRA: Your Honor, I have a brief request.
2 Since late last night, 3:00 in the morning, I have not felt
3 well. I am 99 percent sure that it was food poisoning and
4 even though I know that what I ate last night is what caused
5 it doesn't make me feel better. I was not going to keep 50
6 people from coming in but I am not well. I tried to get my
7 partner but he is to be in state court trial tomorrow and
8 has plans for this afternoon. Would the court consider
9 working late this morning and breaking?

10 THE COURT: No.

11 (Witness resumed)

12 (Jury present)

13 THE COURT: Go ahead, Miss Stewart.

14 MS. STEWART: Thank you, Judge.

15 (Continued on next page)

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1 BY MS. STEWART:

2 Q. I believe, Mr. Haggag, that you testified that
3 you heard a tape of the voice of Sheik Omar and Sayyid
4 Nosair in 1990, at the mosque, is that right?

5 A. Yes.

6 Q. That is a time before the sheik was actually in
7 the United States, is that right?

8 A. Yes.

9 Q. And yet you testified also that with regard to an
10 exhibit that you reviewed, a tape that was seized from your
11 house of the sheik, that that was 1989 on his first visit to
12 America. Do you remember that testimony?

13 A. Yes.

14 Q. And that you taped that yourself. It was a
15 sermon, was it not?

16 A. Yes.

17 Q. Isn't it a fact that in 1989 the sheik was in
18 Egypt?

19 A. I don't know where he was. As far as I remember,
20 I recorded that tape during his the first visit to the
21 States.

22 Q. You told us that was 1989, I believe. Was it
23 1989?

24 A. Possibly.

25 Q. In 1989, the sheik was under house arrest in

1 Egypt. You knew that, did you not?

2 A. I know that he visited the States once and I
3 recorded that tape during his visit.

4 Q. You told us it was in 1989, is that right?

5 A. As far as I remember, yes.

6 Q. Do you know that he was in jail for part of 1989?

7 A. I don't know where he was.

8 Q. Are you familiar with the Fayun case for which he
9 was arrested, went to jail, stood trial and finally was in
10 1990 permitted to leave --

11 MR. KHUZAMI: Objection.

12 THE COURT: Sustained. Let's move this along.

13 Q. Mr. Haggag, you went to the El Salaam Mosque, is
14 that right?

15 A. Yes.

16 Q. And you were listening to tapes made with Sheik
17 Omar and Sayyid Nosair. You testified to that, is that
18 right?

19 A. Yes.

20 Q. Did you tell us that this tape, and I believe it
21 is 802, exhibit, was taped by you in 1989? Is that right?

22 A. As far as I remember, yes.

23 Q. You testified that at the mosque people were very
24 involved and supportive of Sheik Omar. Do you remember that
25 testimony?

1 A. What I said was that some people were supporting
2 him and some people were indifferent to him.

3 Q. Don't you remember in your book that you wrote
4 about people coming up the stairs to listen about this
5 wonderful man? Didn't you write those words in your book?

6 A. May I see the book, please.

7 (Pause)

8 Q. In any event, do you remember that you were at
9 the mosque and you heard about the atrocities that were
10 being committed against Sheik Omar in Egypt? Do you
11 remember that?

12 A. Yes.

13 Q. And you were very moved by that, is that correct?

14 A. Yes.

15 Q. From that time on, is it fair to say that you
16 kept up with the news of what was happening to Sheik Omar in
17 Egypt?

18 A. You could say so.

19 Q. Did you know that he was placed under house
20 arrest at one period after the Sadat trial?

21 A. As far as we knew, yes.

22 Q. Indeed the tape that you are talking about that
23 you say you listened to at the mosque talks about the house
24 arrest, is that right?

25 A. Correct.

1 Q. And the siege, the soldiers and the police
2 surrounding his house, is that right?

3 A. Correct.

4 Q. When you taped the sermon that you said you taped
5 in 1989, where were you? Where did this take place?

6 A. At the Islam mosque.

7 Q. Are you absolutely certain as you sit there that
8 it took place in 1989?

9 A. I am sure that I recorded that tape during the
10 first visit of the sheik to the United States.

11 Q. Do you remember what year that was?

12 A. I estimated that it might have been in '89.

13 Q. The other tapes that Mr. Khuzami asked you to
14 look at, 801 through 807, do you remember looking at those
15 tapes and identifying them for the jury?

16 A. Yes.

17 Q. 802 through 807. I misspoke. Do you remember
18 looking at tapes 802, 803, 805, 806 and 807?

19 A. Yes.

20 Q. These all came from your home, is that right?

21 A. Correct.

22 Q. And you said to him that you gave permission for
23 the agents to go and take them from your home, is that
24 right?

25 A. Yes.

1 Q. Were these all the tapes that were in your home?

2 A. There were other tapes but they were lost.

3 Q. They were lost? Who lost them?

4 A. I think my roommate after I was arrested. Many
5 people entered the apartment.

6 Q. All of these tapes were seized from your
7 apartment after you were arrested, is that right?

8 A. Yes.

9 Q. Was there any other occasion other than the tape
10 that you made in 1989 or whenever, that you yourself taped
11 the sheik?

12 A. I don't remember but it could have happened. I
13 could have made other tapes for him.

14 Q. Do you remember a tape that you made entitled "An
15 Islamic Gathering in Jersey City"?

16 A. I remember something like that. The meeting of
17 the Shoura Council in Jersey City.

18 Q. And that tape was also seized, is that correct,
19 from you? Strike that.

20 That tape you also had in your apartment at the
21 time of your arrest?

22 A. I think there was a copy of it at my place.

23 Q. I would just like to show you what has been
24 marked Abdel Rahman M, which was supplied by the government.

25 Is that your handwriting on the tape?

1 A. Yes.

2 Q. Is this a tape of a meeting among a number of
3 imams and Sheik Omar in Jersey City?

4 A. Yes.

5 Q. Do you remember where this meeting was held?

6 A. I think it was at the sheik's house.

7 Q. Would that have been on Jordan Avenue?

8 A. I am not quite sure whether it was Jordan Avenue
9 or at Fairview, but if I would listen to it I would let you
10 know where it was.

11 Q. This was, as best your recollection serves you
12 was this a private meeting?

13 A. Yes, it was a private meeting.

14 Q. You taped this yourself, is that right?

15 A. As far as I remember, yes.

16 Q. Did you carry a briefcase with a tape recorder?

17 A. What do you mean by a briefcase?

18 Q. Do you know what a briefcase is? Something like
19 this only smaller maybe?

20 A. No. We used the tape recorder that belongs to
21 the sheik for recording the tape.

22 Q. And that was --

23 A. Upon the request of the people.

24 Q. I am sorry. I didn't hear the answer.

25 A. Upon the request of the people.

1 Q. The people who were attending the meeting, is
2 that right?

3 A. Yes.

4 Q. They all agreed that the tape should be made, is
5 that right?

6 A. Yes.

7 Q. And you just kept one copy of the tape, or were
8 there other copies made?

9 A. All those who attended had a copy.

10 Q. It is fair to say that the general meeting was
11 about cooperation among the mosques for the betterment of
12 Muslims of Jersey City, isn't that correct?

13 A. Yes.

14 Q. Because the mosques were basically -- one was an
15 Egyptian mosque, one was a Pakistani mosque, one was an
16 American mosque, and this was an attempt to get everybody to
17 come together, isn't that right?

18 A. No.

19 Q. No?

20 A. No.

21 Q. When did you last listen to this tape?

22 A. I never listened to it again, but the meeting was
23 not as you have said it was.

24 Q. You said it was a Shoura committee. What did you
25 mean by that?

1 A. It's a Shoura Council for the people that are in
2 the city. Shoura Council, meaning probably the consultative
3 council or something. Omar Abdel Rahman at the time wanted
4 to control everybody.

5 Q. And this tape shows how he wanted to control
6 everybody, is that right?

7 A. As far as I remember, the meeting was for an
8 attempt for cooperation among the Muslims. Everybody was
9 afraid to confront him.

10 Q. Who else attended this meeting that was afraid to
11 confront him?

12 A. If I would listen to the tape I would be able to
13 tell you.

14 Q. Sheik Abdul Khalik attended this meeting?

15 A. Yes.

16 Q. Do you remember when it was that this meeting was
17 held?

18 A. '92 or '93. I am not quite sure. Possibly '92.

19 Q. They discussed things like setting up a bail
20 fund, is that correct?

21 A. I don't remember, but I would prefer to listen to
22 the tape.

23 Q. I will see if we can arrange that. I will move
24 on to something else right now.

25 Approximately how many people were attending this

1 gathering in Jersey City?

2 A. Again I repeat, I would like to listen to the
3 tape and after that I will be able to answer your question.

4 Q. It is fair to say that you were instrumental in
5 moving the sheik from the Farook mosque, where he was
6 actually living in a room in the mosque, to Jersey City, is
7 that right?

8 A. I was one of the people who made suggestions, and
9 this was a suggestion, yes.

10 Q. And this was what year, would you tell us that?

11 A. Maybe in '91.

12 Q. I think you said on your direct testimony that
13 the sheik lived on Jordan Avenue for half of '91. Is that
14 still your testimony?

15 A. Yes.

16 Q. Sometime around the end of '91 or early '92, he
17 moved into Fairview Avenue, is that right?

18 A. Yes.

19 Q. You had known the sheik, had you not, since 1990
20 when he first arrived in this country, isn't that right?

21 A. Yes.

22 Q. So when you told the FBI that when the sheik came
23 to 115 Fairview Avenue and you used to frequently see him
24 around the building and you had heard stories about his
25 abuse by the Egyptians and so you became friendly with him,

1 you had been friendly with him before that, hadn't you?

2 A. What you just quoted is different from what I
3 said.

4 Q. You told him that -- and this is 3500D. You told
5 him that Sheik Omar Abdel Rahman moved to 115 Fairview, is
6 that right?

7 A. Yes.

8 Q. And that was where you were living, is that
9 right?

10 A. Yes.

11 Q. You actually were instrumental in getting him the
12 apartment, weren't you?

13 A. Yes.

14 Q. You made all the arrangements with the landlord
15 and the super together to get him the apartment, isn't that
16 right?

17 A. Correct.

18 Q. You were actually the one with him when he signed
19 the lease, isn't that right?

20 A. Yes.

21 Q. Were you the person that was acting as his
22 interpreter-translator when he signed the lease?

23 A. No.

24 Q. It was someone else there?

25 A. Yes.

1 Q. You told the FBI that you were not working when
2 he came to the apartment, isn't that right?

3 A. Yes.

4 Q. And you would frequently see him around the
5 building, isn't that right, see the sheik around the
6 building?

7 A. No. What do you mean frequently seeing him
8 around the building?

9 Q. You remember speaking to Special Agent Liguori
10 and Mr. Corrigan who is sitting back there, Detective
11 Corrigan, don't you?

12 A. Yes.

13 Q. And this would have been either in October,
14 November or December 1993. Do you remember speaking to them
15 on those occasions?

16 A. Yes.

17 Q. Do you remember telling them that since you were
18 not working you would frequently see Sheik Rahman around the
19 building?

20 A. I didn't say that. That might have been a
21 misunderstanding.

22 Q. Had you heard stories about the sheik being
23 abused by Egyptian authorities in Egypt?

24 A. Yes.

25 Q. So you took an interest in Sheik Rahman and his

1 wellbeing at this time in early '92 or late '91.

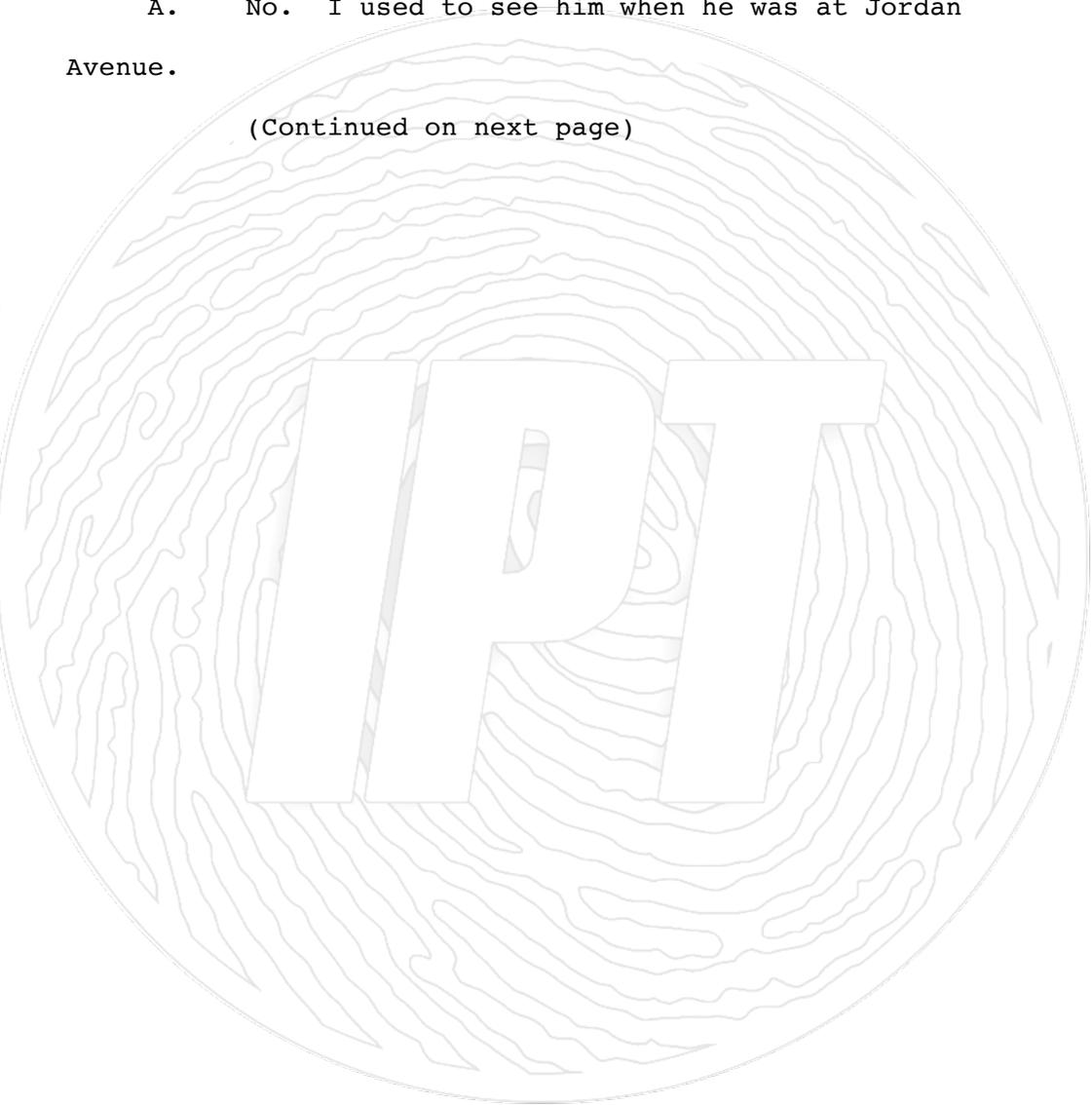
2 A. Towards the end of '91 and in '92, yes.

3 Q. But you didn't begin going to see the sheik at
4 his apartment only when he came to Fairview Avenue, did you?

5 A. No. I used to see him when he was at Jordan
6 Avenue.

7 (Continued on next page)

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1 Q. So when you told the FBI that you began going to
2 see Sheik at his apartment, reading for him, writing reports
3 and doing other personal things, you had actually been doing
4 that for a long period of time, hadn't you?

5 MR. KHUZAMI: Objection.

6 THE COURT: Sustained.

7 Q. Before the sheik moved to Fairview Avenue when he
8 lived on Jordan Avenue --

9 THE COURT: May I see counsel briefly at the
10 side.

11 (At the side bar)

12 THE COURT: On an earlier occasion you told me
13 that you were a minimalist when it came to
14 cross-examination. Can we get that person back?

15 MS. STEWART: OK.

16 THE COURT: Thank you.

17 (In open court)

18 (Continued on next page)

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1 BY MS. STEWART:

2 Q. In February of '92, you began working at
3 Prudential Bache as a computer operator, is that right?

4 A. Yes.

5 Q. Before that, you had worked in restaurants pretty
6 regularly since 1981 when you first arrived in this country,
7 is that right?

8 A. Yes, that is correct.

9 Q. Who got you this job at Prudential Bache?

10 A. Somebody who was in the community who was a
11 friend of mine, and friend of the sheik's also. The sheik
12 talked to him and he got me the job.

13 Q. When you say the sheik, you mean Sheik Omar,
14 don't you?

15 A. Yes.

16 Q. By mid'92.

17 Mid'92, you were no longer friendly with Sheik
18 Omar, is that fair to say?

19 A. I decreased my relationship considerably with
20 him -- or completely with him -- I decreased it.

21 THE INTERPRETER: We were discussing whether he
22 meant "completely" or not.

23 Q. You told us of one incident that occurred before
24 you decreased your relationship, where you placed a phone
25 call for the sheik. Do you remember your testimony

1 regarding this phone call?

2 A. Yes.

3 Q. You said that it was to a person named Issam, is
4 that right?

5 A. Yes.

6 Q. Who is Issam, if you know?

7 A. One of the sheik's followers in Europe.

8 Q. Pardon me. In?

9 A. Europe.

10 Q. Was the phone number that you placed local or
11 overseas?

12 A. Overseas call.

13 Q. Who else was present at the time that you placed
14 this call?

15 A. I don't remember exactly who was present, but
16 maybe one or two brothers were present at the time.

17 Q. Do you remember telling us that the sheik put the
18 call on speaker phone so we could listen, for us?

19 A. Yes.

20 Q. So can you remember who was present at that time?

21 A. I don't remember who was there.

22 Q. Can you remember when this phone call took place,
23 approximately?

24 A. During 1992.

25 Q. Do you remember telling us that you looked up the

1 number in the phone book and then made the call? Do you
2 remember?

3 A. Yes.

4 Q. That was the sheik's phone book?

5 A. Yes.

6 Q. Did the phone book look like this, Mr. Haggag?

7 Mark this U.

8 A. May I see it, please.

9 No.

10 Q. It did not look like that?

11 A. I was referring to the regular phone book that we
12 get.

13 Q. Do you recognize what is Abdel Rahman U? Do you
14 recognize what I showed you?

15 A. Some of his private papers, personal papers that
16 he was using?

17 Q. How are they written, Mr. Haggag?

18 A. Braille system.

19 Q. You say that you looked this up in a regular
20 phone book?

21 A. Yes.

22 Q. What do you mean when you say a regular phone
23 book?

24 A. A regular phone book that he was asking us to
25 write his personal phone numbers in it.

1 Q. Now he was asking you to write the numbers down
2 in the phone book?

3 MR. KHUZAMI: Objection.

4 THE COURT: Sustained.

5 Q. This personal phone book, had you written numbers
6 down in this phone book?

7 A. He dictated some numbers to me in it.

8 Q. Can you describe this phone book at all? What
9 color was it?

10 A. It was something like bluish phone cover. It
11 was, have a hardcover, about palm size or something like
12 that. He used to put it underneath his thigh on the couch.

13 Q. This phone book, he used to put underneath his
14 thigh on the couch? Is that what you are saying? This
15 phone book that was handwritten, is that correct?

16 A. Yes.

17 Q. Did he also have a Braille phone book?

18 A. I think he used phone, used to write some numbers
19 in Braille systems or some other information, personal
20 information, private information for him.

21 Q. When did he first get this phone book that he
22 kept under his leg on the couch?

23 A. '92, at Fairview.

24 Q. That was the first time you ever saw that, is
25 that right, that phone book?

1 A. Yes.

2 Q. You never saw it on Jordan Avenue?

3 A. No.

4 Q. Did you see it in '93 when you were at Fairview
5 Avenue?

6 A. Yes.

7 Q. Same phone book, is that right?

8 A. Yes.

9 Q. Did you see it as late as June 1993 at Fairview
10 Avenue?

11 A. I didn't see anything with him in June 1993.

12 Q. You went there for a very loud fight with Siddig
13 Ali and Emad Salem, didn't you? Did you see the phone book
14 on that occasion?

15 A. I said that the phone, he put it between the
16 couch.

17 Q. Between the couch, meaning between the cushions?

18 A. Between the cushions --

19 Q. Not under his leg?

20 A. Between the cushions of the couch.

21 Q. I thought it was under his leg?

22 A. I said underneath the cushions of the couch where
23 he was sitting.

24 Q. And you made this phone call which was then put
25 on speaker phone, isn't it right? This is sometime in 1992,

1 is that right?

2 A. Yes.

3 Q. And the person on the other end asked when are we
4 going to hear about jihad, is that right?

5 A. Yes.

6 Q. And the sheik said, when these guys stop living
7 like a lady around me. Is that your testimony?

8 A. Yes.

9 Q. That they were embarrassing him, is that right?

10 A. Yes.

11 Q. You know, do you not, that the Koran says no one
12 can embarrass you, you live your own life. You know that,
13 don't you?

14 A. I don't remember that from the Koran. I don't
15 know what you are saying.

16 Q. At any rate, you heard over the speaker phone,
17 after you placed a call from the sheik's phone book to
18 someplace in Europe, the sheik say that these guys have to
19 stop living like a lady around me, is that right?

20 A. Yes.

21 Q. Do you remember then a little further on talking
22 about Mr. Saleh in a fish shop in Jersey City?

23 A. Who, Mr. Saleh?

24 Q. Wahid Saleh?

25 A. Yes.

1 Q. Do you remember that you said at the end of 1992
2 that he said to you, you guys are just sitting there,
3 sitting around doing nothing like women, and you call
4 yourself jihad? Do you remember that testimony?

5 A. Yes.

6 Q. This is from Mr. Wahid, who doesn't even wear a
7 beard, isn't that correct?

8 MR. KHUZAMI: Objection.

9 Q. He said exactly the same thing as the sheik, is
10 that right?

11 A. Approximately.

12 Q. You talked about a bomb book. Do you remember
13 talking about that, that was found at Alkifah when they were
14 cleaning it out?

15 A. Yes.

16 Q. This was in the basement of the El Salaam Mosque,
17 is that right?

18 A. No, the second floor.

19 Q. The second floor. It was an office for
20 Afghanistan refugees, is that right, or for aid to
21 Afghanistan, is that right?

22 A. Yes, it is.

23 Q. And you said there were about 400 copies of this
24 book in that office, is that right?

25 A. Yes.

1 Q. And it was a book, a technical book about making
2 bombs, is that right?

3 A. Yes.

4 Q. And you took yourself a copy, is that right?

5 A. Yes.

6 Q. You took it to your home, is that right?

7 A. Yes.

8 Q. About how long was this book? How many pages,
9 would you say?

10 A. Twenty to 30 pages, maybe.

11 Q. And you gave it to someone named Ahmed Moait to
12 simplify it, is that right?

13 A. Yes.

14 Q. Because it was very technical, is that right?

15 A. I wouldn't say technical, it was difficult.

16 Q. That never happened, is that correct?

17 A. Yes.

18 Q. But you did get the book back from him, is that
19 correct?

20 A. Yes.

21 Q. Then you told us that you burnt it, is that
22 right?

23 A. Yes.

24 Q. Did you leave out a fact about the burning the
25 book?

1 A. Would you repeat that again for me.

2 Q. Did you leave out something about burning this
3 book, this bomb manual?

4 A. I burned the book with Amir. We burned it
5 together.

6 Q. Didn't someone tell you to burn this book?

7 MS. STEWART: I think it requires a yes or no,
8 Judge.

9 A. I was afraid and Amir --

10 THE COURT: The question was simply whether
11 anybody asked you or told you to burn the book. Just yes or
12 no, did anyone ask you or tell you to burn the book?

13 A. Yes.

14 Q. Who was that person?

15 A. Amir.

16 Q. Anyone else tell you, ever, to burn that book, it
17 would get you in trouble?

18 A. Possibly.

19 Q. Didn't Sheik Omar tell you that?

20 A. Possible.

21 Q. Possible or did he?

22 A. He could have said that, and he could have not
23 said that.

24 Q. Do you remember telling the FBI that he said
25 that?

1 A. Yes, I remember.

2 Q. This is the same man that you said goes to
3 mosques and tells people to go bomb something, isn't that
4 right?

5 A. Yes.

6 Q. And he told you to burn the book about how to
7 make the bombs.

8 A. Yes.

9 Q. Going back for a moment to the tapes that were in
10 your home that you turned over to the federal government, to
11 the prosecution in this case, can you focus on those for a
12 moment for me. When you owned them in your own house, was
13 that for the purpose of listening to them?

14 A. Most of the speeches we listened to we keep
15 copies of, whether for Omar Abdel Rahman or by someone else.

16 Q. Did you have tapes of other sheiks giving sermons
17 or other people giving sermons?

18 A. Many.

19 Q. Who else did you have tapes of?

20 A. Mohammed Ismail, Sheik Sattar, Sheik Sharawy,
21 Gesh -- many others.

22 Q. But you only turned over Sheik Omar's tapes to
23 the government, is that right?

24 A. Not only his tapes. All the tapes that I had,
25 they took.

1 Q. You testified that Sheik Omar would charge you \$2
2 if you got a tape from him, is that right?

3 A. Yes.

4 Q. Is it fair to say that on some of those tapes the
5 sheik talked about the history of Islam, the Kalifate and
6 the Crusades?

7 A. Yes.

8 Q. And that in one tape, 103, entitled "Hood," the
9 sheik talked about the history of the call and the message
10 and the responsibility of Muslims?

11 A. Possible.

12 Q. On one tape which had no title, 806, do you
13 recall if the sheik talked about the sharia in the modern
14 state?

15 A. Possible also.

16 Q. And that he talked about jihad by the hand, jihad
17 by the tongue, and jihad by the heart?

18 A. Yes.

19 Q. And that he quoted many other sheiks in this
20 particular sermon or speech, is that right?

21 A. This tape was a rebuttal to what the olmas, the
22 scholars, Muslim scholars, I suppose, were in Egypt.

23 Q. Do you remember a tape that he made about the
24 battle of, excuse my pronunciation, Uhud?

25 A. Yes.

1 Q. That is from the Koran, is that correct, about
2 the followers and the rules for the followers?

3 A. Yes.

4 Q. There also was one other tape which I will come
5 back to, and that was something about doubts about jihad, is
6 that correct?

7 A. Yes.

8 Q. And there was a question and answer period that
9 followed that, is that correct?

10 A. Yes, it is.

11 Q. By the end of 1992, you were writing a book, is
12 that right, about the sheik?

13 A. Yes.

14 Q. You delivered in 1993 115 pages of that book to
15 your wife in Jordan, is that right?

16 A. I am not going to agree with you about the number
17 of pages, but I did.

18 Q. You testified to that earlier here, is that fair
19 to say, that you said about 115 pages?

20 A. It wasn't exactly 115 but it was a large number
21 of pages, yes.

22 Q. Do you remember that the Egyptian authorities
23 offered to publish this book for free?

24 A. Yes.

25 Q. That would be Tarek, your friend at the Egyptian

1 embassy, is that right?

2 A. Yes.

3 Q. So when Mr. Khuzami was asking you about agents,
4 you didn't need agents. You had a publisher already, didn't
5 you?

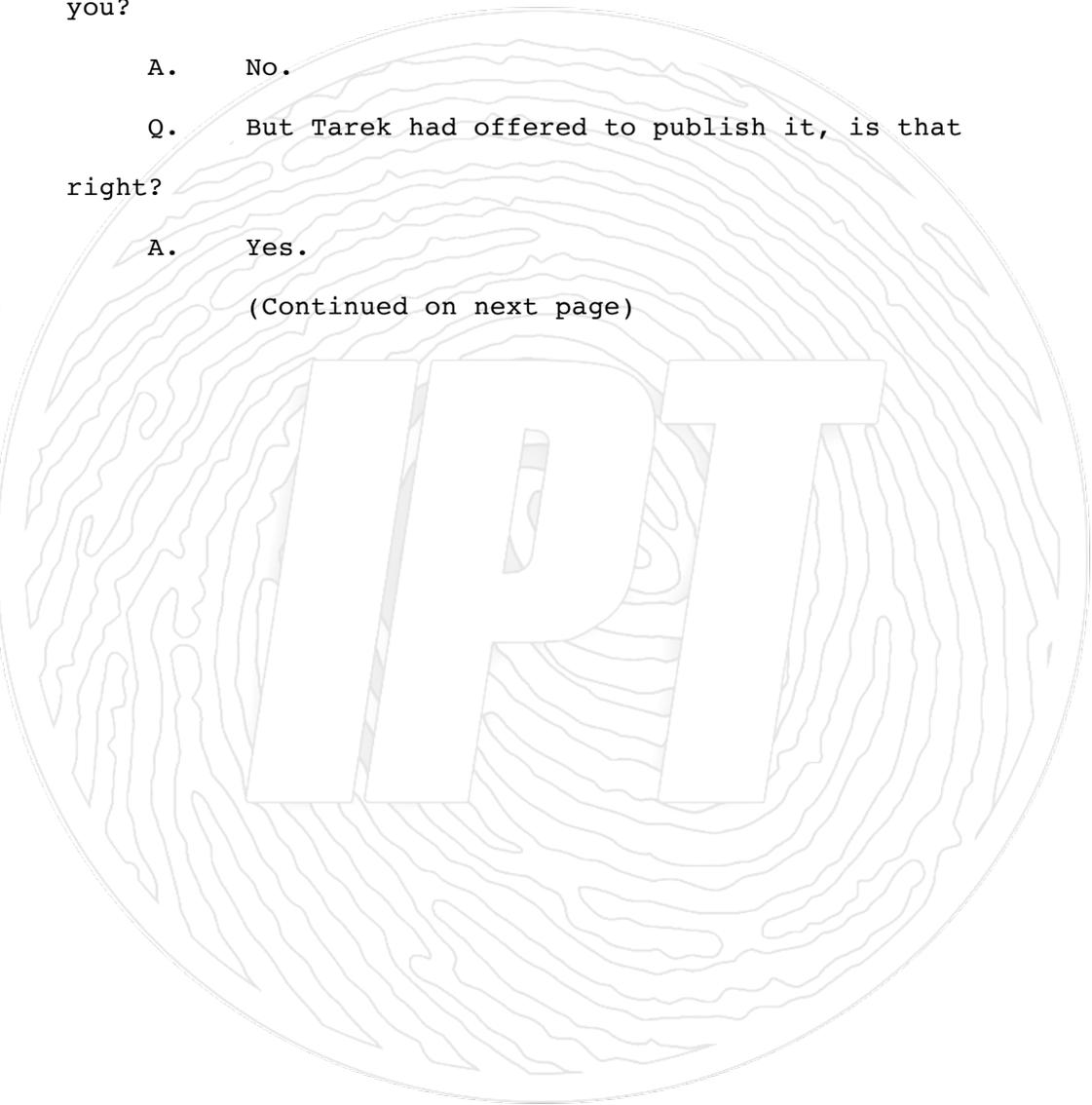
6 A. No.

7 Q. But Tarek had offered to publish it, is that
8 right?

9 A. Yes.

10 (Continued on next page)

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1 Q. You visited Egypt in the summer and fall of 1992,
2 is that right, in August and September of 1992, is that
3 right?

4 A. Yes, in August '92.

5 Q. This was after your split with the sheik, is that
6 correct?

7 A. Yes.

8 Q. Was it in Egypt that you first met Tarig?

9 A. No.

10 Q. Do you remember saying that you met Tarig at the
11 presidential office?

12 A. No, I didn't say that.

13 Q. Did you first make contact with the Egyptians for
14 the purpose of giving them information about Sheik Omar on
15 this trip to Egypt in the summer and fall of 1992?

16 A. No.

17 Q. Do you remember a letter you wrote to Pakistan in
18 December of 1992?

19 A. Yes.

20 Q. This was a letter you wrote to Abd Allah Abd
21 Al-Azim, is that right?

22 A. Yes.

23 Q. Excuse the pronunciation.

24 Was this letter to Pakistan or to Afghanistan
25 actually?

1 A. It was to Peshawar.

2 Q. If you know, is the phone number that is called
3 in Peshawar, is that sort of a hotel, a guest house where
4 Arabs live while waiting to go to be mujahideen in
5 Afghanistan?

6 A. I am not sure. The telephone number was that of
7 an employment office or an office, you know, an office or a
8 hotel, I'm not -- I don't remember.

9 Q. In any event, you wrote to the sheik. First of
10 all, you wanted to expose the fact of the request for
11 political asylum, is that correct, which you thought was
12 incorrect, is that correct?

13 A. Yes.

14 Q. You also said to him that you were in great need
15 of a friend like him, is that correct?

16 A. (In English) "Him" is mentioning --

17 Q. Meaning Abd Allah Abd Al-Azim.

18 A. Yes, that's correct.

19 Q. Do you remember writing to him about going to
20 Egypt after the earthquake?

21 A. Yes.

22 Q. And that you would need a separate correspondence
23 to tell him about what happened there?

24 A. Yes.

25 Q. What sort of strange things happened there?

1 A. What do you mean?

2 Q. Was one of the strange things that you were
3 contacted by Egyptian intelligence while you were in Egypt
4 on that trip?

5 A. No, that was not strange.

6 Q. You said to him that your return was a gift from
7 God. Did you have to escape from Egypt?

8 A. No, I did not escape.

9 Q. How was your return a gift from God?

10 A. Going back to where you live and where you work
11 is considered a gift from God.

12 Q. That's all you meant by it, and that is what you
13 meant by it?

14 A. I tried to give him the impression that there was
15 some pressure from the Egyptian government.

16 Q. Was there pressure on you from the Egyptian
17 government?

18 A. In fact, no.

19 Q. You knew that there were Egyptian intelligence
20 spies in many of the mosques, did you not?

21 A. No.

22 Q. Don't you remember in one of the telephone
23 conversations that you had with the sheik you said, "I was
24 followed by some of your friends," and you had a big
25 discussion about that?

1 A. If you would make me listen to the tape, I may
2 remember it.

3 Q. Do you remember having a discussion ever with the
4 sheik about whether the intelligence was from American
5 intelligence or from Egyptian intelligence, a fellow that
6 was standing in front of the mosque?

7 A. This kind of topics we were discussing them
8 frequently because this kind of topics were the ones favored
9 by Omar Rahman.

10 Q. Do you remember a person that worked at the
11 Egyptian embassy during the fall of 1992, and earlier than
12 that I guess, named Ahmed Samek?

13 A. Yes.

14 Q. He was your friend from Egypt, is that right?

15 A. I knew him in Egypt, but I wouldn't classify him
16 as a friend.

17 Q. He told you, did he not, that they were
18 monitoring the mosques Farooq and El Salaam in New York and
19 New Jersey?

20 A. No.

21 Q. He never said that?

22 A. No, he never did.

23 Q. You met him on a social basis, is that right, his
24 family and your family?

25 A. Yes.

1 Q. That continued here in New York, is that right?

2 A. Yes.

3 Q. Was it only for social reasons or were you
4 actually passing information --

5 A. (In English) Social.

6 Q. -- to Mr. Samek?

7 A. Family meetings, social meetings.

8 Q. When you say that you were cooperating with
9 Egyptian intelligence from August 1992 to May 1993, who were
10 you giving information to in August 1992?

11 A. Mohammed Tarig.

12 Q. How did this come about? Was he introduced to
13 you by Mr. Samek?

14 A. Yes.

15 Q. It is still your position that they were not
16 monitoring the mosques in any way whatsoever, Egyptian
17 intelligence?

18 A. As far as I know, no.

19 Q. Can you tell me what is the month and year that
20 your wife, your second wife, your Egyptian wife, went back
21 to Egypt?

22 A. September or October '92. It may have been
23 September, October. I am not quite sure.

24 Q. She was met at the airport by Mr. Samek, isn't
25 that correct?

1 A. No.

2 Q. He didn't help her get through customs, she
3 wasn't carrying goods to be sold and he made sure she got
4 through the airport easily?

5 A. No.

6 Q. Do you remember if your wife, if the Egyptian
7 police ever questioned her once she arrived home?

8 A. What do you mean by that?

9 Q. That the police arrived at her home or the home
10 at which she was staying and spoke with her.

11 A. In '92, no.

12 Q. But you were dealing with Egyptian intelligence
13 from August 1992, is that right?

14 A. Yes.

15 Q. You had given to them the appeal that Sheik Omar
16 had submitted to the American Immigration judge, is that
17 right?

18 A. Not the appeal, but the letter that he wrote to
19 them.

20 Q. I beg your pardon?

21 A. Not the appeal, but a letter that --

22 Q. What did the interpreter say the first time?

23 THE INTERPRETER: I said, "Not the appeal, but a
24 letter that he wrote to the judge."

25 Q. You had that because you were the interpreter and

1 you just took it with you, is that right?

2 A. No.

3 Q. How did you come by this letter?

4 A. He sent it to everybody for them to sign it. At
5 the break, I remembered that we sent things to Afghanistan.
6 When you asked me about what was in the tape --

7 Q. Can we strike and start over again.

8 THE COURT: There is no question pending now
9 about that.

10 Q. Talking about when you started cooperating with
11 the Egyptian authorities, with Tarig in August of 1992, is
12 that when you turned over to him what you called a letter to
13 the appeals judge with regard to Sheik Omar's immigration?

14 A. No.

15 Q. Was it at that time that you turned over his
16 green card?

17 A. No.

18 Q. Was it at that time that you turned over his
19 telephone bill?

20 A. No.

21 Q. It was just that you spoke with him and gave him
22 general information, is that what happened?

23 A. That was -- it was to talk about helping me in
24 the case of the death of my brother in Egypt.

25 Q. In other words, the Egyptian officials approached

1 you, Mr. Haggag, is that right?

2 A. I didn't say that. I got in touch with him to
3 attempt to have the investigations of the death of my
4 brother go and be correct, in the right direction.

5 Q. Was the death of your brother the same reason you
6 went to Egypt in September of '92?

7 A. Yes.

8 Q. And stayed for a month, is that right?

9 A. Yes.

10 Q. So did you see Tarig in New York, or did you see
11 him in Egypt?

12 A. I saw him in New York, not in Egypt.

13 Q. That was before you left, is that right?

14 A. Yes.

15 Q. Your brother was murdered, I think you told us,
16 is that right?

17 A. Yes.

18 Q. That was some kind of a criminal act that took
19 place in Egypt, is that right?

20 A. Yes.

21 Q. It was your sense that they weren't bothering to
22 investigate it, is that why you went to see Tarig?

23 A. Could you repeat your question again, please?

24 Q. Was it your sense that they were not
25 investigating that in Egypt, is that why you went to see

1 Tarig?

2 A. The investigation was not in the right direction.
3 It was sort of favors or something like that.

4 Q. "Favors" did you say?

5 A. Yes.

6 Q. Meaning corrupt, people were being paid off, is
7 that what you thought?

8 A. Yes. That's what I meant.

9 Q. When you went to see Tarig, he then said to you,
10 "We can help you if you help us," is that what happened?

11 A. No. That's not what happened. He took the
12 information and he got in touch with them.

13 Q. But you did know of him through Ahmed Samek, he's
14 the one who made the introduction, is that right?

15 A. Yes.

16 Q. Ahmed Samek is the same person that loaned you
17 money when your car got towed in front of his house, right?

18 A. Yes.

19 Q. You never paid him back, did you?

20 A. I made a partial payment.

21 Q. You indicated that you did not tell the
22 government initially that you had an agreement with Egyptian
23 intelligence, is that right?

24 A. At the beginning, yes.

25 Q. Was this a written agreement?

1 A. Yes.

2 Q. Is there a copy of it anywhere?

3 A. No.

4 Q. Was it destroyed?

5 A. No, it was only with Tarig.

6 Q. No. Was the agreement, the written copy
7 destroyed?

8 A. No. It wasn't destroyed.

9 Q. Did you and Tarig each have a copy of the
10 agreement?

11 A. No, Tarig had a copy.

12 THE COURT: Ms. Stewart, could you come to a
13 convenient break point in the next five minutes or so.

14 Q. The \$1500 that you say you received from the
15 Egyptians, when did you receive that?

16 A. During that period.

17 Q. Can you tell me a month and year?

18 A. From late '92 to early '93.

19 Q. Late '92 -- before you turned in Mahmud
20 Abouhalima then, is that right?

21 A. Yes.

22 Q. You said, I think, that you felt that this was
23 something shameful, and that's why you did not tell the
24 American government, is that right?

25 A. Yes.

1 MS. STEWART: I am ready to stop, Judge.

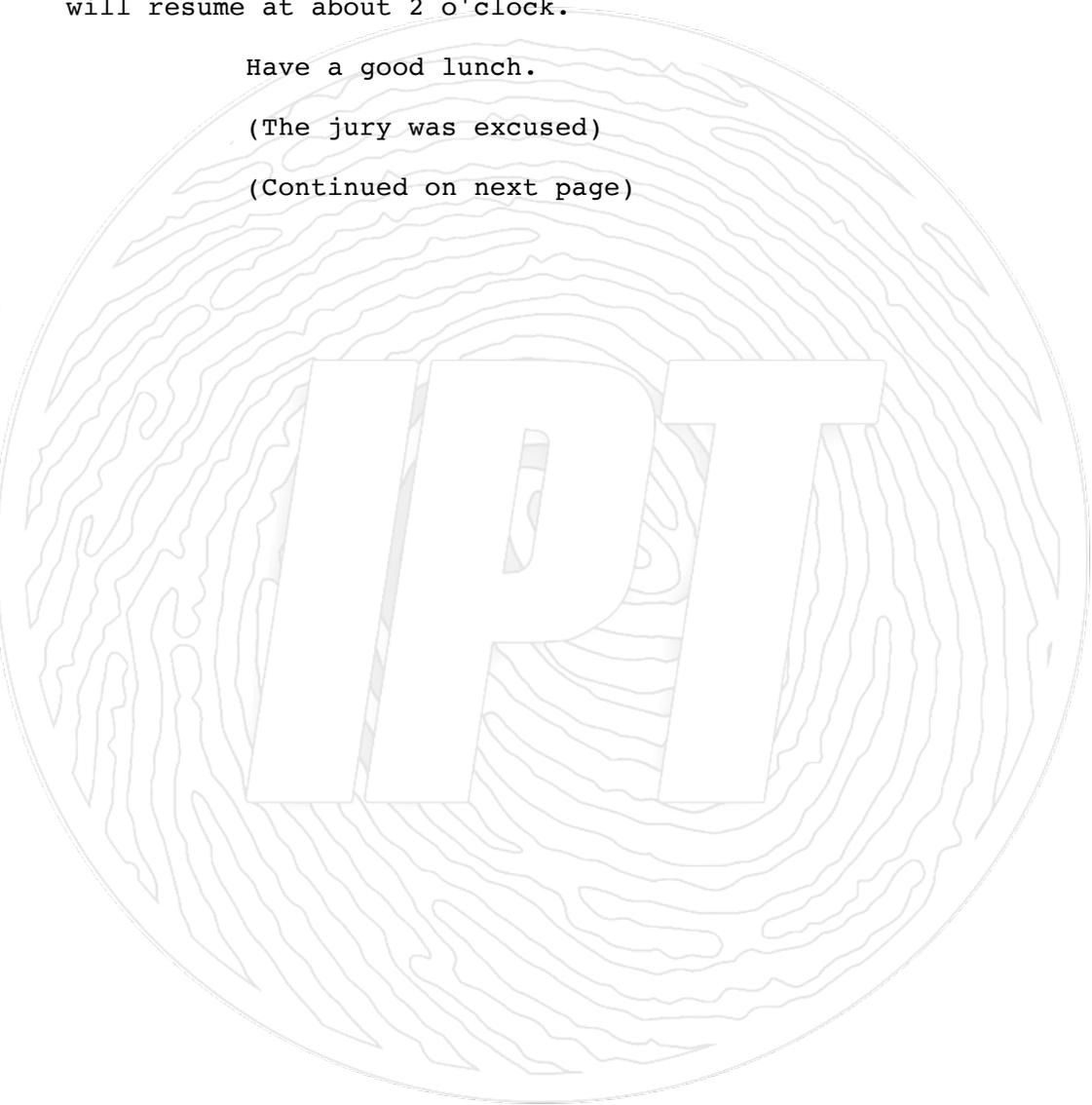
2 THE COURT: Ladies and gentlemen, we are going to
3 break for lunch. Please leave your notes and other
4 materials behind. Please don't discuss the case, and we
5 will resume at about 2 o'clock.

6 Have a good lunch.

7 (The jury was excused)

8 (Continued on next page)

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1 THE COURT: You can step down.

2 (Witness excused)

3 MR. McCARTHY: Your Honor, may I approach briefly
4 with Mr. Patel or Mr. Stavis.

5 THE COURT: Yes.

6 (At the side bar)

7 MR. McCARTHY: Your Honor, I want to ask the
8 court to ask counsel to have Mr. Nosair turn his chair so
9 that he is facing in front like everybody else is. I have
10 seen him a number of times over the last week since the last
11 time I complained about this -- this morning he has the
12 chair at a 45-degree angle looking right at the jury. I
13 turned around a couple of times and saw him looking that
14 way. When he saw me, he looked the other way.

15 THE COURT: This is not the first time this has
16 come up. Let's get him turned around, OK?

17 MR. PATEL: Sure, no problem.

18 THE COURT: Thank you.

19 (Luncheon recess)

20 A F T E R N O O N S E S S I O N

21 Time noted, 2:10 p.m.

22 MR. JABARA: Your Honor?

23 THE COURT: Yes.

24 MR. JABARA: I don't know, my co-counsel is not
25 here, but she had gone --

1 THE COURT: Me neither.

2 MR. JABARA: Pardon?

3 THE COURT: I said "me neither."

4 MR. JABARA: May I step outside?

5 THE COURT: Sure.

6 (Pause)

7 ABDO MOHAMMAD HAGGAG, resumed.

8 (Pause)

9 MS. STEWART: I'm sorry, Judge. My watch
10 literally stopped.

11 (Jury present)

12 THE COURT: Good afternoon, ladies and gentlemen.

13 JURORS: Good afternoon, your Honor.

14 THE COURT: Ms. Stewart.

15 MS. STEWART: Thank you, Judge.

16 CROSS-EXAMINATION (Continued)

17 BY MS. STEWART:

18 Q. Mr. Haggag, with regard to Evaughan Graves and
19 your son, did you know that a Supreme Court judge in Hudson
20 County had awarded her custody in 1985?

21 A. No.

22 Q. You also did not know that a warrant was issued
23 for your arrest at an address on Third Street in Jersey
24 City?

25 A. No.

1 Q. In 1986, it's fair to say you went to Elizabeth,
2 New Jersey, in a different county and got a divorce, is that
3 right?

4 A. Yes.

5 Q. Evaughan Graves never came for that case, is that
6 right?

7 A. Yes.

8 Q. She never even knew that you were getting a
9 divorce, is that right?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q. Your lawyer and you were unable to give her any
13 papers with regard to that divorce, is that right?

14 A. We tried to notify her at the address she gave
15 us. But we never got an answer.

16 Q. That was an address in Virginia, is that right?

17 A. Yes.

18 Q. You advertised in the newspaper, is that right?

19 A. Yes.

20 Q. But that was the Elizabeth newspaper the
21 Elizabeth, New Jersey "Record," wasn't that right?

22 A. I think it was the advertise -- we advertised
23 both in Elizabeth and Edison, and also in Virginia, the
24 places where we lived.

25 Q. But there was no advertisement in the "Jersey

1 Journal," the Jersey City paper, was there?

2 A. This is the doing and the business of the lawyer,
3 not mine.

4 Q. In any event, Evaughan Graves never came to court
5 with you and asked the judge to decide whether you or she
6 should get custody, did she?

7 A. No.

8 Q. The money that you received from the Egyptian
9 intelligence, the \$1500, did you only receive that money on
10 one occasion?

11 A. No, in different times.

12 Q. It's a total of \$1500, or it's \$1500 each time?

13 A. Approximately, all in all, it was about \$1500,
14 yes.

15 Q. You were released from jail on this case in
16 February 1994, is that right?

17 A. Yes.

18 Q. You went into the Witness Protection Program run
19 by the U.S. marshals at that time?

20 A. Yes.

21 Q. While you have been in that program you have
22 received a total of \$153,709, is that right, you and people
23 on your behalf?

24 MR. KHUZAMI: Objection to form.

25 THE COURT: Sustained as to form.

1 Q. Mr. Haggag, have you and people associated with
2 you personally -- your family, in other words -- received
3 during the period of time you've been in the Witness
4 Protection Program \$153,709?

5 MR. KHUZAMI: Objection to form.

6 Q. If you know, Mr. Haggag.

7 THE COURT: Sustained as to form.

8 Q. Mr. Haggag, while you are in the Witness
9 Protection Program, you know, do you not, that everything is
10 paid for with regard to your being in that program, is that
11 right?

12 A. Yes.

13 Q. Your housing is paid for, isn't that right?

14 A. Yes.

15 Q. You receive a subsistence, in other words, a
16 certain amount of money each month, is that right?

17 A. Yes.

18 Q. Your medical is paid for?

19 A. Yes.

20 Q. Travel is paid for?

21 A. Yes.

22 Q. This is done not only for you, but also for the
23 people in your family that are also part of the Witness
24 Protection Program on your behalf, is that right?

25 A. Yes.

1 Q. Do you know, Mr. Haggag, that in the months that
2 you have been in that program the United States government
3 has spent \$153,709?

4 A. (In English) I don't know, sir.

5 Q. I'm "ma'am."

6 MS. STEWART: May I approach, Judge?

7 THE COURT: Yes.

8 MS. STEWART: This is MM.

9 Q. Mr. Haggag, would you take a look at it.

10 THE COURT: What exhibit is this?

11 MS. STEWART: 3500MM.

12 Q. Does that refresh your recollection, Mr. Haggag?

13 MR. KHUZAMI: Objection.

14 THE COURT: Sustained.

15 Q. Are you able to tell us whether or not you know
16 that is the amount of money you received?

17 MR. KHUZAMI: Objection.

18 THE COURT: That is overruled. Do you know
19 whether that is the amount you got, or that -- well,
20 sustained as to form. Can you tell us whether that was the
21 amount in total that was spent on you in connection with the
22 Witness Protection Program?

23 THE WITNESS: I know what I take weekly. But the
24 total and the travel, I don't know anything about that.

25 Q. Mr. Haggag, did you have an opportunity at

1 lunchtime to listen to a tape recording?

2 A. Yes.

3 Q. Did you bring it back with you?

4 MS. STEWART: May I, Judge?

5 THE COURT: Yes.

6 Q. Was that Abdel Rahman M for identification?

7 A. Yes.

8 Q. Does that refresh your memory as to who were the
9 parts -- well, once again, is this one of the tapes that was
10 taken from your apartment?

11 A. Yes.

12 Q. It is a consultation or an Islamic gathering in
13 Jersey City, is that right?

14 A. Yes.

15 Q. Do you recall taping it now having listened to
16 it?

17 A. Yes.

18 Q. Who are the participants in this particular --

19 A. We represented El Salaam mosque, and we were
20 trying to get the sheik's opinion regarding something
21 between El Salaam mosque and the Islamic --

22 THE COURT: Excuse me. She just asked you who
23 the participants were who attended the meeting.

24 THE WITNESS: I'm sorry.

25 A. Well, myself, Sheik Abdel Khaleq, Ismail Fouad

1 and Sheik Omar.

2 Q. You heard your own voice on this tape, is that
3 right?

4 A. Yes.

5 Q. Do you have any idea when exactly this took
6 place?

7 A. During '91.

8 MS. STEWART: Judge, I would move it into
9 evidence, if I may.

10 MR. KHUZAMI: Objection, 401.

11 THE COURT: I will allow it, go ahead.

12 M is received.

13 (Defendant Abdel Rahman Exhibit M for
14 identification was received in evidence)

15 MS. STEWART: Thank you, Judge.

16 Q. Mr. Haggag, Egyptian intelligence, how often did
17 you meet with them during the period from July 1992 until I
18 think it was April of --

19 THE COURT: Actually, may I see counsel at the
20 side.

21 (At the side bar)

22 THE COURT: What is the tape supposed to show?

23 MS. STEWART: They took a lot of tapes with very
24 fiery sermons. We thought that this showed in a very
25 graphic way how people sit around and discuss the issues and

1 his being imam in a true sense, Judge. It may never get
2 played; it may. I don't know. But I am not going to play
3 it right now. I think it is important that they didn't
4 introduce it, that they didn't mark it, that it is there.

5 THE COURT: Please, you know, if this were a
6 narcotics case, you would be introducing somebody to show
7 that your client stood on a street corner one time and
8 didn't sell narcotics.

9 MS. STEWART: I think it is different than that.

10 THE COURT: It's exactly the same.

11 MS. STEWART: I don't think so. I think they
12 need to see that there are other things besides what the
13 government portrays that he was doing at that time.

14 THE COURT: That is not relevant, I am sorry.
15 Objection sustained.

16 MR. WASSERMAN: Your Honor, may I see you in
17 private?

18 My client complained to me earlier about chest
19 pains. I thought maybe we could take it up again at the end
20 of the day, but he's told me now he doesn't want to wait.
21 He doesn't feel that he can wait.

22 THE COURT: I take it he's not willing to waive?

23 MR. WASSERMAN: I'm not. I think he would, but I
24 am not. This is too important a witness.

25 THE COURT: We are going to take a break and we

1 will see.

2 MR. WASSERMAN: That's fine, Judge. Thank you.

3 (In open court)

4 THE COURT: The objection is sustained.

5 Ladies and gentlemen, we are going to take a
6 break. Please leave your notes and other materials behind.
7 Please don't discuss the case, and we will try to resume in
8 a few minutes.

9 (Jury not present)

10 THE COURT: You can step down.

11 (Witness excused)

12 THE COURT: All right. We are going to take a
13 break. We will resume as soon as we can.

14 (Recess)

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1 (In open court; jury not present)

2 THE COURT: Mr. Hampton-El is not feeling well
3 and is going to have to be looked at by a physician. I
4 gather Mr. Wasserman is not willing to have him waive,
5 correct?

6 MR. WASSERMAN: Yes, your Honor, I cannot do
7 that.

8 THE COURT: Which means we are going to take the
9 rest of the afternoon. What I propose to do is to go back
10 and tell the jurors so that we don't have them speculate on
11 where Mr. Hampton-El is. They know that most of the time my
12 appearance at the jury room door means they leave early, but
13 if anybody wants to accompany me on that mission to make
14 sure I don't tell them something untoward, they are welcome
15 to come. Obviously I will do it with the reporter present.

16 Hope to see you tomorrow.

17 (In the jury room)

18 THE COURT: This time I am in uniform and my
19 appearance means what it usually means, unfortunately, which
20 means we will have to break for the day.

21 A JUROR: We are not that upset, your Honor.

22 THE COURT: I thought not.

23 I hope we can get under way tomorrow. Have a
24 safe trip and a pleasant evening, and please don't discuss
25 the case.

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(Pages 10234 through 10236 sealed)

(Proceedings adjourned until 9:30 a.m., Tuesday,
May 9, 1995)



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 May 9, 1995
10:30 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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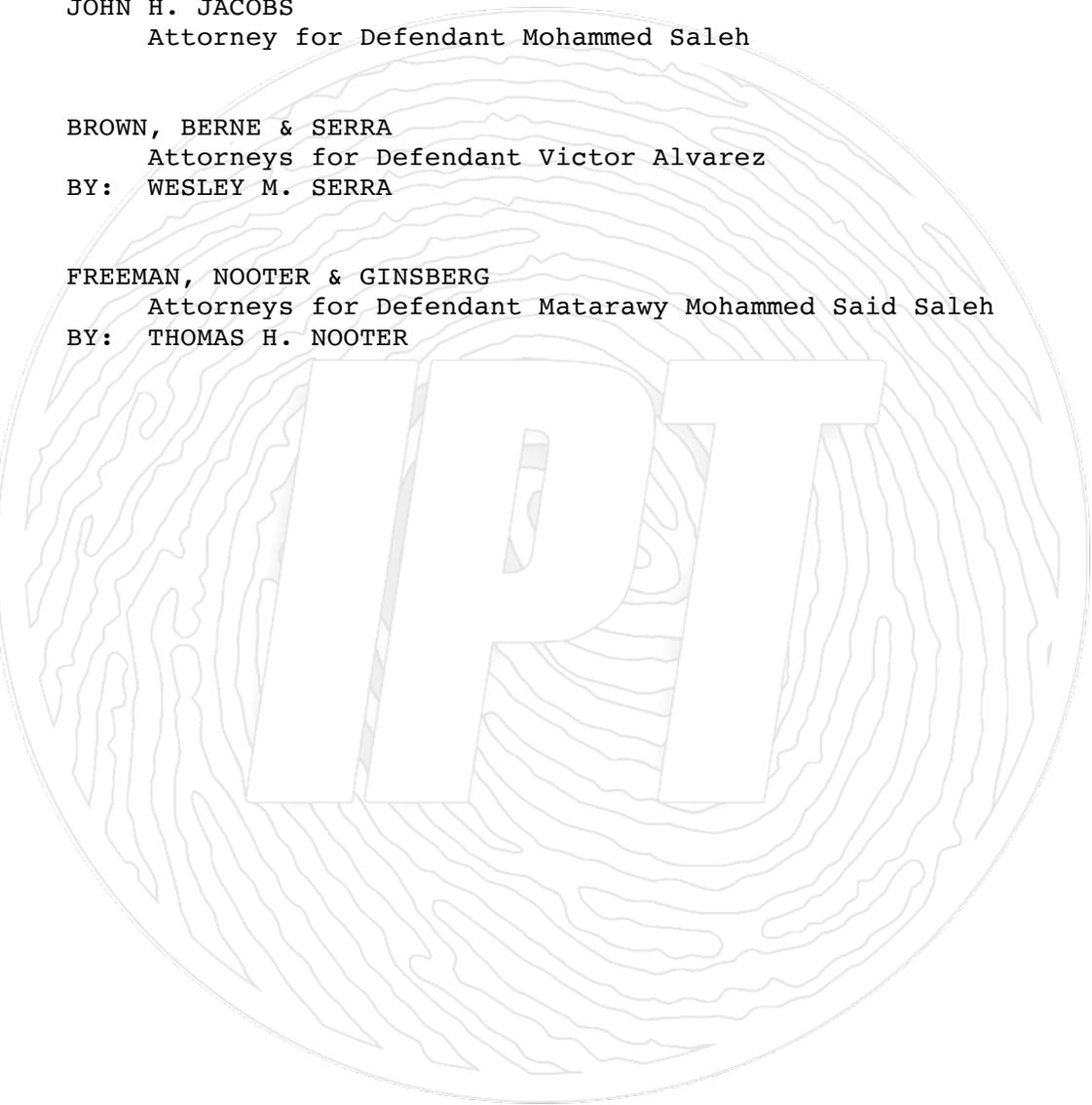
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (In open court, jury not present)

2 THE COURT: May I have the attention of defense
3 counsel. Thank you very much. I gather the defendants want
4 to talk to you en masse.

5 MR. BERNSTEIN: I'm sorry, Judge. I couldn't
6 hear that.

7 MR. McCARTHY: Judge, your mike is not on.

8 MR. LAVINE: Can we move up. I think we can hear
9 you a little better without the machine.

10 MR. BERNSTEIN: Judge, Mr. Jacobs is not here.
11 He is up in the Court of Appeals. I don't think he is aware
12 of the circumstances right now.

13 THE COURT: Aware or not, I gather the defendants
14 want to talk to you en masse.

15 MS. LONDON: Your Honor, if I may, I believe the
16 defendants would like to speak to their attorneys
17 individually.

18 THE COURT: The defendants as a group would like
19 to speak to you individually, correct? You have until 10:30
20 to do that. That is 10 minutes. If you are not back here
21 by 10:30, we are going ahead regardless. We are, in any
22 event, going ahead regardless, and you can tell them that.

23 Ms. Stewart, I want to see you in particular in
24 the robing room with the reporter.

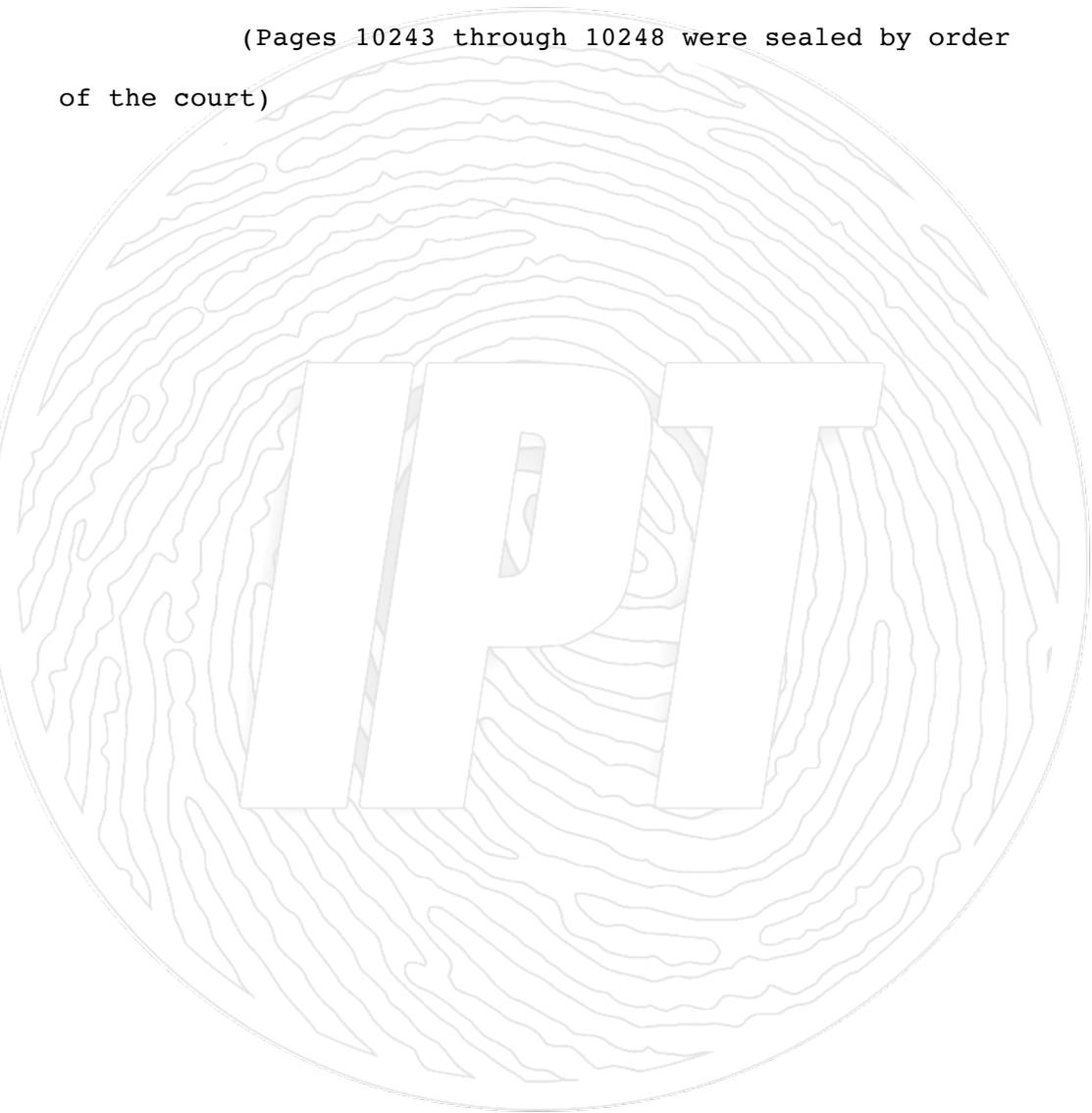
25 MR. WASSERMAN: Your Honor, may I make a request

1 that it be after 10:30, that she be present when we all go
2 back there.

3 THE COURT: She will be present. It will be
4 after 10:30.

5 (Pages 10243 through 10248 were sealed by order
6 of the court)

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1 (In open court)

2 (Jury not present)

3 ABDO MOHAMMAD HAGGAG, resumed.

4 THE WITNESS: Good morning, sir.

5 THE COURT: Good morning.

6 MS. AMSTERDAM: Your Honor, my client advises
7 that he wants to come in.

8 THE COURT: Fine. Then let's wait to get the
9 jury.

10 MR. BERNSTEIN: Your Honor?

11 THE COURT: Sir.

12 MR. BERNSTEIN: I am not sure what's going on at
13 this point, but I am concerned. I have not been allowed to
14 speak to my client when the court broke -- I am making a
15 record, Judge. I want to make a record, and I think I have
16 to make a record.

17 THE COURT: Don't make a record of half-truth Mr.
18 Bernstein.

19 MR. BERNSTEIN: Let me finish -- at least allow
20 me to make my record. I spoke to the chief marshal and
21 indicated that I would like to speak to my client. He said
22 that there are only two rooms, and that it will take two
23 hours. I acted under the theory that because there had been
24 two people using those two rooms, and then we were coming
25 back on the record here, that was the end of it.

1 I now gather that at least one of the lawyers has
2 gone to see their client independently. That client has
3 made an independent decision, after speaking to counsel, to
4 come out and be a participant in this trial. I did not know
5 I had access subsequent to whatever use of the rooms was
6 being done to meet with my client and explain to him my
7 views. I have not been able to consult with Mr. Abdelgani
8 directly except through what were --

9 THE COURT: What were agreed-upon lawyers who
10 went and spoke for the group.

11 MR. BERNSTEIN: Judge, you can check with the
12 marshals.

13 THE COURT: It has been an hour and a half with
14 this nonsense, Mr. Bernstein. If you want to go talk to
15 your client, you can go talk on your time, which is right
16 now. Do you want to do it?

17 MR. BERNSTEIN: Yes.

18 MR. WASSERMAN: I would like to go see my client,
19 Judge, as well.

20 (Pause)

21 MR. LAVINE: Judge, I just wanted to thank you
22 for allowing us to leave the courtroom to speak to our
23 clients. Mr. Bernstein and --

24 THE COURT: I didn't actually allow you to. What
25 I said was to bring if Mr. Khallafalla, and if he had been

1 here, we would have started without you. But I am always
2 happy to be thanked for things that I haven't done because I
3 get blamed for things I haven't done, too.

4 MR. LAVINE: Thanks for not stopping me when I
5 left the courtroom, your Honor.

6 MR. BERNSTEIN: I join in that.

7 MR. LAVINE: Mr. Bernstein and I spoke to the
8 Abdelganis, and they do not wish to come into the courtroom,
9 but they wish us to proceed as attorneys on their behalf.

10 THE COURT: Thank you very much.

11 Is that accurate, Mr. Bernstein?

12 MR. BERNSTEIN: Yes, Judge.

13 THE COURT: Good.

14 MR. WASSERMAN: Thank you, your Honor.

15 THE COURT: Any time.

16 It appears that Mr. Khallafalla is not coming
17 out, is that right?

18 MS. AMSTERDAM: That is what the marshals
19 informed me, your Honor. He indicated to me he wanted to
20 come in. He indicated he was prepared to come in. I can
21 only submit to the court that clearly why he went back into
22 the cell block was either peer pressure or perhaps --

23 THE COURT: If you want another opportunity to
24 talk to him, you can have it, but I want to go ahead.

25 MS. AMSTERDAM: That would be fine, your Honor.

1 I am prepared to allow the court, over the other objections
2 that counsel have in terms of proceeding without clients, I
3 am prepared to have your Honor go ahead, but I would like --

4 THE COURT: As far as I know, nobody has
5 protested that, and, if they did, it would be overruled, as
6 they are well aware.

7 Let's go.

8 (Jury present)

9 THE COURT: Good morning, ladies and gentlemen.

10 JURORS: Good morning, Judge.

11 THE COURT: A delayed good morning.

12 You will notice that the defendants are not in
13 court. They have elected not to come to court today
14 because, although we are taking tomorrow off to celebrate
15 the second holiday of eed, the Muslim holiday, they are
16 dissatisfied with the arrangements for celebrating that
17 holiday at the place where they are confined. They don't
18 feel that they are being given sufficient opportunity to
19 celebrate it in the manner in which they would wish.
20 Therefore, they have elected not to come to court today, in
21 essence, in protest.

22 They have a right not to come to court if they
23 don't want to come to court. It is legally permissible to
24 go ahead in their absence since they are on notice that the
25 case is being tried and they are aware we are going to

1 proceed in their absence, and that is what we are going to
2 do. Ms. Stewart?

3 MS. STEWART: My client has consented to my going
4 forward in his absence.

5 THE COURT: Go ahead.

6 CROSS-EXAMINATION (Continued)

7 BY MS. STEWART:

8 Q. Mr. Haggag, we spoke yesterday about the lesser
9 eed, the holiday of the lesser eed, do you recall that?

10 A. Yes.

11 Q. In 1993 that occurred at the end of March 19 --
12 the end of March, is that right?

13 A. Yes.

14 Q. You then, during the month of May and June, you
15 went to Saudi Arabia, is that correct?

16 A. Yes.

17 Q. This is one of the obligations of Muslims, is
18 that correct?

19 A. Yes.

20 Q. It's called the Haj, is that right?

21 A. Yes.

22 Q. And there is a day that celebrates the end of the
23 great pilgrimage to Mecca, is that correct?

24 A. Yes.

25 Q. That is called the greater eed, is that correct?

1 A. Yes.

2 Q. That is the day that will be celebrated tomorrow,
3 is that right?

4 A. Yes.

5 Q. These are really the only two major holidays for
6 Muslims, is that correct?

7 MR. KHUZAMI: Objection.

8 THE COURT: Sustained.

9 Let's cross-examine on this case, Ms. Stewart.

10 Q. Mr. Haggag, you testified yesterday that you had
11 a group of tapes at your apartment that were subsequently
12 lost I think you told us, is that right?

13 A. Yes.

14 Q. You said something about the fact that your
15 roommate, or the person who was living in your apartment,
16 was responsible for that, is that right?

17 A. Not necessarily he was responsible, but there was
18 some chaos or some disorder. I was not at the apartment, so
19 he did not know what to do with things and where to put them
20 and there were many people coming and going or staying with
21 him.

22 Q. You are saying that when you reviewed the tapes
23 that had been seized by the government all of the tapes that
24 you remember having were not there, is that right?

25 MR. KHUZAMI: Objection to form.

1 MS. STEWART: I will rephrase it, Judge.

2 THE COURT: Please.

3 MS. STEWART: Thank you.

4 Q. You indicated in your testimony that you
5 consented, you agreed to let the agents go to your apartment
6 and get the tapes, is that right, that you had there?

7 A. Yes.

8 Q. I assume at some point you looked at the tapes
9 that had been seized or had been consented to be taken from
10 your apartment, is that right?

11 A. I looked at the tape as related to the case in
12 hand. I did not look at all the tapes, so I don't know what
13 is there and what's not.

14 Q. Did there come a time that you knew that certain
15 tapes that you had had on July 16, 1993 when you were
16 arrested were no longer in your possession?

17 A. I am not quite sure of this piece of information.

18 Q. Well, you said yesterday that some were lost.

19 That is the reason I asked.

20 Do you know that some were lost?

21 A. In particular I cannot tell you what things were
22 lost, but, or what's lost in particular, but I know in
23 general that there were things that were not, that were lost
24 from the apartment.

25 Q. So you would not be able to tell me which

1 particular tapes were missing then, is that right?

2 A. That's correct.

3 Q. You talked about a call that you received from
4 Sheik Omar while he was in California, is that correct,
5 during March 1993?

6 A. Yes.

7 Q. And that you received this call at around 2
8 o'clock in the morning, is that correct?

9 A. Around this time, yes.

10 Q. You're certain as you sit there that it was from
11 California and it was from Sheik Omar, is that right?

12 A. I am not sure, but I do know that it was a
13 long-distance call, out-of-state call, and I expect could
14 have been from California. When he came back, he came with
15 somebody from California who said that, they said that they
16 were in California and they came from there.

17 Q. That was a person named Hamdi, is that correct?

18 A. Correct.

19 Q. Do you know his last name, by any chance?

20 A. No.

21 Q. Directing your attention to your contact with
22 Egyptian intelligence or with the people at the embassy, am
23 I correct that your contact was limited to the New York
24 embassy and the mission to the United Nations, is that
25 right?

1 A. That's correct.

2 Q. Sometimes you would go to the embassy, is that
3 right, and meet with them?

4 A. No. If I were to go to the embassy, I would go
5 for reasons of, you know, taking care of some paperwork.

6 Q. Would it be your testimony, Mr. Haggag, that you
7 only met with Tarig, Mohammed Tarig in the street when you
8 met with him on numerous occasions in 1992 and '93?

9 A. Most of our meetings were, took place in the
10 street.

11 Q. But you knew many other people at the embassy, is
12 that right?

13 A. Yes.

14 Q. That was all because you were going there on
15 regular civilian chores, not to turn over pieces of
16 information, is that right?

17 A. The reason that I used to go to the embassy was
18 to take care of some paperwork related to the sheik, not for
19 giving any information.

20 Q. When you called in September from the jail and
21 you mentioned that Mr. Hosni must be a member of the new
22 team, that was because of your civilian contacts, is that
23 right?

24 A. Yes.

25 Q. You were familiar with which teams were operating

1 through the Egyptian consulate, is that right?

2 A. I was inquiring about one particular person.

3 Q. You said to Mr. Hosni, "You are a member of the
4 new team," is that right?

5 A. That's correct.

6 Q. You also in the course of this conversation and
7 other correspondence with them mentioned someone named
8 Mahsoun?

9 A. Yes.

10 Q. Is that right?

11 A. That's correct.

12 Q. And El Minisi?

13 A. Yes.

14 Q. Sami Dirar, the consulate?

15 A. Yes.

16 Q. Sabri and his brother?

17 A. Yes.

18 Q. Someone named Sala Peck? Sallee, p-E-C-K?

19 A. (In English) I don't know.

20 Q. And you knew Ahmed Samek, right?

21 A. Yes.

22 Q. I'm informed that the mispronunciation is my
23 fault. Salabek is the name of the person.

24 A. I am not familiar with the name.

25 Q. In any event, all of the names with the exception

1 of that one are people that you knew by name in the embassy,
2 is that right?

3 A. Yes, that's correct.

4 Q. You also knew Mr. Ahmed Samek, who we talked
5 about yesterday, is that right?

6 A. Correct.

7 Q. Did you ever meet Mr. Samek at the Farooq mosque
8 in Brooklyn?

9 A. Yes.

10 Q. Did he ever tell you that he was gathering
11 information there for the Egyptians?

12 A. No.

13 Q. In any event, Tarig was your contact during the
14 period of time from July 1992 through April 1993 you told
15 us, is that right?

16 A. Yes.

17 Q. Can you tell us how many times you spoke to or
18 called him during that time period?

19 A. I'm not sure of the exact number of times, but
20 maybe it would have been around six or seven. It could be
21 more; it could be less.

22 Q. In March or April of 1993, you were also called
23 by the FBI, is that right?

24 A. Yes.

25 Q. They were begging you to work for them, is that

1 right?

2 A. They were asking me to help them, not
3 particularly to work for them.

4 Q. Would helping them be giving them information?
5 Is that what you mean by "help"?

6 A. I'm using the term that they used. I'm quoting
7 the term that they used. They asked me to help them. They
8 didn't ask me to work for them or give them any information,
9 just to "help."

10 Q. I'm asking what that meant to you.

11 A. Maybe what they meant was they wanted some
12 information about what was going on.

13 Q. Tarig at the Egyptian embassy, you spoke to him
14 about this approach, did you not?

15 A. Yes.

16 Q. He urged you to work for them, is that right?

17 A. He did not use the expression "to work for them."
18 He asked me to -- he told me to cooperate.

19 Q. What did that mean to you, "cooperate?"

20 A. To give them the information directly, not
21 through Egypt.

22 Q. You told them you were not going to do that, is
23 that right?

24 A. I told him that I did not trust them, and I was
25 afraid of them.

1 Q. But actually you do talk to the FBI, don't you?

2 A. At the end, yes.

3 Q. You told us, I think, that it was three or four
4 times that you spoke to them, is that right?

5 A. That's correct.

6 Q. So you did not tell the Egyptians you were
7 talking to the FBI. Did you tell the FBI that you were also
8 speaking with the Egyptians?

9 MR. KHUZAMI: Objection to form.

10 THE COURT: Sustained.

11 Q. When the FBI contacted you in March of 1993 or
12 April of 1993, did you believe that the reason they
13 contacted was that Egyptian intelligence had told them to?

14 A. I wanted to -- I tried to make sure that the
15 Egyptians gave the information to the Americans, yes.

16 Q. So then when you got a phone call from Agent
17 Liguori of the FBI, you were pretty sure that that happened
18 because you had told the Egyptians, is that right?

19 A. Yes.

20 Q. The only thing happening at that time was the
21 Mubarak so-called plot, is that right?

22 MR. KHUZAMI: Objection.

23 MS. STEWART: I will withdraw the "so-called."

24 THE COURT: I was going to overrule the
25 objection, but go ahead.

1 MS. STEWART: Thank you, Judge.

2 A. Yes.

3 THE COURT: You can answer the question.

4 Q. Did you answer? I'm sorry.

5 A. Yes.

6 Q. When you first made contact with the FBI, first
7 you go to Siddig, is that right?

8 A. No.

9 Q. When the FBI first contacts you, do you go to an
10 immigration lawyer you once had and consult with him?

11 A. No, I got in touch with Mr. Kuby.

12 Q. Did you ever consult with an immigration lawyer?

13 A. This is when, after I knew that Mahmud Abouhalima
14 was the one who did the World Trade Center.

15 Q. You do inform Siddig Ali, though, that you have
16 been contacted by the FBI and they know everything, is that
17 right?

18 A. Yes, I told him so.

19 Q. You do go to your friends at the El Salaam
20 mosque, I think you told us, Boker and Khalek and ask for
21 advice as to what you should do now that the FBI has
22 contacted you, is that right?

23 A. Yes.

24 Q. They tell you to go talk to Sheik Omar because
25 this has been happening to Arabs and Muslims and he may be

1 able to help you with a lawyer, is that right?

2 A. Yes.

3 Q. Before you go to Sheik Omar, do you consult with
4 an attorney on your own with regard to how to deal with the
5 FBI?

6 A. No.

7 Q. You never went to a lawyer who said to you who
8 called the FBI and they said to him, "We can come get him
9 even though he's standing next to you"?

10 A. That I repeat, after Sheik Omar gave me the
11 telephone number of Ahmed Abdel Sattar, who gave me the
12 telephone number of Mr. Kuby, and then Kuby got in touch
13 with the FBI and then this misunderstanding took place.

14 Q. That happened with Mr. Kuby, is that right?

15 A. Yes.

16 Q. What I just described that the FBI said, "We can
17 get him anyplace, even if he's standing right next to you,
18 we can get him," is that right?

19 A. Yes, this is what I heard from the lawyer.

20 (Continued on next page)

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1 Q. You did all this talking about the FBI in order
2 that no one would suspect that you were really working for
3 the Egyptians, is that right?

4 A. Yes.

5 Q. You went to the sheik's apartment, you told him
6 what the problem was, and he put you in touch with Sattar,
7 is that right?

8 A. Yes.

9 Q. Do you remember a four-way telephone conversation
10 that you had on April 30, 1993, with Sattar, Sheik Omar,
11 Emad Salem, and yourself?

12 A. No.

13 MS. STEWART: I misspoke myself. I think it is
14 March 30, Judge.

15 Q. March 30, does that change your testimony?

16 A. I never had this conversation over the phone with
17 Abdel Sattar, Emad and Omar, all at the same time,
18 regardless of the dates.

19 MS. STEWART: Judge, I would ask that this be
20 marked -- I think we are up to V, is it, Abdel Rahman V?

21 THE COURT: Yes.

22 Q. I would just like to show you, Mr. Haggag, what
23 has been marked Abdel Rahman VT. It is in English. I don't
24 know whether you can read that.

25 A. I can read it.

1 MS. STEWART: May I approach, Judge?

2 THE COURT: Yes.

3 Q. Mr. Haggag, have you had an opportunity to look
4 over VT? Does that refresh your recollection as to this
5 conversation?

6 A. Yes.

7 Q. Did you in fact have a conversation on March 30,
8 1993, with Abdel Sattar, yourself, Mr. Salem, and Sheik
9 Omar?

10 A. Abdel Sattar, Sheik Omar and myself were on the
11 line. I don't know anything about this Salem.

12 Q. You don't recall hearing him on the line?

13 A. I didn't know that Emad Salem was on the line.

14 Q. But you do recall having this conversation in
15 which you discussed the lawyers and the fact that you had
16 been contacted by the FBI, is that right?

17 A. Yes.

18 Q. And you talked about how the district attorney,
19 as you called him in this conversation, threatened your
20 lawyer today, is that right?

21 A. This is what I heard from Kuby.

22 Q. And you said he told him if I want him I can get
23 him even if he is standing next to you, is that right?

24 A. This is what I heard from Kuby.

25 Q. And you also reported to them that there were

1 messages, there were clicks on your answering machine made
2 by the FBI, is that right?

3 A. Yes.

4 Q. And that they didn't want to leave a message and
5 embarrass you, is that right?

6 MR. KHUZAMI: Objection to form.

7 THE COURT: Rephrase it.

8 MS. STEWART: I will rephrase it. I will go on
9 from there.

10 Q. And the lawyer spoke to you and you reported in
11 this conversation that you were told don't open the door for
12 them unless they have a court order, is that right?

13 A. Yes.

14 Q. And then you discussed how they would get a court
15 order, is that correct?

16 A. Yes.

17 Q. And Sheik Omar told you they could get that right
18 away, didn't he?

19 A. Yes, possibly.

20 Q. And then Sattar told you that you don't have to
21 open the door even if it is the American President, right,
22 you don't have to talk to them?

23 A. Possibly.

24 Q. And then the sheik spoke about Egypt to you, what
25 would happen in Egypt, that you do have to speak to the

1 prosecutor there, is that right?

2 MR. KHUZAMI: Objection.

3 THE COURT: Sustained.

4 Q. With respect to Ron Kuby, you even at this point
5 invite him to come to the mosque, and he does, does he not,
6 and speaks with the people at El Salaam Mosque about how to
7 deal with being confronted by the FBI, is that right?

8 MR. KHUZAMI: Objection.

9 THE COURT: Sustained.

10 Q. Do you invite Ron Kuby to come and speak at El
11 Salaam mosque?

12 A. Yes.

13 Q. Does he do so?

14 A. Yes.

15 Q. Even with that, you were voluntarily talking to
16 the FBI, is that correct, at this same time?

17 A. No, I was not talking with the FBI at the time.

18 Q. When did you start talking with the FBI?

19 A. I started at the office of the Attorney General,
20 Mr. McCarthy.

21 Q. Didn't you testify here just the other day that
22 you spoke with them two or three times before July?

23 A. These two or three times they were asking me for
24 help and I was hesitating, I was afraid of them.

25 Q. When did you first speak to them? Can you give

1 us a month?

2 A. In the office of Mr. McCarthy.

3 Q. At the office -- I didn't catch --

4 A. Of Mr. McCarthy.

5 Q. Can you give us a month that that meeting took
6 place?

7 A. July 16.

8 Q. So the two or three times that you testified here
9 that you met them before that date, those were just casual
10 meetings or --

11 A. These two or three meetings, they were trying to
12 explain the situation to me in order to get me to help them,
13 to convince me to get me to help them. But I was still
14 afraid of them.

15 Q. And you came back from one of these meetings, did
16 you?

17 A. Yes.

18 Q. And you confronted Siddig Ali, is that right,
19 with the news that the FBI knew everything, is that right?

20 A. Yes.

21 Q. And then you started telling people that Siddig
22 was the informant, didn't you?

23 A. This is not exactly what happened. There is some
24 difference in the time.

25 Q. You began telling people in various mosques and

1 places, other Muslims, that the FBI had come to visit you
2 but they hadn't come to visit Siddig, is that right?

3 A. Yes.

4 Q. And you were the only two that knew anything, is
5 that right?

6 A. No, not the way you are describing it.

7 Q. People began to believe that Siddig was an
8 informant, if you know. Did you tell people that?

9 MR. KHUZAMI: Objection to form.

10 MS. STEWART: Yes, bad form.

11 Q. Did you tell people directly that you believed
12 Siddig Ali was informing the FBI or speaking with them or
13 working with them or helping them?

14 A. Yes.

15 Q. You told a number of people that, is that
16 correct?

17 A. Yes.

18 Q. You go to Saudi Arabia for pilgrimage and that is
19 from May to June 11, is that correct?

20 A. Yes.

21 Q. And on June 17 a fellow named Khallafalla knocks
22 on your door and asks you to come to the sheik's apartment,
23 is that right?

24 A. Yes.

25 Q. And he has to do it a number of times, is that

1 right, before you come?

2 A. Yes.

3 Q. On this occasion, June 17, 1993, you did not know
4 that Emad Salem was taping what was going on in the sheik's
5 apartment, did you?

6 A. I was not sure but I had my doubts.

7 MS. AMSTERDAM: I am sorry. I didn't catch that.

8 A. I was not sure but I had my doubts.

9 Q. You had your doubts that he was taping or that he
10 wasn't taping?

11 A. I was -- that he was taping. I was sure that he
12 was an agent.

13 Q. Who else was there at the point that you entered
14 Sheik Omar's apartment?

15 A. Omar Abdel Rahman, Siddig, Khalid, and Emad
16 Salem.

17 Q. You came to know that the sheik was going to
18 mediate a dispute that had arisen between you and Siddig
19 Ali, is that right?

20 A. Yes, something like that.

21 Q. You had seen him resolve problems between people
22 on other occasions, isn't that right?

23 A. Yes.

24 Q. It is a tradition, it is an Arab tradition, it is
25 an Islamic tradition for a sheik to resolve problems between

1 people, is that right?

2 A. Yes, the elderly, the scholar would do that.

3 Q. You had seen him do this in business matters
4 between people, is that right?

5 A. Yes.

6 Q. And in family matters, is that right?

7 A. Yes.

8 Q. In essence, the problem between you was brought
9 by Siddig, is that right?

10 A. That is correct.

11 Q. He said that you were telling everyone that you
12 were part of the FBI -- that he was part of the FBI.

13 A. Whom do you mean by --

14 Q. Siddig Ali complained that you were telling
15 everyone that he was working with the FBI.

16 A. Yes.

17 Q. And the other part of the complaint, as the
18 mediation goes on, dealt with a complaint that you were
19 stabbing Sheik Omar in the back, that you were being nice to
20 him in the face but behind his back you were saying things
21 about him.

22 MR. KHUZAMI: Objection to form.

23 THE COURT: Sustained.

24 Q. The second complaint dealt with your relationship
25 with Sheik Omar at that time, is that right?

1 A. I don't think so. I do not remember.

2 Q. You told Mr. McCarthy that you listened to this
3 tape, is that correct, before you gave your direct
4 testimony? This was what is known as CM 46, is it 347?

5 A. Yes, I listened to this tape labeled as CM 46,
6 but your general intention is not clear to me.

7 MS. STEWART: I didn't hear the interpreter.

8 A. I don't fully understand what you mean.

9 Q. It begins, does it not, with the sheik stating
10 the nature of Siddig's complaint against you, which is that,
11 and I am reading from page 52 of the government's
12 transcript, the sheik says brother Siddig has a complaint
13 against you, and you are loving brethren, and you have
14 worked together on many charitable matters, and you became
15 friends in Allah and became brethren in Allah. He complains
16 that you, meaning that you told more than one person that
17 he, that he is cooperating with the FBI and that he knows
18 them. And then he asks you did that happen, is that right?

19 A. Yes.

20 Q. And you admit that that happened, is that
21 correct?

22 A. Yes.

23 Q. And then he talks to you about how sure you are
24 of that happening and you say you started out being 80
25 percent sure and now you are 99 percent sure. Is that

1 correct?

2 A. Yes.

3 Q. And that was all lies, is that right?

4 A. Yes.

5 Q. At one point in the conversation, Emad Salem
6 speaks up and says people are saying that you say that I am
7 with the FBI. Do you remember that happening in this
8 conversation?

9 A. Yes.

10 Q. Were you saying that Emad Salem was part of the
11 FBI?

12 A. I was repeating what Sheik Omar Abdel Rahman had
13 said about Emad Salem.

14 Q. But did you know personally at that time that
15 Emad was working for the FBI?

16 A. We had our strong suspicions about him.

17 Q. Did you ever see him consulting with a fellow
18 named Mahsoun at the Egyptian embassy?

19 A. No, I never did that, and I have never even seen
20 Mahsoun.

21 Q. But you mentioned his name when you called the
22 Egyptian embassy, is that right?

23 A. Yes.

24 Q. Did they at the Egyptian embassy ever tell you
25 that Emad Salem was also working with Egyptian intelligence?

1 A. No, nobody told me that.

2 Q. Not until after you were arrested, is that
3 correct?

4 A. No.

5 MR. KHUZAMI: Objection.

6 A. Nobody ever told me that.

7 THE COURT: Sustained.

8 Q. Did you at one point respond to Emad Salem by
9 saying that the sheik said it, Siddig said it and all the
10 people at the mosque are saying that you are FBI?

11 A. Yes.

12 Q. Do you remember after the point of July 16 when
13 you were arrested that you wrote -- strike that.

14 Do you remember a letter that starts out or a
15 writing that starts out in your handwriting saying something
16 about Fifi?

17 A. Yes.

18 Q. Fifi means the FBI, is that right?

19 A. Yes.

20 Q. Do you remember in that letter -- if you give me
21 one minute --

22 A. That was not a letter.

23 MS. STEWART: This is 3500GG.

24 Q. Was it just a writing, is that what it was?

25 A. Yes.

1 Q. Did you write this when you were in jail or did
2 you write it before you went to jail?

3 A. Before I went to jail.

4 Q. Before you went to jail you wrote, and another
5 close confidante is Emad Salem, an informant of Fifi since
6 '91?

7 A. This is our suspicion in 1991. We had our
8 suspicions about him in the area since 1991 and we were
9 talking about it.

10 Q. And you went on to say that the sheik said to
11 you, and this was in reference to a trip he made to Detroit
12 with Emad Salem, that the sheik said this one is an agent of
13 the Egyptian or American intelligence, don't let him sleep
14 in the room next to mine. Do you remember the sheik telling
15 you that?

16 A. The sheik, when he came back -- after he came
17 back from the trip he had talked about what took place in
18 Detroit. He talked to us about Emad Salem and he explained
19 to us how he had asked for him to be taken away from close
20 to his room.

21 Q. The discussion with Siddig Ali, Emad Salem and
22 the sheik on that occasion, on June 17, 1993, revolved
23 around the Mubarak plot, did it not?

24 A. Yes, you may say so.

25 Q. You said at one point the idea was originally

1 mine, and all was my planning. Do you remember saying that?

2 A. Yes.

3 Q. That was a lie too, is that right?

4 A. Yes.

5 Q. When Siddig Ali raises Sheik Omar as being
6 responsible at all in the plot, do you remember what you
7 said?

8 A. Could you repeat the question, please.

9 Q. Whether Siddig Ali says -- strike that. Let me
10 start over.

11 This was a very, very heated argument, is that
12 right?

13 A. Yes.

14 Q. In the Arabic, you can hear people yelling and
15 screaming at each other, is that right?

16 A. Yes.

17 Q. And people are talking so fast they are not
18 waiting for the other person to finish, they are speaking on
19 top of each other, is that right?

20 A. Yes.

21 Q. Very angry, threatening people that I will kill
22 you right now or you should commit suicide, is that right?

23 A. Siddig had told me that he could have killed me.
24 I told him before you kill me you better go and commit
25 suicide.

1 Q. There came a point where Siddig Ali says,
2 including our honorable sheik. Do you remember that point
3 in the conversation?

4 A. Yes.

5 Q. And you say, no, it wouldn't do anything to our
6 sheik, he is at a distance. Do you remember saying that?

7 A. Yes.

8 Q. And then you repeat again, the sheik is at a
9 distance.

10 A. No, I did not know that Siddig had told him about
11 Mubarak.

12 Q. And you still don't know that, do you?

13 A. Siddig had repeated that twice in my presence,
14 and I tried to deny that, but he twice affirmed it, and that
15 was in the presence of the sheik, who seemed to have known
16 about it.

17 Q. Let's read the transcript, Mr. Haggag. You say
18 that Siddig Ali is saying that the sheik knew about it from
19 what happened at the argument on June 17?

20 A. You are talking about Mubarak plot.

21 Q. Right.

22 A. Siddig was saying that this also would do away
23 with the sheik.

24 Q. Do you remember the reason he gave why it would
25 do away with the sheik?

1 A. I don't recall the reason that he gave.

2 Q. Let me just read it to you. OK?

3 A. Go on.

4 MR. KHUZAMI: Objection, form.

5 THE COURT: Sustained. You are supposed to pose
6 questions.

7 MS. STEWART: Sorry, Judge.

8 THE COURT: It's all right.

9 Q. Do you remember Siddig Ali saying to you, its
10 failure would have entailed what? It will drag us all down
11 right and left, correct? Do you remember him saying that?

12 A. Yes.

13 Q. And then he goes on to say, do you remember him
14 saying -- strike that. Do you remember Salem saying, true?
15 And do you remember yourself saying, right? And then Siddig
16 going on to say, including our honorable sheik? Do you
17 remember him saying that?

18 A. Yes.

19 Q. And then you said yes, and Siddig said, due to
20 his closeness to its front. Do you remember him saying
21 that?

22 A. Could you repeat the last sentence, please.

23 Q. Do you remember Siddig saying at that point, due
24 to his closeness to its front? I am at page 63. I am
25 sorry.

1 A. Could you repeat that again. I am not following
2 this.

3 THE COURT: Did Siddig say in substance that the
4 sheik would have been brought down because he was close to
5 the front of the Mubarak plot?

6 THE WITNESS: Yes.

7 Q. And then you responded no, it wouldn't do
8 anything to our sheik, he is at a distance. That's what you
9 said. You told us that already, is that right?

10 A. Yes.

11 Q. And then do you remember Siddig Ali saying to you
12 what matters is, let's be realistic, Abdel Rahman, and you
13 said again, do you remember, the sheik is at a distance?

14 A. Yes.

15 Q. And then Siddig said, do you remember this, wait,
16 Abdel Rahman, and you said the sheik is at a distance. Do
17 you remember that exchange?

18 A. Yes.

19 Q. And Siddig said again, wait, Abdel Rahman. Then
20 you were not able to be understood on the tape, do you
21 remember that, and Siddig said wait, wait, do you remember
22 that?

23 A. Yes.

24 Q. And do you remember you repeated yet again yes,
25 sheik is distant?

1 A. Yes.

2 Q. And Siddig Ali said again Abdel Rahman, let me
3 finish oh brother, if you please, and do you remember saying
4 yes, don't swerve around the issue, stay straight? Do you
5 remember that exchange?

6 A. Yes.

7 Q. And Siddig Ali said no, I am telling you I am
8 straight now. And you said, what are you telling me
9 straight? And you said what made the sheik be involved in
10 the matter? Do you remember asking Siddig that question?

11 A. Yes.

12 Q. And do you remember he gave this answer: The
13 involvement of the sheik is that, ah, my relationship with
14 him is very firm and my relationship with you and the
15 brother in here is very strong. Do you remember that
16 answer?

17 A. Yes.

18 Q. He is talking about the fact that he is close to
19 the sheik and you are close to the sheik, is he not?

20 A. He was telling me that he was close to the sheik
21 and he was close to me.

22 Q. And that is why any failure would bring the sheik
23 down, isn't that right?

24 A. Possibly. This is one of the scenarios or one of
25 the possibilities.

1 Q. At the very end of this furious argument, you
2 leave the apartment, is that right?

3 A. Yes.

4 Q. Do you remember if it is at that point that you
5 are called, and this is at page 99, the Poker tail?

6 A. I don't remember this expression. I remember
7 what Omar Abdel Rahman had said. I remember that he was
8 telling me that I was working for Poker and my answer was
9 Poker is cleaner than you are. Poker is Ibrahim Poker, who
10 is an imam at the mosque.

11 Q. And you left at that point, is that right?

12 A. Yes.

13 Q. Siddig Ali at that time, June 17, was not an FBI
14 agent, as far as you know, is that right?

15 A. Yes.

16 Q. He was not working for the Egyptian government as
17 far as you know, is that right?

18 A. Yes.

19 Q. You were cooperating with both the FBI and the
20 Egyptians at that point, is that right?

21 A. Yes, I was cooperating with the Egyptians but not
22 with the Americans, the FBI.

23 Q. You would meet them, though. You would go to
24 meet them even though you wouldn't give them information, is
25 that right?

1 A. Yes, they would meet me, but -- yes, they would
2 meet me.

3 Q. And Emad Salem was FBI and also Egyptian
4 intelligence, and you didn't know that, is that right?

5 MR. KHUZAMI: Objection.

6 THE COURT: Sustained.

7 Q. On June 17, did you know whether Emad Salem was
8 working for any intelligence organization?

9 A. I had my personal strong suspicions and doubts,
10 in addition to the suspicions and the doubts of the sheik
11 and this small Muslim community.

12 Q. What was the reason why you took credit in front
13 of the sheik for the entire Mubarak plot?

14 A. In order to clear any suspicions or doubts about
15 myself, in case that Omar Abdel Rahman would have gone to
16 Egypt and he would have been sentenced there -- he would
17 take power, he would take charge in Egypt -- sorry -- my
18 wife and my children are in Egypt and they would have been
19 his first victims.

20 Q. So you were saying you were -- this is an English
21 expression, I don't know whether it is translatable --
22 hedging your bets, is that right?

23 A. Could you repeat that again, please.

24 Q. You were making sure that if Sheik Omar took
25 power or became the Islamic head of Egypt, that you would

1 not be in any difficulty, is that right?

2 MR. KHUZAMI: Objection.

3 THE COURT: Overruled. Is that what you were
4 doing?

5 A. Not to be the Islamic head, to be the president.

6 THE COURT: In other words, if he became the
7 president --

8 THE WITNESS: If he become president under any
9 circumstances.

10 The second reason was that if this thing would
11 have been investigated, they would have known that I was the
12 person who had saved Mubarak, and then in this case I would
13 be in danger, because my children would have been in Egypt
14 and I would be here, in danger.

15 Q. Less than a week after this argument, people were
16 arrested, including Siddig Ali, is that right?

17 A. Yes.

18 Q. That would be June 23, as you recall?

19 A. Possibly, yes.

20 Q. On July 16, you, too, were arrested, is that
21 right?

22 A. On July 16 I was at the office of Mr. McCarthy.

23 Q. And you got arrested there, didn't you, Mr.
24 Haggag?

25 A. At the end of the day, yes.

1 Q. You went to see Mr. McCarthy voluntarily, you
2 went without a lawyer, is that right?

3 A. Yes.

4 Q. And you came to an office right in this very
5 neighborhood, is that right?

6 A. Yes.

7 Q. And you spoke to Mr. McCarthy that day and they
8 asked you a lot of questions about the Mubarak plot, is that
9 right?

10 A. Yes.

11 Q. Is that correct?

12 A. Yes.

13 Q. And you answered those questions, is that right?

14 A. Yes.

15 (Continued on next page)

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1 Q. And there was no mention in your answers of
2 anything about the sheik or the sheik's desire, was there?

3 A. What do you mean?

4 Q. In that entire day's questions and answers, there
5 was no mention of the sheik and a fatwa or the sheik's
6 desires for the Mubarak plot.

7 MR. KHUZAMI: Objection, foundation.

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

9 (At the side bar)

10 THE COURT: I don't understand the the objection.

11 MR. KHUZAMI: I think that it is required that he
12 be asked whether or not the questions or those subjects were
13 inquired of before it is proper impeachment.

14 THE COURT: No, you can go into that on redirect.

15 MS. STEWART: I asked were you asked questions
16 about the Mubarak assassination plot and he said yes.

17 THE COURT: I think what he is suggesting is that
18 you have to ask were you asked about the sheik's
19 involvement.

20 MS. STEWART: He can clear that up on redirect.

21 THE COURT: Yes, he can clear that up on
22 redirect.

23 (In open court)

24 THE COURT: The objection is overruled. Go
25 ahead.

1 THE WITNESS: Would you please repeat the
2 question.

3 MS. STEWART: I don't know whether I can remember
4 it.

5 (Continued on next page)

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1 BY MS. STEWART:

2 Q. When you came on July 16 and you spoke with Mr.
3 McCarthy and agents from the Federal Bureau of
4 Investigation, you were asked about your involvement in the
5 Mubarak assassination conspiracy, is that right?

6 A. Yes.

7 Q. And in the course of your detailing what had
8 happened, you never mentioned Sheik Omar, is that right?

9 A. Yes.

10 Q. And you never mentioned Sheik Omar's desire even,
11 did you?

12 A. What do you mean by desire?

13 Q. Mr. Haggag, did you not testify that you were
14 told by Siddig Ali this is the sheik's desire?

15 A. Yes.

16 Q. You never mentioned this desire when you spoke
17 with the FBI on the first occasion, is that right?

18 A. Yes.

19 Q. Yes, you didn't mention it or yes, you did
20 mention it?

21 THE COURT: The answer is yes to your question,
22 he did not mention it. Go ahead.

23 MS. STEWART: Bad question. I am sorry.

24 Q. And you were arrested, is that right?

25 A. Yes.

1 Q. You were held with no bail?

2 A. Yes.

3 Q. You were so upset that you were throwing up in
4 the conference room, weren't you?

5 A. Throw up?

6 Q. Yes.

7 A. I was sick, I was very nervous. I did not throw
8 up.

9 Q. Do you remember meeting again with Mr. McCarthy
10 and agents from the FBI on July 26?

11 A. Yes.

12 Q. By this time, you were keeping a diary of what
13 was happening at MCC, weren't you?

14 A. Yes.

15 Q. And they spoke to you again on 7/26 about the
16 so-called Mubarak plot, is that right?

17 MR. KHUZAMI: Objection to form.

18 THE COURT: Sustained.

19 Q. They spoke to you again on July 26 about the
20 Mubarak plot, is that right?

21 A. Yes.

22 Q. And you remained in jail, is that right?

23 A. Yes.

24 Q. There was no deal made between you and the
25 government at that time, is that right?

1 A. Yes.

2 Q. And you were eventually, in August, indicted for
3 seditious conspiracy and also for the attempted plot against
4 Mubarak, is that right?

5 A. Yes.

6 Q. Sheik Omar was also indicted for the first time
7 in August, isn't that right?

8 A. Yes.

9 Q. He was not at MCC, though, isn't that true? He
10 was at Otisville when you were at MCC?

11 A. Yes.

12 Q. And Otisville is a different prison, upstate, is
13 that correct?

14 A. Yes.

15 Q. After you were indicted you began to try and
16 contact the Egyptian embassy, is that right?

17 A. Yes.

18 Q. You made phone calls, you wrote letters, is that
19 correct?

20 A. Yes.

21 Q. When you called them in September of 1993, you
22 were very, very distraught about being charged with these
23 crimes, is that right? Very, very upset?

24 A. Yes.

25 Q. And you said to them, did you not, the U.S.

1 Attorney has told me, we know you blew the whistle on
2 Mubarak, get the Egyptians to call us? Do you remember
3 telling them that in that conversation?

4 A. Possibly.

5 Q. Is it possibly or is it yes?

6 A. Yes, because there is some difference in the
7 translation.

8 Q. Let me just show you what is 3500V.

9 THE COURT: For the record, that is 35119V.

10 MS. STEWART: I am sorry.

11 THE COURT: It is all right. Just so the record
12 is clear.

13 (Pause)

14 Q. Let me show you page 6 of this.

15 The U.S. Attorney wanted to hear from your
16 lawyer, is that fair to say -- wanted to hear from the
17 Egyptian intelligence agents, is that right?

18 A. From Egyptian official.

19 Q. In this phone call you were weeping and weeping
20 and weeping, isn't that true?

21 A. Yes.

22 Q. For more than five or six pages you are crying
23 and crying as you are talking to them on the phone, isn't
24 that right?

25 A. Yes.

1 Q. Tarek, the fellow you had cooperated with when
2 you made the first phone call to him, he changed his number,
3 isn't that right?

4 A. Yes.

5 Q. You couldn't get hold of him any more, is that
6 right?

7 A. Yes.

8 Q. And Ahmed Samek had gone back to Egypt and was
9 refusing to see your wife, isn't that right?

10 A. Yes.

11 Q. And you were really desperate, is that right?

12 A. Yes.

13 Q. And the Egyptians did call, as far as you know,
14 isn't that right? They did get in touch with the
15 government.

16 A. Yes.

17 Q. And the next time you speak with Hosni, you are
18 on a first-name basis, isn't that right?

19 A. What do you mean by first name basis?

20 Q. When he answers the phone, you call him by his
21 first name, Fouad, is that right?

22 A. Yes.

23 Q. And he says, everything is perfect, and you say,
24 thank God, isn't that right?

25 A. Yes.

1 Q. You had a deal -- this is now October -- and you
2 moved from MCC in early November, is that right?

3 A. Yes. But --

4 MR. KHUZAMI: Objection to form.

5 THE COURT: The objection to form is sustained,
6 although the question has already been answered.

7 MS. STEWART: I thought he did answer it, Judge.

8 THE COURT: I said he had.

9 A. There was no deal yet.

10 Q. Right. The deal was not finally struck until the
11 Friday before you began testifying here, is that right?

12 A. Yes.

13 Q. You spoke with the government at some length on
14 October 31, 1993, is that right?

15 A. Yes.

16 Q. On November 9 and November 10, 1993, is that
17 right?

18 A. Yes.

19 Q. And November 19, is that right?

20 A. Yes.

21 Q. On December 21 and 22, 1993, is that right?

22 A. Yes.

23 Q. And December 27 and 29 of 1993, is that right?

24 A. Yes.

25 Q. In all of those discussions that you had with the

1 government, you never mentioned the sheik's fatwa for
2 Mubarak, is that right?

3 A. I mentioned the general fatwa of the sheik but I
4 did not say that I got a special or private fatwa from him.

5 Q. As you testified to here this week, is that
6 right? Strike that.

7 You never mentioned a fatwa such as the one you
8 testified to late last week, is that right?

9 MR. KHUZAMI: Objection to form.

10 THE COURT: Sustained as to form.

11 Q. In all of these meetings with the government in
12 1993, you never mentioned that the sheik gave a fatwa for
13 the assassination of Mubarak such as you testified to here
14 last week.

15 MR. KHUZAMI: Objection to form.

16 THE COURT: Sustained.

17 Q. Last week you testified before this jury that the
18 sheik had given you an order or a fatwa or a direction or a
19 command to kill Hosni Mubarak. Do you remember testifying
20 to that?

21 A. Yes.

22 Q. That was never mentioned in any of these
23 debriefings during 1993, is that correct?

24 A. Yes.

25 Q. Did you ever testify before a grand jury at all

1 during all of the time that you had been speaking with the
2 government?

3 THE INTERPRETER: Excuse me. I have to explain
4 to the witness what a grand jury is.

5 MS. STEWART: May he, Judge?

6 THE INTERPRETER: May I, Judge?

7 THE COURT: No. Did you ever appear before a
8 group of people and be sworn with an oath such as the one
9 you took before you testified here, in the time before you
10 testified here in court?

11 THE WITNESS: No.

12 Q. You got out of jail on February.

13 In February 1994, is that right?

14 A. Yes.

15 Q. And you didn't speak with the government at all
16 from December to August 1994, is that right?

17 A. Yes.

18 Q. In August 1994, you spoke to them on August 11
19 and August 12, is that right?

20 A. Yes.

21 Q. And you spoke with them again in October and
22 December 1994, is that right?

23 A. Yes.

24 Q. It is only in those last two dates that I have
25 mentioned that you ever mentioned either a fatwa from the

1 sheik for Mubarak or the sheik's desire for Mubarak.

2 MR. KHUZAMI: Objection to form.

3 THE COURT: Sustained.

4 Q. When you spoke with the government in October
5 1994 and again in December 1994, it is on those occasions
6 that you spoke about a fatwa given to you by Sheik Omar for
7 the assassination of Mubarak, is that right?

8 A. Yes.

9 Q. During the time that you were close to sheik --
10 strike that.

11 During the years from 1990 to 1992, when you
12 would attend mosques with Sheik Omar and got to know him, he
13 spoke many, many times about Mubarak, did he not?

14 A. Yes.

15 Q. He spoke about him as a tyrant to be overthrown,
16 is that right?

17 A. Yes.

18 Q. He spoke about him robbing the treasury of Egypt,
19 is that right?

20 A. Yes.

21 Q. Ruining the economy, of Egypt, is that right?

22 A. Yes.

23 Q. And while he was enriching himself and his
24 family, permitting starvation of the people, is that
25 correct?

1 A. Yes.

2 Q. That he ruled with military law and that if he
3 didn't have the military law he would be gone in 20 minutes?
4 Do you remember him saying that?

5 A. Yes.

6 Q. He wouldn't permit open elections but he was the
7 only one running for president, do you remember him saying
8 that?

9 A. Yes.

10 Q. And he called him the Pharaoh of Egypt, is that
11 right?

12 A. Yes.

13 Q. And that is a name of ancient oppression in
14 Egypt, is it not?

15 A. Yes.

16 Q. He said Egypt needs a revolution, an Islamic
17 revolution, is that right?

18 A. Yes.

19 Q. He basically said that it was Islamically correct
20 to get rid of Mubarak by any means necessary, isn't that
21 right?

22 A. Yes.

23 Q. And you agreed with that, didn't you?

24 A. At that time, yes.

25 Q. Up until you ceased your relationship in, I think

1 you said the summer of '92, with the sheik, you agreed with
2 all of that, isn't that right?

3 A. Till he moved to Fairview and I had spent lots of
4 time with him. I realized the lying and the beating around
5 the bush that he uses, and I realized the dirty sexual
6 things that he used to do. I started to completely
7 change --

8 MS. STEWART: Your Honor, I move to strike --

9 THE COURT: That is stricken. She asked you a
10 simple question. It was whether you agreed with the things
11 that she mentioned he had been saying up until a certain
12 point in 1992. Did you?

13 THE WITNESS: Yes.

14 Q. And when you ceased having a good relationship
15 with him, you gave up all these political principles as
16 well, isn't that right?

17 A. No, not everything.

18 Q. You went to work for Mubarak's government, didn't
19 you?

20 A. Yes, and I took pride in that.

21 Q. Did you lose faith in jihad as well?

22 A. No, impossible.

23 Q. So was it all a lie before then or was it just
24 partly lying before then?

25 A. There is a big difference between the Islamic

1 jihad and the case of Omar Abdel Rahman.

2 Q. I think I just asked you about whether you were
3 lying before then --

4 MR. KHUZAMI: Objection.

5 A. No.

6 Q. On June 17 when you were talking with Emad Salem
7 and having this big argument, you didn't know he had tapes
8 running, you said not once but four times, the sheik is
9 distant from this, did you not?

10 A. Yes.

11 Q. When the government wanted you to say the fatwa
12 talk about the Mubarak association, you accomodated them,
13 did you not?

14 A. No.

15 Q. The fatwa you told us about, there was no tape
16 recording and there was nobody present but you and the
17 sheik, according to you, isn't that correct?

18 A. Yes.

19 Q. And the sheik knew that you had been contacted by
20 the FBI at that time, didn't he?

21 A. Yes.

22 Q. That they know everything, you said.

23 A. Yes yes.

24 Q. And you are telling this jury that after that he
25 gives you the go-ahead and do it?

1 A. Yes.

2 Q. Let us talk about the dates involved here. You
3 told us that on March 23, the sheik comes back from Los
4 Angeles, is that right?

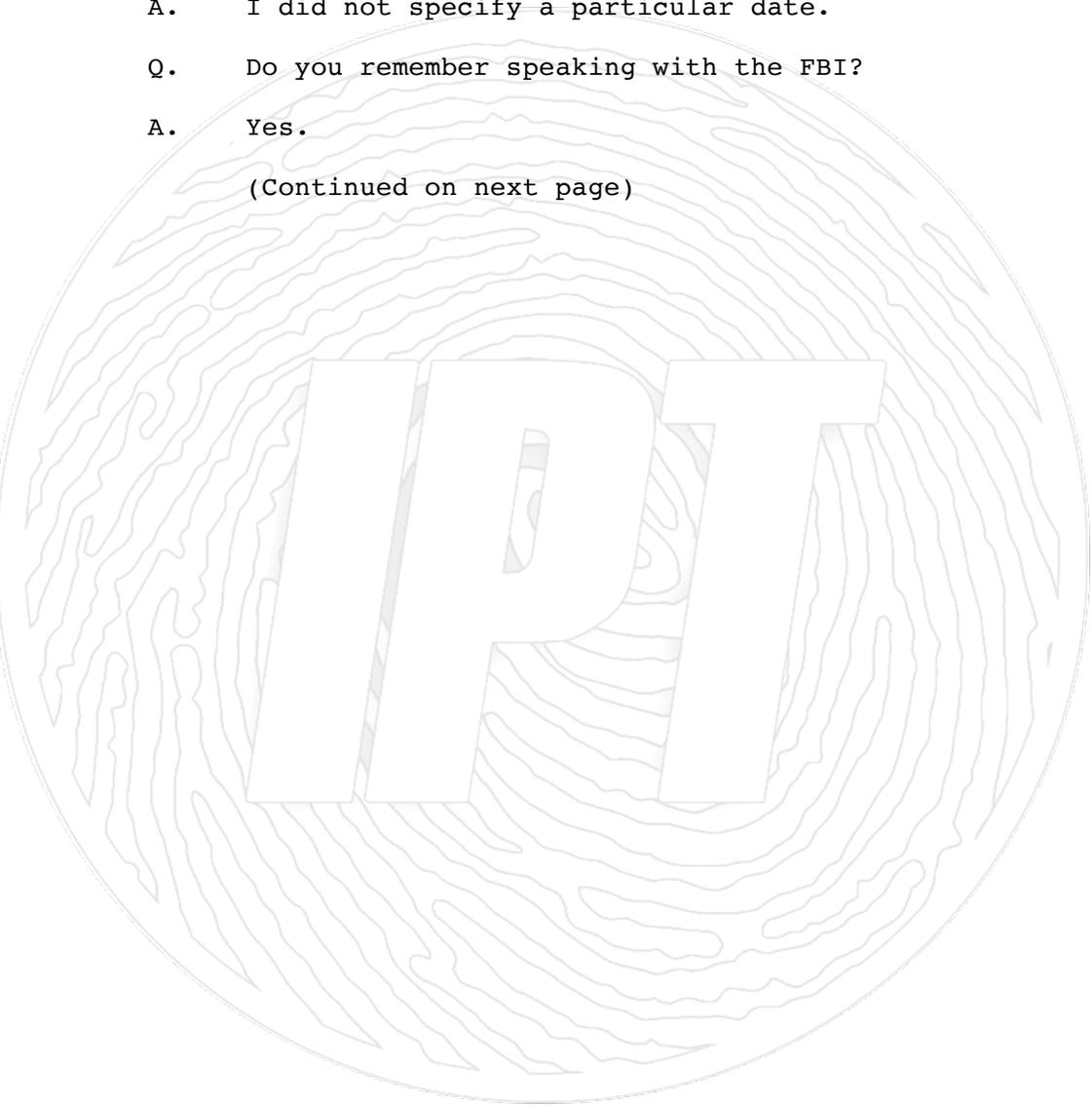
5 A. I did not specify a particular date.

6 Q. Do you remember speaking with the FBI?

7 A. Yes.

8 (Continued on next page)

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1 THE COURT: Could you come to a convenient break
2 point in the next five minutes, Miss Stewart.

3 MS. STEWART: I think we are at that point now,
4 Judge.

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. We will
8 resume at 2:00. Have a pleasant lunch.

9 (Jury excused)

10 (Witness excused)

11 THE COURT: Ms. London, Mr. Elhassan yesterday
12 had sent me a note in the nature of a motion, asking to be
13 permitted to participate at side bars. I had planned to
14 rule on that in his presence. Since he is not here I will
15 rule on that in his absence and rely on you to convey the
16 message that that application is denied. The rules provide
17 for legal matters to be discussed in the absence of
18 defendants, and side bars are just a subset of legal
19 discussions. So that application is denied.

20 MS. AMSTERDAM: Your Honor, may I see your Honor
21 in chambers at some point today?

22 THE COURT: Right now.

23 (Pages 10301 through 10303 sealed)

24 (Luncheon recess)

25

A F T E R N O O N S E S S I O N

Time noted, 2:10 p.m.

ABDO MOHAMMAD HAGGAG, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon, your Honor.

THE COURT: Ms. Stewart?

MS. STEWART: Judge.

CROSS-EXAMINATION (Continued)

BY MS. STEWART:

Q. Mr. Haggag, when we broke I think I had asked you whether or not you recalled that March 23, 1993 was the day that Sheik Omar came back from returned home from wherever he had been. You said you really didn't remember.

Do you remember giving that answer to my question?

A. Yes.

Q. Yesterday I played a tape for you and you listened to it in which you were speaking with Sheik Omar, and you were saying to him that you didn't know he was back and that it was the eed, do you remember that yesterday?

A. I remember that, and I would like to add something else.

Q. Please.

A. At the break yesterday, I remembered something.

1 The sheik got in touch with me in order to take Hamdi from
2 Los Angeles to the post office to send, to mail a few things
3 to Pakistan and in different parts in America using my car.
4 And, in fact, I picked him up, we went to the post office
5 and we finished whatever we wanted to do, and I drove him
6 back.

7 Q. That's after Sheik Omar came back from Los
8 Angeles, is that right?

9 A. Yes.

10 Q. So is it fair to say that you remember that he
11 came back on the day of the eed, March 23, 1993?

12 A. I remember that he might have come one day before
13 the eed or at the eve of the eed, around that time, yes.

14 Q. Let me just show you this transcript very
15 quickly.

16 MS. STEWART: May I show it to him and then list
17 the letter because they are not lettered?

18 THE COURT: Is it the next exhibit?

19 MS. STEWART: No, it is a transcript of an
20 already played exhibit.

21 THE COURT: All right. Go ahead.

22 Q. If you could just take a look at that.

23 MS. STEWART: It is the transcripts for Abdel
24 Rahman S, Judge.

25 A. (In English) Would you like me to read it all?

1 Q. No, no. Does that refresh your recollection at
2 all that it was March 23 the day of the eed that the sheik
3 returned from Los Angeles?

4 A. (In English) Yes.

5 A. (Through interpreter) Yes.

6 Q. Are you aware that it was April 4 of 1993 when
7 Mubarak arrived in the United States?

8 A. Yes.

9 Q. Do you remember that April 6 is the day that the
10 sheik had a press conference at his apartment, 1993?

11 A. No, I don't recall that.

12 Q. Do you remember that that is the day that Mubarak
13 left the United States?

14 A. Again, I don't remember that. I do know that the
15 sheik had held a press conference during the visit of
16 Mubarak, but I don't remember the exact date.

17 Q. Do you remember that on April 5 you had a
18 conversation with the sheik on the phone about the news
19 around Mubarak's visit to the United States?

20 A. Yes.

21 Q. And you had indicated in this conversation, did
22 you not, that the United States had refuted what Mubarak had
23 said?

24 A. Yes.

25 Q. Going back in time, during January, February and

1 March of 1993, you had spoken with Siddig Ali about a plan
2 to kill Mubarak, is that right?

3 A. Would you repeat the months you referred to,
4 please?

5 Q. Sure. January, February, and March of 1993. It
6 may be April as well.

7 A. In January and February, Siddig was talking about
8 an Egyptian high official, without naming anyone in
9 particular. In March and April he was concentrating on
10 Mubarak, yes.

11 Q. Did there come a time that Siddig Ali told you
12 that he was worried because he had not spoken to the sheik
13 about this?

14 A. I don't recall that.

15 Q. Do you remember speaking with the FBI on
16 February -- I mean, on October 26, 1994?

17 A. Yes.

18 Q. And -- Special Agents Liguori and Voss were
19 there, as well as Detective Corrigan, do you remember that?

20 A. Yes.

21 Q. And Jillian Isaacs and Larry Schoenbach, lawyers
22 for you were there, do you remember that?

23 A. Yes.

24 Q. Also Mr. Khuzami and Mr. Fitzgerald were there,
25 do you remember that?

1 A. Yes.

2 MS. STEWART: This is 35119M.

3 MR. KHUZAMI: Page reference, please?

4 MS. STEWART: 3.

5 Q. Does that refresh your recollection that at one
6 point during this meeting you told all those people I named
7 that Siddig Ali had expressed concern for not having
8 previously told the sheik about the Mubarak plan?

9 A. (In English) I cannot --

10 A. (Through interpreter) This is not exactly what I
11 said. I cannot say that this is exactly the words that I
12 said.

13 Q. But is that the essence of what you said?

14 A. Siddig wanted to talk to the sheik and discuss
15 this with him. What I wanted to do at the time is to try
16 not to bring anybody else in this issue. Siddig was saying
17 that if the sheik did not know, he would have -- he would
18 become angry and he would bring everything upside down.

19 Q. That isn't what you told the FBI on this
20 occasion, though, is it? They just didn't put it in your
21 report, is that right?

22 MR. KHUZAMI: Objection.

23 THE COURT: Sustained.

24 Q. Did you tell the FBI that when you spoke to them
25 in October 1994?

1 A. Yes.

2 Q. That the sheik would be angry and would turn
3 everything upside down if he didn't know?

4 A. Yes.

5 Q. So that when they wrote down "Siddig Ali asked
6 CW," that was you --

7 MR. KHUZAMI: Objection.

8 THE COURT: Sustained.

9 MS. STEWART: May we approach, Judge?

10 THE COURT: No.

11 Q. You told us from the stand the other day that
12 Siddig Ali drew plans, he actually drew where people would
13 be or where taxi cars would be on a written plan, is that
14 correct?

15 A. Yes.

16 Q. You never turned that plan in to anybody, did
17 you?

18 MS. STEWART: May I ask that he answer the
19 question.

20 A. He ate the paper.

21 THE COURT: That is an answer.

22 Q. Did these plans include a UPS truck?

23 A. I don't recall that.

24 Q. Do these plans include that everybody would get
25 jobs at the Waldorf-Astoria and work in room service?

1 A. No, I don't think so.

2 Q. As a matter of fact, you didn't even know which
3 hotel Mubarak was going to stay at, did you?

4 A. Yes, Siddig told me about it.

5 Q. Didn't he say he didn't know whether it was the
6 Plaza or the Waldorf?

7 A. Yes. But there was a strong possibility that it
8 would be the Waldorf.

9 Q. You told us that Siddig said there would be two
10 taxis, and each would be positioned at the end of the hotel,
11 is that right?

12 A. One on the right and one on the left, yes.

13 Q. What about the other buildings in that block?
14 Would there be taxis in front of them?

15 A. I have no idea.

16 Q. When he first told you, didn't Siddig Ali tell
17 you that he would be outside the taxi standing in the
18 entranceway to the Waldorf and he would throw the hand
19 grenades?

20 A. Yes, he said something like that.

21 Q. You did not tell us that when you recounted the
22 plan here, did you, Mr. Haggag?

23 A. I said what I remembered.

24 Q. You also told the FBI, did you not, that Siddig
25 Ali was a little unbalanced, a little crazy?

1 A. My definition of "crazy" is that he's thinking
2 about crimes and he is implementing crimes, and to me this
3 is an unnatural way of thinking.

4 THE COURT: The question was did you tell the FBI
5 that he was crazy?

6 THE WITNESS: This is what I said to the FBI, and
7 this is what I meant.

8 Q. But all you said to the FBI was that he was crazy
9 and hyperactive, isn't that what you said to the FBI?

10 A. This is what I said, and what I meant I just said
11 now.

12 Q. The first time you mentioned the sheik in
13 connection with the Mubarak assassination was on October 24
14 through 26, 1994, is that fair to say?

15 MR. KHUZAMI: Objection to form. To whom?

16 THE COURT: Sustained.

17 Q. On October 24 to 26 you met, did you not, with
18 FBI agents Liguori, Voss and Detective Corrigan, is that
19 fair to say?

20 A. Yes.

21 Q. Mr. Fitzgerald and Mr. Khuzami were also present,
22 is that right?

23 A. Yes.

24 Q. Your lawyers, Jillian Isaacs and Lawrence
25 Schoenbach, they were also present, is that right?

1 A. Yes.

2 Q. This was the first time that you talked about the
3 sheik in connection with the Mubarak assassination, is that
4 right?

5 A. No, that's not true.

6 Q. Would you like to look through each and every
7 report of each and every time you met with them and point
8 out --

9 MR. KHUZAMI: Objection.

10 Q. -- to me where you mentioned it before?

11 THE COURT: Sustained.

12 Q. Tell me when you mentioned it before, Mr. Haggag.

13 A. The first day at Mr. McCarthy's office I told him
14 about the poetry that Omar Abdel Rahman had written and his
15 fatwa about killing Mubarak. A permission to kill that was
16 in the poetry.

17 Q. Mr. Haggag, can I show you what's been marked
18 35119A.

19 A. (In English) As you like. Thank you very much.

20 Q. After looking at 35119A do you find it in there?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 Q. Mr. Haggag, you had the meeting in October that I
24 just described, and the people were there present, is that
25 right?

1 A. Yes.

2 Q. On that occasion, do you remember saying and that
3 is -- do you remember what you said on that occasion?

4 MR. KHUZAMI: Objection to form.

5 THE COURT: Sustained.

6 Q. On that occasion you spoke with the people I
7 named previously about the sheik and President Mubarak of
8 Egypt, did you not?

9 A. Yes.

10 Q. Do you remember what you said on that occasion?

11 A. Yes.

12 Q. Tell me what you said.

13 A. All what I said or something that I said
14 particularly?

15 Q. Well, if you can just give us a synopsis.

16 A. I told him about the fatwa that I asked the sheik
17 about and which he gave to me as this personal thing or
18 private thing. And I told -- I told about the reason that I
19 asked for this fatwa.

20 Q. Isn't it a fact that the only things you talked
21 about with regard to President Mubarak and the sheik, and
22 this is at page 14, Sheik Rahman also made remarks --

23 MR. KHUZAMI: Objection.

24 THE COURT: Sustained.

25 Q. Mr. Haggag, didn't you also tell them or did you

1 tell them that the sheik would never specify that somebody
2 should go out and conduct any action against Mubarak,
3 however, he would suggest that Mubarak should be dead?

4 MS. STEWART: Judge, I think it calls for a yes
5 or no answer.

6 A. What I said was that the sheik was giving --

7 THE COURT: You want only a yes or no to that?

8 MS. STEWART: Yes.

9 THE COURT: Let the translator translate the
10 question. Let the reporter read it back, and let the
11 translator translate it into Arabic.

12 A. What I said was that the sheik was --

13 THE COURT: No. Do not translate his answer.

14 Just have the reporter read back the question and
15 translate that.

16 (Record read)

17 THE COURT: I was asking the translator to
18 translate the question.

19 THE INTERPRETER: Oh, again? I thought --

20 THE COURT: Read it back to him again, please.

21 I want it done sentence by sentence from the
22 transcript. Thank you.

23 THE INTERPRETER: OK.

24 (Record read)

25 A. Not in this way, in different meaning.

1 Q. Mr. Haggag, were these interviews conducted in
2 English or were they conducted in Arabic?

3 A. In English.

4 Q. So there was no translator there that could have
5 gotten what you said wrong, is that right?

6 A. No, there wasn't.

7 Q. Do you remember telling them about a trip that
8 the sheik made to Philadelphia to speak at a mosque?

9 A. Yes.

10 Q. And that he made a speech about Mubarak on that
11 occasion?

12 A. Yes.

13 Q. Do you remember that you told them that he spoke
14 with Palestinians, Egyptians and Yemenites and called for a
15 revolution against Mubarak?

16 A. Yes.

17 Q. You met the 24th, the 25th and the 26th of
18 October, 1994, is that right?

19 A. Yes.

20 Q. Do you remember that you said -- strike that.

21 Mr. Haggag, did you have any opportunity to read
22 over the reports of the government before you testified
23 here?

24 A. No, I didn't have them.

25 Q. On October 26, 1994, do you remember recounting

1 to them about the sheik coming back from Los Angeles on
2 March 23, '93?

3 A. Yes.

4 Q. And that he sent Hamdi over to your house? Do
5 you remember that happening?

6 A. Yes.

7 Q. Do you remember your telling them that you told
8 the sheik that Mubarak was in town on that occasion?

9 A. Yes.

10 Q. The next time you spoke about the sheik and the
11 fatwa after this occasion on the 26th of October was in
12 December 1994, is that right?

13 A. Yes.

14 Q. At that meeting which took place from the 13th to
15 the 15th, Mr. Voss and Mr. Corrigan were there, is that
16 right, Agent Voss and Detective Corrigan were there?

17 A. Yes.

18 Q. And Ms. Isaacs, is that correct, from your
19 lawyer's office, another lawyer?

20 A. Yes.

21 Q. And Mr. Khuzami? Do you remember that occasion?

22 A. Yes.

23 Q. Do you remember telling them on that occasion,
24 first telling them that sometime between March 31 and April
25 5 you received the fatwa?

1 A. Yes.

2 Q. We've been referring to this as a fatwa, but in
3 fact, you testified that no fatwa was necessary, isn't that
4 right?

5 A. There is a general fatwa to kill Mubarak for
6 anybody who could carry this out should do it. What I did
7 is that I obtained a fatwa especially for me to be on the
8 safe side.

9 Q. Even though you were told supposedly you didn't
10 need one, right?

11 A. Yes.

12 Q. When you say "to be on the safe side," you never
13 intended to carry anything out, did you?

14 A. Yes.

15 Q. You intended to carry out the fatwa?

16 A. No.

17 Q. So this was all a setup, wasn't it?

18 A. No, it was not a setup.

19 Q. In any event, you said that you received the
20 fatwa between March 31 and April 5, is that right?

21 A. Yes.

22 Q. Before that you had said you received it on March
23 23, the day he returned, isn't that right?

24 A. I didn't say that.

25 Q. But that was a mistake, is that right?

1 MR. KHUZAMI: Objection.

2 THE COURT: Sustained.

3 Q. Did he say "I did say that" or "I didn't say
4 that"?

5 THE INTERPRETER: "I did not say that."

6 THE COURT: He said, "I did not say that."

7 MS. STEWART: I am sorry. It came across as "I
8 did say that." I'm sorry, Judge.

9 Q. You didn't say that?

10 A. No.

11 Q. In October, when you spoke with these agents and
12 the two U.S. attorneys and your two lawyers, you did not say
13 that on the day the sheik returned he gave you the fatwa?

14 A. No, I didn't say that. I said after he came.

15 Q. Do you remember telling them that on April 5 you
16 told Siddig that you had been contacted by the FBI and they
17 knew everything? Do you remember telling them that in
18 December 1994, the government?

19 A. I said -- yes, I said the beginning of April.

20 MS. STEWART: This is at page 10, Mr. Khuzami.

21 MR. KHUZAMI: Of which item?

22 MS. STEWART: 351190.

23 MR. KHUZAMI: Thank you.

24 Q. Do you remember telling them, "On April 5 while
25 Haggag was on his way to meet with Detective Corrigan and

1 Coleman, Siddig Ali called him. Haggag met Ali in the
2 street on his way back from the meeting. When they met,
3 Haggag advised Ali that he knew that the FBI knew the plot
4 and everything else." Does that refresh your memory that
5 you said April 5?

6 A. I did not -- it was not April 5. I said it was
7 at the beginning of April, in early April.

8 Q. And you were speaking English and they were
9 understanding you in English, is that right?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q. Do you remember telling them that on that same
13 day, or do you remember that on that same day, April 5, you
14 went to see the sheik after seeing Ali?

15 A. Yes.

16 Q. You told the sheik you wondered why the FBI had
17 not spoken with Siddig Ali, is that right?

18 A. Yes.

19 Q. Then on April 6 was the day, the next day was the
20 day that you went to talk to the sheik about the fatwa, is
21 that right?

22 A. Possibly.

23 Q. Well, do you know what day it was?

24 A. In early April when Mubarak was here.

25 Q. Do you remember the exact date or not?

1 A. Not the exact date.

2 Q. On that occasion, the sheik told you that Mubarak
3 was here, is that right?

4 A. Yes.

5 Q. And it would be easy to hunt him, is that what he
6 told you?

7 A. Yes.

8 Q. And Hamdi, the person from Los Angeles, he was
9 present when this was said, is that right?

10 A. Yes. He was at one corner of the room.

11 Q. You told us the other day that when the fatwa was
12 given nobody was present, didn't you?

13 A. It was between me and the sheik. Hamdi was
14 sitting at the corner. He was busy with something else.

15 Q. On the same occasion the sheik inquired what
16 happened with the FBI, did he not? He asked you, "What
17 happened with you and the FBI"?

18 A. Yes.

19 Q. Did you also tell the FBI on this occasion that
20 Sheik Rahman did not know that Mubarak was in the country,
21 but only knew that he planned to come?

22 A. What I know is that Omar Abdel Rahman knew that
23 Mubarak was here.

24 Q. So that when you told the FBI that you did not
25 know, but only knew that he was coming to this country, that

1 was not the truth?

2 MR. KHUZAMI: Objection.

3 THE COURT: Sustained.

4 Q. Did you tell the FBI that when Sheik Rahman gave
5 the fatwa to kill Mubarak, Sheik Rahman did not know Mubarak
6 was in the United States, but did know that Mubarak planned
7 to come to New York, is that what you told the FBI in
8 December of 1994?

9 A. There is a misunderstanding here.

10 Q. Did you tell the FBI you were uncertain, is that
11 right, about this timing of this fatwa? Did you tell the
12 FBI that?

13 A. (In English) Repeat your question?

14 A. (Through interpreter) Could you repeat the
15 question, please?

16 Q. Sure. Did you tell the FBI in this briefing in
17 December 1994 that you were uncertain, that you were unclear
18 about when you got the fatwa?

19 A. Yes. The specific date I was not sure of it. I
20 didn't know whether it was the 4th or the 5th or the 6th.
21 That's why I'm saying early April.

22 Q. You didn't tell this jury that you were uncertain
23 about anything, though, did you?

24 MR. KHUZAMI: Objection.

25 THE COURT: Sustained and stricken.

1 Q. Did you tell the FBI that the sheik said to you
2 on that occasion, "The man is here, it would be easy to do,
3 just go hunt him, but keep it secret"?

4 A. Yes.

5 Q. That is not the same thing you told us here a few
6 days ago, is it?

7 A. The same meaning.

8 Q. Do you remember that you told the FBI that
9 between the time you talked to the sheik about Siddig Ali
10 and the time you spoke to him about Mubarak that the sheik
11 went to Los Angeles with Hamdi?

12 A. No, I don't remember.

13 Q. I show you 351190, page 12.

14 Do you remember telling the FBI and the
15 prosecutors that?

16 A. Yes.

17 Q. Do you remember that later on in the interview
18 you said that you got the fatwa on the 6th or 7th of April?

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

20 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Are you familiar with the concept of
3 a point of diminishing returns?

4 MS. STEWART: I am, Judge.

5 THE COURT: Good. Me, too. I think we are
6 getting there.

7 MS. STEWART: I think I have a right to take him
8 through this whole interview where he kept switching back
9 and forth and not being very certain. He sat up in there in
10 that witness chair and spouted it out like it was gospel,
11 and I think I have a right to develop it.

12 THE COURT: You have right to conduct an
13 effective cross-examination. If we are talking about
14 rights, there's going to come a point where I am going to
15 have a right to give you a time limit.

16 MS. STEWART: I don't think I've ever abused my
17 right to cross-examination, Judge, and don't think I'm doing
18 it now.

19 THE COURT: That's right, you haven't, which is
20 why I am so surprised.

21 (Continued on next page)

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1 (In open court)

2 Q. Have you spoken to Mr. Khuzami at all since
3 December 1994?

4 A. Yes.

5 Q. That was regarding your testimony here, is that
6 right?

7 A. Yes.

8 Q. So that when you recounted last Thursday how the
9 sheik gave you this fatwa, that was after speaking with the
10 government on a number of occasions before you came in here
11 to testify, is that right?

12 A. Yes.

13 Q. It was all a lie, wasn't it, Mr. Haggag?

14 A. No.

15 Q. Do you remember you also spoke about the sheik
16 speaking in 1990 at Al Farooq mosque?

17 A. Yes.

18 Q. Where is Al Farooq mosque?

19 A. (In English) Atlantic Avenue in Brooklyn.

20 A. (Through interpreter) Atlantic Avenue in
21 Brooklyn.

22 Q. At the Friday prayer, which is when I think you
23 said these remarks were made about jihad in America -- how
24 many people attend Friday prayers at Al Farooq mosque?

25 A. I did not say it was at the Friday prayer. I

1 said at the lesson that was given on Friday evening.

2 Q. Al Farooq is a very large mosque, is it not?

3 A. Yes.

4 Q. At the Friday prayer more than a thousand people
5 would attend, isn't that right, at the Friday noonday
6 prayer?

7 A. (In English) You are mixing --

8 Q. May I just ask him to answer this question,
9 Judge.

10 THE COURT: She doesn't want an answer about the
11 statement. She's now changing the subject to the Friday
12 noon prayers.

13 MS. STEWART: I don't think I changed the
14 subject. I think he changed the subject.

15 THE COURT: I do. But as long as you've decided
16 to change the subject, she now wants to know how many people
17 go to the Friday noon prayers. Is it about a thousand?

18 THE WITNESS: Between 200 and 300 maximum.

19 (Continued on next page)

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1 Q. At Al Farook Mosque?

2 A. Yes.

3 Q. And on this Friday evening when you attended, how
4 many people were there?

5 A. Around 50 or 60 people, more or less.

6 Q. And Al Farook Mosque is the same mosque that the
7 sheik was actually living in when you rescued him and took
8 him to live in Jersey City, is that right?

9 A. Yes.

10 Q. And do you know, Mr. Haggag, why he was living in
11 the room and came to Jersey City and was no longer
12 associated with Al Farook at that point?

13 A. Yes.

14 Q. Wasn't it because he had spoken out against
15 Saddam Hussein in the Gulf War at Al Farook Mosque?

16 A. The reason that you mentioned is the reason that
17 they prevented him from entering the mosque, not the reason
18 that made him live at the mosque.

19 Q. They prevented him from entering because he said
20 that both sides were wrong in the Gulf War, isn't that
21 right?

22 A. Yes.

23 Q. You indicated that after a sermon was given, the
24 sheik was asked about how do we do jihad here in America,
25 isn't that right?

1 A. Yes.

2 Q. And he said something that, we shouldn't be
3 children and just turn on the water, you should go blow some
4 military bases and go steal some banks, is that right?

5 A. Yes.

6 Q. And you are certain as you sit there that it was
7 at Al Farook that he said this?

8 A. Yes.

9 Q. He didn't say this at El Salaam, did he?

10 A. He said that in numerous places.

11 Q. Really? You told us only two times you ever
12 heard him say this when you testified.

13 A. I said twice that I remember in particular, and I
14 remember the places in which he said that. And I made it
15 clear that he was repeating that in most of his speeches.

16 Q. He said these exact words, right, in most of his
17 speeches, he said go blow some military bases, go steal some
18 banks. That's what the sheik said?

19 A. Many times, on many occasions.

20 Q. Those words, is my question, those exact words.

21 A. The same meaning.

22 Q. Go blow some military bases, go steal some banks,
23 those meanings.

24 A. The military bases or the camps, he repeated in
25 many places.

1 Q. Did you happen while you were at MCC for eight
2 months to listen to the CM's -- I shouldn't say MCC -- while
3 you were incarcerated, to listen to the CM's in this case,
4 the tapes Emad Salem made?

5 A. Yes.

6 Q. Did you listen to CM 10 that took place in the
7 sheik's kitchen?

8 A. As far as I remember, yes.

9 Q. You are certainly not pro-American, are you, Mr.
10 Haggag?

11 MR. KHUZAMI: Objection.

12 THE COURT: Sustained.

13 Q. Would you say that your views are somewhat
14 anti-American?

15 MR. KHUZAMI: Objection.

16 THE COURT: Sustained.

17 MS. STEWART: I will withdraw the question,
18 Judge.

19 Q. You never reported all these numerous times that
20 you have just recalled, you never reported that to the FBI
21 or any local law enforcement people, did you?

22 MR. KHUZAMI: Objection to form.

23 THE COURT: Sustained as to form.

24 Q. The numerous times that Sheik Omar said to go
25 blow some military bases, go steal some banks, you never

1 ever reported that to the FBI or to any law enforcement
2 people, did you?

3 A. No.

4 Q. And you actually took your own son and got him
5 out of the United States so he wouldn't be raised here by
6 his American mother, didn't you?

7 A. Yes.

8 Q. Did you know that that woman put up posters all
9 over the subways of Jersey City, the Path trains with your
10 picture and the baby's picture on it, looking for you after
11 you did that?

12 A. No, I didn't know that.

13 Q. They never made you aware of that at El Salaam
14 Mosque?

15 A. No, and El Salaam didn't know anything about that
16 either. The mother had a drug problem.

17 Q. We will come back to that.

18 Did you review the translation of your Fifi
19 material, the Fifi writing that you did?

20 A. Yes.

21 Q. Did you find that something was left out of that
22 translation?

23 A. Such as what?

24 Q. Do you remember that you were writing about your
25 return to America after your hajj in 1993? This is 35119G.

1 A. Yes.

2 Q. Do you remember you were saying about how you
3 returned to the land of transgression, meaning the United
4 States?

5 A. I said something similar to this meaning, yes.

6 Q. Did you say where God's moral principles are
7 violated openly and where a person believes that he can do
8 anything he pleases?

9 A. Yes.

10 Q. Did they forget to translate the part of that
11 writing of yours that said, and indeed they do anything,
12 they are able to do. They sent a missile into the sky named
13 Challenger, and the devine power destroyed it in less than
14 20 seconds. Do you remember writing that?

15 A. Yes.

16 Q. And that was not translated, was it?

17 A. It was translated.

18 Q. Let me show you GG.

19 MR. KHUZAMI: Objection.

20 THE COURT: Sustained.

21 Q. You said you reviewed this translation, Mr.
22 Haggag?

23 A. Yes.

24 Q. Did you review the English part of it?

25 A. Yes.

1 Q. Do you remember seeing that that part about the
2 Challenger was not in the translation?

3 MR. KHUZAMI: Objection to form.

4 THE COURT: Sustained.

5 Q. When Mr. Khuzami showed you the the tapes that
6 had been seized from your apartment -- if you remember, it
7 was 802 through 809 or something, exhibit -- do you remember
8 that?

9 A. Yes.

10 Q. There was one other tape he didn't show you,
11 wasn't there, that was seized from your apartment? Did you
12 have a tape named "Doubts about Jihad"?

13 A. Yes.

14 Q. Which is Exhibit 801 in this case. And do you
15 remember that that was a sermon by Sheik Rahman, Abdel
16 Rahman?

17 A. Yes.

18 Q. What was the thesis of that particular sermon, if
19 you remember?

20 A. There was a sheik, his name was Majdy Warda, he
21 was from Egypt, he came and he said that jihad would not be
22 correct in the States, if somebody wants to participate in
23 jihad they would go to Afghanistan or to the Bosnia. If you
24 want to conduct jihad in America, you would leave America
25 first and then you would come back -- before you come back

1 you request a visa for jihad.

2 Q. This is what, another sheik, is that right?

3 MR. KHUZAMI: Objection.

4 MS. STEWART: I am just trying to clarify, Judge.

5 THE COURT: The name of the person who said this
6 was what?

7 A. Magdy Warda.

8 THE INTERPRETER: W-A-R-D-A, M-A-G-D-Y or I.

9 Q. This sermon was the sheik --

10 MR. KHUZAMI: Objection. I don't believe the
11 witness has finished his answer.

12 Q. I am sorry. Did you finish your answer, Mr.
13 Haggag?

14 A. I am still talking about what Magdy Warda had
15 said. The visa that somebody would have now, either as a
16 tourist visa or a working visa, this is a contract between
17 you and the American government. If you don't agree with
18 the pattern or the kind of life in the United States, then
19 leave, because the modern life in the United States would be
20 contradictory to your religion and principles, and Islam
21 tries first and foremost to maintain the religion and the
22 principles of the human being. And then came the answer of
23 the Sheik Omar Abdel Rahman.

24 Q. And his answer was to remove doubts about doing
25 jihad, is that right? That's why it is called "Doubts about

1 Jihad."

2 A. Yes.

3 Q. Do you remember at the end of that, Mr. Haggag,
4 Sheik Omar was asked questions? Do you remember that?

5 A. Yes, the tape they have has a question and
6 answer.

7 Q. It is not my tape, Mr. Haggag, it is your tape,
8 isn't it? You owned this tape, didn't you?

9 A. Yes.

10 Q. And at the end Sheik Omar was asked, was he not,
11 what an ordinary man should do regarding jihad, especially
12 in America? And the speaker said may God reward you. Do
13 you remember hearing that on the tape or hearing it in
14 person if you attended the lecture?

15 A. No, I didn't attend the lecture. I did not
16 attend this meeting, but I listened carefully to the tape.

17 Q. And isn't it a fact that when Sheik Omar answered
18 that question, he said what should an ordinary person do to
19 refute the doubts and to clarify the issue of jihad as a
20 duty that should be carried on? You just go to any of the
21 fields of jihad where the Muslims are needing their
22 brethren, and the Muslims should not let them down, because
23 the Muslim is the brother of the Muslim, who doesn't treat
24 him unfairly and does not abandon him at the time of need.
25 You must hasten your steps toward any field of the fields of

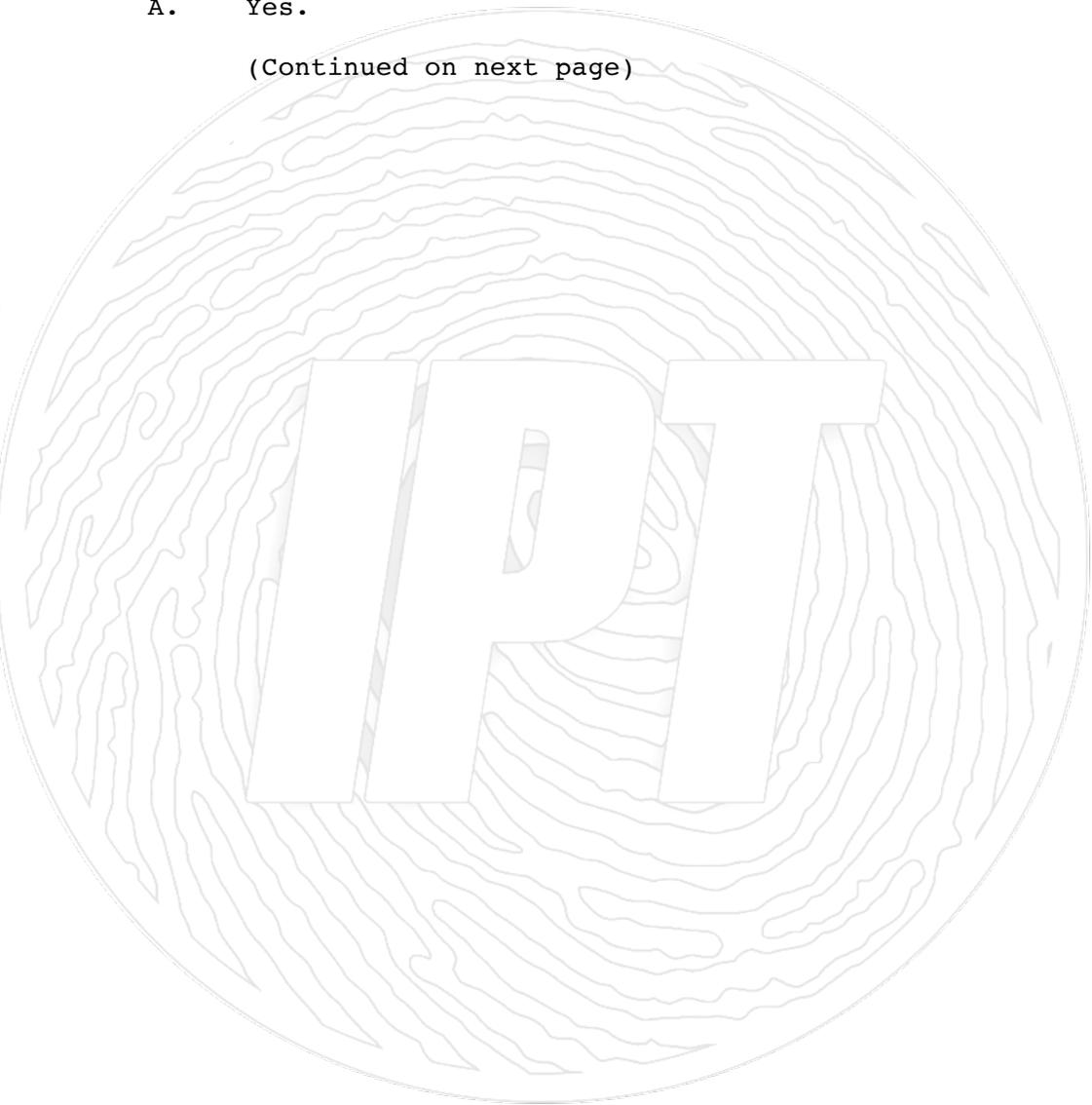
1 jihad, in Afghanistan and Yugoslavia, south of Sudan,
2 Somalia, and all these fields, Palestine and Burma. Your
3 tape, Mr. Haggag, am I right?

4 MR. KHUZAMI: Objection.

5 A. Yes.

6 (Continued on next page)

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1 MS. STEWART: No further questions.

2 THE COURT: Anyone else? Mr. Patel.

3 MR. KHUZAMI: May I have one moment with Mr.
4 Patel?

5 THE COURT: Yes.

6 MR. PATEL: Your Honor, could I approach with the
7 government?

8 (At the side bar)

9 MR. PATEL: Your Honor, I think it was over the
10 lunch break, sometime today, I showed Mr. Khuzami some
11 photographs that I was going to use during my
12 cross-examination, possibly introduce in evidence, relating
13 to the arson that Mr. Haggag mentioned briefly in his
14 direct. Just now Mr. Khuzami mentioned that the government
15 intended to object to the use of those photographs and
16 actually suggested that we come to side bar and state our
17 positions.

18 MR. KHUZAMI: Your Honor, it is the government's
19 position that under Rule 613(b) this is extrinsic
20 evidence --

21 THE COURT: What is the purpose of the
22 photographs being used?

23 MR. PATEL: The purpose of the photographs is to
24 demonstrate to the jury what actually happened.

25 THE COURT: The restaurant burned down? He

1 testified the restaurant burned down. How burned down the
2 restaurant was, I think, is irrelevant.

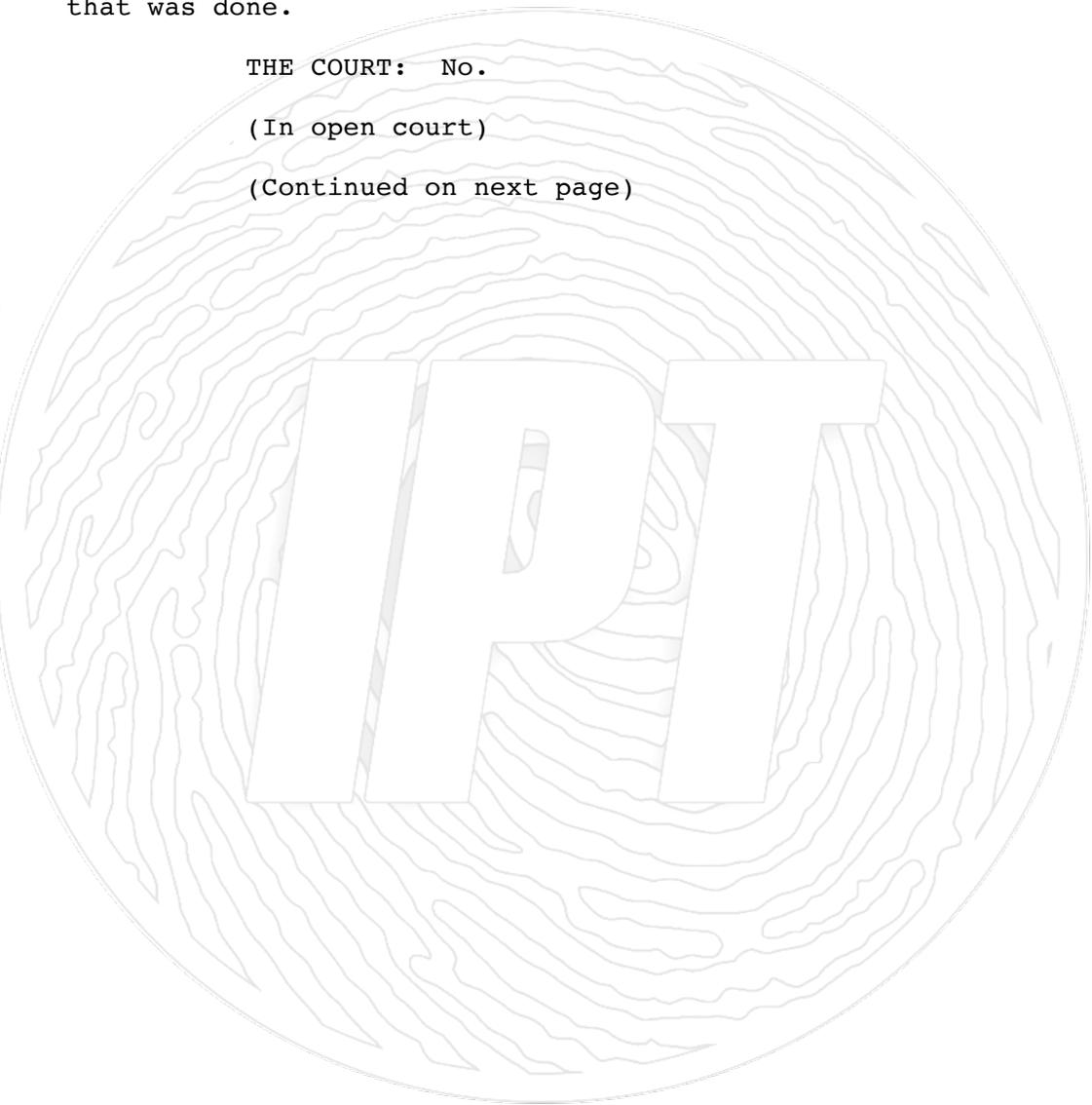
3 MR. PATEL: I would disagree with your Honor. I
4 think that it is relevant for the jury to see the damage
5 that was done.

6 THE COURT: No.

7 (In open court)

8 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MR. PATEL:

3 Q. Mr. Haggag, you have been to Denville, New
4 Jersey, haven't you?

5 A. Yes.

6 Q. It is Exit 39 off Interstate 80, about 40 miles
7 west of here, right?

8 A. Yes.

9 Q. In April 1991, you were working as a chef at the
10 Main Street Cafe, right?

11 A. Yes.

12 Q. In 1991, you became a partner in the corporation
13 that owned the Main Street Cafe, correct?

14 A. Yes.

15 Q. You bought a 25 percent interest in that
16 corporation, correct?

17 A. Yes.

18 Q. You put those shares in your wife's name, is that
19 correct?

20 A. Yes.

21 Q. Therefore your name appears nowhere in the
22 corporate records of the Main Street Cafe, correct?

23 A. Yes.

24 A. That is correct.

25 Q. The Main Street Cafe was in a building that

1 housed a number of other businesses, correct?

2 A. Repeat again, please.

3 Q. I will withdraw the question. Let's talk -- the
4 Main Street Cafe was at 17 East Main Street, Denville, New
5 Jersey, right?

6 A. Yes.

7 Q. Right next door, part of the same building was 15
8 East Main Street, and that was another business, right?

9 A. Yes.

10 Q. A place called Miracle Ear, correct?

11 A. Yes.

12 Q. It is a place that sold hearing aids?

13 A. Yes.

14 Q. The restaurant that is the Main Street Cafe, the
15 building was only a one-story structure at that point,
16 right?

17 A. Yes.

18 Q. And over the hearing aid place there was also one
19 story, right?

20 A. Yes.

21 Q. About three or four stories down, though, it
22 became a two-story structure, right?

23 A. Yes, possibly, I think so.

24 Q. Possibly or yes?

25 A. Yes.

- 1 Q. There were stores in the front of the building,
2 right?
- 3 A. Yes.
- 4 Q. And there were apartments in the back?
- 5 A. Excuse me.
- 6 Q. There were people living in the back of the
7 building?
- 8 A. No, I didn't know that.
- 9 Q. The restaurant was about 55 feet long, right?
- 10 A. Yes.
- 11 Q. But only 18 feet wide.
- 12 A. Yes.
- 13 Q. It had a burglar alarm, right?
- 14 A. Yes.
- 15 Q. And as a partner, you had a key to the front
16 door, right?
- 17 A. Yes.
- 18 Q. A key to the back door, right?
- 19 A. Yes.
- 20 Q. And you knew the code to the electronic burglar
21 alarm, right?
- 22 A. Right.
- 23 Q. At some point your partner Sami said, some gas
24 and a match and we can make \$140,000, right?
- 25 A. Yes.

1 Q. And you decided to burn the building down
2 yourself, right?

3 A. Yes.

4 Q. August 7, you did not go to work that day, right?

5 A. Right.

6 Q. You went to your sister's wedding? Your sister's
7 wedding?

8 A. That was in Egypt.

9 Q. Did you tell the -- your sister's wedding was in
10 Egypt?

11 A. Yes.

12 Q. On August 7, where were you?

13 A. I was at home.

14 Q. At some point you purchased a container to hold
15 gasoline, correct?

16 A. Correct.

17 Q. How large a container did you purchase?

18 A. About three quarters of a milk gallon.

19 Q. Three quarters of a milk gallon, and when did you
20 purchase this?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 Q. On the evening of August 7 you went to the
24 restaurant, right?

25 A. Yes.

1 Q. And you had this container full of gasoline with
2 you, right?

3 A. Correct.

4 Q. Were you wearing gloves that night?

5 A. No.

6 Q. You turned off the burglar alarm, right?

7 A. Yes.

8 Q. And you went into the back door of the
9 restaurant, right?

10 A. Right.

11 Q. What time did you get to the restaurant?

12 A. Half an hour after it was closed.

13 Q. What time did they close the restaurant on the
14 7th?

15 A. Around 11:00.

16 Q. So you got there around 11:30, right?

17 A. Yes.

18 Q. You went into the kitchen area, right?

19 A. Correct.

20 Q. Right between the stove and the refrigerator,
21 there is a large, like garbage can, right?

22 A. Correct.

23 Q. Plastic garbage can, right?

24 A. Correct.

25 Q. You poured the gasoline into the garbage can,

1 right?

2 A. Yes.

3 Q. And you threw in a match, right?

4 A. Correct.

5 Q. And you saw the fire get started, right?

6 A. Yes.

7 Q. And you ran out the door, right?

8 A. Yes.

9 Q. Locked the door, right?

10 A. Yes.

11 Q. You turned on the burglar alarm, right?

12 A. I am not sure of that.

13 Q. You went home? After you started the fire you
14 went home?

15 A. Yes.

16 Q. Didn't call the police, did you?

17 A. No.

18 Q. Didn't call the fire department?

19 A. No.

20 Q. Didn't call any of the businesses that were also
21 located in that same building, did you?

22 A. No.

23 Q. The police did eventually come, right?

24 A. Yes.

25 Q. And they evacuated two residents of the building,

1 didn't they?

2 A. I don't know anything about that.

3 Q. And the fire department came, right?

4 A. Yes.

5 Q. And they had to break down the door to get into
6 the fire, right?

7 A. Yes.

8 Q. At around 3:00 in the morning on August 8, 1991,
9 you came back to the scene, right?

10 A. Earlier than that.

11 Q. What time did you get back to the scene?

12 A. Around 1:00, half past, 1:30.

13 Q. And you saw the damage to the restaurant, right?

14 A. Yes.

15 Q. The inside of the restaurant was completely
16 destroyed, right?

17 A. Yes.

18 Q. In fact, that garbage can that you had put the
19 gasoline disappeared, right?

20 A. Right.

21 Q. And the whole kitchen was completely scorched and
22 burnt, right?

23 A. Correct.

24 Q. The roof, the skylight in the roof had started to
25 collapse, right?

- 1 A. Correct.
- 2 Q. The burglar alarm was melted?
- 3 A. Yes.
- 4 Q. And a number of the other stores in the same
5 building had also been damaged, right?
- 6 A. Yes.
- 7 Q. The Miracle Ear place next door had smoke and
8 water damage, right?
- 9 A. Right.
- 10 Q. There was a little knickknack shop next to them
11 and most of their merchandise was damaged by smoke and
12 water, right?
- 13 A. Right.
- 14 Q. There was a tanning salon that had only opened a
15 few weeks before the fire, and they were destroyed by this
16 fire, right?
- 17 A. Correct.
- 18 Q. There was another restaurant upstairs, Chinese
19 restaurant, also damaged, right?
- 20 A. What do you mean by upstairs?
- 21 Q. There was a Chinese restaurant. Was that
22 upstairs or on the same street level?
- 23 A. Same street level.
- 24 Q. The hair salon was upstairs, right?
- 25 A. There was nothing upstairs.

1 Q. There was an upstairs farther over, right?

2 A. There was nothing upstairs at all because only
3 one level.

4 Q. There was only one level over the restaurant,
5 over the Main Street Cafe, but in the same building a few
6 stores down, it was two levels, right?

7 A. The whole building was only one level. I think
8 you are referring to another building next to it or beside
9 that.

10 MR. PATEL: Your Honor, may I approach?

11 THE COURT: Yes.

12 Q. Mr. Haggag, I am showing you what has been marked
13 TT1 and 2. Can you see what this is?

14 A. Yes.

15 Q. Do you recognize what that is a photograph of?

16 A. Yes.

17 Q. It is a photograph of the Main Street Cafe?

18 A. Yes.

19 MR. KHUZAMI: Objection, 401.

20 THE COURT: Sustained.

21 Q. Mr. Haggag, do you see that the same building
22 becomes a two-story structure?

23 MR. KHUZAMI: Objection, 401.

24 THE COURT: Sustained.

25 Q. Does this refresh your recollection that the

1 building becomes a two-story structure?

2 MR. KHUZAMI: Objection, 401.

3 THE COURT: Sustained.

4 Q. Mr. Haggag, you received \$3,000 for torching that
5 building, right?

6 A. Yes.

7 Q. And the five other businesses that were destroyed
8 in that fire, right?

9 A. Yes.

10 Q. You told a New Jersey arson investigator that it
11 was against your religion to start a fire that would take
12 food away from families, didn't you?

13 A. I am not sure of what I said exactly.

14 Q. Would you like to see the report?

15 A. I might have said that, but I am not exactly
16 sure.

17 Q. Would you like to see the report?

18 Q. Showing you what has been marked 35119Z, I would
19 just ask you to look at the last paragraph. Does that
20 refresh your recollection --

21 THE COURT: Mr. Patel, can you do two things.

22 One is to talk into the microphone and the second is to come
23 to a convenient break in the next five minutes.

24 MR. PATEL: Twenty seconds, your Honor.

25 Q. Does that refresh your recollection that you told

1 the New Jersey arson investigator that it would be against
2 your religion to cause a fire which would take away a
3 family's source of food?

4 A. Possible.

5 Q. Possible yes?

6 A. Possible yes and possible no.

7 Q. Does this refresh your recollection as to what
8 you said?

9 A. Yes.

10 Q. Thank you. When you say yes, that means you said
11 it, right?

12 A. Again, I am saying possible but I don't remember.

13 MR. PATEL: Good place to stop.

14 THE COURT: Ladies and gentlemen, we are going to
15 break for a short time. Please leave your notes and other
16 materials behind. Please don't discuss the case, and we
17 will resume in a few minutes.

18 (Recess)

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: How much more do you have?

3 MR. PATEL: In terms of what?

4 THE COURT: Time.

5 MR. PATEL: I'm sorry, Judge. I'm really bad at
6 estimating that. I have a little bit more to do with him
7 about arson and insurance --

8 THE COURT: You don't have to give it all to me.

9 MR. PATEL: A bit on Nosair.

10 THE COURT: So that if you blink, you won't see
11 it go by?

12 MR. PATEL: Exactly. Then I am doing the
13 agreement, the plea agreement. I mean, he's saying yes, so
14 if he doesn't fight me, it's going to go fast.

15 THE COURT: All right. You will finish my 4:30?

16 MR. PATEL: I sure hope so.

17 THE COURT: I sure hope so, too.

18 MR. PATEL: Is that when --

19 THE COURT: I would like to break at 4:340
20 because the lady in the back is having a little problem.

21 MR. PATEL: I'll talk fast.

22 THE COURT: Well --

23 MR. PATEL: I understand.

24 (Continued on next page)

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1 (In open court)

2 THE COURT: Mr. Patel. Go ahead.

3 MR. PATEL: Thank you, your Honor.

4 Q. Mr. Haggag, right before the break we were
5 talking about your interview with the Morris County arson
6 investigator, do you recall that?

7 A. Yes.

8 Q. You had a meeting with him about a month after
9 the fire, right?

10 A. Yes.

11 Q. This meeting occurred in the prosecutor's office,
12 right?

13 A. Yes.

14 Q. You spent an hour or two with him, right?

15 A. Less than an hour.

16 Q. Less than an hour.
17 You didn't have a lawyer with you, did you?

18 A. No.

19 Q. You were by yourself?

20 A. Yes.

21 Q. You went in there and you lied to him, right?

22 A. Yes.

23 Q. You told him a whole story about how you had
24 nothing to do with this fire, right? Is that right?

25 A. (In English) What story are you talking about?

1 Q. You didn't tell him that you went in and poured
2 some gas in a garbage can and through a match in there, did
3 you?

4 A. No.

5 Q. You told him you had no idea what happened,
6 right?

7 A. Yes.

8 Q. That was not true, was it?

9 A. Yes.

10 Q. That was a lie, right?

11 A. Yes.

12 Q. You filed a lawsuit to get the insurance
13 proceeds, right?

14 A. Yes.

15 Q. You were trying to get your share of \$140,000,
16 right?

17 A. Yes.

18 Q. You don't know if these other businesses that got
19 destroyed in the fire had insurance, do you?

20 A. No, I didn't know.

21 Q. That lawsuit was pending until very recently,
22 wasn't it?

23 A. Yes.

24 Q. It was pending until the FBI informed the
25 insurance company of what happened, right?

1 A. I don't know.

2 Q. Do you recall on your direct testimony talking
3 about Government Exhibit 850, this audiotape that you say
4 Mr. Nosair played in the mosque?

5 Do you recall that testimony?

6 A. Yes.

7 Q. This tape and everything Mr. Nosair said in the
8 mosque was said in public, right?

9 A. Yes.

10 Q. It was for the world to hear, right?

11 A. (In English) For the Muslims to hear.

12 Q. I am sorry?

13 THE INTERPRETER: He said, "For the Muslims to
14 hear."

15 Q. Anyone who came into the mosque could hear that,
16 right?

17 A. Yes.

18 Q. On May 2, I think that was the first day you
19 testified, you testified that the tape was played in 1988,
20 right?

21 A. Yes. And then I corrected the date.

22 Q. The next day you came in and you said it was,
23 that you believed it was sometime in early 1990, right?

24 A. Yes.

25 Q. And this tape has a date written on it, doesn't

1 it, of May 1990?

2 A. Yes.

3 Q. Would you like to see it?

4 MR. PATEL: May I approach.

5 Q. It says May 1990 in Arabic?

6 A. Yes.

7 Q. It's not in your handwriting, is it?

8 A. No.

9 Q. You don't know when that date was written on that
10 tape, do you?

11 A. What do you mean?

12 Q. Well, at some point someone wrote that on the
13 tape, right?

14 A. Yes.

15 Q. You don't know when that happened?

16 A. I believe it is at the day where the tape was
17 played.

18 Q. You believe, but you don't know?

19 A. Yes.

20 Q. In fact, the tape refers to an election in March,
21 right?

22 A. Yes.

23 Q. That's months before the May date, right?

24 A. (In English) Months before what?

25 Q. The tape itself talks about an election in the

1 mosque, right?

2 A. Yes.

3 A. (In English) March.

4 Q. An upcoming election, right?

5 A. Yes.

6 Q. An election in the future, right?

7 A. Yes.

8 Q. An election in March?

9 A. Yes.

10 Q. The tape is dated May, right?

11 A. Yes.

12 Q. So if the tape was played in May, it couldn't

13 have been about an upcoming election, could it? May comes

14 after March, right?

15 A. Yes.

16 Q. Mr. Khuzami showed you something to refresh your

17 recollection about the date, right?

18 A. Yes.

19 Q. What he showed you was part of your book, right?

20 A. Yes.

21 Q. A book you started writing in 1992, right?

22 A. Yes.

23 Q. The book is your recollection or your story of

24 what happened, right?

25 A. Yes.

1 Q. Do you recall meeting with the agents -- let me
2 just get the date -- in October of 1994?

3 A. Would you repeat the question, please?

4 Q. Yes. Do you recall meeting with the agents and
5 Mr. Khuzami and your lawyer in October of 1994?

6 A. Yes.

7 Q. You recall telling them about this tape being
8 played, right?

9 A. Yes.

10 Q. At that time you thought it was played sometime
11 in 1988 -- '89, excuse me, is that right?

12 A. Every time I said '88 or '89 I was not -- when I
13 said '88 or '89, I was not quite sure about the date.

14 Q. Would it be fair to say you're not quite sure
15 about the date?

16 A. Yes.

17 Q. You remember testifying about a conversation that
18 you had with Mr. Hampton-El in Brooklyn outside?

19 A. (In English) Which one?

20 Q. A conversation about Mahmud Abouhalima?

21 A. Yes.

22 Q. And you were alone when you had that
23 conversation, just you and Mr. Hampton-El, right?

24 A. Yes.

25 Q. Mr. Hampton-El told you about this conversation

1 or this incident that he'd had with Mahmud, right?

2 A. Yes.

3 Q. You weren't present when he had that conversation
4 with Mahmud, were you?

5 A. No.

6 Q. As you sit here today, you have no personal
7 knowledge of whether that conversation, that is, the
8 conversation between Rashid and Mahmud Abouhalima ever
9 occurred?

10 A. From Rashid, who told me that it took place.

11 Q. All right. But you weren't there, right?

12 A. Yes.

13 Q. So you are completely dependent on Rashid to know
14 the existence of that conversation?

15 A. Yes.

16 Q. You spoke with the FBI in early April or late
17 March of 1993, correct?

18 A. Yes.

19 Q. The first time you actually met an FBI agent is
20 they stopped you one day as you were going into work down
21 here on Gold Street, right?

22 A. Yes.

23 Q. They told you at the time I think you said that
24 they were begging you for your help, right?

25 A. Yes.

1 Q. You told the FBI that it was against your
2 religion for you to work with them, right?

3 A. Yes.

4 Q. On July 16, 1993 you had a meeting with
5 Mr. McCarthy in his office, right?

6 A. Yes.

7 Q. No lawyer, right?

8 A. (In English) Excuse me?

9 Q. No lawyer?

10 A. Yes.

11 Q. That is no lawyer for you, right?

12 A. Yes.

13 Q. Mr. McCarthy is a lawyer, right?

14 A. Yes.

15 Q. You realized from your conversation with him that
16 day that he wanted information from you, right?

17 A. Not information. He just wanted to know the
18 truth.

19 Q. He asked you questions?

20 A. Yes.

21 Q. About various things, right?

22 A. Yes.

23 Q. He wanted to hear your answers, right?

24 A. Yes.

25 Q. You spent a number of hours with him that day,

1 right?

2 A. Yes.

3 Q. At the end of that day, you were arrested, right?

4 A. Yes.

5 Q. One of the agents put you in handcuffs, right?

6 A. Yes.

7 Q. They brought you to the United States Marshals
8 Service, right?

9 A. Yes.

10 Q. Filled out a marshal's intake form, right?

11 A. Yes.

12 Q. They fingerprinted you, right?

13 A. Yes.

14 Q. Photographed you?

15 A. Yes.

16 Q. Had you empty your pockets, right?

17 A. Yes.

18 Q. They took your clothes from you, right?

19 A. Yes.

20 Q. They gave you prison uniform to wear, right?

21 A. Yes.

22 Q. They sent you into the -- you spent the night in
23 the MCC, right?

24 A. Yes.

25 Q. You didn't speak to a lawyer that day, did you?

1 A. No.

2 Q. You didn't see a judge that day, did you?

3 A. (In English) The second day.

4 Q. That day, July 16, 1993 --

5 A. No.

6 Q. -- no lawyer, right?

7 A. No.

8 Q. The next day, you did see a lawyer, right?

9 A. Yes.

10 Q. The next day you did see a judge, right?

11 A. Yes.

12 Q. The night of the 17th you spent on Ninth South in
13 the MCC, right?

14 A. Yes.

15 Q. In July you met a lawyer named Stewart London,
16 right?

17 A. Yes.

18 Q. He reviewed the charges against you, right?

19 A. Yes.

20 Q. He told you you were in very serious trouble,
21 right?

22 A. Yes.

23 Q. He told you that you were facing the possibility
24 of spending the rest of your life in jail, right?

25 A. He didn't say that. Because I told him that I

1 had informed the Egyptians.

2 MR. PATEL: Mr. Khuzami, it's page 10031, line 3.

3 Q. Do you remember being asked the following
4 question and giving the following answer this is on May 3:

5 "Q. And he told you you were facing the
6 possibility of spending the rest of your life in jail?

7 "A. Yes."

8 Do you remember being being asked that question
9 and giving that answer?

10 You knew back in July that you were facing life
11 in prison, right?

12 A. Yes.

13 Q. You knew, he told you that life in prison meant
14 life in prison without parole, right?

15 A. Possible.

16 Q. That means you go in at 35 and you come out in a
17 box, right?

18 A. Yes.

19 Q. He told you that the only way out of this problem
20 for you was to cooperate, right?

21 A. He didn't say that.

22 Q. But you told him that you wanted to cooperate
23 with the government, right?

24 A. I told him that I had informed the Egyptians and
25 if this charge were, charges were serious, they would find

1 out that I am the one who had saved Mubarak, not plotted
2 against him.

3 MR. PATEL: I don't think there is a question
4 pending.

5 A. (In English) Sorry.

6 THE COURT: Implicit in your question was what he
7 had told him. You want him to stop talking?

8 MR. PATEL: Yes.

9 THE COURT: All right. Ask another question.

10 Q. In August of 1993, you were assigned new counsel,
11 right?

12 A. Yes.

13 Q. Lawrence Schoenbach, right?

14 A. Yes.

15 Q. You were indicted in August of 1993, right?

16 A. Yes.

17 Q. You remember talking about that indictment on
18 your direct testimony, right?

19 A. Yes.

20 Q. Indictment numbered S3 93 Cr. 181, right?

21 Right?

22 MR. KHUZAMI: Objection.

23 THE COURT: Sustained.

24 What is the difference? Come on.

25 Q. In that indictment you were charged with two

1 counts, right?

2 A. Yes.

3 Q. Seditious conspiracy, right?

4 A. Yes.

5 Q. Conspiracy to murder President Mubarak, right?

6 A. Yes.

7 Q. You told Mr. Schoenbach that you wanted to
8 cooperate with the government, is that correct?

9 A. Yes.

10 Q. And he proceeded to set up meetings between you
11 and representatives of the government, right?

12 A. Yes.

13 Q. I believe Ms. Stewart went through the dates of
14 those meetings with you, right?

15 A. Yes.

16 Q. Those meetings occurred in various places around
17 the country, right?

18 A. Yes.

19 Q. They'd last two or three days at a time, right?

20 A. Yes.

21 Q. While those meetings were occurring, this
22 indictment, S3, was still open, right?

23 A. Yes.

24 Q. As you sit here today, this indictment is still
25 pending, right?

1 A. I think not.

2 Q. You expect it to be dismissed at the time of your
3 sentencing, don't you?

4 A. Dismissed from what?

5 Q. There are open counts in an indictment against
6 you, are there not?

7 A. The agreement states that after the government
8 investigation, they will drop the charges on two counts.

9 Q. The agreement that says that if you cooperate
10 with the government that the indictment will be dismissed,
11 right?

12 MR. KHUZAMI: Objection.

13 THE COURT: Overruled. Is that what the
14 agreement says?

15 THE WITNESS: Excuse me?

16 THE COURT: Do you want to restate the question?

17 Q. The agreement is that if the government finds
18 that you have provided substantial assistance that they will
19 move to dismiss the indictment against you, right?

20 A. Correct.

21 Q. As you sit here right now, the indictment is
22 open, right?

23 A. (In English) I'm not sure. I believe not.

24 Q. You took a plea on April 28, 1995, right?

25 A. Yes.

1 Q. That was the Friday before you started to
2 testify, right?

3 A. Yes.

4 Q. On that same day you signed this plea agreement,
5 right?

6 A. Yes.

7 Q. That's 35119Y in evidence, right?

8 A. Yes.

9 Q. You reviewed that agreement with Mr. Schoenbach
10 before you signed it?

11 A. Yes.

12 Q. He explained it to you, right?

13 A. Yes.

14 Q. You understood it when you signed it, right?

15 A. Yes.

16 Q. In fact, at the time you pled, Judge Mukasey
17 offered to explain it to you and you said that you
18 understood it, right?

19 A. Yes.

20 Q. You understood that you were supposed to take a
21 plea to mail fraud, right?

22 A. Yes.

23 Q. That carries a maximum of a five-year sentence,
24 right?

25 A. Yes.

1 Q. Mail fraud is trying, is mailing -- you're really
2 pleading guilty to mailing a letter to try to get money,
3 right?

4 A. Yes.

5 Q. You are not pleading to the aggravated arson,
6 that is, arson for hire, right?

7 A. Yes.

8 Q. The New Jersey presumptive sentence is not
9 something you are going to be facing, right?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q. Arson is burning the building, right?

13 A. Yes.

14 Q. You didn't plead guilty to arson, right?

15 A. Yes.

16 Q. You are not going to be charged with arson,
17 right? That's your understanding?

18 A. (In English) Mail fraud.

19 A. (Through interpreter) Yes. OK.

20 Q. Mail fraud is trying to collect the money, right?

21 A. Yes.

22 Q. You did plead guilty to the mail fraud, right?

23 A. Yes.

24 Q. And you expect that -- well, your understanding
25 is this indictment has already been dismissed?

1 A. (In English) The two counts?

2 Q. Yes.

3 A. Yes.

4 Q. Do you remember at the end of your plea in this
5 room on the 28th of April Mr. Khuzami said that the
6 government would move to dismiss the outstanding counts at
7 the time of sentencing?

8 A. Yes.

9 Q. You haven't been sentenced yet, right?

10 A. Yes.

11 Q. The counts are still open, right?

12 A. Yes.

13 Q. You're facing the possibility of life in jail,
14 right?

15 A. Yes.

16 Q. You don't expect to go to jail for the rest of
17 your life, do you?

18 A. No.

19 Q. You are not going to be going to jail for
20 seditious conspiracy, you expect that count to be dismissed,
21 too, right?

22 A. Yes.

23 Q. You don't expect to go to jail for taking your
24 son to Egypt, do you?

25 A. No.

1 Q. You don't expect to go to jail for helping your
2 friend take his son out of the United States, do you?

3 A. No.

4 Q. You don't expect to be prosecuted for forgery, do
5 you?

6 A. (In English) What forgery?

7 Q. Signing the sheik's name to a check.

8 A. No.

9 Q. You don't expect to go to jail for lying to the
10 United States law enforcement officials, do you?

11 A. No.

12 Q. Basically your agreement says that they forgive
13 you for everything you've told them about, right?

14 A. Yes.

15 Q. They even forgave you for the arson that you
16 didn't tell them about until August of '94, right.

17 MR. KHUZAMI: Objection to form.

18 THE COURT: Sustained.

19 Q. When did you tell them about the arson?

20 A. The second half of '94.

21 Q. Excuse me?

22 A. The second half -- August '94.

23 Q. August '94.

24 Did you tell them about that? Did you tell them
25 about the arson?

1 A. Yes.

2 Q. Did Siddig tell them about the arson first?

3 MR. KHUZAMI: Objection.

4 THE COURT: Sustained.

5 Q. August of '94 you had been working with the
6 government for about a year, right?

7 MR. KHUZAMI: Objection to form.

8 THE COURT: Do you want to rephrase it.

9 Q. You started working for the government -- you
10 were removed from the MCC in November of '93, right?

11 A. Yes.

12 Q. At that time you started having semi-regular
13 meetings with the government, right?

14 A. Yes.

15 Q. You had an understanding that you were going to
16 cooperate with the government at that time, right?

17 A. Yes.

18 Q. You didn't tell them in November of '93 about the
19 arson, right?

20 A. No.

21 Q. You didn't tell them in December?

22 A. No.

23 Q. Right?

24 You told them in August?

25 A. Yes.

1 Q. What you expect to get out of the deal is if you
2 testify truthfully, right, they will write a letter for you,
3 is that right?

4 A. Yes.

5 Q. It's called a 5K1 letter, right?

6 A. Yes.

7 Q. Mr. Schoenbach explained to you that a 5K1
8 letter, it's called that because it refers to Section 5K1 of
9 the guidelines, right?

10 A. Yes.

11 Q. Mr. Schoenbach explained the guidelines to you,
12 right?

13 A. Yes.

14 Q. It's a very complex system for sentencing people
15 in federal court, right?

16 A. Yes.

17 Q. You need a calculator and you have to refer to a
18 grid, right?

19 THE COURT: You don't need a calculator.

20 MR. PATEL: I need a calculator.

21 THE COURT: Some people need a calculator. You
22 have to refer to a grid. Go ahead.

23 Q. He explained these guidelines to you, right?

24 A. Yes.

25 Q. He told you that if the government writes a 5K1

1 letter, the guidelines don't really matter, right?

2 A. Yes.

3 Q. And that Judge Mukasey would be free to impose
4 whatever sentence he thought was appropriate, right?

5 A. Yes.

6 Q. Mr. Schoenbach also told you that only the
7 government can write a 5K1 letter, right?

8 A. Yes.

9 Q. He can't write a 5K1 letter on your behalf,
10 right?

11 A. Yes.

12 Q. The judge can't write himself a 5K1 letter,
13 right?

14 A. Yes.

15 Q. Only those guys, the government, can write you a
16 5K1 letter, right?

17 A. Yes.

18 Q. At the time you took the plea to mail fraud,
19 Judge Mukasey told you that if they wrote a letter that he
20 could sentence you to no time at all, right?

21 A. Yes.

22 Q. He said that if he got that letter and if he gave
23 you that sentence, they would have no right to appeal that
24 sentence, right?

25 A. Yes.

1 Q. You could walk away from this free and clear,
2 right?

3 A. Yes. Correct.

4 Q. As you sit here today you have no idea what your
5 sentence is going to be, right?

6 A. Yes.

7 Q. Because the government hasn't written a letter
8 yet, right?

9 A. Yes.

10 Q. The government's only going to write the letter
11 if you do what you're supposed to do, right?

12 A. Yes.

13 Q. What you're supposed to do is tell the truth,
14 right?

15 A. Yes.

16 Q. But it's the government and only the government
17 who decide if you're telling the truth, right?

18 A. Yes.

19 Q. You spent a lot of time with those prosecutors
20 since November of '93 and a lot of time with FBI agents,
21 right?

22 A. Yes.

23 Q. You found out during those meetings what the
24 truth was, right?

25 A. Yes.

1 Q. In the fall of 1993 you met with, I think,
2 Mr. Corrigan and Mr. Khuzami and they asked you why in CM46
3 you had said that you were the one who initiated the Mubarak
4 plot, do you remember?

5 A. Yes.

6 Q. You told them that you told people what it was
7 that they wanted to hear, right?

8 A. Yes.

9 Q. The truth is the truth, right?

10 A. Yes.

11 Q. There's one truth, right? There is only one
12 truth?

13 A. Yes.

14 Q. Do you remember some point in -- well, sometime
15 after June of 1994 Mr. Schoenbach told you that I wanted to
16 talk to you?

17 A. Yes.

18 Q. And that I wanted to talk to you with your lawyer
19 present?

20 A. (In English) Schoenbach my lawyer.

21 A. (Through interpreter) Schoenbach is my lawyer.

22 Q. I wanted to talk to you while Mr. Schoenbach was
23 there, did he explain that to you?

24 A. I don't understand the question.

25 Q. Did Mr. Schoenbach show you a letter that I wrote

1 to him asking to speak to you?

2 A. He told me that one of the lawyers wanted to talk
3 to me.

4 Q. Did he tell you it was me?

5 A. He told me the name, but I don't remember it.

6 Q. Let me show you what's been marked Nosair U and
7 see if that refreshes your recollection.

8 MR. KHUZAMI: Objection.

9 THE COURT: Show it to him and ask whether he's
10 ever seen it.

11 MR. PATEL: Absolutely.

12 Q. Have you ever seen that before?

13 A. No.

14 Q. Did you tell Mr. Schoenbach you wanted to speak
15 to that lawyer?

16 A. (In English) Excuse me?

17 Q. Did you tell Mr. Schoenbach that you wanted to
18 speak to that lawyer, me or whoever it was?

19 A. I told him that whoever, whatever he's going to
20 hear from me in this private meeting, he would hear from me
21 in the, in court.

22 Q. You had private meetings with the government, is
23 that correct?

24 A. Yes.

25 Q. Is there some reason that you didn't want to have

1 a meeting with one of the defense attorneys?

2 A. There was no reason for us to meet.

3 Q. The truth is the truth for the government and for
4 the defense, right?

5 A. Yes.

6 Q. Was there a reason not to meet with the defense
7 attorney?

8 A. The reason is that whatever you would have heard
9 from me in the private session you would hear from me in
10 court.

11 Q. Did Mr. Schoenbach advise you not to meet with
12 the attorney?

13 A. No. I was the one who told him, sir.

14 Q. It was your decision not to meet with this
15 attorney, right?

16 A. Yes.

17 Q. Were you afraid you might get the truth wrong?

18 A. (In English) I'm afraid to twisting the truth,
19 not to get it wrong, twist it.

20 Q. I'm sorry. Can we do that in Arabic, please.

21 A. (In English) Sorry.

22 A. (Through interpreter) I was afraid that somebody
23 might twist the truth in the meeting.

24 Q. On May 2 you testified that a tape was played in
25 1988, right?

1 A. Yes.

2 Q. You know that 1988 was before the date of the
3 conspiracy in the indictment, right?

4 A. Yes.

5 Q. And the next day you came back and testified that
6 the tape was played in 1990, right?

7 A. Yes.

8 Q. That's after the start of the conspiracy, right?

9 MR. KHUZAMI: Objection.

10 Q. If you know.

11 THE COURT: Sustained.

12 Q. If this deal goes through, in addition to not
13 being prosecuted for the list of crimes we went through
14 before, you are going to get some airplane tickets if you
15 want them, right?

16 A. Yes.

17 Q. And you are going to get \$5,000, right, if you
18 leave the country, right?

19 A. Yes.

20 Q. In the process of negotiating this plea
21 agreement, how much money had you asked for?

22 MR. KHUZAMI: Objection.

23 THE COURT: Sustained.

24 Q. Had you asked for a larger sum of money than
25 \$5,000?

1 A. I didn't ask for a specific amount of money.

2 Q. Did you get to keep the \$3,000 you were paid for
3 torching the cafe?

4 A. (In English) Excuse me?

5 Q. Do you get to keep the \$3,000 that you were paid
6 for burning the Main Street Cafe?

7 A. Yes.

8 Q. Your plea agreement also says that the government
9 will make best efforts to get you travel documents, right?

10 A. Yes.

11 Q. You have an Egyptian passport, don't you?

12 A. Yes.

13 Q. You would like an American passport, wouldn't
14 you?

15 A. Yes.

16 Q. They told you that they would try to get you an
17 American passport, right?

18 A. No.

19 Q. But did they tell you that they would contact INS
20 and inform them of your cooperation? It is in your
21 agreement.

22 A. Yes.

23 Q. Immigration & Naturalization Service?

24 A. (In English) Excuse me?

25 Q. Yes.

1 A. (In English) There is no mention of an American
2 passport.

3 A. (Through interpreter) In the agreement there is
4 no mention of the INS, and the government made it clear that
5 there is nothing about the passport.

6 Q. Did you say there is no mention of the INS in
7 your agreement?

8 Q. There's no mention of the passport. That's all.

9 MR. KHUZAMI: Objection.

10 THE COURT: The objection is overruled. Go
11 ahead.

12 A. There no mention of the passport.

13 Q. That is right. There is a mention of travel
14 documents, right?

15 A. Yes.

16 Q. Passports are travel documents, aren't they?

17 A. Yes.

18 Q. The U.S. Attorney's Office is part of the
19 Department of Justice, isn't it?

20 A. Yes.

21 Q. Immigration & Naturalization Service, those are
22 the folks that issue American passports, right?

23 A. Yes.

24 Q. That's part of the Department of Justice, isn't
25 it?

1 A. Yes.

2 Q. You told us before that you didn't ask for a
3 specific amount of money, is that correct?

4 A. Yes.

5 Q. What money did you ask for?

6 A. I asked for some help to start my life in any
7 other country, in any country other than the United States,
8 whether visa or as work.

9 Q. Are you aware that they're paying Emad Salem a
10 million dollars?

11 A. Yes.

12 MR. PATEL: No further questions, your Honor.

13 THE COURT: All right.

14 Ladies and gentlemen, we are going to break for
15 the day. Please leave your notes and other materials
16 behind. Please don't discuss the case, and remember we're
17 not sitting tomorrow. We will sit on Thursday. See you
18 then. Good night.

19 (The jury was excused)

20 (Witness excused)

21 (Proceedings adjourned to Thursday, May 11, 1995
22 at 9:30 a.m.)

23

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25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,
16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

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

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

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

-----x
May 11, 1995
9:45 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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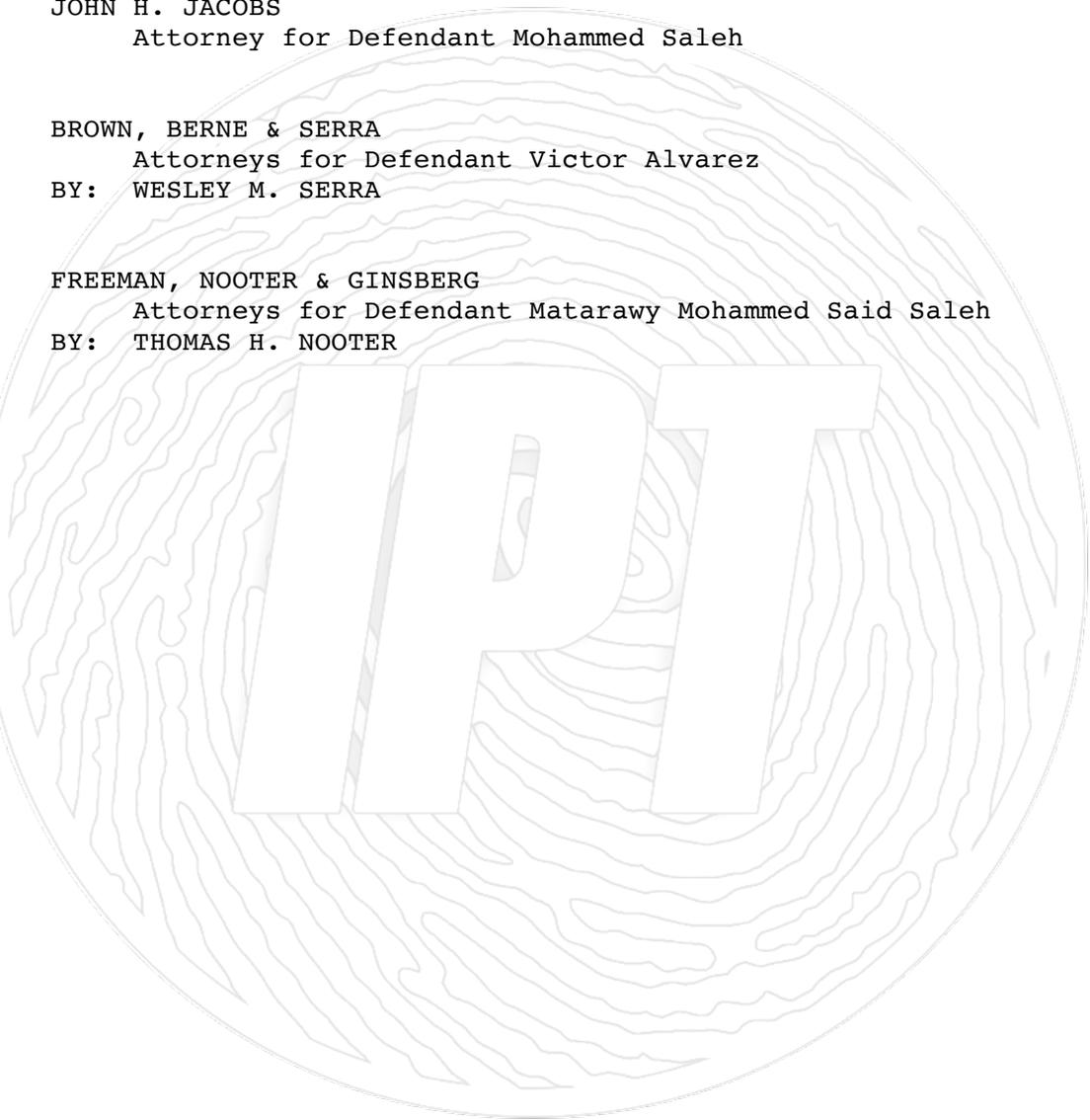
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (Jury not present)

3 THE COURT: Yes.

4 MR. STAVIS: I have a brief application, your
5 Honor. At pages 10301 to 10303 of the record, your Honor
6 had a conference in the robing room with Ms. Amsterdam. In
7 the event that that relates to any of the other
8 defendants --

9 THE COURT: It doesn't. It relates only to her
10 client.

11 Today we are going to have to stop early because
12 Juror 104 needs to see a physician about his blood tests.
13 So we are going to stop at about 20 to 4. We'll go in the
14 afternoon simply until then and then break.

15 ABDO MOHAMMAD HAGGAG, resumed.

16 (Jury present)

17 THE COURT: Good morning, ladies and gentlemen.

18 JURORS: Good morning.

19 THE COURT: Mr. Haggag, you are still under oath.

20 Mr. Ricco?

21 MR. RICCO: Yes, your Honor. I have no cross at
22 this time.

23 THE COURT: Mr. Wasserman?

24 CROSS-EXAMINATION

25 BY MR. WASSERMAN:

1 Q. Good Morning.

2 A. (In English) Good morning.

3 Q. Mr. Haggag, in connection with your going to that
4 one weekend in Pennsylvania, before you went up there, you
5 had heard a lot of stories about what was going on in
6 Bosnia, correct?

7 A. Yes.

8 Q. Those stories had a lot to do with rape camps
9 being set up and ethnic cleansing, people being taken out of
10 villages and killed just because they were Muslim?

11 MR. KHUZAMI: Objection.

12 THE COURT: Sustained.

13 Q. The stories that you heard that led you to go up
14 to or think about going to Bosnia had to do with killing
15 that was going on --

16 MR. KHUZAMI: Objection.

17 Q. -- of Muslims in Bosnia?

18 THE COURT: Sustained.

19 MR. WASSERMAN: Your Honor, may I have a side
20 bar, please.

21 THE COURT: No. Continue.

22 Q. What led you to think about going to Bosnia?

23 A. I did not have the intention to go to Bosnia.

24 All I wanted to do was to help the people there in any way I
25 can. And when I went to Pennsylvania, it was for me to get

1 trained.

2 MS. AMSTERDAM: To what? I am sorry.

3 THE INTERPRETER: To be trained to help the
4 Muslims there.

5 Q. Didn't you tell the FBI that you were
6 disappointed that you could not get to Bosnia with just one
7 weekend of training?

8 A. No.

9 Q. You did not tell them that.

10 The reason you were going to get trained was so
11 that you could help the people in Bosnia?

12 A. As a Muslim, as far as training is concerned, you
13 are required to be trained to use the weapons and know how
14 to use them.

15 Q. The people that you went on that weekend with,
16 you mentioned some names, Omar the Sudani, is that correct?

17 A. Yes.

18 Q. And Imad Abdou, correct?

19 A. Yes.

20 Q. And Fadil Elmasry, correct?

21 A. Yes.

22 Q. And Hamdi Ali, correct?

23 A. Yes.

24 Q. You don't see any of those people in the
25 courtroom now, do you?

1 MR. KHUZAMI: Objection.

2 THE COURT: Sustained.

3 MR. WASSERMAN: I'm sorry, Judge. Sustained?

4 THE COURT: Yes.

5 Q. You had a discussion about the training in
6 Pennsylvania with Sheik Omar, did you not?

7 A. Would you repeat the question, please?

8 Q. Sure. Did you tell the FBI that you had
9 discussed the training that was going on in Pennsylvania
10 with Sheik Omar, with Dr. Rahman?

11 A. Yes.

12 Q. In fact, you told the FBI that he wasn't very
13 pleased with it because of the people who were involved,
14 particularly Siddig and Rashid, isn't that correct?

15 A. He had some objections.

16 Q. I am sorry?

17 A. He had some objections.

18 Q. In fact, one of his objections was to Siddig, he
19 said that he didn't trust Siddig's money or his religion,
20 correct?

21 A. Yes.

22 Q. And he didn't trust Rashid, correct?

23 A. Yes.

24 Q. And he felt that if the war in Bosnia lasted a
25 hundred years Siddig would never go there, correct?

1 A. Yes.

2 Q. And he tried to discourage some people from
3 going, correct?

4 A. Yes.

5 Q. And you told the FBI that he tried to discourage
6 a man named Ihab Aoussi from going, correct?

7 A. Yes.

8 Q. Ihab Aoussi was someone who had fought in
9 Afghanistan, correct?

10 A. Correct.

11 Q. And he worked as an accountant, correct?

12 A. Yes.

13 Q. And the sheik also tried to discourage Hamdi Ali
14 from going, correct?

15 A. Yes.

16 Q. Hamdi Ali went and trained, correct?

17 A. Yes.

18 Q. Now, you testified that the weapons that were
19 used on the weekend that you were there were old, is that
20 correct?

21 A. Yes.

22 Q. And that you subsequently -- didn't you tell the
23 FBI that subsequently, after that weekend, new weapons were
24 gotten by Siddig and Ubaidah? No?

25 Siddig never told you that new weapons were

1 picked up some weeks after you trained?

2 MR. KHUZAMI: Objection.

3 THE COURT: Overruled.

4 Q. Did Siddig tell you that new weapons were gotten
5 some weeks after you were trained?

6 A. Yes. He said that they were going to get new
7 weapons, yes.

8 Q. And didn't he in fact tell you after the weapons
9 were gotten in Virginia that they were brought up to
10 Pennsylvania and used in Pennsylvania?

11 A. I don't recall him saying something like that to
12 me.

13 Q. Didn't he tell you that Ubaidah had gone down to
14 Virginia and picked up about six weapons, semiautomatic
15 rifles, an AK-47, and several SKS rifles? Didn't he tell
16 you that?

17 A. No.

18 Q. You don't recall that?

19 A. No, I don't remember that.

20 Q. You don't remember that. OK.

21 Now, the camp itself was a property, was a house
22 owned by a man named Kelvin Smith, correct?

23 THE COURT: Mr. Wasserman, could you --

24 MR. WASSERMAN: Yes, Judge.

25 THE COURT: Talk into it, but not right on top of

1 it.

2 MR. WASSERMAN: Yes, your Honor.

3 Q. The camp was owned by a man named Kelvin Smith,
4 correct?

5 A. You mean Abu Mohaimin?

6 Q. Yes. Did you know that Kelvin Smith was his
7 American name?

8 A. No, I didn't know his American name.

9 Q. Did you know that he was an investigator for the
10 federal Parks Service?

11 A. I knew he was working for the government.

12 A. (In English) For the law enforcement.

13 Q. And it really wasn't a camp, was it? It was his
14 home and his property, correct? That's where he lived,
15 correct?

16 A. It was a camp. It was not his house.

17 Q. I'm sorry?

18 A. His house was at the rear, at the end.

19 Q. Well, I am going to show you a picture.

20 MR. WASSERMAN: Your Honor, may I approach.

21 THE COURT: Yes.

22 MR. WASSERMAN: Actually, if I may, Judge. Your
23 Honor, by stipulation the government has agreed that the
24 following pictures, Hampton-El B1 through B3 and Hampton-El
25 B6, for the moment leaving out B4 and B5, the government

1 stipulates that they can be introduced into evidence as
2 representing pictures of the property in question.

3 MR. KHUZAMI: So stipulated.

4 THE COURT: Have these been marked before? Were
5 these marked before in connection with another witness?

6 MR. WASSERMAN: No, your Honor.

7 THE COURT: Because according to my notes you're
8 up to E.

9 MR. WASSERMAN: I'm up to E? Then I stand
10 corrected, your Honor. I will change the notation on these
11 exhibits.

12 THE COURT: I just don't want exhibits designated
13 with duplicative --

14 MR. WASSERMAN: No problem, your Honor.

15 THE COURT: All right. E1 to E3 and E6, those
16 are received on stipulation. Go ahead.

17 (Defendant Hampton-E1 Exhibits E1 to E3 and E6
18 for identification were received in evidence)

19 MR. WASSERMAN: Just for the record, Judge, E4
20 and E5 are also stipulated to by the government. They are
21 pictures of houses. The stipulation is these are pictures
22 of houses across the road from the property in question.

23 MR. KHUZAMI: So stipulated.

24 THE COURT: All right. E4 and E5 are received
25 with that stipulation. Go ahead.

1 (Defendant Hampton-El Exhibits E4 and E5 for
2 identification were received in evidence)

3 MR. WASSERMAN: May I approach, your Honor.

4 THE COURT: Yes, you may.

5 MR. WASSERMAN: Thank you.

6 Q. Do you recognize the property in question, the
7 place where you trained?

8 A. The picture are taken from another angle, from
9 the angle of the houses. I never came near the houses, so I
10 couldn't tell you yes or no.

11 Q. OK. In fact, you didn't sleep in a house when
12 you were you there, isn't that correct?

13 A. No.

14 Q. You slept in a house?

15 A. (In English) Yes, that's correct.

16 A. (Through interpreter) Yes. We did not sleep in a
17 house.

18 Q. The weekend that you were there was very cold,
19 was it not?

20 A. Yes.

21 Q. And you slept outside on top of the mountain that
22 was there, correct?

23 A. Yes.

24 Q. And you slept without a sleeping bag, correct?

25 A. Yes.

1 Q. And the training that that you had to do was very
2 vigorous, was it not?

3 A. Yes.

4 Q. For example, you described how on the run to the
5 power plant you vomited, correct?

6 A. Yes.

7 Q. There were times when -- the training was run by
8 three people, was it not? Ubaidah, Khidr and Mohaimin,
9 correct?

10 A. Yes.

11 Q. And the training was hard, yes?

12 A. Yes.

13 Q. And rough, yes?

14 A. Yes.

15 Q. And at the same time, you had contact with
16 Mohaimin's family, did you not, his children were around?

17 Yes?

18 A. Yes.

19 Q. And he had a number of children, correct? Young
20 children, little Mohammed. Yes?

21 A. Yes.

22 Q. And the target shooting that you did was right by
23 the road, was it not? It's depicted in those pictures that
24 you have before you.

25 A. I am not looking at the picture, but as far as I

1 remember, yes.

2 Q. OK. That's fine.

3 Were you aware that the training was part of a
4 survival or outdoor confidence program that was sponsored by
5 the Islamic Community Enrichment Development Corporation?

6 A. No, I didn't know that.

7 Q. Did you meet a lawyer up there named Robert
8 Abdullah who was one of the founders of that corporation?

9 A. Yes.

10 MR. KHUZAMI: Objection to form.

11 THE COURT: Sustained as to form.

12 MR. WASSERMAN: I'm sorry, your Honor. He
13 answered. Do you want me to rephrase it?

14 THE COURT: Yes. That's stricken.

15 Q. Did you meet a person up there named Robert
16 Abdullah?

17 A. Abdullah?

18 Q. Robert Abdullah.

19 A. Yes. We met somebody whose name was Abdullah,
20 not at the camp, but in the mosque.

21 Q. And did you know that he was a lawyer?

22 A. Yes, that's how he introduced himself.

23 Q. And that he was one of the founders of this
24 corporation?

25 A. I didn't know anything about that.

1 Q. OK. During this training it was very difficult
2 even to cook food, you weren't able to get a fire started,
3 wasn't that correct?

4 A. Yes.

5 Q. You described a run to the power plant.

6 Yes?

7 A. Yes.

8 Q. And that run to the power plant was a simulated
9 exercise, it was an exercise to train you, it was not an
10 exercise to blow up the power plant, correct?

11 A. Yes.

12 Q. During this weekend, you were with Siddig Ali,
13 correct?

14 A. Yes.

15 Q. And you and Siddig Ali were very, very good
16 friends, correct?

17 A. Yes.

18 Q. You used to hang out together, correct?

19 A. Yes.

20 Q. Would it be fair to say that you would see Siddig
21 Ali at least several times a week?

22 MR. KHUZAMI: Objection to form. Time period.

23 MR. WASSERMAN: Same time period, your Honor.

24 THE COURT: Could you specify what it is.

25 MR. WASSERMAN: Yes. The time period that you

1 were up that weekend. The same period that you were up at
2 that weekend.

3 A. Before the camp I used to see him twice or once a
4 week. After the camp I used to see him maybe once every
5 week or once every two weeks.

6 Q. Was there something -- withdrawn.

7 At the camp Siddig took to the training very
8 well, did he not?

9 A. Yes.

10 Q. And he enjoyed the hardships, yes?

11 A. Yes.

12 Q. And he was Ubaidah's favorite trainee, correct?

13 A. Yes.

14 Q. Is the reason that you began to see less of
15 Siddig after that weekend because you were angry or upset at
16 the relationship between Ubaidah and Siddig?

17 A. No.

18 Q. It would be fair to say that Ubaidah was not one
19 of your favorite people after that weekend, correct?

20 A. Correct.

21 Q. And that you felt also that there came a time
22 after that weekend when you believed he was spending money
23 like a pig, correct?

24 A. Yes.

25 Q. And one of the incidents that led to your feeling

1 that way was you went with Siddig Ali to the Sand Man Hotel
2 in Trenton where Ubaidah was buying some equipment from a
3 man named Garrett, correct?

4 A. Yes, we did go to the hotel, but I don't know, I
5 don't know the name of the person you're referring to.

6 Q. OK. But the purpose of going there was to assist
7 Ubaidah was picking up some equipment that was being
8 purchased from Garrett, correct?

9 A. For training, yes.

10 Q. Yes. I'm sorry. The man's name is Garrett
11 Wilson, correct?

12 A. I don't know his name.

13 Q. All right. And at the, at that purchase did you
14 see the equipment that was being purchased?

15 A. Yes.

16 Q. And it included climbing gear? Yes? Grappling
17 gear? Yes?

18 A. What do you mean by "climbing gear"?

19 Q. Ropes and related equipment to climb.

20 A. Yes.

21 Q. And it included a blow gun?

22 A. Yes.

23 Q. And a crossbow?

24 A. Yes.

25 Q. And exploding targets, that is, the targets that

1 would explode?

2 A. I don't remember that.

3 Q. OK. Did it include training videos?

4 A. Maybe yes, maybe no.

5 Q. How about electric matches?

6 A. Yes.

7 Q. And that's basically due to the fact that there
8 was such difficulty lighting fires at the time you were you
9 there, correct?

10 A. Yes.

11 Q. In addition to the exploding targets there was
12 cannon fuse, was there not?

13 A. (In English) What?

14 Q. Cannon fuse.

15 THE COURT: Sustained. He said he didn't
16 remember the exploding targets. Move on.

17 MR. WASSERMAN: I'm sorry.

18 THE COURT: Go ahead.

19 Q. Was there cannon fuse included in the equipment?

20 A. I'm not sure about that.

21 Q. OK. Now, at this time Siddig was continuing to
22 train, correct?

23 A. Yes.

24 Q. It would be fair to say that we're at some point
25 in February, correct?

1 A. I think it could have been in January, but I'm
2 not quite sure about the date.

3 Q. All right. Now, did there come a time when you
4 learned that Rashid and Ubaidah had gone to Bosnia?

5 A. Yes.

6 Q. And this occurred after the pickup of equipment
7 that we've just talked about, yes?

8 A. Around the same time. I am not -- I cannot say
9 whether it was before or after.

10 Q. And actually, to be more accurate, you found out
11 that they had gone to Zagreb?

12 A. Yes.

13 Q. They did not go into Bosnia, correct?

14 A. Yes.

15 Q. Approximately how long after this did there come
16 a time when there was another financial matter connecting
17 Ubaidah that disturbed you, specifically, the bill for a van
18 that Amir Abdelgani had rented?

19 A. I think that was in February when Amir and Siddig
20 came to me and told me about the rental of the van. And
21 Amir asked me to go and talk to Abdel Rashid regarding this
22 matter. Because Siddig was leaving things unstable, you
23 know, not clear.

24 Q. I'm sorry. I didn't catch the last part.

25 A. Siddig was leaving things unclear. He was not

1 making the matters clear.

2 Q. And approximately how long after that did you
3 have this meeting at Rogers Avenue in Brooklyn?

4 MR. KHUZAMI: Objection to form.

5 MR. WASSERMAN: I will rephrase it, Judge. No
6 problem.

7 Q. There came a time after this request for you to
8 go meet with Rashid that you actually did go meet with
9 Rashid, correct?

10 A. Yes.

11 Q. Now, Rashid was not someone you knew well,
12 correct?

13 A. Yes.

14 Q. You had met him once or twice before briefly,
15 correct?

16 A. Yes. Maybe three times or more.

17 Q. And you knew of him, that he had been someone who
18 had gone to Afghanistan and had been wounded there, correct?

19 A. Yes.

20 Q. And you knew that he had for a time been active
21 in the Alkifah office in Brooklyn?

22 A. I don't know about this.

23 Q. You don't know about this. OK.

24 In addition -- withdrawn.

25 At this meeting there was Amir Abdelgani and

1 yourself, correct?

2 A. Yes.

3 Q. And Ubaidah?

4 A. Yes.

5 Q. Rashid and Siddig?

6 A. Yes.

7 Q. And this meeting takes place approximately when?

8 A. At the -- early '93.

9 Q. Well, can you give us a month?

10 A. There were many events, and I cannot specify a
11 date.

12 Q. Well --

13 A. Maybe February, maybe March.

14 Q. Maybe February, maybe March. OK.

15 Can you do it in reference to how long after you
16 found out that Rashid and Ubaidah had gone to Zagreb?

17 A. A few weeks.

18 Q. A few weeks after that. OK.

19 Now, at that meeting there were a number of
20 things discussed, correct?

21 A. Yes.

22 Q. And you've testified -- withdrawn.

23 One of the things that was discussed was that --
24 or you've testified that \$100,000 was being received each
25 month by Uhaidah and Rashid, correct?

1 A. Rashid. By Rashid, not Ubaidah.

2 Q. By Rashid?

3 A. Yes.

4 Q. And did you believe that?

5 A. Yes. Why not?

6 Q. I'm sorry. I didn't ask you why not. I asked

7 you did you believe it.

8 A. Yes.

9 Q. And do you believe it now as you sit in that
10 chair?

11 A. Yes.

12 MR. KHUZAMI: Objection.

13 A. (In English) Sorry.

14 Q. You kept a diary when you were in prison,
15 correct?

16 A. Yes.

17 Q. And part of the reason you kept that diary was to
18 record things about the co-defendants in the case, correct?

19 A. No.

20 Q. You didn't record entries in that diary so you
21 could remember things about your co-defendants?

22 A. No.

23 Q. Do you recall testifying in a collateral
24 proceeding, that is, a proceeding outside of the presence of
25 the jury on May 3, last week?

1 A. Yes.

2 Q. At that proceeding you were asked the following
3 question and gave the following answer.

4 MR. KHUZAMI: Objection.

5 THE COURT: May I see that?

6 MR. WASSERMAN: Sure.

7 Your Honor, I can give you a page cite.

8 THE COURT: I don't --

9 MR. WASSERMAN: It's 10032, line 21 through 10033
10 line 1.

11 THE COURT: It doesn't do me any good unless I
12 have the page in front of me, and I don't.

13 MR. WASSERMAN: I'm sorry. I thought you had the
14 transcript.

15 MR. KHUZAMI: Your Honor, I will withdraw the
16 objection.

17 MR. WASSERMAN: Thank you.

18 Q. You were asked the following question and gave
19 the following answer:

20 "Q. The diary that you kept included written
21 notations about co-defendants in this case, isn't it
22 correct?

23 "A. Yes, sir?"

24 A. (In English) Including --

25 A. (Through interpreter) The diary was for some

1 events that are relating directly to me and some of the
2 co -- some of the brethren were there. It was not only for
3 them.

4 Q. Weren't you asked the following question also:
5 "Is it fair to say that you kept that diary so you could
6 remember what was going on with people inside the MCC?"

7 A. Yes.

8 Q. And at the time that you kept that diary you were
9 hoping to --

10 THE COURT: Mr. Wasserman.

11 MR. WASSERMAN: Yes, Judge.

12 Q. -- gather information that would help you in your
13 effort to cooperate with the government, correct?

14 A. No.

15 Q. Well, isn't it fair to say that you intended to
16 cooperate with the government immediately after your arrest
17 in July 16, 1993?

18 A. Yes.

19 Q. OK. And you had a lengthy session with the
20 government on July 16, 1993, correct?

21 A. Yes.

22 Q. And they asked you about a number of topics
23 during that meeting, correct?

24 A. Yes.

25 Q. And they asked you about Nosair, correct?

1 A. July 26?

2 Q. July 16.

3 A. Yes. They asked me about Nosair's trial.

4 Q. They asked you about the World Trade Center,
5 correct?

6 A. Possible.

7 Q. Did they ask you about Nosair in general?

8 MR. STAVIS: I am going to object at this point,
9 your Honor. It is outside the scope.

10 MR. WASSERMAN: I will withdraw the question.

11 THE COURT: That objection is sustained.

12 MR. WASSERMAN: No problem.

13 Q. They asked you about the World Trade Center?

14 MR. KHUZAMI: Objection. Asked and answered.

15 THE COURT: Sustained. Go ahead.

16 MR. WASSERMAN: I'm sorry. Forgive me, your
17 Honor. I don't recall.

18 Q. Your answer was they did not ask you or you don't
19 recall?

20 THE COURT: His answer was, I think, "Possibly."

21 MR. WASSERMAN: Possibly.

22 Q. Do you recall the following question and answer,
23 page 10048, line 21:

24 "Q. They asked you questions about the World
25 Trade Center, yes?

1 "A. Yes."

2 Does that refresh your recollection as to what
3 you testified to last week?

4 A. Possibly, also.

5 Q. It possibly refreshes your recollection?

6 THE COURT: Move on to something else,
7 Mr. Wasserman.

8 Q. Would it be fair to say that the topics that you
9 covered in that meeting in July were including Mubarak, the
10 assassination plot on Mubarak, correct?

11 A. Yes. That was the main topic.

12 Q. And they -- you told them what you knew, correct?

13 A. Yes.

14 Q. You told them that you had gone to Rashid for
15 weapons, and that he told you that he'd get back to you,
16 correct?

17 A. Yes.

18 Q. Incidentally, there did come a time when you were
19 indicted for the assassination plot on Mubarak, correct?

20 A. Yes.

21 Q. And you noted that Rashid was not indicted for
22 that, correct?

23 A. Yes.

24 Q. Now, at this meeting on July 16 the -- you were
25 arrested after that meeting, correct?

1 A. Yes.

2 Q. And you, as you've testified before, intended to
3 cooperate with the government from that meeting on, correct?

4 A. Yes.

5 Q. And it was apparent to you, was it not, that the
6 information you had given to the government on July 16, 1993
7 was not sufficient to get you out of jail, correct?

8 Correct?

9 A. Would you repeat the question, please?

10 MR. WASSERMAN: If I could have the reporter read
11 it back, your Honor.

12 (Record read)

13 A. I knew that the investigations would get me out
14 of jail one way or the other.

15 Q. You were asked about Rashid at this meeting on
16 July 16, yes?

17 A. Yes.

18 Q. And you told them what you knew about him,
19 correct?

20 A. Yes.

21 Q. Now, you've testified here that you have a
22 meeting at Rogers Avenue sometime in February or March in
23 which you discuss Amir Abdelgani's \$700 bill for a van he
24 rented which he felt Ubaidah should pay for, correct?

25 A. Yes.

1 Q. And that at that meeting the \$100,000 a month was
2 discussed, correct?

3 A. Yes.

4 Q. And did you not propose that you and Siddig
5 should take over the monies that come in to finance the
6 Bosnian matter?

7 A. No.

8 Q. You did not propose that.

9 Now, did there not come a time when you
10 complained about Ubaidah's extravagance at that meeting?

11 A. Yes.

12 Q. And you complained that more money was going to
13 be raised by making videos using the people who were
14 training, correct?

15 A. Yes. That's what Rashid told him.

16 Q. You basically said, "We're not going to be
17 involved with that," correct?

18 A. I told him that these people should not have been
19 involved.

20 Q. Are you saying -- they should not have been
21 involved?

22 A. Yes. They should not be involved in something
23 like that.

24 Q. OK.

25 A. Because something like extortion.

1 Q. Extortion, OK.

2 At a certain point in this meeting it would be
3 fair to say at the end Siddig got very upset, correct?

4 A. Yes.

5 Q. And he got so upset that he tore his sweater, his
6 shirt?

7 A. Yes.

8 Q. And Rashid had to give him something to use in
9 its place, correct?

10 A. Yes.

11 Q. And, in fact, Siddig was so upset he was also
12 very angry at you, correct?

13 A. Yes.

14 Q. And you were telling him to calm down, stop
15 acting like a woman, correct?

16 A. Yes.

17 Q. And Ubaidah stepped in between the two of you,
18 correct?

19 A. Yes.

20 Q. Now, when during this meeting did you have this
21 conversation that you've testified to where Rashid told you
22 about being involved in some way with Meir Kahane and his
23 killing?

24 MR. STAVIS: Objection. Scope, your Honor.

25 THE COURT: Overruled.

1 A. After we finished the meeting and Siddig had
2 calmed down and we went downstairs, Siddig and Amir went
3 towards the car and then Rashid took me aside and he talked
4 to me. That was at the street.

5 Q. And so you were going home at that time?

6 A. Yes.

7 Q. Now, at that moment you say that you were alone
8 with Rashid, correct?

9 A. Yes.

10 Q. And he goes into an extensive discussion with you
11 about Mahmud Abouhalima and the murder of Kahane, correct?

12 A. (In English) Short discussion.

13 Q. Short discussion.

14 A. But you never go back upstairs, correct?

15 A. No.

16 Q. Now, before this discussion that you say took
17 place, Ubaidah had apologized at Rashid's request, correct,
18 for his extravagance?

19 A. Yes. He apologized for spending the money in a
20 stupid way.

21 Q. Now, Rashid said that he would look into Amir
22 getting paid by Ubaidah for the van rental, correct?

23 A. Yes. Rashid said that the money was with Ubaidah
24 (In English) For the van.

25 Q. And that Abu Ubaidah would check with the van

1 company to find out why they had overcharged, correct?

2 A. Yes. He would correct the mistake between him
3 and the company.

4 Q. And that Amir would get his money, correct?

5 A. Yes.

6 Q. Did you ever follow up with Amir to find out if
7 he got his money?

8 A. Yes.

9 Q. And you found out that he didn't get any money,
10 correct?

11 A. Yes.

12 Q. That Rashid told him essentially he didn't know
13 anything about it, correct?

14 A. (In English) Repeat that again, please?

15 Q. Essentially Rashid brushed him off later on and
16 said, "I don't know anything about it," correct?

17 A. What I know is that Amir did not take the money
18 neither from Rashid nor from Abu Ubaidah.

19 MR. WASSERMAN: Your Honor, may I just have a
20 moment.

21 (Pause)

22 (Continued on next page)

23

24

25

1 Q. Is it fair to say that you never told the
2 government about this conversation until sometime in the
3 fall of 1993, correct?

4 A. When you met with Mr. McCarthy and the agents on
5 July 16 and they asked you about Rashid and they asked you
6 about Nosair and stuff, you never told them about this
7 conversation, correct? Correct?

8 A. No, I told them.

9 Q. You told them on July 16, 1993?

10 A. No.

11 Q. Did you tell them on July 16, 1993?

12 A. No.

13 Q. Thank you.

14 Q. But they asked you about Rashid on July 16, 1993,
15 correct? Yes or no.

16 A. Yes.

17 Q. And you testified a little while back that you
18 told them what you knew about Rashid, correct? Yes or no.

19 MR. KHUZAMI: Objection.

20 THE COURT: Sustained. Move on.

21 Q. Incidentally, in your diary, the American brother
22 that you referred to, is that Rashid?

23 A. Could I see the diary, please?

24 Q. Sure.

25 MR. WASSERMAN: I am sorry, your Honor. One

1 second.

2 Q. Would you just take a look at the first page
3 there, where there is a yellow marking. Was the American
4 brother referred to there Rashid?

5 A. Yes.

6 Q. And isn't it fair to say that what you wrote into
7 your diary was that you told Mahmoud "all of the charges
8 against the American brother have been fabricated by Siddig,
9 who is inventing a heroic tale"? Isn't that what that
10 Arabic translates to?

11 THE INTERPRETER: Excuse me.

12 A. What I wrote in the diary, all the accusations,
13 charges are fabricated by Siddig and false heroic
14 inventions.

15 Q. Against the American brother, correct?

16 A. Yes.

17 Q. Against Rashid, correct?

18 A. Yes.

19 Q. Did you also write into your diary on August 13
20 that you had spoken with El-Gabrowny and that he related a
21 conversation where Ronald Kuby had said that they are trying
22 to put everyone --

23 MR. KHUZAMI: Objection.

24 MR. WASSERMAN: I am trying to phrase it in terms
25 of a question, Judge.

1 THE COURT: The objection is sustained.

2 MR. WASSERMAN: I will try again.

3 Q. -- that you were informed that it was a general
4 conspiracy to --

5 MR. KHUZAMI: Objection.

6 THE COURT: Sustained.

7 Q. Did you not write in your diary the following: A
8 conspiracy in any individual --

9 MR. KHUZAMI: Objection.

10 THE COURT: Sustained. Strike three. Move on to
11 something else.

12 MR. WASSERMAN: Your Honor, if I may --

13 THE COURT: You may not. You may move on to
14 something else.

15 MR. WASSERMAN: I would like that portion of the
16 diary moved into evidence. It seems that it has been
17 identified and I have laid the foundation for it.

18 THE COURT: That is not sufficient. Nobody is
19 the challenging the foundation. We will deal with it at a
20 later point. Move on to something else.

21 MR. WASSERMAN: May I have a side bar, please?

22 THE COURT: You may not. Move on to something
23 else.

24 Q. You testified earlier today that you believed
25 that \$100,000 a month was coming in, correct?

1 A. Yes.

2 Q. Did you not record in your diary that you didn't
3 believe any member of this conspiracy had enough money to
4 pay for their own room?

5 A. I meant Siddig and the Sudanese brothers.

6 Q. And the Egyptians, but not the American brother?

7 A. No.

8 Q. You always considered him a little different than
9 the Egyptians and the Sudanese, correct?

10 A. Yes.

11 (Continued on next page)

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1 Q. In your diary you also recorded various
2 notations, that you were incredulous, you did not believe
3 that there was such a conspiracy, correct?

4 MR. KHUZAMI: Objection.

5 THE COURT: Sustained.

6 Q. Did you not in your diary express utter
7 disbelief?

8 MR. KHUZAMI: Objection.

9 THE COURT: Now I will see you at the side.

10 (At the side bar)

11 MR. WASSERMAN: Your Honor, I believe I am
12 entitled to go into his past statements. These are
13 recorded. They have been provided to us by the government.
14 They have been translated. I don't see what the problem is
15 in asking him questions about what he stated in his diary.

16 THE COURT: Do you want to draw him a diagram?

17 MR. KHUZAMI: It is hearsay, and unless he
18 establishes some sort of inconsistency, then he can use them
19 as potential impeachment. But they are hearsay statements.

20 THE COURT: Do you understand what "move on"
21 means?

22 MR. WASSERMAN: Judge, I understand --

23 THE COURT: You have been trying basically to get
24 messages to that jury over my rulings. Do you know what I
25 do to lawyers who do that?

1 MR. WASSERMAN: Your Honor --

2 THE COURT: I will do it to you in front of the
3 jury if I have to.

4 MR. WASSERMAN: Judge, if I may, I really feel
5 that when I am --

6 THE COURT: What you feel, mister, is irrelevant
7 to me. Move on to something else. Do you understand that?

8 MR. WASSERMAN: May I pose a question to the
9 court quickly. Judge, sometimes I don't understand the
10 ruling from the bench --

11 THE COURT: Now you understand.

12 MR. WASSERMAN: When I ask for a side bar it is
13 not to overrule the court's rulings but to understand it.
14 That avoids substantive errors more than anything else.

15 THE COURT: Then now there aren't going to be any
16 more errors. Let's go.

17 Are you going to tell me you put him up to it?

18 MR. PATEL: No, Judge. I have an objection to a
19 question Mr. Wasserman asked where he referred to
20 codefendants as members of a conspiracy, that he was a straw
21 man being knocked down, and I would ask that the question
22 and answer be stricken.

23 THE COURT: I don't recall that the answer got
24 out.

25 MR. PATEL: Maybe we can check the record later.

1 THE COURT: Also, as between you and Mr. Stavis,
2 can we figure out who is making the objections? It should
3 be you.

4 MR. PATEL: Yes, your Honor.

5 THE COURT: Good.

6 (In open court)

7 MR. WASSERMAN: Your Honor, may I just have a
8 moment. I am trying to find a page.

9 Thank you, Judge.

10 (Continued on next page)

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1 BY MR. WASSERMAN:

2 Q. Mr. Haggag, you testified that approximately a
3 week after Mohammad Salameh was arrested you ran into Siddig
4 at a mosque and he was very excited, telling you that
5 Mahmoud did it, Mahmoud did it, referring to the Trade
6 Center, correct?

7 A. Yes, he was the one who came to me.

8 Q. It would be fair to say that Mohammad Salameh was
9 arrested approximately a week after the Trade Center?

10 A. Yes.

11 Q. And you have testified here that Siddig told you
12 he was going to prove it to you, correct?

13 A. Yes.

14 Q. Because you were in doubt about it, correct?

15 A. I did not completely believe it.

16 THE INTERPRETER: Corrections.

17 A. I completely denied that.

18 Q. And he said he was going to prove it to you, and
19 to do that he brought you over, or rather he had Mohammed
20 Abouhalima, Mahmoud's brother, come a couple days later to
21 his apartment and meet with you, correct?

22 A. Yes.

23 Q. And at that time, he asked Mohammed Abouhalima to
24 confirm that yes in fact Mahmoud had done it, correct?

25 A. Mohammed said that he participated in it. Siddig

1 said that he was the only one who did it.

2 Q. But Mohammed corroborated that Mahmoud had
3 participated in the Trade Center, correct?

4 A. Yes.

5 MR. KHUZAMI: Your Honor, objection. I believe
6 the witness was attempting to correct his answer.

7 THE COURT: Let him finish his answer. The
8 answer to the prior question?

9 MR. KHUZAMI: Yes.

10 THE COURT: Read back the prior question.

11 (Record read)

12 A. Mohammed and I agreed that this was a crime
13 against Islam and the Muslims.

14 Q. At the same time, you testified that at the same
15 time Siddig was trying to prove to you that Mahmoud did it,
16 that Siddig was also complaining or was upset that he had
17 been left out, correct?

18 A. Yes.

19 Q. This is after, obviously, he had seen pictures of
20 what damage had been done and lives lost, correct, of the
21 Trade Center, correct?

22 MR. KHUZAMI: Objection.

23 THE COURT: Sustained.

24 Q. Would it be fair to say that it was common
25 knowledge that lives had been lost, people injured and a lot

1 of damage during the Trade Center, correct?

2 A. Yes.

3 Q. And that Siddig was aware of that destruction, if
4 you know?

5 A. It was common knowledge to everybody. I believe
6 that Siddig might have known it, yes.

7 Q. You believe Siddig might have known it, and yet
8 he is complaining to you about having been left out of the
9 party, correct?

10 A. Yes.

11 Q. Did he not explain to you at the time that the
12 reason he had been left out was that he had never gotten
13 back to Mahmoud about Mahmoud's inquiry, about doing a test
14 bombing? Didn't he tell you that?

15 A. No, he didn't tell me that.

16 Q. Did you not have approximately eight meetings
17 with FBI agents and prosecutors during the fall of 1993?

18 A. Approximately, yes.

19 Q. Did you not, were you not asked about anything
20 you might know about the World Trade Center, correct?

21 A. Yes.

22 Q. If you recall, you testified that you had been
23 asked about the World Trade Center on July 16 when you had
24 your discussions then, correct?

25 A. Yes, possible.

1 Q. And during these further discussions in the fall,
2 you told the government all about this request by Mahmoud of
3 Siddig to do a test explosion, and did you not then tell the
4 government that Siddig had explained to you that the reason
5 he was left out, that he got his answer why he was left out
6 from Mahmoud Abouhalima, and that Mahmoud informed him that
7 it was because he was too late? Do you remember that?

8 A. No, I don't remember that.

9 Q. You don't remember telling the government that
10 Siddig explained that what Mahmoud meant by "too late" was
11 that Siddig never got back to Mahmoud on his original
12 inquiry regarding a test explosion?

13 A. Yes, possibly.

14 Q. Yes, possibly. And that because of that Mahmoud
15 did not include Siddig in the actual World Trade Center
16 blast. Do you recall telling the government that?

17 A. Is that the question or a comment?

18 Q. I am sorry.

19 THE COURT: He asked you whether it was a
20 question.

21 A. Is that a question or a comment?

22 Q. A command?

23 A. Yes.

24 Q. It was a question.

25 THE COURT: He wants to know whether you told the

1 government that.

2 A. I don't recall exactly what I told them.

3 Q. Did you not also have information -- you didn't
4 testify about the reason Siddig gave you he was left out of
5 the Trade Center, did you? Did you tell the jury that
6 before today?

7 A. No.

8 Q. You had given the government some information
9 that you had gotten during your stay at MCC concerning
10 Mohammad Salameh, correct?

11 A. Can you repeat the question.

12 Q. Did you give the prosecutors information
13 concerning Mohammad Salameh based upon your contacts with
14 him at MCC?

15 A. I don't think so.

16 Q. Did you not tell the prosecutors that you had
17 been told that Mohammad Salameh had been in contact with
18 Iraqi intelligence?

19 MR. KHUZAMI: Objection.

20 THE COURT: Sustained.

21 Q. Did you tell the prosecutors that Mohammad
22 Salameh had been involved with Iraqi intelligence?

23 A. Sustained.

24 Q. Did Mahmoud or Mohammed Abouhalima tell you that
25 Mohammad Salameh had been involved with Iraqi intelligence?

1 MR. KHUZAMI: Objection.

2 THE COURT: That is overruled.

3 A. Yes, Mohammed Abouhalima told me that Mohammad
4 Salameh had contacts with the Iraqi intelligence.

5 Q. Also you told the prosecutors that Mahmoud had
6 complained to you that Ramzi Yousef was really responsible
7 for organizing the whole thing, correct?

8 A. Yes.

9 Q. And that he had left everybody behind to take the
10 fall, correct?

11 A. Yes.

12 Q. And that they were pawns, correct? He was the
13 master, they were the pawns, correct?

14 A. Something like that.

15 Q. And you also told the prosecutors that Yasin, the
16 fellow who fled back to Iraq from whence he came, had
17 floated stories that actually Mahmoud was the --

18 MR. KHUZAMI: Objection.

19 THE COURT: That is sustained.

20 MR. WASSERMAN: I will rephrase it.

21 THE COURT: You will move on to something else.

22 MR. WASSERMAN: Judge, I will rephrase it.

23 THE COURT: You will move on to something else,

24 Mr. Wasserman.

25 Q. I just want to cover a couple of matters in

1 connection with the arson that you committed. You were
2 never prosecuted for that, correct?

3 THE COURT: That has been covered.

4 Q. Is it fair to say that based upon the interview
5 that you had with the Morris County prosecuting office, that
6 based upon that interview there was no prosecution for
7 arson?

8 THE COURT: Sustained.

9 Q. Did you not continue after that interview to try
10 to collect the proceeds from the insurance policy?

11 A. Yes.

12 Q. In fact, your partner in that restaurant that
13 burned down was Sami, correct?

14 A. Yes.

15 Q. And Sami opened up a new place at the same site,
16 correct?

17 A. Yes.

18 Q. And you would often go there with Siddig to try
19 to see what was happening with the collection of the
20 insurance moneys, correct?

21 A. No.

22 Q. In connection with -- would it be fair to say
23 that the reason that you became involved in -- withdrawn.

24 The incident that you were involved with in
25 taking a five-year-old child to Canada, you testified that

1 you were aware of what was going to happen before it
2 happened, correct?

3 A. Yes.

4 Q. Wouldn't it be fair to say that before it
5 happened, that the father is a man named Osama Omasha, is
6 that correct?

7 A. Yes.

8 Q. And that he came to you with a problem, correct?
9 He came to you with a problem that he and his wife, his
10 Jewish wife, were estranged, correct?

11 A. This was something known at the mosque.

12 Q. And that he had visiting rights but they had to
13 be supervised, correct?

14 A. Yes.

15 Q. And that he came to you and asked what to do,
16 correct?

17 A. No.

18 Q. Didn't you tell the government that Omasha
19 discussed with you what he might possibly do in this
20 situation and you advised him to take his son? Didn't you
21 tell the government that?

22 A. What I said, that he wanted to take his son.

23 Q. That he wanted to -- OK. That he wanted to take
24 his son. And was it your idea to drug her, drug the mother?

25 A. No, it was his idea.

1 Q. And you came up with the pills, correct?

2 THE COURT: Sustained. That has been explored.

3 Q. What kind of pills were they, sir?

4 A. I don't know what kind they were.

5 Q. They were your pills, were they not?

6 A. Yes -- excuse me.

7 Q. They were pills that you were providing, correct?

8 A. Yes.

9 Q. And your testimony is you don't know what they
10 were?

11 A. Yes.

12 Q. Is it fair to say that -- this boy was
13 five-years-old, correct?

14 THE COURT: Mr. Wasserman, move on to something
15 else.

16 MR. WASSERMAN: I have just one more question in
17 this area, Judge.

18 THE COURT: No, you will move on to something
19 else. Do you understand that?

20 Q. Would it be fair to say that the theme that runs
21 through your actions in the past --

22 THE COURT: Sustained. If you want to pose a
23 question, pose a question. To sum up, wait till the end of
24 the case.

25 MR. WASSERMAN: All right.

1 Q. There have been a list of things that have been
2 provided to this jury about the arson and the taking of the
3 children, the kidnapping of the children, and lying to the
4 government and lying to the Morris County prosecutor,
5 correct?

6 A. Yes.

7 Q. And it would be fair to say that when your
8 interest is involved, you will steal and you will lie,
9 correct?

10 A. Not stealing.

11 MR. WASSERMAN: Just lying. Thank you, no
12 further questions.

13 THE COURT: Mr. Bernstein?

14 MR. BERNSTEIN: Yes, Judge.

15 CROSS-EXAMINATION

16 BY MR. BERNSTEIN:

17 Q. Good morning, Mr. Haggag.

18 A. Good morning, sir.

19 Q. Mr. Haggag, I represent Mr. Amir Abdelgani, and I
20 have a few questions for you, sir.

21 Regarding the training session that you attended
22 down in Pennsylvania, you discussed people taking nicknames,
23 correct?

24 A. Yes.

25 Q. When you went to Pennsylvania, everyone took a

1 nickname or got a nickname, correct?

2 A. Yes.

3 Q. The person who ran or owned the land, who I think
4 was referred to as Kelvin Smith, he had the name Abu
5 Mohammed, correct -- Mohaimon?

6 A. Mohaimon.

7 Q. Let me ask, sir, is it fair to say that Siddig
8 Ali and Abu Ubaidah came up with the idea of giving
9 nicknames to everyone?

10 A. Yes.

11 Q. Would it be fair to say that Ubaidah said that
12 they didn't want people to know the true names of people
13 when they went to Bosnia, correct?

14 A. Yes.

15 Q. And he explained that this was the practice in
16 Afghanistan prior to that, correct, that Ubaidah understood
17 that this was the practice in the Afghani war?

18 A. Yes.

19 Q. Siddig and Ubaidah gave out those names to
20 people, correct?

21 A. Yes.

22 Q. Amir was called Abu Mohammed?

23 A. Yes.

24 Q. Is it fair to say that you knew Amir Abdelgani
25 had a son or has a son named Mohammed?

1 A. Yes, at that time.

2 Q. And the expression Abu Mohammed basically means
3 father of Mohammed, correct?

4 A. Yes, correct.

5 Q. In Pennsylvania, or during the period of the
6 Pennsylvania training, people were divided into two teams,
7 correct? Let me digress. When people did the mountain trip
8 toward the power plant, they were divided into two columns,
9 correct?

10 A. No, they were all one team.

11 Q. Regarding people going to Pennsylvania, would it
12 be fair to say that Ubaidah divided people into teams as to
13 who would be going to Bosnia first, who would be going to
14 Bosnia second?

15 A. Yes, he wanted to do that.

16 Q. And in fact there was a time that he said that
17 the first time going to Bosnia would be Siddig Ali, Amir
18 Abdelgani, and Hamdi Ali, correct? Did you ever tell the
19 government that, that the first team, that Ubaidah had said
20 that Siddig Amir and Hamdi Ali would be in the first team
21 going over to Bosnia?

22 A. Yes.

23 Q. And later on I think you told the agents that it
24 was going to be Siddig, Amir, Tarig, and somebody named
25 Mohammed. Correct?

1 A. Yes.

2 Q. And you were going to be in the second team with
3 other people, correct?

4 A. Yes.

5 Q. And first team and second team meant who would go
6 over first and who would go over second, correct?

7 A. No, the first team means the people that were
8 doing very well in the training, the second team means the
9 people who needed more training.

10 Q. Didn't you tell the government that the first
11 team would go to Bosnia first, presumably, from your answer,
12 because they were ready?

13 A. Yes.

14 Q. Just a few more questions, sir.

15 Regarding the Mubarak plot that you described, it
16 is your testimony that you didn't want to do the
17 assassination of President Mubarak, correct?

18 A. Yes.

19 Q. And it is your testimony that you never were
20 going to do anything despite your conversations with Siddig
21 Ali.

22 A. Yes.

23 Q. But you told the agents that you actually made
24 some suggestions for the plan and some criticisms of the
25 plan at various times, correct?

1 A. Yes.

2 Q. In fact, you described that you had suggested to
3 Siddig that hotel uniforms be obtained for purposes of the
4 plan, correct?

5 A. Would you explain this point, please.

6 Q. You had described Siddig Ali's plans regarding
7 the hotels and where Mubarak would be staying, correct?

8 A. Yes.

9 Q. And at one time did you tell the agents that you
10 had suggested to Siddig Ali that hotel uniforms be obtained
11 for the participants in the plot?

12 A. Yes.

13 Q. So that people would look like hotel employees at
14 or around the hotel, correct?

15 A. Not exactly.

16 Q. But you had suggested the uniforms?

17 A. Siddig said that he wanted to wear a uniform, and
18 I agreed with him about this idea.

19 Q. Sir, do you recall telling the agents that you
20 believed it was your suggestion for obtaining the hotel
21 uniforms?

22 A. Possibly.

23 Q. Did you also suggest to Siddig Ali that Mohammed
24 Abouhalima should not be used in this plan?

25 A. Also possible.

1 Q. Didn't you suggest that Mohammed Abouhalima not
2 be used because Mohammed Abouhalima's brother had been
3 arrested, Mahmoud Abouhalima?

4 A. Yes.

5 Q. Despite those suggestions, you never told Siddig
6 Ali that you weren't going to participate.

7 A. At the beginning, I told him no.

8 Q. Later on you went along with him, correct?

9 A. When I found out that he insisted on that and he
10 did not want to change his mind, I wanted to slow him down,
11 and also to control him at the same time, so that he would
12 not hurt anybody else, because I knew that the Sudanese
13 brothers were following him blindly.

14 Q. Sir, isn't it a fact that you went along with
15 him, or didn't you tell the agents you went along with him
16 because you didn't want Siddig to consider you a coward?

17 A. I don't think that I said that.

18 Q. Sir, I am showing you what has been marked
19 35119A, at page 3.

20 MR. BERNSTEIN: May I approach, your Honor?

21 THE COURT: Yes, you may.

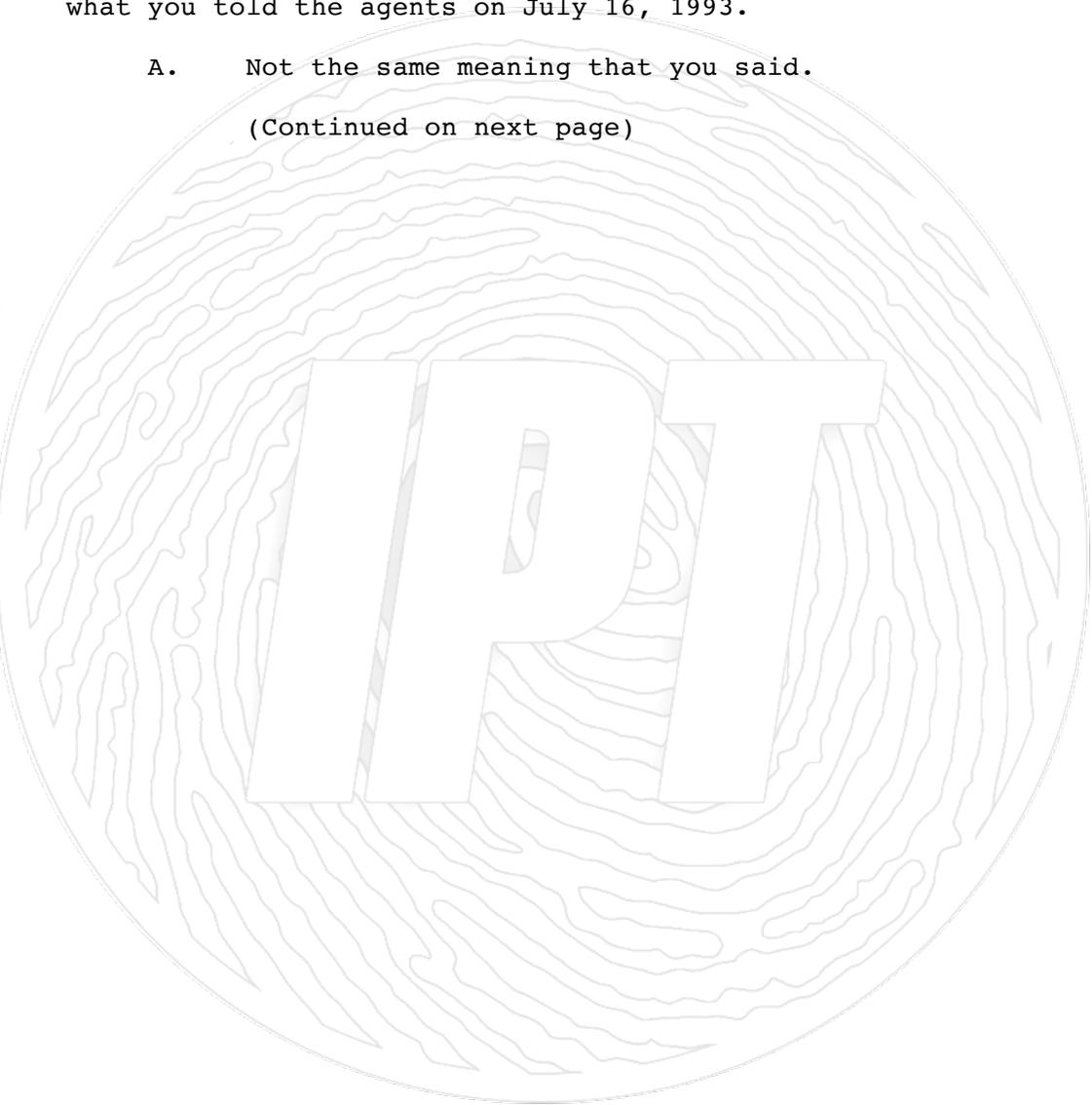
22 Q. And I ask you to read from the highlighted yellow
23 portion at the bottom of page 3 the last, sentence, and I
24 ask you whether or not that refreshes your recollection as
25 to whether or not you told the agents that you went along

1 with or listened to Siddig -- I will withdraw the
2 question -- that you listened to Siddig because you didn't
3 want to be considered a coward? Sir, I ask you if that
4 refreshes your recollection as to whether or not that is
5 what you told the agents on July 16, 1993.

6 A. Not the same meaning that you said.

7 (Continued on next page)

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1 Q. So that what I have shown you doesn't refresh
2 your recollection as to whether you said you didn't want to
3 be considered a coward.

4 MR. KHUZAMI: Objection.

5 THE COURT: Sustained.

6 Q. Sir, despite your suggestions and your
7 motivations, it was never your intention to kill President
8 Mubarak, correct?

9 MR. KHUZAMI: Objection.

10 THE COURT: Sustained.

11 MR. BERNSTEIN: Sir. I have no further
12 questions. Thank you.

13 THE COURT: Anyone else? Ms. London. Actually,
14 we will take a break. Ladies and gentlemen, please leave
15 your notes and other materials behind. Please don't discuss
16 the case, and we will resume in a few minutes.

17 (Jury excused)

18 (Witness excused)

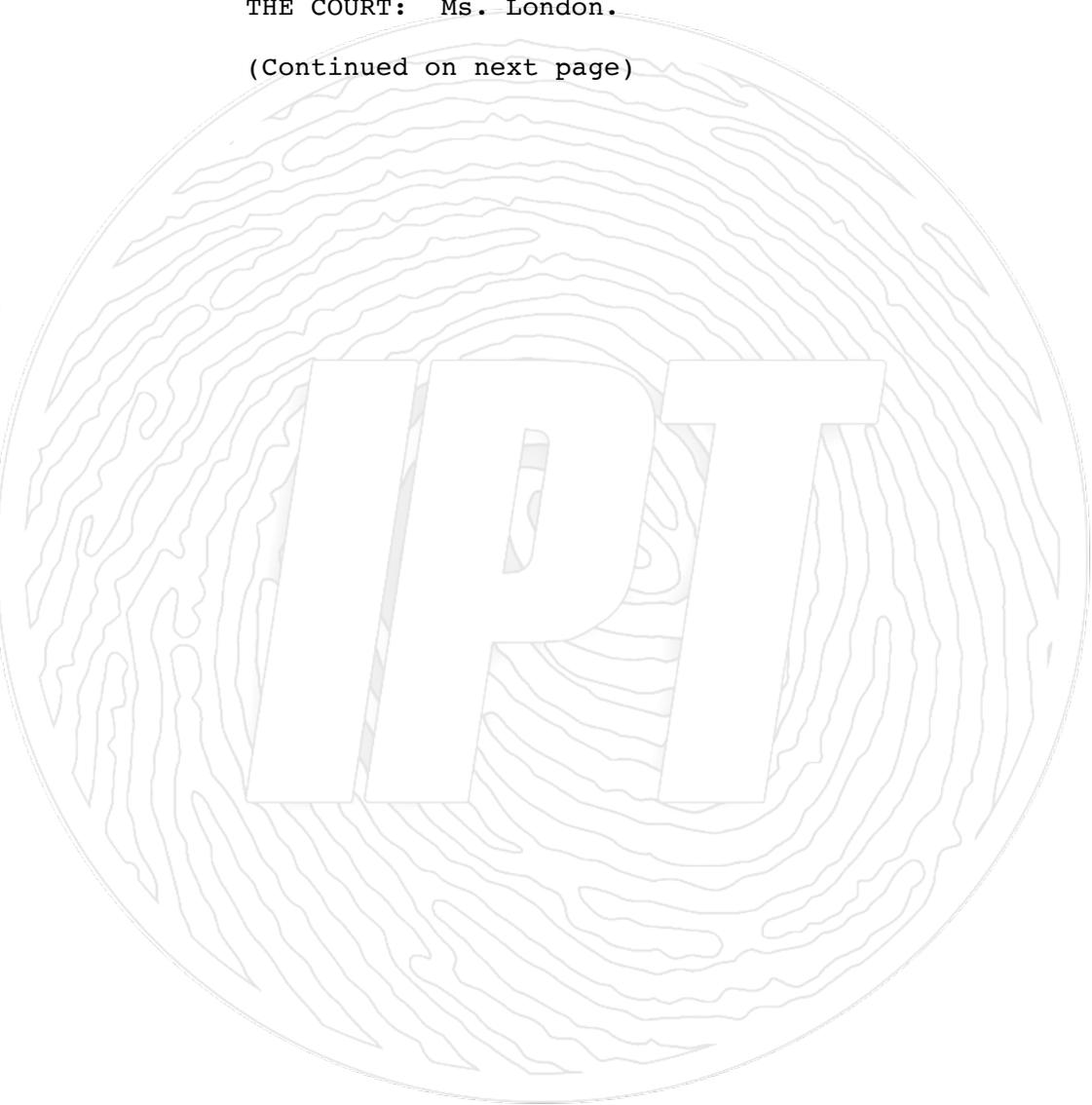
19 (Recess)

20 THE COURT: Mr. Wasserman, you wanted to publish
21 the photographs?

22 MR. WASSERMAN: Your Honor, I have spoken with
23 Miss London, your Honor, and I believe she has some
24 photographs as well, if we could put them all in at the same
25 time, your Honor.

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THE COURT: Fine.
MR. WASSERMAN: Thank you.
(Witness resumed)
(Jury present)
THE COURT: Ms. London.
(Continued on next page)



1 CROSS-EXAMINATION

2 BY MS. LONDON:

3 Q. Good morning, Mr. Haggag. I represent Tarig
4 Elhassan.

5 Mr. Haggag, throughout 1992, would it be fair to
6 say that you heard a lot of discussions in the mosques and
7 in the Muslim communities about what was happening to
8 Muslims in Bosnia?

9 A. Yes.

10 Q. In fact, would it be fair to say that you
11 participated in many of these discussions?

12 A. Yes.

13 Q. Would I be correct, or do you believe that the
14 Muslims in general were very upset about the plight of --

15 MR. KHUZAMI: Objection.

16 THE COURT: Sustained.

17 Q. Were you upset about the plight of Muslims in
18 Bosnia?

19 A. Yes.

20 Q. Do you know of other Muslims who were upset about
21 the plight of Muslims in Bosnia?

22 A. Yes.

23 Q. It would be fair to say that you were upset about
24 the attempts to kill all the Muslims in that country?

25 MR. KHUZAMI: Objection.

1 THE COURT: Sustained. Let's move on,
2 Ms. London, please.

3 Q. During 1992, there were various speakers who
4 lectured about the situation of Muslims in Bosnia at the El
5 Salaam Mosque, isn't that correct?

6 A. Yes.

7 Q. These speakers were also lecturing in other
8 mosques in this New York City/New Jersey area, correct?

9 A. Possibly.

10 Q. Do you recall hearing a lecture by a speaker by
11 the name of Sheik Thabit, T-H-A-B-I-T?

12 A. I am not sure about the name.

13 Q. Do you recall hearing lectures from Bosnian
14 sheiks?

15 A. Yes.

16 Q. At these lectures, videos were sometimes shown,
17 were they not?

18 A. Yes.

19 Q. In fact, at these lectures when you saw videos,
20 you saw pictures of pregnant women with their stomachs cut
21 open.

22 MR. KHUZAMI: Objection.

23 THE COURT: Sustained.

24 Q. Would it be fair to say that the videos that you
25 saw contained graphic and ugly depictions of what was

1 happening to Muslims in Bosnia?

2 A. Yes.

3 Q. And you heard that people there, Muslims there
4 had no food, no water, no medicines, no shelter, correct?

5 A. Yes.

6 Q. As a result of these lectures and these speeches
7 and the videos, fund-raising drives, drives to raise money
8 were organized, is that correct?

9 A. Yes.

10 Q. In fact, fund-raising drives were organized at
11 the El Salaam Mosque, isn't that correct?

12 A. Yes.

13 Q. And the funds were to be used to buy medicines
14 and food to send to the Muslims in Bosnia, isn't that
15 correct?

16 A. Yes.

17 Q. And there were clothing drives, attempts to
18 collect clothing to send to Bosnia, correct?

19 A. Yes.

20 Q. And you as a Muslim believed that it was your
21 duty to help out fellow Muslims in trouble, isn't that
22 correct?

23 A. Yes.

24 Q. In fact, it is a Muslim duty to help fellow
25 Muslims in trouble, correct?

1 A. Yes.

2 Q. Muslims were asked, if they could, to train to go
3 to Bosnia, isn't that correct?

4 A. Yes.

5 Q. And it would be fair to say that Muslims were not
6 being sent or brothers were not being sent to Bosnia to help
7 there without getting training first, isn't that correct?

8 A. Yes.

9 Q. By the middle of 1992, would it be fair to say
10 that Siddig Ali was talking to you about going to Bosnia?

11 A. Yes.

12 Q. And that Siddig had told you he wanted to be the
13 leader of one of the Bosnian relief efforts, correct?

14 A. Leader --

15 Q. He wanted to be an organizer, a major participant
16 in organizing Bosnian relief efforts.

17 A. Yes.

18 Q. And Siddig also lectured at various mosques about
19 the need to help Muslims in Bosnia, correct?

20 A. Yes.

21 Q. One of the mosques he lectured at was the Warren
22 Street mosque here in New York City, correct?

23 A. Yes.

24 Q. At these lectures he tried to recruit people,
25 isn't that correct?

1 A. Yes.

2 Q. Siddig was a good speaker, correct?

3 A. Yes.

4 Q. He was able to impress people as being a pious
5 person, correct?

6 A. Yes.

7 Q. With very strong religious beliefs. When he
8 spoke, he impressed people that he, Siddig Ali, was devoutly
9 Muslim, isn't that correct?

10 A. Yes.

11 Q. And by his speaking abilities, Siddig was able to
12 get people to trust in him, isn't that correct?

13 A. Yes.

14 Q. And he used Islam to build this trust in his
15 fellow brothers, correct?

16 A. Yes.

17 Q. You have already told us that in your
18 understanding, the purpose of going to Pennsylvania was to
19 train people to be able to go to Bosnia, correct?

20 MR. KHUZAMI: Objection.

21 THE COURT: Overruled. Was that your
22 testimony -- the purpose of whose going to Pennsylvania?

23 MS. LONDON: The purpose of the Pennsylvania
24 training.

25 THE COURT: I will allow it. Go ahead.

1 A. Yes, at the beginning, yes.

2 Q. This training was open to anybody who wanted to
3 go, isn't that right?

4 A. No.

5 (Continued on next page)

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1 Q. In your debriefings with the government, did you
2 not say to them that the training was open to anyone who
3 wanted to go?

4 A. It was open to the people whom Siddig would
5 choose, not open for everybody.

6 Q. In going to this training, you had minimal
7 personal cost in dollars, correct, you personally? It
8 didn't cost you very much money to go to the training?

9 A. Yes.

10 Q. You personally did not have to supply any weapons
11 or guns that might be used at the training, correct?

12 A. Yes.

13 Q. You have testified that you went to this camp on
14 one occasion, correct?

15 A. Yes.

16 Q. I would be correct in saying that there were
17 other trips to the camp, other weekend trips that you did
18 not go on, correct?

19 A. Yes.

20 Q. In fact, in previous questioning here, you have
21 listed other people who went with you on the trips, isn't
22 that correct?

23 A. Yes.

24 Q. You had conversations about your experiences in
25 Pennsylvania with my client, Tarig Elhassan, isn't that

1 correct?

2 A. Could you repeat the question, please?

3 Q. You had discussions or conversations with Tarig
4 Elhassan about your training in Pennsylvania, isn't that
5 correct?

6 A. Yes.

7 Q. In fact, in your understanding, Tarig Elhassan
8 went to the camp on a number of occasions, correct?

9 A. Yes.

10 Q. But not at the same time as you, correct?

11 A. Yes.

12 Q. In fact, you had conversations with Tarig
13 Elhassan about this Pennsylvania training at Lincoln Park in
14 Jersey City, correct?

15 A. Yes.

16 Q. You were there with others to do physical
17 exercise training, correct?

18 A. Yes.

19 Q. And in waiting for other people to come, you had
20 conversations with Tarig about what you did in Pennsylvania
21 and what he did in Pennsylvania, correct?

22 A. Yes.

23 Q. Would it be fair to say that the emphasis in the
24 training in Pennsylvania was getting in shape?

25 A. Yes.

1 Q. The training involved strenuous physical
2 exercise?

3 A. Part of it, yes.

4 Q. And it involved long runs, correct?

5 A. Yes.

6 Q. Obstacle courses, where you had to climb over
7 things?

8 A. Yes.

9 Q. Correct?

10 MS. LONDON: Your Honor, I would like to approach
11 the witness and show him defendant Elhassan Exhibits C1
12 through C4, which the government has agreed to stipulate are
13 photographs taken during the time of the Pennsylvania
14 training between December of 1992 and February of 1993.

15 THE COURT: OK. Go ahead.

16 MS. LONDON: I would like to offer these
17 photographs into evidence, your Honor.

18 MR. KHUZAMI: So stipulated.

19 THE COURT: All right.

20 They have been stipulated in.

21 (Defendant Elhassan Exhibits C1 through C4 for
22 identification was received in evidence)

23 THE COURT: Did you want to show them to the
24 witness?

25 MS. LONDON: Yes.

1 THE COURT: Go ahead.

2 Q. Mr. Haggag, I am going to show you four
3 photographs marked C1 through C4.

4 MS. LONDON: May I stand here?

5 THE COURT: If you are going to question about
6 the photographs, you may. Go ahead. Sure.

7 MS. LONDON: Yes, your Honor.

8 Q. Directing your attention to C1, Mr. Haggag, do
9 you recognize the area depicted in that photograph?

10 A. The area you mean?

11 Q. Do you recognize there is part of an obstacle
12 course in that photograph? Do you recognize that?

13 A. No.

14 Q. In your training there, did you have to climb
15 over a large bar and then under another part of a bar in the
16 middle of a field?

17 A. No.

18 Q. Do you recognize who is in C1?

19 A. I think it is Siddig.

20 Q. Let me take a quick look at C2.

21 Do you recognize that --

22 THE COURT: Could you talk into the microphone,
23 please. Thank you.

24 Q. In C2, Mr. Haggag, do you recognize that as part
25 of an obstacle course?

1 A. I am not sure of the area.

2 Q. Do you recall an obstacle course like that on
3 your visit to Pennsylvania?

4 A. No.

5 Q. I won't to ask you identify people there. I
6 think it is difficult.

7 In photograph C3 and C4, I would direct your
8 attention to the large -- not large, a long strip that runs
9 through the center of the photograph.

10 A. Yes.

11 Q. That looks a little bit like an old part of a
12 railroad track or something like that, correct?

13 A. Yes.

14 Q. Do you recall doing any maneuvers or exercises on
15 a metal strip like that?

16 A. No, I don't remember now.

17 Q. Do you recognize any of the people in the
18 photograph in C4? Look at C3. It may be clearer.

19 A. Yes.

20 Q. Directing your attention to the person in the
21 left front of the photograph in C3 with his head down, do
22 you recognize who that is?

23 A. This one?

24 Q. Yes, correct.

25 A. Not clear.

1 Q. Do you recognize the person standing next to him?

2 A. Behind him?

3 Q. Yes. The person also that appears sort of maybe
4 a little bit behind him, but as opposed to the other three
5 people in the photograph in the front wearing a cap that's
6 on backwards, a vest and a long white shirt.

7 A. From the way he looks, there is a possibility
8 that it could be the lawyer Abdullah, but I am not -- it's
9 not possible to make sure because it is not very clear.

10 Q. Thank you. Mohaimin you've told us was the
11 director of the camp there, correct?

12 A. Yes.

13 Q. He told you that he was going to try and create
14 for you there some of the conditions that you could expect
15 to find in Bosnia, correct?

16 A. Yes.

17 Q. Do you recall there being a map of Bosnia on one
18 of the walls?

19 A. No.

20 Q. You have already told us that you went there in
21 winter, correct?

22 A. (In English) Repeat again, please?

23 Q. When you went there it was winter, and it was
24 cold, correct?

25 A. Yes.

1 Q. You've told us about the night that you had to
2 spend up on a mountain, correct?

3 A. Yes.

4 Q. It would be fair to say that that was not only
5 cold but also rather unpleasant, correct?

6 A. Yes.

7 Q. And throughout the night you as a group had to be
8 on the alert for a surprise attack from Mohaimin and his
9 assistant, correct?

10 A. Yes.

11 Q. So each person had to do a two- or three-hour
12 watch, correct?

13 A. Yes.

14 Q. The purpose of the surprise attack was that
15 Mohaimin was going to pretend he was the Serbian enemy,
16 correct?

17 A. Yes.

18 Q. You were up there simulating, pretending you were
19 behind, you were in enemy territory, Serbian territory,
20 correct?

21 A. Yes.

22 Q. When Siddig organized your group to go to
23 Pennsylvania, did he tell you what kind of clothing to take
24 with you?

25 A. Yes.

1 Q. He did tell you that you would need very warm
2 clothing because you would be outdoors in the cold a lot?

3 A. Yes.

4 Q. You testified about the mission during your visit
5 to blow up the power plant. You do recall that testimony,
6 correct?

7 A. Yes.

8 Q. Now, Mohaimin gave you very detailed instructions
9 before you set out on that mission, correct?

10 A. Yes.

11 Q. He gave you a briefing session and told you that
12 your mission that night was going to be to blow up the power
13 plant at the top of the mountain, correct, or the top of the
14 hill?

15 A. Yes.

16 Q. That the power plant was in Serbian territory,
17 correct?

18 A. Yes.

19 Q. You never intended to blow up that power plant,
20 did you?

21 A. Yes.

22 A. (In English) I never did.

23 Q. And as a group you never intended to blow up that
24 power plant, correct?

25 A. Yes.

1 Q. But you acted as though it was a real-life
2 mission, correct?

3 A. Yes.

4 Q. Before you went out on the mission Mohaimin even
5 sketched out on a blackboard for you the plan of attack on
6 the power plant, correct?

7 A. Yes.

8 Q. And you learned a set of hand signals, correct?

9 A. Yes.

10 Q. There was a signal for when you had to lie down
11 and not move, correct?

12 A. Yes.

13 Q. And a signal for when you should get up and run,
14 correct?

15 A. Yes.

16 Q. You testified, didn't you, that on this run you
17 felt faint and you vomited, correct?

18 A. Yes.

19 Q. But you still kept going, didn't you?

20 A. Yes.

21 Q. Even though you knew it was a simulated mission,
22 correct?

23 A. Yes.

24 Q. You treated it as though it was a real one,
25 correct?

1 A. Yes.

2 Q. You testified when Mr. Bernstein was questioning
3 you about code names, or I think he referred to them as
4 nicknames that were used, that Siddig Ali and Abu Ubaidah
5 had worked out, correct?

6 A. Yes.

7 Q. It would be fair to say that most of these names
8 were a name prefixed by Abu, correct?

9 A. Yes.

10 Q. Are you aware of the code name that Tarig
11 Elhassan was given during this training period?

12 A. No, I'm not sure. He told me about it, but I'm
13 not sure of it.

14 Q. In your debriefings with the government, you were
15 questioned about the code names, were you not?

16 A. Yes.

17 Q. Isn't it a fact that in these debriefings you
18 informed the government that Mr. Elhassan's code name,
19 Tarig's code name during these training trips was Abu Aisha?

20 A. Yes.

21 Q. Are you aware that Mr. Elhassan has children?

22 A. No. I don't know the names of his children.

23 Q. No, are you aware that he does have children?

24 A. Yes.

25 Q. In fact, Mr. Tarig invited you to a feast that he

1 had to celebrate the birth of his youngest child, Shuaib,
2 correct?

3 A. Indirectly, yes.

4 Q. Mr. Bernstein asked you about team one, which was
5 going to be sent to Bosnia first, do you recall those
6 questions?

7 A. Yes.

8 Q. You told us that team would be included Siddig,
9 Amir, Tarig, Elhassan, and Mr. Bernstein mentioned a
10 Mohammed, do you recall those four names?

11 A. Yes.

12 Q. It would be fair to say that the Mohammed was
13 Mohammed Abouhalima, correct?

14 A. Yes.

15 Q. During your weekend in Pennsylvania, did you have
16 other simulation exercises?

17 A. What do you mean?

18 Q. For example, did Mohaimin and his assistants ever
19 attack your living quarters, you know, during the night,
20 while you were sleeping?

21 A. No, that didn't happen.

22 Q. During your trip to Pennsylvania did Mohaimin
23 ever capture you all, line you up and then spray pepper mace
24 in your face?

25 A. No.

1 Q. Did you hear about the pepper mace spraying from
2 other people who went on other occasions?

3 A. Yes.

4 Q. They described it as a very unpleasant
5 experience, right?

6 A. Yes.

7 Q. Where they couldn't see, their eyes are stinging
8 and they're expected to survive through it, correct?

9 A. Yes.

10 Q. It would be fair to say that the owners of this
11 camp took the training seriously, correct?

12 A. Yes.

13 Q. And you were told that you would have to train
14 for two or three months before you could be sent to Bosnia,
15 correct?

16 A. (In English) Repeat again, please?

17 A. (Through interpreter) Would you repeat the
18 question, please.

19 Q. You were told that you would have to train for
20 two or three months before being sent to Bosnia?

21 A. Yes. Something like that.

22 Q. Around the same time as this Pennsylvania
23 training, there was other physical training going on at
24 Lincoln Park in Jersey City, correct?

25 A. Yes.

1 Q. This involved many of the same people, correct?

2 A. Yes.

3 Q. Lincoln Park is a public park in Jersey City,
4 isn't it?

5 A. Yes.

6 Q. It's an open --

7 A. Yes.

8 Q. Open public park?

9 A. Yes.

10 Q. Anyone can use it, correct?

11 A. Yes.

12 Q. You don't need a special pass or a membership
13 card to get in there, correct?

14 A. Yes.

15 Q. You met there several times a week, correct?

16 A. Yes.

17 Q. And you ran and did calisthenics, correct?

18 A. Yes.

19 Q. And just generally tried to get in shape,
20 correct?

21 A. Yes.

22 Q. I believe you also testified about a weapons
23 training -- well, withdrawn.

24 Did there come a time, sometime around October of
25 1992 that you went to the Kalifah mosque in Brooklyn with

1 Siddig Ali?

2 A. Yes.

3 Q. You went there to attend a weapons training
4 course, correct?

5 A. Yes.

6 Q. That was a course sponsored by the NRA, the
7 National Rifle Association, correct?

8 A. Yes.

9 Q. And it was run by a Mr. Ferguson, is that
10 correct?

11 A. (In English) I don't know the name.

12 Q. You had to register or sign up for this course,
13 right?

14 A. Yes.

15 Q. You also saw Tarig Elhassan and Amir Abdelgani at
16 this course, right?

17 A. Yes.

18 Q. But they didn't go there with you, correct?

19 A. What do you mean, go with me?

20 Q. You traveled there with Siddig Ali, correct?

21 A. Yes.

22 Q. You never traveled there with Tarig and Amir,
23 correct?

24 A. Yes.

25 Q. It would be fair to say there were around 30

1 people or so in this course?

2 A. No.

3 Q. About how many people would you say?

4 A. Ten or twelve.

5 Q. Would it be fair to say that there were people
6 that you didn't know at this course?

7 A. Yes.

8 Q. At the course you were taught to identify various
9 guns?

10 A. Yes.

11 Q. Taught basic handling of a gun?

12 A. Yes.

13 Q. How to clean the gun you were taught, correct?

14 A. Yes.

15 Q. There was no actual firing of weapons, was there?

16 A. No.

17 Q. It would be fair to say that you found the course
18 was not very interesting, correct?

19 A. Yes.

20 Q. Would it be fair to say you found the course was
21 not very useful?

22 A. Yes.

23 Q. Would it be fair to say that you believed that
24 the man who was running the course was getting a lot of
25 money for doing nothing?

1 A. Yes.

2 Q. On Monday at conclusion of your direct testimony
3 you testified that you gave a check to Mohammed Abouhalima
4 for the families of fellow Muslims in jail, correct?

5 A. Yes.

6 Q. This check had been issued by a charity, correct?

7 A. Yes.

8 Q. You as a Muslim believed that the families of
9 people in jail took precedent over the other charities at
10 that time, was that correct?

11 A. Yes.

12 Q. I think, in fact, in response to a question from
13 Ms. Stewart about organizing defense committees, you
14 responded that assisting his family is a duty?

15 A. Yes.

16 Q. By that you meant it was a duty to assist the
17 family of a Muslim prisoner who is not available to support
18 his own family, correct?

19 A. Yes.

20 Q. In fact, there were other Muslims in the
21 community, were there not, who were collecting money to help
22 the family of Mahmud Abouhalima and other prisoners,
23 correct?

24 A. Yes.

25 MS. LONDON: Your Honor, I have no further

1 questions.

2 THE COURT: Thank you.

3 Ms. Amsterdam, representing Mr. Khallafalla.

4 Go ahead.

5 MS. LONDON: Oh, your Honor, I'm sorry. May we
6 publish the photographs to the jury?

7 THE COURT: Yes, you may. You are going to
8 publish the ones that were also --

9 MS. LONDON: From Mr. Wasserman.

10 THE COURT: -- introduced by Mr. Wasserman for
11 Mr. Hampton-El. Go ahead.

12 (Exhibits published to the jury)

13 THE COURT: Go ahead, Ms. Amsterdam.

14 MS. AMSTERDAM: Thank you, sir.

15 CROSS-EXAMINATION

16 BY MS. AMSTERDAM:

17 Q. Good afternoon, sir.

18 A. (In English) Good afternoon.

19 Q. Is it Mr. Haggag or Haggag?

20 A. (In English) No, Haggag.

21 Q. Haggag. Thank you, sir.

22 A. (In English) Thank you.

23 Q. On direct examination with Mr. Khuzami, you
24 talked about Siddig being crazy, do you recall that?

25 A. Yes.

1 Q. When you first met him, however, he didn't appear
2 crazy then, did he?

3 A. No.

4 Q. When did you first meet him approximately?

5 A. During '91.

6 Q. 1991?

7 A. Yes, I think so.

8 Q. And you met him at the mosque, did you not?

9 A. Yes.

10 Q. I believe it was at a time that there were
11 reelections going on in the mosque, correct?

12 A. Yes.

13 Q. You were publishing a magazine about the upcoming
14 elections, right? You were publishing some kind of magazine
15 or informational printing, writing about the upcoming
16 elections, do you recall that?

17 A. No.

18 Q. Didn't you ask Siddig to help you with the
19 upcoming elections?

20 A. No.

21 Q. All right. Nonetheless, in your dealings with
22 Siddig at the mosque, he impressed you as somebody who was
23 hard working, correct, at that time?

24 A. (In English) Easy to like.

25 A. (Through interpreter) Yeah, he was somebody that

1 you can take to, is easy to like.

2 Q. He was easy to like?

3 A. Yeah.

4 Q. He had a certain amount of charm or charisma?

5 A. Yes.

6 Q. The two of you became close friends, or you
7 became friendly, right?

8 A. Yes.

9 Q. At the time you became friendly it wasn't
10 apparent to you that Siddig was crazy, right?

11 A. No.

12 Q. You spent a good deal of time together during '91
13 and '92, would that be a fair statement?

14 A. '92, yes. In '91 our relationship was very
15 little.

16 Q. During '92 you'd see each other at the mosque?

17 A. Yes.

18 Q. You'd see each other outside the mosque, correct?

19 A. Yes.

20 Q. There were times that Siddig actually told you
21 that he viewed you as his best friend, correct?

22 A. Yes.

23 Q. There were times that Siddig told you that you
24 were the only person he trusted, correct?

25 A. Yes.

1 Q. Even after you told him that the FBI had come to
2 visit you or speak with you, Siddig still told you that you
3 were the only person that he truly trusted, correct?

4 A. I don't think that I was the only one that he
5 could trust, but, yes, he could trust me.

6 Q. Siddig told you that?

7 A. Yes, he told me that, but he didn't tell me the
8 part of I'm the only one that --

9 Q. As you say, he was easy to like, right?

10 A. Yes.

11 Q. He appeared to be quite smart, would that be
12 true?

13 A. Yes.

14 A. (In English) Smart talking.

15 Q. He was very articulate in English, right, spoke
16 English quite well?

17 A. Yes.

18 Q. That's something that many immigrants admire,
19 would that be a fair statement?

20 A. Yes.

21 Q. He appeared to be educated, would that be fair?

22 A. Yes.

23 Q. He also appeared to be very dedicated to Islamic
24 causes, correct?

25 A. Yes.

1 Q. He confided in you during 1992 that he wanted to
2 become an important person in the Muslim community, he
3 wanted to work hard to be recognized as an important person
4 in the community, right?

5 A. Yes.

6 Q. There were many people within -- the Muslim
7 community is a pretty small community, would that be
8 correct?

9 A. Yes.

10 Q. There were people within the community who
11 actually viewed Siddig Ali as a scholar, right?

12 A. (In English) As what?

13 Q. A religious scholar.

14 A. No.

15 Q. There were people in the community that thought
16 he was very, very, very religious and admired him for that?

17 A. They knew that he was a good orator, but not very
18 religious.

19 Q. A good speaker?

20 A. Yes.

21 A. (In English) Good speaker.

22 Q. And he was asked at many mosques to come and
23 speak, correct?

24 A. Yes.

25 Q. During 1992, most of what he spoke about was

1 Bosnia, correct?

2 A. Yes.

3 Q. During the fall of 1992, you returned home to
4 Egypt, correct?

5 A. Yes.

6 Q. When you came back in late 1992 there were --
7 Siddig had taken a lot of efforts to -- withdrawn.

8 When you returned in late 1992, Siddig had
9 training underway for Bosnia, correct?

10 A. He was looking for it, yes.

11 Q. He convinced you to go to Pennsylvania with him
12 even though you didn't intend to go to Bosnia yourself,
13 right?

14 A. Yes.

15 Q. You stated, did you not, that as a Muslim you
16 felt that it was your responsibility to be trained to know
17 how to use weapons, would that be a fair statement?

18 A. Yes.

19 Q. Isn't there an Arabic statement, and I'm sorry if
20 I'm not translating it correctly, but something to the
21 effect of, "Teach your children swimming, archery and
22 horseback riding"?

23 A. It is a statement from the Prophet. It is an
24 order from the Prophet.

25 Q. From the prophet in the Bible? In the Koran?

1 A. (In English) In the Koran, yes.

2 Q. That statement suggests that Muslims should be
3 prepared not to commit crimes, but to defend themselves and
4 their brothers, correct?

5 A. Yes.

6 Q. That motivation was part of your reason for going
7 to training in Pennsylvania, right?

8 A. Yes.

9 Q. It took you a long time of being with Siddig Ali
10 before you realized that he was crazy, would that be fair?

11 A. Yes.

12 Q. It wasn't obvious to you at the beginning, was
13 it?

14 A. No.

15 Q. And you said to Ms. Stewart, I believe, that one
16 of the things that made you realize eventually that Siddig
17 was crazy was he was talking about doing bad things, right?

18 A. Yes.

19 Q. That was one of the things that made you realize
20 that Siddig was imbalanced?

21 A. Yes.

22 Q. But over the many months of your friendship with
23 Siddig there were other things also that made you suspicious
24 that Siddig was a bit crazy, right?

25 A. Yes.

1 A. (In English) I would say so.

2 Q. He seemed very hyperactive, would that be fair?

3 A. Possibly.

4 Q. During 1992 he lost a great deal of weight, would
5 that be a fair statement?

6 A. No, I'm not sure of that.

7 Q. I didn't appear to be able to hold a job?

8 A. He did not have the desire to work.

9 Q. Would I be correct in saying he started to hold
10 himself out as if he was a great religious leader and that
11 made you think he was a bit crazy, right?

12 MR. KHUZAMI: Objection to form.

13 THE COURT: Yes. Do you want to break it up.

14 Q. Didn't he begin to think of himself as quite
15 important in the Muslim community?

16 A. He had the desire.

17 Q. He had a desire to be very important in the
18 community?

19 A. Yes.

20 Q. He had the desire to be viewed as a great Islamic
21 figure, right?

22 A. Yes.

23 Q. But there came a time that you began to see
24 through his disguise, and you began to see the real Siddig
25 Ali, right?

1 A. Yes.

2 Q. And it became clear to you who spent a lot of
3 time with Siddig Ali that he really didn't know that much
4 about Islam, would that be fair to say?

5 A. From the beginning I knew that.

6 Q. He didn't seem to have that much knowledge?

7 A. During our private discussions and meetings it
8 was clear that he knew only a little bit about religion.

9 Q. That you found out during conversations with him,
10 right?

11 A. Yes.

12 Q. During private conversations over a period of
13 time, right?

14 A. Yes.

15 MR. KHUZAMI: Objection.

16 THE WITNESS: (In English) Excuse me.

17 THE COURT: Sustained.

18 Q. And then you began to see that his actions also
19 were hypocritical, would that be fair to say?

20 MR. KHUZAMI: Objection.

21 THE COURT: Sustained.

22 Q. Was one of the reasons that you thought Siddig
23 Ali appeared to be crazy that he appeared to say that he was
24 very, very religious and then do things that were contrary
25 to the religion? Would that be a fair statement?

1 A. No.

2 Q. Let me rephrase it.

3 Siddig, when he went to mosques and spoke, Siddig
4 appeared to be very religious, right?

5 A. Yes.

6 Q. And his reputation in the community was of being
7 a religious person, right?

8 A. Yes. He wanted to build up this reputation.

9 Q. But when you were him privately, you began to
10 have suspicions that he was not as religious as he appeared,
11 right?

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 Q. Did there come a time, sir, that you went with
15 Siddig Ali to a speech that he gave at Rutgers University?

16 A. No, I did not go there.

17 Q. Do you remember an occasion where Siddig Ali was
18 accused of having made sexual advances to a recent Muslim
19 convert, a college student, do you recall that?

20 A. Yes.

21 Q. That was one of the things that began to make you
22 feel suspicious about whether or not this man really was as
23 religious as he said he was, would that be fair to say?

24 MR. KHUZAMI: Objection.

25 THE COURT: Sustained.

1 Q. Now, you stated that you said that he was -- that
2 you came to believe that he was crazy, right?

3 A. Yes. And I explained what I meant by the term
4 "crazy."

5 Q. Part of why you came to believe that he was crazy
6 was that you saw in dealing with him that he lied to you at
7 times, right?

8 A. (In English) I cannot remember exactly.

9 Q. Do you remember -- I'm sorry, sir.

10 A. I don't remember what you mean by saying that,
11 lying to me in numerous occasions.

12 Q. Well, there was a time that he told you that he
13 knew -- that he had sent money to Mohammed Salameh, one of
14 the World Trade Center defendants, do you recall that?

15 A. No.

16 Q. Wasn't there a time that Mr. Siddig Ali told you
17 that he knew Mohammed Salameh?

18 A. No.

19 Q. Mohammed Salameh's middle name is Amin, A-M-I-N?

20 A. Yes.

21 Q. Didn't you, sir, write in your diary that
22 Siddig's statements of knowing Amin were false, they were
23 lies, and that after you met Salameh in prison you realized
24 that Siddig had lied about that?

25 A. Yes.

1 Q. In fact, you wrote that Siddig lied about knowing
2 him out of his feelings, Siddig's feelings of inferiority,
3 do you recall writing that in your diary?

4 A. Could I see this diary, please?

5 MR. KHUZAMI: Objection. 401, your Honor.

6 THE COURT: Sustained.

7 Q. After you were arrested, you realized that Siddig
8 had also lied about you, right?

9 A. Yes.

10 Q. You heard tape recorded conversations where he
11 spoke to Emad Salem about you, right?

12 A. Yes.

13 Q. You heard Siddig say that you had agreed to do
14 certain things, and you knew that that was a lie, right?

15 A. Yes.

16 Q. You heard Siddig say that you had in fact done
17 certain things, and you knew that those were lies, right?

18 A. What do you mean by "done"?

19 Q. Well, you listened to tape-recorded conversations
20 where Siddig told Emad that you had agreed to kill President
21 Mubarak, and that was a lie, right?

22 A. Yes.

23 MR. KHUZAMI: Objection.

24 THE COURT: That is overruled. Go ahead.

25 Q. Correct? There were a series of recorded

1 conversations that you listened to between Siddig and Emad
2 that you were not a party to the conversation, right?

3 A. Yes.

4 Q. Then you heard them when you were sitting in
5 jail, right?

6 A. Yes.

7 Q. You realized that the things that Siddig was
8 telling Emad about you had been lies, right?

9 MR. KHUZAMI: Objection.

10 THE COURT: Sustained.

11 Q. Did you realize that the things that --

12 THE COURT: Sustained.

13 Q. -- Siddig told Emad about you were lies?

14 THE COURT: Sustained.

15 Q. Did you also come to realize over the course of
16 your relationship with Siddig that he used you, took
17 advantage of you?

18 MR. KHUZAMI: Objection. 401.

19 THE COURT: Sustained.

20 Q. Was there a time, sir, that Siddig borrowed your
21 car without your permission and went to buy equipment,
22 training equipment? Do you recall such a time?

23 A. Yes. He borrowed my car.

24 Q. And then he got two tickets, and he didn't tell
25 you about them, right?

1 A. Yes.

2 Q. You regarded that as something that a religious
3 person really wouldn't do, correct?

4 A. Possible.

5 Q. Siddig seemed to you to create problems for those
6 people around him, right, such as you getting tickets?

7 MR. KHUZAMI: Objection.

8 Q. Would that be a fair statement?

9 THE COURT: Sustained, sustained, sustained.

10 MR. JACOBS: Your Honor, may I be heard on 806 on
11 this matter?

12 THE COURT: No, you may not.

13 MR. JACOBS: Then I cite 806 for the record.

14 THE COURT: OK.

15 MS. AMSTERDAM: I would join in that, your Honor.

16 Q. Isn't it a fact, sir, that in borrowing your car
17 without your permission and getting tickets on your car
18 which he didn't tell you about he was creating problems for
19 you without your knowledge, right?

20 THE COURT: Sustained.

21 Q. Right?

22 THE COURT: Sustained.

23 Q. It was the combination of this behavior on the
24 part of Siddig that made you eventually realize that Siddig
25 was crazy, right?

1 MR. KHUZAMI: Objection.

2 THE COURT: Sustained.

3 Ms. Amsterdam, do you have any unobjectionable
4 questions to ask? If you do, please ask them. Thank you.

5 Q. Even the way that Siddig Ali talked about the
6 criminal plans he had was crazy, he switched his targets
7 every day, correct?

8 MR. KHUZAMI: Objection.

9 THE COURT: Sustained.

10 Q. Isn't it true that Siddig Ali gave you a list of
11 a number of different things he wanted to do and that list
12 seemed to change every day?

13 MR. KHUZAMI: Objection to form.

14 Q. Did he give you a list of things he wanted to do?

15 A. No.

16 Q. Did he talk to you about a number of criminal
17 actions he wanted to take?

18 A. Yes.

19 Q. Didn't it appear to you that each day he had some
20 new thing that he wanted to do?

21 A. Yes.

22 Q. All right. He talked to you about the United
23 Nations, right?

24 A. Yes.

25 Q. He talked to you about Boutros Ghali, correct?

1 A. Yes.

2 Q. He talked to you about kidnaping somebody from
3 the Egyptian consul?

4 A. Yes.

5 Q. He talked to you about attacking the American
6 embassy in Cairo?

7 A. Yes.

8 Q. He talked to you about getting even with Egypt
9 because he claimed he had been abused there years ago when
10 he had visited the country?

11 A. No. It was not -- the intention was not to get
12 even.

13 Q. He talked to you about other targets, various
14 Jewish targets, without being specific as to what those
15 targets were?

16 A. Yes.

17 Q. He at one point said that he wanted to take some
18 action against a Congressman Schmerber, do you recall that?

19 A. Yes.

20 Q. And he wanted to take some action against Senator
21 D'Amato, do you recall that?

22 A. Yes.

23 Q. Even after you told Siddig that the FBI knew
24 about the Mubarak plot he said to you, "I'm going to do it
25 anyway," right?

1 A. (Through interpreter) Not exactly.

2 A. (In English) Next time.

3 A. (Through interpreter) And he said, "Next time."

4 Q. Well, that seemed crazy to you, didn't it?

5 A. Yes.

6 Q. Now, at first when Siddig started to talk about
7 these things, it seemed as if it was just talk, right?

8 A. Yes.

9 Q. In fact, you even told the FBI that you thought
10 that Siddig was just exercising his rights to free speech,
11 right?

12 A. Yes.

13 Q. You thought he was just angry about politics and
14 politicians in general, right?

15 A. Yes.

16 Q. It wasn't obvious to even you, a close friend,
17 that he might really be serious, at first it wasn't obvious
18 to you, right?

19 A. Yes.

20 Q. You told the FBI that you even doubted his
21 ability to carry out these actions, right?

22 A. Yes.

23 Q. Indeed, Siddig Ali didn't do anything specific
24 before the time that you left for your pilgrimage, right?

25 MR. KHUZAMI: Objection to form.

1 THE COURT: Sustained as to form. Stricken.

2 Q. Did there come a time that you left for your
3 pilgrimage in May that lasted from May to June of 1993?

4 A. Yes.

5 Q. Was that about the same time -- withdrawn.
6 You left in May of 1993?

7 A. Yes.

8 Q. Was that about the time, May of 1993, when Siddig
9 told you that he had met Emad Salem?

10 A. Before that, I think.

11 Q. Within weeks of your leaving he told you he had
12 met Emad Salem, right?

13 A. Yeah, but -- it's possible, yes, weeks.

14 MS. AMSTERDAM: I'm sorry?

15 THE INTERPRETER: Weeks, meaning weeks. You
16 know, I'm repeating what the witness has said, that weeks
17 means, you know, weeks, because he repeated the word in
18 English and Arabic.

19 Q. He told you approximately the end of April that
20 he had met Emad Salem?

21 A. Yes, around this time.

22 Q. Then you left in May?

23 A. Yes.

24 Q. To go on your pilgrimage, right?

25 A. Yes.

1 Q. Prior to his meeting Emad Salem, Siddig hadn't
2 taken any criminal actions, had he?

3 MR. KHUZAMI: Objection.

4 THE COURT: Sustained.

5 Q. Before meeting Emad Salem, Siddig had talked
6 about moving the training camps to the Sudan, do you recall
7 that?

8 A. Yes.

9 Q. And his training was about going to Bosnia,
10 correct?

11 A. (In English) In the beginning.

12 A. At the beginning, yes. Then after that, I
13 realized that he had his own agenda and Ubaidah had his own
14 agenda.

15 Q. You realized that he had his own agenda, correct?

16 A. Yes, from their talking.

17 Q. Talking to you personally, correct?

18 A. Yes.

19 Q. Through your friendship, your close friendship
20 with him you realized he had a different agenda, right?

21 A. Yes.

22 MR. KHUZAMI: Objection.

23 THE COURT: Sustained.

24 Q. Before Siddig met Emad Salem, he even talked
25 about going to the Philippines, right?

1 A. Possibly.

2 Q. When he first talked to you about Mubarak, that
3 was before he met Emad Salem, right?

4 A. Yes.

5 Q. The two of you met approximately four times to
6 discuss this?

7 A. Approximately, yes.

8 Q. During that period of time, no one made any
9 reservations at the hotel, right?

10 A. Yes.

11 Q. No one got any uniforms, right?

12 MR. KHUZAMI: Objection. Foundation.

13 THE COURT: Sustained.

14 Q. In connection with this plot to get Mubarak,
15 nobody got any hotel uniforms, correct?

16 MR. KHUZAMI: Objection.

17 THE COURT: Sustained.

18 Q. Siddig talked to you about trying to get
19 Mubarak's schedule for his, for coming to this country, do
20 you recall that?

21 A. Yes.

22 Q. He told you that he knew somebody at the Sudanese
23 Embassy who was going to give him that information, right?

24 A. Yes.

25 Q. Weeks went on, and he continued to tell you that

1 he was trying to get that information, right?

2 A. Yes.

3 Q. Months went on, and he told you he was trying to
4 get that information, right?

5 A. No.

6 Q. You never saw a schedule, did you?

7 A. No.

8 Q. You never met Yousef Imad or anyone else from the
9 Sudanese Embassy, right? You personally never met anyone,
10 right?

11 A. Yes.

12 Q. Eventually Siddig told you that President Mubarak
13 must be staying at either the Waldorf Hotel or the Plaza
14 Hotel because Siddig said that's where all the big shots
15 stay, right?

16 A. Yes.

17 Q. He told you he'd been checking the newspapers,
18 correct?

19 A. (In English) Excuse me?

20 Q. That he had been checking the newspapers
21 regarding Mubarak's schedule, correct?

22 A. His information about Mubarak's visit was from
23 Ahmed Yousef, who was working at the embassy.

24 Q. That's according to Siddig Ali, right?

25 A. Yes.

1 Q. Eventually Siddig Ali tells you that Mubarak must
2 be staying at either the Waldorf or the Plaza, because
3 that's where all the big shots stay, right?

4 A. Yes. That's the information he had from the
5 person who was working at the Sudanese Embassy.

6 Q. Oh, the person at the Sudanese embassy narrowed
7 it down to two hotels because that's where all the big shots
8 stay? That's your testimony?

9 MR. KHUZAMI: Objection.

10 THE COURT: Sustained.

11 Q. During these conversations that you had with
12 Siddig, no arrangements were made to get taxicabs, correct?

13 A. Yes.

14 Q. Then, isn't it a fact that no action was taken
15 against President Mubarak in the months of January,
16 February, March, or April, into May of '93 before you go on
17 your pilgrimage, right?

18 MR. KHUZAMI: Objection to form.

19 Q. Nothing happened about President Mubarak until
20 Siddig Ali met Emad Salem, right?

21 MR. KHUZAMI: Objection to form.

22 THE COURT: Sustained.

23 Q. When you met Emad Salem, he offered to check your
24 apartment for wiretaps, right?

25 A. Yes.

1 Q. He told you that he was involved in a United
2 Nations plot, and asked you if you wanted to join him,
3 right? He invited you to join him, right?

4 A. Yes.

5 Q. He bragged to you that he had helped the World
6 Trade Center bombers, correct?

7 A. Possibly, as far as I remember.

8 Q. And you wrote in your diary that Emad Salem was a
9 despicable person, correct?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q. Do you still hold that opinion of him today?

13 THE COURT: Sustained.

14 MR. JACOBS: 806, your Honor.

15 THE COURT: Sustained.

16 Ms. Amsterdam, do you want to come to a
17 convenient break point.

18 MS. AMSTERDAM: That is fine, your Honor.

19 THE COURT: Good.

20 Ladies and gentlemen, we are going to break for
21 lunch. Please leave your notes and other materials behind.
22 Please don't discuss the case, and we will resume after
23 lunch.

24 (The jury was excused)

25 THE COURT: You can step down.

1 (Witness excused)

2 THE COURT: Just for your information,
3 Mr. Jacobs, 806 has been complied with here. That does not
4 include eliciting opinions like the ones that were being
5 solicited.

6 MR. JACOBS: Well, I would disagree. Especially
7 with answers to questions relating to Siddig Ali.

8 THE COURT: There was ample cross-examination on
9 that under 806. Again, opinions of the kind that were
10 called for on the questions that I sustained objections to
11 don't come within 806.

12 See you after lunch.

13 (Luncheon recess)

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AFTERNOON SESSION

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2:00 p.m.

(In open court; jury not present)

THE COURT: In addition to the conversation we had this morning about 806, I should point out that there is a certain amount of discretion to limit repetitive cross-examination, and I have done that, and I intend to continue doing it.

Also, if I rule in the middle of a question, please don't complete the question.

MS. AMSTERDAM: Sorry, your Honor.

THE COURT: Because if you keep doing that, then it creates the impression that what you are trying to do is say I don't care about the ruling, I just want to get this in front of the jury, and if that happens, then I am going to tell them that is what you are doing and that you are inviting them to disregard their oath, and you don't want me to say that, right?

MS. AMSTERDAM: Sorry.

ABDO MOHAMMED HAGGAG, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: Ms. Amsterdam, go ahead.

(Continued on next page)

1 CROSS-EXAMINATION continued

2 BY MS. AMSTERDAM:

3 Q. Just a few more questions, sir. On direct
4 examination, you said that you were concerned that Siddig
5 Ali might hurt the other people around him. Do you recall
6 saying that?

7 A. Yes.

8 Q. That was due in part because he had a lot of
9 charisma and people trusted him, right?

10 A. The Sudanese brothers, yes.

11 Q. Trusted him?

12 A. Yes.

13 Q. And you yourself had followed him to Pennsylvania
14 even though you didn't want to go to Bosnia, correct?

15 A. Not following him. I went according to my own
16 decision.

17 Q. But he convinced you to go, correct, encouraged
18 you to go?

19 MR. KHUZAMI: Objection to form.

20 Q. He encouraged you to go?

21 A. Yes, possibly.

22 Q. And in part you went because he was able to
23 convince you to do this, right?

24 A. I would not say he convinced me to go. I went
25 there because I wanted to go.

1 Q. There was a time that we spoke about this
2 morning -- withdrawn.

3 There was an incident that we spoke about in the
4 morning wherein Siddig Ali had gotten you to loan him your
5 car without you knowing what he was going to use it for,
6 correct?

7 A. Yes.

8 Q. And you were concerned, were you not, that he
9 might get other people to do things for him without their
10 knowing what it was he intended to do, correct?

11 A. Yes.

12 Q. And he indeed did make plans without consulting
13 people, such as the Mubarak plan, right?

14 A. As far as the Mubarak plan, I tried as much as I
15 could to control him so that he wouldn't tell anybody else,
16 so that he would not hurt the Sudanese brothers who trusted
17 him.

18 Q. He also got you at one point to change --
19 withdrawn.

20 On direct examination you talked about a time
21 that you thought that you were going to go to get security
22 for a demonstration. Do you recall that?

23 A. Yes.

24 Q. And the sheik at one of the mosques had asked you
25 to do this, and you went with Siddig Ali, correct?

1 A. Yes.

2 Q. Without asking your permission, Siddig Ali
3 changed the plan, and instead of going to look for security,
4 Siddig took you to look for weapons, right?

5 A. Yes, to Rashid, to Abdel Rashid --

6 A. (In English) To meet Rashid.

7 Q. And he took you to Trenton without consulting you
8 as to what his purpose was? He had you follow him to
9 Trenton without you knowing why?

10 A. Yes, this Trenton, he put some pressure on me to
11 go with him. By Trenton you mean the Sandman Motel.

12 Q. Yes. Just a few additional questions, sir.
13 Would I be correct in saying that when Mahmoud Abouhalima
14 and Mohammad Salameh were arrested, that there was
15 widespread disbelief in the Muslim community, people did not
16 believe that they were involved in the Trade Center bombing?

17 MR. KHUZAMI: Objection.

18 THE COURT: Sustained.

19 Q. When Siddig came to you originally and told you
20 that Mahmoud Abouhalima was involved, you said to Siddig,
21 what are you hallucinating? Do you recall testifying to
22 that?

23 A. Yes.

24 Q. You did not believe that Mahmoud could be
25 involved, correct?

1 A. Yes.

2 Q. Through your work at the mosque -- withdrawn.

3 You were on the board of directors at the mosque?

4 A. At that time, no.

5 Q. But you attended the mosque frequently?

6 A. Yes.

7 Q. From your observations in the mosque and in the
8 Muslim community, would I be correct in saying that the
9 community as a whole did not believe that Mahmoud Abouhalima
10 was involved in the World Trade Center case?

11 THE COURT: Sustained.

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 Q. Would I be correct in saying that the community
15 and the mosque raised donations for the defense team and for
16 the families of the World Trade Center defendants?

17 A. Yes.

18 Q. Would I also be correct in saying that within the
19 Muslim community there was a heightened fear about law
20 enforcement?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 Q. Were you nervous about increased activity on the
24 part of law enforcement or informants after the World Trade
25 Center case?

1 A. It was natural to be afraid.

2 Q. Lastly, sir, about the training in Pennsylvania.
3 The night that you went -- not just you, but the night --
4 withdrawn.

5 First of all, the training in Pennsylvania,
6 Mr. Khallafalla was not there, correct?

7 MR. KHUZAMI: Objection to form.

8 THE COURT: Sustained as to form.

9 Q. When you were in Pennsylvania training,
10 Mr. Khallafalla was not present with you, correct?

11 A. No, he was not there.

12 Q. And the evening that you did the exercise
13 regarding the power plant, there was an occasion that a
14 police officer approached the trainer. Do you remember
15 that?

16 A. Yes.

17 Q. And the trainer was asked what was happening. Do
18 you recall that?

19 MR. KHUZAMI: Objection, foundation.

20 THE COURT: Did you see that happen?

21 THE WITNESS: Yes.

22 Q. Indeed, the trainer told the police officer at
23 that time that he was just looking for some wire that had
24 been stolen, correct?

25 A. The police officer told Abdel Mohaimon that there

1 were people that used to come there to steal the wires.
2 That's why the police officer was asking Abdul Mohaimon and
3 Abdul Mohaimon told us.

4 Q. Lastly, sir, Mr. Khuzami asked you when you were
5 in Pennsylvania at training, whether or not there was any
6 training in explosives. Do you recall that question?

7 A. Yes.

8 Q. And you told him that there was not. Do you
9 recall that?

10 A. Yes.

11 Q. When you were at training in Pennsylvania, was
12 Emad Salem there?

13 A. No.

14 MS. AMSTERDAM: I have no further questions.

15 THE COURT: Mr. Lavine, representing Fadil
16 Abdelgani. Go ahead.

17 MR. LAVINE: Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MR. LAVINE:

20 Q. Good afternoon, Mr. Haggag.

21 A. Good afternoon, sir.

22 Q. My name is Charles Lavine. I represent Fadil
23 Abdelgani. We have met before, have we not?

24 A. Yes.

25 Q. Let me bring you back to the training camp that

1 you attended in Pennsylvania. Do you remember how you got
2 there?

3 A. Yes.

4 Q. How was that?

5 A. There were two cars. I went with Siddig and
6 Hamdi in Hamdi's car, and I met Abdul. We went to Newark,
7 the Newark mosque, to wait for Abu Ubaidah. And the
8 Sudanese brothers came, I believe, in their van at this
9 point, to Newark's mosque, and then we went to Pennsylvania.

10 Q. On your way to Pennsylvania, do you remember if
11 you were in the same car as Fadil Abdelgani?

12 A. No, I don't think so.

13 Q. Do you remember what was the topic of
14 conversation -- withdrawn. Was there conversation in the
15 car on the trip to Pennsylvania? Were people talking?

16 A. Yes.

17 Q. Was Bosnia being discussed?

18 A. Yes.

19 Q. You were in Pennsylvania for two evenings, is
20 that correct?

21 A. Yes.

22 Q. Did you bring a sleeping bag?

23 A. No.

24 Q. Did anyone else bring sleeping bags?

25 A. No.

1 Q. Did you stay outside for both those evenings?

2 A. At the second half of the second night, it was
3 too cold for me, so I went to the warehouse that we were
4 staying at.

5 Q. Whether you got to the warehouse, did you see
6 Fadil there?

7 A. I can't remember.

8 Q. Do you remember if Fadil Abdelgani stayed outside
9 for the second night?

10 A. What do you mean by outside? Outside the tent or
11 outside the warehouse?

12 Q. Outside the warehouse.

13 A. I remember that I saw him in the morning, on
14 breakfast.

15 Q. The first night that you stayed outside, did you
16 see him outside during the evening?

17 A. At the same thing. By outside, what do you mean
18 by outside?

19 Q. Outside means out in nature, outside, whether in
20 a tent or not, but outside, not inside.

21 A. Yes, we met each other, we saw each other.

22 Q. Did you see him outside the second night?

23 A. Please try to specify outside during the night or
24 during the day or in the morning.

25 Q. During the second night when it was dark out,

1 isn't it true that Fadil had gone back to the warehouse and
2 did not stay outside all night?

3 A. I believe that I saw that he was also tired.

4 Q. After Pennsylvania, you attended some exercise
5 sessions at Lincoln Park in Jersey City, correct?

6 A. Yes.

7 Q. Did you see Fadil Abdelgani there?

8 A. No.

9 Q. Let me bring you back to Pennsylvania for just a
10 moment. Did Fadil get a nickname?

11 A. Yes.

12 Q. Do you remember his nickname?

13 A. No.

14 Q. Do you remember if he was referred to as Abu
15 Dabiyah or Abu Zabiyah? Pardon my pronunciation.

16 A. I don't remember.

17 Q. At Pennsylvania, was there a problem between
18 Fadil and Siddig?

19 A. Yes.

20 Q. What was that problem?

21 A. Siddig wanted to be the boss of everybody else,
22 and Fadil was the first one to realize that Siddig was
23 working for himself, not for the religion, and he used an
24 Arabic word that means that someone is using religion to
25 achieve his own ends.

1 Q. Is that word the equal of the English word
2 hypocrite?

3 A. No, not equal to that one. It could be part of
4 being a hypocrite, yes.

5 Q. Is there an English word that is the equal of
6 whatever word Mr. Abdelgani used?

7 THE COURT: Are you asking the witness if he
8 knows the word in English, or are you asking the
9 interpreter?

10 MR. LAVINE: I am asking the witness, Judge.

11 THE COURT: If the witness can provide the
12 English word, fine. If he can't, it is not addressed to the
13 interpreter. Go ahead.

14 MR. LAVINE: That is true.

15 A. As far as I know, I don't know an English word of
16 it.

17 Q. When Fadil said that, did he raise his voice?
18 Was he angry and yelling?

19 A. Yes, he was angry.

20 Q. Did Fadil tell him that Siddig was not doing this
21 training for Bosnia but was doing it for himself?

22 A. Fadil said something like that, yes.

23 Q. After that, did Siddig ever tell you that he
24 distrusted Fadil?

25 A. Yes, Siddig told me that.

1 Q. Did he also tell you that he did not like Fadil?

2 A. Yes.

3 Q. In the conversations that you had with Siddig,
4 did Siddig ever mention to you, did he ever tell you that he
5 had assassinated a Sudanese opposition leader in the city of
6 Chicago?

7 A. No.

8 MR. LAVINE: Nothing further. Thank you.

9 THE COURT: Mr. Jacobs, representing Mohammed
10 Saleh. Go ahead.

11 CROSS-EXAMINATION

12 BY MR. JACOBS:

13 Q. Mr. Haggag, on July 16, 1993, you met Assistant
14 United States Attorney McCarthy, is that correct?

15 A. Yes.

16 Q. How did you get there that day? Did you go
17 yourself, agents pick you up and take you there?

18 A. Two agents came to my dwelling, and they told me
19 that the U.S. Attorney wanted to see me, so I went with
20 them.

21 Q. Was Detective Corrigan one of the people that
22 came that day on July 16 to your house?

23 A. No.

24 Q. Do you remember their names?

25 A. Yes.

1 Q. What are their names?

2 A. First name David and Steve from New Jersey.

3 Q. David Frasca and Steve Chapman?

4 A. Yes.

5 Q. When they came, they said that the prosecutor
6 wanted to talk to you. Fair to say, is that what happened?

7 A. Yes.

8 Q. Did they tell you you were under arrest at that
9 time?

10 A. No.

11 Q. You had met agents before July 16, is that
12 correct, sir?

13 A. Yes.

14 Q. And you had met Corrigan before, isn't that fair
15 to say, back in March and in April?

16 A. Yes.

17 Q. And I think you told Miss Stewart you met them
18 four or five times, is that correct?

19 A. No.

20 Q. Three or four times?

21 A. Two or three times.

22 Q. Two or he three times, OK. And Corrigan and the
23 other agents had asked you to cooperate back in March or
24 April, is that correct?

25 A. Yes.

- 1 Q. And they offered you money, is that correct?
- 2 A. They used the term financial help, and I refused.
- 3 Q. Financial help is money, correct?
- 4 A. Yes.
- 5 Q. They offered you other inducements, correct?
- 6 A. Yes.
- 7 Q. And you reported this back, I think you said, to
8 the Egyptian authorities, correct? You were getting advice
9 from Tarek about how to deal with the agents?
- 10 A. Yes.
- 11 Q. They came again on July 16, and this time they
12 took you someplace, to Mr. McCarthy's office, correct?
- 13 A. Yes.
- 14 Q. You were there to cooperate with the government,
15 weren't you, that day?
- 16 A. To tell the truth only.
- 17 Q. After you told the truth that day, you had
18 handcuffs placed on you, correct, you were arrested,
19 correct?
- 20 A. Yes.
- 21 Q. And you went to jail, correct?
- 22 A. Yes.
- 23 Q. MCC here? Correct?
- 24 A. Yes.
- 25 Q. At MCC on July 16, you met a number of the

1 defendants here whom you had known previously, correct?

2 A. Some of them I knew.

3 Q. And you met a number of the people charged in the
4 World Trade Center case, is that correct?

5 A. Yes.

6 Q. Among the people that you met after July 16 was
7 Mohammed Saleh, which is my client, correct?

8 A. Yes.

9 Q. Am I correct you had never seen Mohammed before
10 you met him in jail, correct?

11 A. Yes, it's a fact.

12 Q. You had never seen him in a mosque, correct?

13 A. Yes.

14 Q. You had never seen him in Pennsylvania, correct?

15 A. Yes.

16 Q. You had never been introduced to him, correct?

17 A. Yes.

18 Q. Nobody ever used his name, correct?

19 A. Yes.

20 Q. You didn't know he owned a gas station, correct?

21 A. Yes.

22 Q. Over the next few months you had conversations
23 with Mohammed, you had conversations with some of the World
24 Trade Center people, isn't that correct?

25 A. Yes.

1 Q. And you have been asked about some of those
2 conversations, some by defense lawyers and some by the
3 government, correct?

4 A. Yes.

5 Q. You testified to a conversation that you had with
6 my client in jail, is that correct, and Mr. Khuzami asked
7 you those questions, correct?

8 A. Yes.

9 Q. You were talking about where Mohammed was
10 relating a conversation to you concerning his meeting with
11 Siddig Ali and Emad Salem, correct?

12 A. Yes.

13 Q. And I think you told the jury that Mohammed was
14 relating the fact that during that meeting he thought that
15 Emad looked like an informer, correct?

16 A. Yes.

17 Q. Before he made that statement to you, as you have
18 testified, would I be correct in stating that you were
19 talking about how stupid Siddig was and how Emad Salem was
20 no human being? Was that the subject of the conversation
21 right before that?

22 A. Yes.

23 Q. And Mohammed was saying the same things about
24 those two people, how stupid they were, and they weren't
25 very nice, not nice human beings, correct?

1 A. Yes, but he used some stronger words.

2 Q. Strong words, OK. And it was in this context
3 that he said he thought at the time he met him that he might
4 have been an informant, correct?

5 A. Yes.

6 MR. KHUZAMI: Objection to form.

7 MR. JACOBS: I will withdraw it.

8 Q. At least two of the people -- at least one person
9 that has been charged and convicted in the World Trade
10 Center, you knew before July 16. That is Mahmoud
11 Abouhalima, correct?

12 A. Yes.

13 Q. Am I correct, according to you you met him and
14 his brother maybe once before July 16, 1993?

15 A. Yes.

16 Q. And you saw them frequently in jail, is that
17 correct?

18 A. Yes.

19 Q. And you have had some questions asked about some
20 of the conversations you had with them, correct?

21 A. Excuse me.

22 Q. You have been asked about some of the
23 conversations you had with them, correct?

24 A. Yes.

25 Q. It was Mahmoud Abouhalima that talked to you

1 about Ramzi Yousef, isn't that correct?

2 A. Yes.

3 Q. And that it was Yousef that organized the World
4 Trade Center bombing, correct?

5 MR. KHUZAMI: Objection.

6 Q. Is that what Mahmoud Abouhalima told you?

7 THE COURT: Sustained.

8 Q. Did you have a conversation with Mahmoud
9 Abouhalima about Ramzi Yousef?

10 A. Yes.

11 Q. Did Mahmoud Abouhalima tell you that --

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 Q. What did he say about Ramzi Yousef, Mahmoud
15 Abouhalima?

16 MR. KHUZAMI: Objection.

17 THE COURT: Sustained.

18 Q. When you spoke with Mahmoud Abouhalima, I assume
19 you didn't tell him that you were the one that had informed
20 on him, is that correct?

21 A. Yes.

22 Q. You were the one in fact, according to you, who
23 were responsible for his arrest, correct?

24 A. Yes.

25 Q. And you never let on to him or anybody else that

1 you had talked to the government or to the Egyptian
2 authorities, did you?

3 A. Yes.

4 Q. In other words, you pretended to be their friend
5 when in fact you had given information on them, correct?

6 A. I did not try to show that I was anybody's
7 friend. I helped the Egyptians from the standpoint that,
8 depending on my convictions and what I believed in, and that
9 is also the basis on which I helped Omar Abdel Rahman
10 initially.

11 Q. When you talked to Mahmoud Abouhalima and you
12 talked to my client, you didn't tell them that you had
13 already talked to the authorities, did you?

14 A. Which authority are you referring to?

15 Q. When you talked to Mohammed you had already met
16 with Mr. McCarthy and talked to him on July 16, didn't you?

17 A. Yes.

18 Q. And you had already talked to the Egyptian
19 authorities and given them information on Mahmoud, correct?

20 A. Yes.

21 Q. So you pretended that you were just a regular
22 defendant in jail like everybody else when you in fact had
23 given information about them, hadn't you, sir?

24 A. I was not pretending. It was not proper for me
25 to give anyone of them information about what I was doing.

1 Most of them knew that I was keeping a diary.

2 (Continued on next page)

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1 Q. The question, sir, is: Did you, for example,
2 with Mahmud ask him details about the World Trade Center?

3 Did you do that, sir?

4 A. No.

5 Q. He just volunteered to you details about what he
6 knew about the World Trade Center bombing?

7 MR. KHUZAMI: Objection.

8 THE COURT: Sustained.

9 Q. Did he admit his role in the World Trade Center
10 bombing to you, sir --

11 MR. KHUZAMI: Objection.

12 Q. -- in jail?

13 THE COURT: Sustained.

14 Q. Let me show you Defendants' S in evidence. These
15 are seven photographs of some of the people involved in the
16 World Trade Center, and let me at the same time use these --
17 they are in evidence -- the government's photos.

18 Mr. Haggag, take a look at that photo spread, if
19 you'd like, and take a look at the first photograph, which
20 is a photograph of Bilal Alkaysi, Government Exhibit GX5F.

21 Do you see that photograph, the first one?

22 A. Yes.

23 Q. Did you ever meet that man before July 16, 1993?

24 A. No.

25 Q. Did you see him in jail after July 16, 1993?

1 A. Yes.

2 Q. Did you have any conversations with him? Yes or
3 no.

4 A. Yes.

5 Q. Take a look at No. 2 in your photo spread in
6 evidence.

7 MR. JACOBS: Mr. Fitzgerald, I am showing him
8 W610, the photograph of Ramzi Yousef.

9 Q. Do you see that individual?

10 A. Yes.

11 Q. Did you ever see him before?

12 A. No.

13 Q. Never met him?

14 A. No.

15 Q. I assume he wasn't in jail when you were in
16 there, at MCC?

17 A. Yes.

18 Q. I am not asking where you are exactly, but you
19 are not in jail at the present time, are you, sir?

20 A. No.

21 Q. You have been released from jail at the present
22 time, correct?

23 A. Yes.

24 Q. Let's take a look at the third person in there,
25 showing you another copy of W630, a picture of Mr. Yousef,

1 do you see that gentleman there? Did you ever see him
2 before?

3 A. Which one?

4 Q. I'm sorry. He should be No. 3.

5 MR. FITZGERALD: Yasin.

6 MR. JACOBS: Yasin.

7 Thank you, Mr. Fitzgerald.

8 THE COURT: No. 3. For the record, that is
9 Exhibit J rather than S.

10 MR. JACOBS: Thank you, your Honor.

11 Q. OK. Do you see No. 3 there?

12 A. Yes.

13 Q. Did you ever see that man before?

14 A. No.

15 Q. How about No. 4, Mohammed Salameh, GX5E?

16 A. Yes.

17 Q. Had you ever met him before July 16, 1993?

18 A. Yes.

19 Q. On how many occasions?

20 A. I used to see him at the mosque while he was
21 praying.

22 Q. Did you ever talk with him?

23 A. Once he came in, he came to me when I was close
24 to Omar Abdel Rahman and he told me not to trust this man.

25 Q. How about No. 5, Mr. Ajaj?

1 A. Yes.

2 Q. Did you ever see him before July 16?

3 A. No.

4 Q. How about No. 6, a picture of Mr. Ayyad, Nidal
5 Ayyad? Had you ever seen him before?

6 A. No.

7 Q. How about the last defendant, Mahmud Abouhalima,
8 512, that's someone you knew before, correct?

9 A. Yes.

10 Q. And you had met him about once, correct?

11 A. Once or twice.

12 Q. You yourself had absolutely no role and no
13 participation in the World Trade Center bombing, isn't that
14 correct?

15 A. Yes.

16 Q. Any information you got was from speaking to
17 other people, correct?

18 A. Yes.

19 THE COURT: Mr. Jacobs, if you could stand by the
20 microphone when you ask the questions.

21 MR. JACOBS: Yes.

22 THE COURT: Thank you.

23 Q. You made a number of phone calls from MCC to
24 various Egyptian authorities, correct?

25 A. Yes.

1 Q. You knew when you made those calls that those
2 calls were taped, is that correct?

3 A. Yes.

4 Q. There is a big sign at MCC on the phone that says
5 your calls are being taped, correct?

6 A. Yes.

7 Q. You spoke to this fellow Hosni from the Egyptian
8 consulate I think on about October 14, 1993, is that
9 correct?

10 A. Yes.

11 Q. Have you seen a transcript of that conversation
12 in English?

13 A. Yes.

14 Q. You have reviewed it, correct?

15 A. Yes.

16 Q. There came a point where you were talking with
17 Hosni that Emad Salem's name came up, is that correct?

18 A. Yes.

19 Q. You said that Emad Salem was a despicable man --

20 MR. KHUZAMI: Objection.

21 THE COURT: Sustained.

22 Q. Did you talk to Mr. Hosni about cooperating with
23 the government?

24 A. Yes.

25 Q. Did you tell Mr. Hosni that your motive, the

1 reason you wanted to cooperate with them was so "I could get
2 out of here," meaning get out of jail? Did you say that to
3 Mr. Hosni?

4 A. Not that meaning.

5 Q. Well, did you say, translated in English,
6 "Frankly, I want to help them," meaning the government, "so
7 I can get out of here"?

8 Did you say those words?

9 A. Not the same meaning.

10 Q. You have read the English translation?

11 A. Yes.

12 Q. Are you saying it's not correct?

13 A. What I said in Arabic is that if I did not
14 cooperate with them, they will never get me out of there.

15 Q. So this translation that you've seen is wrong?

16 A. It is different, but about the same meaning.

17 Q. Did you tell Mr. Hosni that the government was
18 going to lose their case if they worked with Emad Salem
19 alone and that they needed you to get the sheik?

20 MR. KHUZAMI: Objection.

21 THE COURT: Sustained.

22 Q. Did you make references to the fact that the
23 United States government needed you as a witness, that they
24 would lose the case if they had Emad Salem?

25 MR. KHUZAMI: Objection.

1 THE COURT: Sustained.

2 Q. Did you talk about the government losing the case
3 with Mr. Hosni?

4 MR. KHUZAMI: Objection.

5 Q. Yes or no.

6 THE COURT: Sustained.

7 MR. JACOBS: May I be heard at the side bar with
8 respect to this, your Honor?

9 THE COURT: No.

10 Q. Did you complain to Mr. Hosni about Emad Salem?

11 MR. KHUZAMI: Objection.

12 THE COURT: Sustained.

13 MR. JACOBS: Your Honor, I have nothing further
14 but I would offer 35119W, page 7, the fourth full paragraph,
15 at this time.

16 MR. KHUZAMI: One moment, your Honor.

17 MS. STEWART: Judge, could Mr. Jacobs repeat what
18 he offered.

19 THE COURT: I think he said 35119W.

20 MR. JACOBS: I'm sorry. 35119W, page 7, your
21 Honor. I would hand it up.

22 THE COURT: Would you?

23 MR. KHUZAMI: Your Honor, the government objects.

24 THE COURT: I don't have that one, so if I could
25 see it. May I see it?

1 (Pause)

2 THE COURT: Sustained.

3 Anything else?

4 MR. JACOBS: I have nothing further.

5 THE COURT: Thank you. Mr. Nooter?

6 MR. SERRA: Your Honor, I have no questions of
7 this witness.

8 THE COURT: I am sorry, Mr. Serra.

9 MR. SERRA: That's quite all right.

10 THE COURT: Mr. Nooter?

11 MR. NOOTER: Thank you, your Honor.

12 THE COURT: Representing Wahid Saleh. Thank you.

13 CROSS-EXAMINATION

14 BY MR. NOOTER:

15 Q. Mr. Haggag, I would like to direct your attention
16 to the time you first met Wahid Saleh, which you said was in
17 front of a fish house in late 1992, is that correct?

18 A. Yes.

19 Q. In 1992 you had made a trip to Egypt in the fall,
20 is that correct?

21 A. Yes.

22 Q. And you came back -- I am sorry.

23 You came back in September or October, is that
24 right?

25 A. Yes.

1 Q. So this meeting was after that, is that correct?

2 A. Yes.

3 Q. Do you remember whether it was in October when
4 you first ran into Wahid Saleh?

5 A. I cannot specificity date exactly.

6 Q. So it could be October or November, something
7 like that?

8 A. Yes.

9 Q. Do you remember if it was cold outside yet?

10 A. Yes, it was cold.

11 Q. But you don't remember which month, is that
12 right?

13 A. No, I don't remember exactly.

14 Q. You had come to this place with Siddig Ali, is
15 that right?

16 A. Yes.

17 Q. To the fish restaurant?

18 A. Yes.

19 Q. Is it fair to say that the fish restaurant is
20 located on Tonnelly Avenue and Broadway in Jersey City?

21 A. Yes.

22 Q. That is a location that's more or less right in
23 the middle of the Muslim community of Jersey City, is that
24 right?

25 A. Yes.

1 Q. It's a few blocks away from Journal Square, is
2 that right?

3 A. Yes.

4 Q. Journal Square is sort of the main business
5 center of Jersey City, is that right?

6 A. Yes.

7 Q. There are a lot of office buildings and stores
8 and things like that, is that correct?

9 A. Yes.

10 Q. And this is a few blocks down Tonnelly Avenue
11 from Journal Square, is that correct?

12 A. Yes.

13 Q. The restaurant itself is fairly small, is that
14 correct?

15 A. Yes.

16 Q. This is the kind of place where you can sit down
17 at tables or you can take out hot food, is that right?

18 A. Yes.

19 Q. They post the phone number so you can call ahead
20 if you want to make an order and then come pick it up, is
21 that right?

22 A. Yes.

23 Q. It's quite a popular restaurant in the Muslim
24 community, isn't that right?

25 A. Yes.

1 Q. It's very busy, is that right?

2 A. Yes.

3 Q. People will sometimes drive up and double-park,
4 run in to get their food and come out, is that right?

5 A. Yes.

6 Q. Because Tonnelly Avenue is a busy avenue there,
7 isn't that right?

8 A. Yes.

9 Q. I would like to approach and show you several
10 photographs. If I didn't lose track, those are marked N1
11 through 5.

12 THE COURT: N as in Nancy?

13 MR. NOOTER: Yes. Do I have an N already?

14 THE COURT: No, you don't. Neither do you have
15 an M.

16 MR. NOOTER: M was premarked as something else.

17 THE COURT: OK. So N it is. Good.

18 N1 through 5.

19 Q. I would ask you just to look through the five
20 photographs, and tell me if you recognize what they are.

21 A. Yes.

22 Q. Generally speaking, they are views of this
23 restaurant, four from the outside and one from the inside,
24 is that correct?

25 A. Yes.

1 Q. Are they a fair and accurate representation of
2 what the restaurant essentially looks like?

3 A. Yes.

4 Q. Is it true that one of them shows sort of up the
5 street and one of them, up the street towards Journal
6 Square, one of them shows up the street away from Journal
7 Square, is that correct?

8 A. Yes.

9 Q. One shows the front of the restaurant, is that
10 right?

11 A. Yes.

12 Q. One shows the inside just the door, the doorway
13 leading out onto the street, is that correct?

14 A. Yes.

15 MR. NOOTER: At this time I would move these
16 photographs into evidence, your Honor.

17 MR. KHUZAMI: No objection.

18 MR. NOOTER: I would ask if I could just pass
19 them among the jury while I continue to question.

20 THE COURT: OK.

21 (Defendant Wahid Saleh Exhibit N1 through N5 for
22 identification were received in evidence)

23 (Exhibits published to jury)

24 Q. On that particular day, do you remember whether
25 you and Siddig Ali had ordered hot food ahead of time to

1 take out?

2 A. Yes, I believe Siddig had placed the order before
3 he went there.

4 Q. He had phoned it in?

5 A. Yes.

6 Q. So when you arrived, you just came to pick up the
7 food, pay, and leave, is that right?

8 A. Yes.

9 Q. This restaurant is a place that has one cashier
10 for both the sit-down customers as well as the people to
11 come to take out the food, is that correct?

12 A. Yes.

13 Q. So everybody leaving has to stop at the cashier
14 in order to pay before they go out, is that right?

15 A. Yes.

16 MR. NOOTER: I guess we all know "aiwa" means
17 yes, but was that translated?

18 THE INTERPRETER: Yes.

19 MR. NOOTER: Sorry.

20 Q. According to your testimony, after you and Siddig
21 Ali went out, Wahid Saleh came out of the restaurant, is
22 that right?

23 A. Yes.

24 Q. He stopped you in front of the restaurant and had
25 a conversation, is that right?

1 A. Across the street.

2 Q. Across Tonnelly Avenue?

3 A. At the corner of the street.

4 Q. Let me just understand. Had you already walked
5 across the street of traffic, or had you just walked to the
6 corner?

7 A. We went outside to the door of the restaurant,
8 Wahid came with us, we crossed the street where the car was
9 parked at the auto shop, and we stopped there for a while.

10 Q. The auto shop is on the other side of Broadway
11 from the corner where the restaurant is, is that right?

12 A. Yes.

13 Q. Was this at lunchtime or dinnertime?

14 A. It was at night.

15 Q. In the evening at dinnertime?

16 A. Yes.

17 Q. During that walk over to where the car was
18 parked, you had a conversation that had to do with weapons,
19 is that correct?

20 A. Yes.

21 Q. You have lived in the Jersey City area since
22 about 1981, is that correct?

23 A. Around '83.

24 Q. OK. From '83 to about '93, is that correct?

25 A. Yes.

1 Q. During that span of time you attended the El
2 Salaam mosque as your principal mosque, is that right,
3 starting in about '85, '86, '87?

4 A. Yes.

5 Q. Which year was it, do you remember?

6 A. When I first started, it was about '87.

7 Q. '87. From that point on to '93 at the time of
8 your arrest, you attended regularly, is that right?

9 A. Yes.

10 Q. You mentioned in your direct testimony that you
11 had seen Wahid Saleh several other times other than the fish
12 house meeting, is that correct?

13 A. Yes, we used to see him in the area a lot of
14 times.

15 Q. Was that ever at the mosque?

16 A. Sometimes in the mosque, yes.

17 Q. Would you say one or two times, three?

18 A. The mosque?

19 Q. That you saw Wahid at the mosque.

20 A. A few times.

21 Q. Did you ever see Wahid with Fares Khallafalla?

22 A. No.

23 Q. Did you ever see him with Fadil Abdelgani?

24 A. No.

25 Q. Did you ever see him with Tarig Elhassan?

1 A. No.

2 Q. How about Amir Abdelgani?

3 A. No.

4 Q. Have you ever seen him with any of the defendants
5 here at this table of course other than himself?

6 A. No.

7 Q. Did you ever see him with Mohammed Abouhalima?

8 A. No.

9 Q. Did you ever see him with Mahmud Abouhalima?

10 A. No.

11 Q. Did you ever see him with any of the World Trade
12 Center defendants that Mr. Jacobs just showed you pictures
13 of?

14 A. No.

15 Q. Did you yourself ever have Wahid's telephone
16 number?

17 A. No, I don't think so.

18 Q. Did you ever have a beeper number for him?

19 A. One time I got his number for him. I'm not sure
20 whether Wahid gave it to me for Siddig gave it to me, a
21 beeper number, pager number.

22 Q. You don't remember whether Wahid himself ever
23 gave you a beeper number?

24 A. I'm not sure who gave it to me. It could be
25 either Wahid or Siddig.

1 Q. Did you ever call the beeper number to try to
2 reach Wahid for any reason?

3 A. Yes.

4 Q. Do you remember approximately when that would
5 have been?

6 A. Towards the end of '92, the beginning of '93.

7 Q. Did you reach Wahid when you called that beeper
8 number?

9 A. I don't remember.

10 Q. You have testified at length about going to
11 Pennsylvania to train for Bosnia. You did this training
12 with other people, is that fair to say?

13 A. Yes.

14 Q. Among those other people were people from Egypt,
15 is that correct?

16 A. Yes.

17 Q. But Wahid was not one of those people, is that
18 right?

19 A. Yes.

20 Q. During the training you used weapons, is that
21 correct?

22 A. Yes.

23 Q. But Wahid did not supply any of the weapons for
24 that training, is that correct?

25 A. Yes.

1 Q. The training session that you went to was after
2 the time you had first run into Wahid at the fish house, is
3 that right?

4 A. Yes.

5 Q. In addition to that, you've testified about a
6 plan to assassinate President Mubarak, is that right?

7 A. Yes.

8 Q. That developed in 1993, is that right?

9 A. Yes.

10 Q. Wahid never supplied any weapons for the plan to
11 murder Mubarak, is that correct?

12 A. Yes.

13 Q. At time when Siddig discussed this plan there was
14 a plan for what different people would do in the course of
15 that assassination, is that right?

16 A. Would you repeat the question?

17 Q. When Siddig discussed the plan with you, he
18 talked about the functions different people who would be
19 part of that plan would have, what they would do, is that
20 right?

21 A. Yes.

22 Q. Wahid was not one of the people who was supposed
23 to have any part, is that correct?

24 A. Yes.

25 Q. Is it fair to say you never went to Egypt for the

1 purpose of receiving any weapons in Egypt, did you?

2 A. Me personally?

3 Q. You personally.

4 A. No.

5 Q. You never called anybody in Egypt to ask them to
6 receive weapons on your behalf, is that right?

7 A. Yes.

8 Q. You yourself don't have any experience smuggling
9 weapons internationally, do you?

10 A. (In English) No.

11 Q. You don't have any experience?

12 A. No.

13 Q. Now, after you started attending the El Salaam
14 mosque, there came a point where you became a trustee there,
15 is that right?

16 A. Yes.

17 Q. When was that, approximately?

18 A. Around '91.

19 Q. How long did that last?

20 A. Around a year. From the end of -- towards the
21 end of '90, until the end of '91.

22 Q. Also in connection with the mosque you taught
23 children at the mosque, did you not?

24 A. Yes.

25 Q. The mosque is a place of learning about Islam as

1 well as a place of worship, is that correct?

2 A. Yes.

3 Q. In your function as a trustee, did you help try
4 to raise money for the mosque?

5 A. Yes.

6 Q. Would it be fair to say that Wahid never
7 contributed any money to the mosque, is that correct?

8 A. I cannot say that, no.

9 Q. If you know, isn't it true that Wahid never
10 actually became a member of the mosque, is that correct?

11 A. No.

12 Q. He did not become a member, is that right?

13 A. He was a member; he used to attend at the mosque.

14 Q. Some people could vote, for example, on who were
15 trustees and things like that, is that right?

16 A. Yes.

17 Q. Wahid was not one of those people, was he?

18 A. Yes, correct.

19 Q. He just came from time to time to pray, to your
20 knowledge, is that right?

21 A. Yes.

22 Q. The times you saw him were only a few times, is
23 that right?

24 A. Yes.

25 Q. You went every week, is that right?

1 A. Yes. Two or three times.

2 Q. Two or three times a week, is that right?

3 A. Yes.

4 Q. At the mosque is it fair to say that after the
5 prayers, particularly on Friday when people are filing out
6 of the mosque, other people might hand out flyers and things
7 to the people who are coming out?

8 A. Yes.

9 Q. These flyers might be about things that are going
10 on in Bosnia, for example?

11 A. Yes.

12 Q. Things that are going on in Egypt, for example?

13 A. Yes.

14 Q. Political things and people's opinions about
15 politics are on these flyers sometimes, is that right?

16 A. Yes.

17 Q. Very often outside in front of the mosque people
18 would have discussions about political issues, is that
19 right?

20 A. Yes.

21 Q. At the mosque, one of the things you are taught
22 or one of the things you are taught as a Muslim is to help
23 fellow Muslims, is that correct?

24 A. Yes.

25 Q. In that regard isn't it true that at the mosque

1 sometimes announcements would be made that someone needs a
2 job, for example, someone needs some help of some kind, is
3 that true?

4 A. Yes.

5 Q. There's also like a bulletin board at the
6 entrance where people who might need a job will post a
7 notice, is that right?

8 A. Yes.

9 Q. I believe you testified that during 1993 Siddig
10 Ali was looking for work from time to time, is that right?

11 A. Yes. '92.

12 Q. '92. Do you know whether he was looking for work
13 in '93?

14 A. I knew he was not working in '93, but he was not
15 looking.

16 Q. Are you aware that Wahid tried to help him with
17 work in connection with the flea market he owned?

18 A. Yes.

19 Q. You've seen that flea market, is that right?

20 A. Yes. I went with Siddig to Wahid's flea market,
21 if that's the one you mean.

22 Q. Yes. It's a very large place on Kennedy
23 Boulevard, is that right?

24 A. Yes.

25 Q. It's like a whole block, is that correct?

1 A. Yes.

2 Q. In it there are like stalls where people rent
3 space and sell clothing and other kinds of goods, is that
4 right?

5 A. Yes.

6 Q. Your purpose of going with Siddig was that Wahid
7 was giving Siddig some clothing so that he could go sell
8 that clothing at other flea markets, is that right?

9 A. Yes, for Wahid to make arrangements for him so
10 that he could sell this stuff in another flea market, in
11 addition to the fact that he was giving him commodities at
12 wholesale, and settle their accounts, of course, at the end.

13 Q. You came along to help load these things into the
14 trunk of Siddig's car, and then you'd go off someplace else
15 to sell these items, is that right?

16 A. Yes, he was using my car.

17 Q. OK.

18 A. Station wagon.

19 Q. Did you go there more than once?

20 A. I think it was only once, but maybe more than
21 once.

22 Q. During the time you were there, did you happen to
23 notice that the people that Wahid did business with included
24 Palestinians and Jews, people of all races?

25 MR. KHUZAMI: Objection.

1 THE COURT: Sustained.

2 Q. Sir, at the point that you got arrested in July
3 of 1993 and went into the MCC, Wahid Saleh had not been
4 arrested yet, is that correct?

5 A. Yes.

6 Q. He was arrested some weeks later and then came
7 into the MCC, is that right?

8 A. Yes.

9 Q. After you saw each other again in MCC, is it true
10 that you sent him a couple of letters or notes?

11 A. Yes, some religious prayers.

12 Q. OK. I would like to approach, if I could, to
13 show you two exhibits.

14 (Pause)

15 MR. KHUZAMI: Objection, your Honor.

16 THE COURT: May I see the exhibits. Come up to
17 the side.

18 (Continued on next page)

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1 (At the side bar)

2 MR. NOOTER: Judge, these are two notes that
3 Haggag wrote to my client. Exhibit P -- they are in the
4 wrong order -- is basically just prayers. There is a
5 translation here. I wasn't thinking of offering the
6 translation. I just had it prepared so that we all know
7 what it says. Basically the relevance of this is Haggag as
8 sort of a teacher of Islam was trying to teach Wahid the
9 proper way to pray.

10 THE COURT: That objection is sustained. What is
11 the next one?

12 MR. NOOTER: Judge, you know that it is part of
13 my defense that Wahid in fact is not a follower of Sheik
14 Omar, is not essentially a religious person, and this is
15 something that Haggag would be able to say. I mean, if he
16 doesn't say it, presumably he will have some other
17 explanation for sending these prayers.

18 THE COURT: No, it doesn't prove that at all. Go
19 ahead. What is the next one?

20 MR. NOOTER: If he says that he wasn't doing
21 that, then it doesn't matter. The main point is, that is
22 what I feel he was doing, and I think he will say he was
23 doing that.

24 THE COURT: I am not going to speculate on that.
25 What is the next one? It doesn't prove it in any event.

1 MR. NOOTER: The other letter is basically a
2 thank you letter for my client. You see he wrote his name
3 in English with his inmate number, which was so that my
4 client could put some money in his commissary account.

5 Let me look at this. Here it is. It thanks him
6 for the fact that Wahid gave him some toiletries and things
7 like that from the commissary until he could get some money
8 in his commissary account in order to get the money, and it
9 also talks about the newspaper articles about Wahid's arrest
10 that he was giving.

11 THE COURT: This rivals in irrelevance the
12 photographs of the fish market. I have no idea what this is
13 supposed to prove.

14 MR. NOOTER: I believe that the conversation in
15 the fish market didn't happen or didn't happen the way he
16 said it. I want to establish his relationship with my
17 client.

18 THE COURT: This doesn't do it.

19 (Continued on next page)

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1 (In open court)

2 THE COURT: The objection is sustained.

3 Q. Sir, when you met up with Wahid again in the MCC,
4 did you observe that he was not a very religious person or
5 that he did not know very much about the religion of Islam?

6 A. Yes, this is a fact.

7 Q. You started to try to teach him the proper way to
8 pray and things like that, is that right?

9 MR. KHUZAMI: Objection.

10 THE COURT: Sustained.

11 Q. Sir, when you arrived at the -- well, withdrawn.
12 When Wahid arrived at the MCC, isn't it true that
13 Siddig Ali told you to stay away from him because he might
14 be an FBI informer?

15 MR. KHUZAMI: Objection.

16 THE COURT: Sustained.

17 Q. Did you believe that Wahid Saleh was an FBI
18 informer or he might be?

19 MR. KHUZAMI: Objection.

20 THE COURT: Sustained.

21 MR. NOOTER: Judge, I --

22 THE COURT: No.

23 Q. Sir, is it true that you sent to Wahid Saleh some
24 newspaper articles?

25 A. Yes.

1 Q. You sent those newspaper articles to him because
2 you had had a discussion with him about those newspaper
3 articles, is that correct?

4 MR. KHUZAMI: Objection.

5 THE COURT: Sustained.

6 Q. Sir, is it true that after Siddig Ali and many of
7 the other defendants were arrested in June, that Siddig Ali
8 made statements to the press to the effect of Wahid is an
9 informer?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q. Sir, did you believe Wahid Saleh was an informer?

13 MR. KHUZAMI: Objection.

14 THE COURT: Sustained.

15 Mr. Nooter, if there is no way to do it, there is
16 no way to do it.

17 Do you have anything else?

18 MR. NOOTER: Yes.

19 Q. Sir, there came a time when you started telling
20 someone in the Egyptian embassy about things you were
21 learning from Siddig Ali, is that correct, someone named
22 Mohammed Tarig?

23 A. Yes.

24 Q. Sometime after that point, is it true that you
25 went down to Washington, D.C. to attend a peace

1 demonstration in connection with Bosnia?

2 A. Yes.

3 Q. That demonstration was attended by something like
4 65,000 people, is that right?

5 A. Considerably less than the number than that
6 number.

7 Q. OK. But it was thousands of people, is that
8 right?

9 A. Yes.

10 Q. It was people of all races and groups, is that
11 right?

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 Q. The purpose of the demonstration, of this peace
15 demonstration was to call upon Congress to assist or --

16 MR. KHUZAMI: Objection.

17 THE COURT: Sustained.

18 May I see you at the side.

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: The question --

3 MR. NOOTER: I have about five more minutes all
4 together. It relates directly to what Siddig --

5 THE COURT: Keep your voice down.

6 MR. NOOTER: -- talked about, arranging the
7 busses for this peace demonstration. It has to do with the
8 trust of Siddig and Emad and this guy and everybody else of
9 my client in terms of their trusting him to be involved in
10 this conspiracy. It relates directly to the issues of this
11 case.

12 THE COURT: Arranging buses for a demonstration
13 relates to the issues in this case how?

14 MR. NOOTER: Because Siddig Ali in CM43 describes
15 that action as nonsense because it's inconsistent with the
16 objectives of jihad.

17 He specifically says that.

18 THE COURT: So argue it to the jury.

19 MR. NOOTER: But I first have to establish that
20 he was there.

21 THE COURT: That who was there?

22 MR. NOOTER: My client, which is what he said,
23 they went there together.

24 THE COURT: Fine. You can establish that in one
25 question. They went there together. The end.

1 (In open court)

2 Q. Sir, when you went down to Washington for this
3 peace demonstration, did you see Wahid Saleh there?

4 A. Yes.

5 Q. Is it fair to say you never had any discussion
6 with Wahid Saleh about blowing up the UN, is that correct?

7 A. Yes.

8 Q. It's correct you never had a discussion with him
9 about blowing up tunnels or bridges or buildings, is that
10 correct?

11 A. Yes.

12 Q. You never had a conversation with Wahid Saleh
13 about kidnaping people, is that right?

14 A. Yes.

15 Q. You never had a conversation with Wahid in which
16 he indicated he hates the United States or anything like
17 that, did you?

18 A. No.

19 Q. And in any conversations you had with Wahid
20 Saleh, he never indicated that he hates Israel or Jews, is
21 that correct? He never did say that he hated Israel or
22 hated Jews, is that right?

23 A. Yes.

24 Q. Is it fair to say, to your knowledge, he never
25 gave any money for jihad, is that right?

1 A. Yes.

2 Q. And he never gave you any weapons for any
3 purpose, is that correct?

4 A. Yes.

5 MR. NOOTER: No further questions, your Honor.

6 THE COURT: Do you have anything else?

7 MR. KHUZAMI: Yes. Brief, your Honor.

8 May I approach, your Honor.

9 THE COURT: Yes.

10 REDIRECT EXAMINATION

11 BY MR. KHUZAMI:

12 Q. Mr. Haggag, let me show you what's been marked as
13 Government Exhibit 770 for identification, a cassette tape,
14 and ask you to take a look at that.

15 Have you seen that?

16 A. Yes.

17 Q. Mr. Haggag, do you know Tarig Elhassan?

18 A. Yes.

19 Q. Are you familiar with his voice?

20 A. Yes.

21 Q. On how many occasions have you heard him speak?

22 A. Many.

23 Q. Did you have an opportunity at the lunch break
24 today to listen to the voices on Government Exhibit 770?

25 A. Yes.

1 Q. Did you recognize any of the voices that you
2 heard?

3 A. Yes.

4 Q. Whose voice did you recognize?

5 A. Siddig and Tarig, Tarig Elhassan.

6 Q. If you might pick up the item on the rail,
7 Government Exhibit 809.

8 A. Yes.

9 Q. Have you seen that before?

10 A. Yes.

11 Q. Where did you see that before?

12 A. In a fax that was sent to Omar Abdel Rahman, and
13 I told him that instead of tearing it up I would keep it and
14 I kept it at my home.

15 (Continued on next page)

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1 Q. How do you recognize that, Government's Exhibit
2 809, as the fax that you kept from Sheik Omar Abdel Rahman?

3 A. I remember the topic, all of it, And I also
4 entered my initials and the date.

5 Q. Those initials and date you entered recently in
6 connection with your testimony?

7 A. Yes.

8 Q. Mr. Haggag, Ms. Amsterdam asked you whether or
9 not you ever thought that Siddig Ali was not serious about
10 the crimes that he was planning. Do you recall that
11 question?

12 A. Yes.

13 Q. You indicated that early on you thought that he
14 was only talking, but later on you realized that he was
15 serious, is that correct?

16 A. Yes.

17 Q. During that early time when you thought that he
18 was only talking, did you ever go to Canal Street and buy
19 timers?

20 MS. AMSTERDAM: Objection, your Honor.

21 THE COURT: Sustained.

22 Q. Did he ever ask you to contribute any money to
23 get stolen cars?

24 MS. AMSTERDAM: Objection, your Honor.

25 THE COURT: Sustained.

1 Q. Did he ever ask you to go out and do anything in
2 connection with the plot to murder President Mubarak?

3 A. Yes, he asked many times.

4 Q. Did he ever ask you to go out and obtain any
5 materials?

6 A. What do you mean by obtain materials?

7 Q. Did he ever ask you to obtain weapons?

8 A. Yes.

9 Q. Did you ever actually go out and obtain those
10 weapons?

11 A. I would like you to repeat the question, please.

12 Q. Did Siddig Ali in connection with the Mubarak
13 plot ever ask you to go out and get weapons, yourself?

14 A. No, he wanted to take me with him.

15 Q. Did he ever ask you to give him money?

16 A. Possibly, yes.

17 Q. Did you ever in fact give him money?

18 A. No.

19 Q. Did you ever go out and provide him any fuel oil?

20 MS. AMSTERDAM: Objection, your Honor.

21 THE COURT: Sustained.

22 MR. KHUZAMI: No further questions.

23 THE COURT: Ms. London.

24 (Continued on next page)

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1 REXCROSS-EXAMINATION

2 BY MS. LONDON:

3 Q. Good afternoon, Mr. Haggag.

4 A. Good afternoon.

5 Q. You were just shown a tape by Mr. Khuzami that
6 you testified to that you listened to at lunchtime, correct?

7 A. Yes.

8 Q. That is a tape recording of a telephone
9 conversation, correct?

10 A. Excuse me.

11 Q. It is a recording of a telephone conversation,
12 correct?

13 A. Yes, I heard the tape.

14 Q. You weren't present when the conversation that
15 you listened to on that tape took place, were you?

16 A. No, I wasn't there.

17 Q. Did you ever speak to Tarig Elhassan on the
18 telephone?

19 A. I don't remember, but I don't think so.

20 Q. But you have spoken to him, as you have told us,
21 in person, correct?

22 A. Yes, many times.

23 Q. When you have had conversations with Tarig
24 Elhassan, have they been in Arabic or in English?

25 A. In Arabic.

1 Q. The telephone conversation that you listened to
2 on the cassette, was that in Arabic or in English?

3 A. In Arabic.

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1 MS. LONDON: I have no further questions.

2 THE COURT: Anyone else?

3 MS. AMSTERDAM: I have nothing further, your
4 Honor.

5 THE COURT: Thank you very much. You are
6 excused.

7 (Witness excused)

8 THE COURT: Ladies and gentlemen, we are going to
9 break for the day, and from your standpoint for the week.
10 Please leave your notes and other materials behind. Please
11 don't discuss the case. We will resume on Monday. Have a
12 pleasant weekend.

13 (Jury excused)

14 THE COURT: Miss Stewart?

15 MS. STEWART: I was just going to inquire, Judge,
16 if we could know what is next on the road map here.

17 MR. McCARTHY: We have three CM's, I think, to
18 do, and then we are going to move into -- one moment.

19 Three CM's and Garrett Wilson, for sure, and we
20 will send out a letter tomorrow morning to sketch out the
21 rest.

22 THE COURT: Speaking of letters, I got a letter
23 from Mr. McCarthy -- I think it was Mr. McCarthy.

24 MR. McCARTHY: It was me. It was short, though.

25 THE COURT: I wasn't commenting on the length.

1 Miss Stewart, did you get the letter?

2 MS. STEWART: It was left on my desk here this
3 morning, Judge.

4 THE COURT: Have you had a chance to read it?

5 MS. STEWART: I have looked it over. If you
6 would like a letter answer or if you want me to just.
7 respond --

8 THE COURT: Could you?

9 MS. STEWART: I don't think, first of all, that
10 the exhibit which they wish to put into evidence, the
11 so-called Saudi Arabia writing of Mr. Haggag really stands
12 for the proposition they say it stands for. Secondly, I
13 think that, because they only wrote the letter after I had
14 finished my cross-examination, I would not have had any
15 opportunity to do a voir dire or a cross-examination on this
16 particular document, and therefore --

17 THE COURT: We can get the witness back, I am
18 sure.

19 MS. STEWART: But it is not within the whole
20 context. I think it is unfair to us to have to go into it
21 as a separate issue at this point. The fact is, they could
22 have raised this that night before they finished their
23 direct examination if they felt that strongly about it. To
24 wait till after the cross-examination has finished to write
25 the letter seems to be an attempt to come in by the back

1 door.

2 There are numerous problems with this that I
3 would have objected to otherwise. They claim it was
4 authored by my client. We claim that it is not. The sheik
5 did not sign, as far as I know, this particular document.
6 We can't show it to him and have him tell us whether or not,
7 but I have seen other signatures of his that do not seem to
8 conform to that. It was written in a different ink. It
9 seems to be in the same handwriting as the original
10 document.

11 Over and above that, it seems not to stand for
12 the proposition that they say it does, which is that he is
13 saying here that he is willing to make attacks on America.
14 Our point is simply he is not willing to make attacks on
15 America in America. That is not to say that he is not
16 opposed to American policy abroad, and this is completely
17 abroad, to say nothing of the original reason it was kept
18 out, which is because a lot of it is extremely vituperative,
19 I think is the word.

20 I think I would have done better writing a letter
21 than this sort of rambling discourse.

22 It also speaks of Abdel Rahman in the third
23 person, which we would contest shows that it was not written
24 by the sheik and he was merely taking dictation from the
25 sheik.

1 THE COURT: I believe that was his testimony.

2 MS. STEWART: That was his testimony, that's what
3 I am saying. But sometimes he says we, not I, Abdel Rahman.

4 MR. McCARTHY: We listened to a rather long
5 conversation in the Abu Bakr Mosque where in the third
6 person Dr. Abdel Rahman repeatedly says the sheik has to be
7 a front for, or by his lights at least a symbol for.

8 THE COURT: If you want the witness back, we can
9 get him back.

10 MR. SERRA: Your Honor, may I be heard as to the
11 same exhibit but from the viewpoint of a codefendant? I
12 find it interesting that the government offers in this
13 letter, which I also just received this morning, two
14 different but very important different evidentiary bases to
15 offer this: 801(d)(1) a coconspirator statement, and
16 802(d)(1) which is an admission. If it is an admission,
17 your Honor, which the government seems to emphasize when
18 they say, and I quote from page 2, it is powerful evidence
19 of the sheik's intent and motive, then it is not admissible
20 against the rest of the people who are presently on trial.
21 It is only admissible if it is an admission against the
22 person who makes it.

23 If the court is inclined to admit it, if at
24 all -- I am certainly not --

25 THE COURT: Two things inclined me to admit. You

1 know one was that I saw things there the second time that I
2 hadn't seen the first, which always has an effect on me that
3 may be beyond the significance of what I saw. But the
4 second reason had to do with something the government also
5 cited, which was part of Miss Stewart's cross-examination,
6 so I am inclining toward admitting it. But you were saying
7 that if I were inclined to admit it then what.

8 MR. SERRA: As a coconspirator statement, your
9 Honor, from the position of coconspirator I would raise a
10 Rule 403 objection. The government has endless speeches and
11 writings of Dr. Abdel Rahman which makes his political
12 beliefs, whether interpreted Miss Stewart's way or the
13 government's way, expounded at great length without --

14 THE COURT: They are not endless. In fact, I
15 have kept a good number of them out.

16 MR. SERRA: Your Honor, I would submit from a
17 codefendant's point of view this would be number one on the
18 list to keep out because of the inflammatory language, which
19 adds very little to the overall political beliefs but adds a
20 lot to the heat of the argument, without shedding much more
21 light.

22 THE COURT: I think part of the government's
23 point is that the heat in this case is the light.

24 MR. SERRA: Your Honor, the light is elucidated
25 by at least a dozen other exhibits already in evidence.

1 THE COURT: We are not simply dealing with
2 political opinions, John Stuart Mill against somebody else.
3 This is political opinions of a certain kind and at a
4 certain voltage.

5 MR. SERRA: I don't want to be making this
6 argument because Miss Stewart certainly does not need me to
7 put words in her mouth.

8 THE COURT: Although she would probably
9 appreciate it.

10 MS. STEWART: I am happy to have him do so.

11 MR. SERRA: Thank you, Miss Stewart.

12 This is not an argument that I wish to make
13 because I wish to argue strictly from the point of view of
14 the codefendant.

15 THE COURT: Understood.

16 MR. SERRA: If the court is going to admit this
17 under 802(d)(1) we don't need to get into it. If it is a
18 coconspirator statement and therefore admitted against all
19 defendants I would strongly urge the court that under 403
20 the inflammatory hate language in this warrants this to be
21 the first document that the court should exercise its
22 discretion under 403 to keep out.

23 Your Honor, the court read the letter probably in
24 more detail than I did, but it seems as though the
25 government's argument here is in the nature of admission

1 rather than a coconspirator statement, because they are
2 talking for two pages, Mr. McCarthy is talking for two pages
3 about Dr. Abdel Rahman's intent and motive, without saying
4 he is the one who wrote this. But that is an admission as
5 opposed to coconspirator statement, which would be in
6 furtherance of the conspiracy rather than simply eventing
7 anger.

8 MR. McCARTHY: I don't disagree with much of
9 that. I think that our main argument here is that it is
10 admissible both as an admission and as rebuttal to a defense
11 that is being pursued.

12 I would point out that given Mr. Serra's obvious
13 familiarity with the writings of the sheik which lead him to
14 make the argument that we have volumes of this stuff, the
15 objections ought to come at the time the door gets opened,
16 not at the time that we walk through it. We tried to get it
17 in the right way. It is simply not fair to allow half the
18 story to come in, and when we try to complete the picture
19 complain that everybody is being prejudiced.

20 THE COURT: What you are saying is that he should
21 have gotten up and objected when Miss Stewart cross-examined
22 with regard to the tape that the witness had. I wouldn't
23 really expect him to do that.

24 MR. McCARTHY: There are a lot of hard choices
25 that have to get made and I think you are hard put to

1 complain when with your eyes open a misimpression comes
2 flying in and you know that the misimpression is going to be
3 corrected. The time to stop it is when the misimpression
4 comes in the first place.

5 MS. STEWART: That was directly counter to his
6 testimony with regard to speeches made in mosques where he
7 was asked the question what about jihad in America. It had
8 nothing to do with this document, which was out of the case
9 completely at that point, and which the government was
10 sitting on like a ripe egg hoping to hatch, I would think.

11 THE COURT: Wait a minute. What you are telling
12 me is that having kept it out, you felt perfectly free to go
13 ahead as far as you wanted with absolutely no thought that
14 it might come back to haunt you.

15 MS. STEWART: There are 20 documents that say
16 everything that is said here, although it is said in the
17 sheik's words which I submit, your Honor, everybody who
18 reads this knows these are not the sheik's words. There is
19 not one quote from the Koran here. It is just inelegant,
20 poor Arabic, I am told by everyone, in the original.

21 THE COURT: That is something I can't speak to.

22 MS. STEWART: It is. Notwithstanding that, if
23 they are going to come back with this, saying America has
24 done terrible things abroad, in Saudi Arabia, in Palestine,
25 in Egypt, they could have come back right now. They don't

1 need this document to come back with it.

2 The fact is that this particular document is
3 extremely inflammatory in the sense of the pigs'
4 grandchildren, the monkey and the pigs' grandchildren, and
5 to put it in separately, not as part of ongoing testimony,
6 to bring this man back and put it in highlights it all the
7 more, making its prejudicial factor go up to a higher level
8 than it would have been if it had just come in in the
9 regular course.

10 MR. McCARTHY: First of all, they are his words
11 and these are crimes that are going to call for the fact
12 finder in this case to make a judgment call about whether
13 somebody is capable of very heinous crimes. The fact
14 that -- I don't quibble with the fact that the language is
15 strong, and if this were a securities case or a tax fraud
16 case, there might be a good argument --

17 THE COURT: Miss Stewart, you want an opportunity
18 to put something in writing?

19 MS. STEWART: Yes, I would, Judge.

20 THE COURT: OK. Whenever you can get to it.

21 MR. SERRA: Your Honor, I would point out that
22 the language Mr. McCarthy just used, whether someone is
23 capable of very heinous crimes is clearly an admission
24 rather than coconspirator statement, if the court admits
25 this at all.

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THE COURT: See you Monday.

(Proceedings adjourned until 9:30 a.m., Monday,
May 15, 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,"

Defendants.

-----x

S5 93 Cr. 181 (MBM)

May 15, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

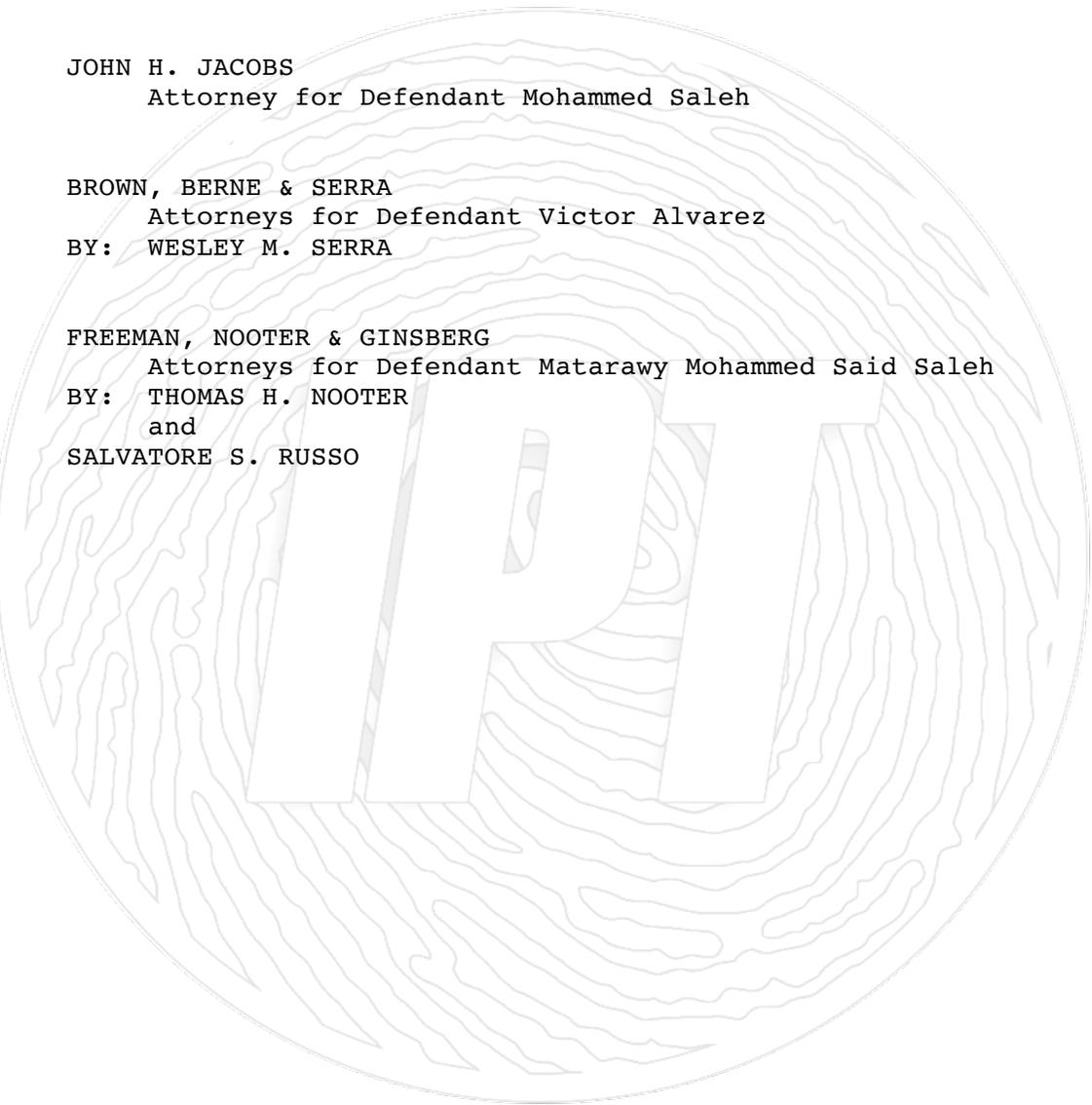
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. We have the following
4 problem. Juror number 11, who is a woman who has been
5 standing in the back for the last two months or so, is
6 really in a lot of pain. She is in a great deal of pain.
7 She has seen a doctor, who has told her that she needs two
8 weeks of bed rest, if that works fine, if it doesn't work
9 she needs an operation. She is very emotional about it,
10 obviously, but she thinks she needs to be excused. She has
11 told Miss Schwartz that she thinks she needs to be excused.
12 I can't argue with that. It has been obvious that she has
13 made enormous sacrifice in being there. She has been
14 standing for about two months and she lies down during
15 breaks in the jury room. You can't ask her for more than
16 that. What I propose to do is to talk to her and let her
17 go.

18 MR. SERRA: Your Honor, I am not sure I heard
19 you. You said that she, after consulting the doctor, had
20 requested to be excused?

21 THE COURT: Yes.

22 MR. SERRA: Judge, I just wasn't sure I heard
23 you.

24 THE COURT: But I am going to talk to her first
25 and get it direct from her and then let her go. I will see

1 you in a couple of minutes.

2 MR. McCARTHY: Your Honor, so your Honor is fully
3 informed if whatever questions of this nature come up, I
4 have advised some of the defense lawyers that the government
5 expects to rest its case within the next month.

6 MS. AMSTERDAM: Your Honor, do you want
7 representatives to go with you or to speak to her alone?

8 THE COURT: I would prefer to do it alone simply
9 because it is difficult -- obviously it will be on the
10 record. Does anybody want to be there?

11 MR. SERRA: Does the court intend to be on the
12 record?

13 THE COURT: Yes, of course.

14 (In the robing room)

15 (Jury number 11 present)

16 JUROR NO. 11: I am sorry, your Honor.

17 THE COURT: Look, everybody knows the sacrifice
18 you made.

19 JUROR NO. 11: I tried.

20 THE COURT: I know you did, and everybody else
21 knows you did.

22 JUROR NO. 11: With much regret I leave you. I
23 have no choice, you know, for my health.

24 THE COURT: I know, and I wish you the best of
25 luck, and I have to tell you everybody, including me, is

1 grateful for what you have done.

2 JUROR NO. 11: I am sorry if I screwed up this
3 morning by doing this. I didn't mean to, you know, step out
4 of line.

5 THE COURT: You didn't. I think you knew what
6 the bottom line was.

7 JUROR NO. 11: I have grown attached to my jury
8 family, you know.

9 THE COURT: We will stay in touch.

10 JUROR NO. 11: I want to come to the reunion if
11 they have one. Will I be allowed to?

12 THE COURT: Absolutely, and you stay in touch
13 with me too.

14 JUROR NO. 11: I will. I didn't write anything
15 because I didn't know if it was proper or anything, but my
16 heartfelt thanks.

17 THE COURT: Your face says it all.

18 JUROR NO. 11: Thank you.

19 (In open court)

20 THE COURT: Miss Stewart, we had talked at the
21 end of last week about some papers that you were going to
22 get for me.

23 MS. STEWART: Yes, your Honor. I told Mr.
24 McCarthy that I would have a letter here at 11. He said
25 that they won't deal with that until tomorrow.

1 MS. LONDON: Your Honor, very briefly,
2 Mr. Elhassan would like to voice an objection to the juror
3 being excused and to his not being present when the court
4 interviewed her.

5 THE COURT: I take it when you say that
6 Mr. Elhassan would like to, you mean Mr. Elhassan would like
7 to, not his lawyer.

8 MS. LONDON: Yes.

9 THE COURT: The objection to both is patently
10 without basis. The record will disclose the reasons and
11 does disclose the reasons the juror was excused.

12 (Jury present)

13 THE COURT: Good morning, ladies and gentlemen.

14 JURORS: Good morning.

15 THE COURT: As you know, we have had to excuse
16 juror number 11, who has been in great discomfort for a long
17 time. Juror number 14 will take seat number 11. We will
18 move your materials to seat number 11 but in the meantime
19 you are now juror number 11.

20 Mr. McCarthy.

21 MR. McCARTHY: Yes, your Honor, thank you.

22 GAMAL ABDEL-HAFIZ,

23 called as a witness by the government,

24 having been duly sworn, testified as follows:

25 THE COURT: Please try to talk into the

1 microphone.

2 MR. McCARTHY: May I proceed, your Honor?

3 THE COURT: Go ahead.

4 MR. McCARTHY: Your Honor, before I resume Mr.

5 Abdel-Hafiz, at this time the government would offer

6 Government's Exhibit 326E, which for counsel's benefit is CM

7 23. 326E is a tape and 326T is a transcript with no

8 underlined portions.

9 THE COURT: There being no objection, 326E and
10 326T are received.

11 (Government's Exhibits 326E and 326T received in
12 evidence)

13 MR. McCARTHY: If I may, I would resume with Mr.
14 Abdel-Hafiz at this point.

15 THE COURT: Go ahead.

16 MR. McCARTHY: Thank you, your Honor.

17 (Continued on next page)

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1 DIRECT EXAMINATION

2 BY MR. McCARTHY:

3 Q Good morning, Mr. Abdel-Hafiz.

4 A Good morning.

5 Q Why don't you turn the microphone in front of you
6 towards your face.

7 A All right.

8 Q On your left, I have placed before you five
9 tapes. Three of them are Government's Exhibit 342E, tapes
10 1, 2 and 3, and the other two are Government's Exhibit 348E,
11 tapes 1 and 2. Again for counsel's benefit, 342E is CM 40.
12 348E is CM 46.

13 Mr. Abdel-Hafiz, did you review those tapes?

14 A Yes, sir, I have.

15 Q Also on your left there are two transcripts, one
16 which is marked 342T and the other, I believe, 348T.

17 A Yes, sir.

18 Q Did you review the underlined portions of the
19 tape 342E?

20 A Yes, sir.

21 Q I am sorry. I screwed it up. 342T.

22 A Yes, sir, I have.

23 Q And you compared that against the Arabic language
24 spoken on the tape which is 342E?

25 A Yes, sir.

1 Q Are the underlined portions a fair and accurate
2 English translation of the Arabic on the tape?

3 A Yes, sir, they are.

4 Q I want to ask you now the same questions with
5 respect to 348T.

6 A Yes, sir, I have.

7 Q In other words, have you compared the underlined
8 portions in the transcript that is 348T to the Arabic that
9 is spoken on the tape which is 348E?

10 A Yes, sir, I have.

11 Q And are they fair and accurate?

12 A Yes, sir, they are.

13 MR. McCARTHY: Your Honor, at this point the
14 government would offer the tapes 342E and 348E, and the
15 transcripts, the T exhibits.

16 THE COURT: Mr. Wasserman, you are rising but
17 what are you rising to do?

18 MR. WASSERMAN: I have some cross.

19 THE COURT: Why don't we wait for cross. Absent
20 objection, 342E and 348E and the corresponding transcripts,
21 342T and 348T are received.

22 (Government Exhibit 342E, 342T, 348E, and 348T
23 were received in evidence)

24 Q Mr. Abdel-Hafiz, let me just for a moment, if I
25 may, direct you to the transcript that is 342T, and

1 specifically to page 23 of that transcript.

2 MR. McCARTHY: Your Honor, this is in the jury's
3 books, by the way.

4 THE COURT: 342?

5 MR. McCARTHY: Yes, sir.

6 THE COURT: That is presumably in the 300 series.

7 MR. McCARTHY: I sure hope so. 342T, page 23.

8 THE COURT: There should be a book marked 300
9 been series next to each juror's chair. You are on 342?

10 MR. McCARTHY: Yes, your Honor.

11 THE COURT: Which page?

12 MR. McCARTHY: Page 23, the last attribution on
13 that page.

14 I think everyone has it, your Honor so I will
15 proceed.

16 THE COURT: Go ahead.

17 Q Mr. Abdel-Hafiz, are you familiar with an Arabic
18 phrase, and again forgive my pronunciation, nikremo hallawa?
19 Let me spell that. N-I-K-R-E-M-O -- that's the first
20 word -- hallawa, H-A-L-L-A-W-A.

21 A Yes, sir.

22 Q What does nikremo hallawa mean?

23 A It means to be generous to him if we translate it
24 literally, but in the context it means "will harm him" or
25 "will kill him."

1 Q Is it a common expression?

2 A Yes.

3 Q And you are saying that the literal meaning of it
4 is "will be generous to him"? You mean "will" as in the
5 future be generous to him?

6 A Yes.

7 Q But interpreting that phrase it means something
8 different to the Arabic speaker?

9 A Yes.

10 Q And that is?

11 A It means "we'll harm him" or "we will kill him."

12 Q Directing your attention to the bottom of page 23
13 of the transcript marked 342T, do you see an attribution to
14 Siddig Ali which says, I told him we will be generous to
15 him, and then in brackets sound of the kiss that expresses
16 sarcasm?

17 A Yes.

18 Q Did you hear the expression nikremo hallawa in
19 that portion of the transcript?

20 A Yes, sir.

21 Q What did you understand it to mean? I realize
22 that you have translated it "we will be too," T-O-O,
23 "generous to him."

24 A Yes. I understood that means we will harm him or
25 we will kill him.

1 MR. McCARTHY: Thank you. I have no further
2 questions at this time, your Honor.

3 THE COURT: Mr. Wasserman representing
4 Mr. Hampton-El. Go ahead.

5 CROSS-EXAMINATION

6 BY MR. WASSERMAN:

7 Q Good morning, Mr. Hafiz.

8 A Good morning, sir.

9 Q Mr. Hafiz, could you turn to page 29 of 342T.

10 A Yes, sir.

11 Q You had worked on a previous translation of this
12 transcript, correct?

13 A Previous translation?

14 Q In other words, this is not the first draft of
15 your transcript, does?

16 A I am not really sure. I believe this the first
17 one that I worked on. There were some more underlines that
18 I worked on before, but this is the first time I got nine
19 full pages of underlines from this transcript.

20 Q Had there been other translators who worked on
21 this particular transcript, to your knowledge?

22 A I believe so. If there is a transcript or a
23 translation done, somebody else did it.

24 Q What I direct your attention to is the
25 attribution to Siddig Ali near the top of the page, and then

1 if you go down that attribution you will see about five
2 lines, four lines from the bottom you will see the subject
3 is known?

4 A Yes.

5 Q You then have I even, because I was very scared
6 for Abdel Rashid so they wouldn't do anything to him, I
7 didn't even call Abdel Rashid on Monday. Correct?

8 A Yes.

9 Q Do you recall what the translation was before you
10 made that change?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q The Arabic that you interpreted for that
14 particular phrase --

15 THE COURT: Which particular phrase, Mr.
16 Wasserman?

17 MR. WASSERMAN: The one that he just read, your
18 Honor.

19 THE COURT: The one that who just read?

20 MR. WASSERMAN: Mr. Hafiz.

21 MR. McCARTHY: I think Mr. Wasserman just read
22 it.

23 MR. WASSERMAN: I am sorry, if I just read it,
24 forgive me. It is the phrase in the question.

25 THE COURT: The long segment of the sentence that

1 you read?

2 MR. WASSERMAN: Yes, Judge.

3 THE COURT: Go ahead.

4 Q The Arabic for that could be interpreted as
5 follows: It was not that I was so scared for Abdel Rashid
6 or anything like that. We hadn't done anything. I didn't
7 even call Abdel Rashid on Monday.

8 You are aware that that --

9 MR. McCARTHY: Objection to form.

10 THE COURT: Sustained. Are you asking a
11 question?

12 MR. WASSERMAN: OK. That's the question.

13 THE COURT: Your question is can it be
14 interpreted the way you just read it?

15 MR. WASSERMAN: Correct.

16 A I don't believe so.

17 Q Are you aware that --

18 MR. McCARTHY: Objection.

19 MR. WASSERMAN: What is the objection?

20 THE COURT: Sustained.

21 MR. WASSERMAN: What? I am sorry, Judge. I am
22 not aware what the objection was to.

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

24 (At the side bar)

25 THE COURT: I assume what you intend to ask him

1 is are you aware that that was translated that way by
2 someone else. If that is the question, it is objectionable.

3 MR. WASSERMAN: Let me tell you about the
4 background --

5 THE COURT: I don't care about the background, I
6 care about the question.

7 MR. WASSERMAN: All right, OK fine. The question
8 that I would propose then to submit to him is, are you aware
9 that the same passage is contained in CM 41 and reads as
10 follows, and I would assume that is a permissible question.

11 THE COURT: Did he translate CM 41?

12 MR. WASSERMAN: I will ask him.

13 MR. McCARTHY: I would object because CM 41 is
14 not in yet.

15 MR. WASSERMAN: I would just ask if he has
16 translated it and is he aware --

17 THE COURT: That I will allow. That I will
18 allow.

19 MR. WASSERMAN: Thank you, Judge.

20 (In open court)

21 (Continued on next page)

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1 BY MR. WASSERMAN:

2 Q Mr. Hafiz, did you translate CM 41?

3 A No.

4 Q Have you reviewed CM 41?

5 A No.

6 Q The Arabic that you translated for this
7 particular passage --

8 THE COURT: Mr. Wasserman, if he hasn't either
9 translated or reviewed that other CM --

10 MR. WASSERMAN: I understand, no problem.

11 THE COURT: Good.

12 Q Following the phrase that, so they wouldn't do
13 anything to him I didn't even call Abdel Rashid on Monday, I
14 left the subject completely, could not that sentence I left
15 the subject completely be translated as I forgot about the
16 whole subject?

17 A In a sense, yes.

18 Q And wouldn't the fact that there is laughter as
19 indicated in the translation be an ingredient that would be
20 necessary for your correct interpretation of the passage?

21 A I believe I translated it as correct as I felt it
22 should be.

23 Q In your translation, you have that he is worried
24 about Abdel Rashid and then he laughs later, and what I am
25 suggesting to you is that Arabic could be translated as it

1 was not that I was so scared for Abdel Rashid or anything
2 like that, we hadn't done anything, I didn't even call Abdel
3 Rashid on Monday, that the laughter would be more consistent
4 with that interpretation?

5 MR. McCARTHY: Objection to form.

6 THE COURT: Sustained.

7 Q Would not the laughter be more consistent with
8 that interpretation?

9 THE COURT: Sustained.

10 Q Would not the laughter be more consistent with
11 the interpretation that he was not that scared of Abdel
12 Rashid at all?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q In the Arabic, are you saying that in the Arabic
16 that you have translated there is no phrase, we hadn't done
17 anything, before the phrase I didn't even call him on
18 Monday?

19 A I believe there was not a phrase that says that
20 in the Arabic.

21 Q And you are aware that that is in dispute?

22 A If it is underlined, I am aware it is in dispute.

23 MR. WASSERMAN: Fine, thank you. No further
24 questions.

25 THE COURT: Anyone else? Any redirect?

1 MS. STEWART: Judge, I have just one.

2 THE COURT: I am sorry. Miss Stewart.

3 CROSS-EXAMINATION

4 BY MS. STEWART:

5 Q Good morning, Mr. Abdel-Hafiz.

6 A Good morning.

7 Q With regard to Government's Exhibit 342, the
8 reference on page 23 that the government asked you to look
9 at.

10 A Yes, ma'am.

11 Q You indicated that the expression down there, "we
12 will be too generous to him," indicated that the person had
13 an evil intent, that they intended to harm or kill someone,
14 is that right?

15 A Yes, ma'am.

16 Q From what source did you derive that
17 interpretation?

18 A From the common knowledge of the Egyptian dialect
19 and the Egyptian language.

20 Q You are saying that this is an Egyptian
21 colloquialism, is that right?

22 A It is a way to say that we will take care of this
23 person, we will do something to him. In this particular
24 sentence, when they are calling the president a laughing
25 cow, that doesn't mean that they want to be generous to him

1 in a respectful way.

2 Q I am asking you specifically, is the phrase that
3 you testified to, that you put in quotation marks, "we have
4 to be generous to him," is that a colloquial expression, an
5 Egyptian colloquial expression?

6 A I don't really sure what you mean by colloquial
7 expression.

8 Q Let me see if I can rephrase the question. Is
9 this a form of speech that you are saying is particular to
10 Egyptian Arabic?

11 A Yes, fairly, yes.

12 Q When you put in brackets sound of a kiss that
13 expresses sarcasm, that is your own interpretation about
14 what the sound of the kiss expresses, is that right?

15 A It is my own interpretation from my knowledge of
16 the Egyptian dialect, too.

17 Q You are aware that the person speaking spoke in,
18 I assume, a Sudanese dialect, is that right?

19 A Not in this particular CM here. He was talking
20 to two Egyptians, and he was talking Egyptian dialect most
21 of the time.

22 Q You have translated this entire tape and many
23 others containing the voice of Siddig Ali, is that correct?

24 A Yes.

25 Q Does he speak in a Sudanese dialect that he

1 switches off to an Egyptian dialect?

2 A No, he mainly spoke in Egyptian dialect and
3 sometimes here and there he says Sudanese phrase or
4 something.

5 Q Is there any dictionary that we might look at
6 that would back up your position that this is an Egyptian
7 phrase particular to Egyptian Arabic?

8 A No, with an explanation. Let me explain that,
9 please. You will not find the dictionary that will give you
10 this explanation or interpretation, because no one made any
11 dictionaries for slang dialects, and part of the slang --
12 let me give you an example. All the Egyptians when they
13 refer to someone, that he smokes cigarettes, they say he
14 drinks cigarettes. If this is said by an Egyptian and they
15 would like to translate it from Arabic to English, it
16 wouldn't be correct to translate it that this person drinks
17 cigarettes, because it will not make any sense and it will
18 not be acceptable by any English-speaking person who will
19 read it. It has to be translated he smokes cigarettes.
20 Therefore in this particular dialect, you are not going to
21 find it in a dictionary that will tell you, when we are
22 talking about a sarcastic way about somebody and want to be
23 too generous to him, that will mean will harm him. That
24 would be understood by someone who used the language, knew
25 the language, heard the language, studied the language.

1 Q So you are saying this is a widespread
2 expression, an expression that is used very widely in Egypt,
3 is that right?

4 A Yes.

5 Q All parts of Egypt, the southern part, the
6 northern part, all parts of Egypt people use this particular
7 expression, is that right?

8 A I believe so, yes.

9 Q Did you consult with the government about this
10 particular expression at any time?

11 A In which way?

12 Q After you had translated it as you have
13 translated it in this particular --

14 A I was asked about it by the government, what it
15 meant.

16 (Continued on next page)

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1 MS. STEWART: Nothing further, Judge. Thank you.

2 THE COURT: Anyone else? Any redirect?

3 MR. McCARTHY: Thank you no, thank you, your
4 Honor.

5 THE COURT: Thank you, Mr. Abdel-Hafiz. You are
6 excused:

7 (Witness excused)

8 MR. McCARTHY: Your Honor, at this time the
9 government would ask to read Government's Exhibit 326T.

10 THE COURT: Go ahead.

11 MR. McCARTHY: Your Honor, this is a conversation
12 occurring on May 30, 1939. Mr. Fitzgerald will read the
13 part of, or the phrases attributed to Mr. Siddig Ali, Mr.
14 Khuzami will read the phrases attributed to Emad Salem.

15 (Government's Exhibit 326T read to the jury)

16 THE COURT: Ladies and gentlemen, we are going to
17 take a break. Please leave your notes and other materials
18 behind. Please don't discuss the case, and we will resume
19 in a few minutes.

20 (Jury excused)

21 MS. STEWART: Judge, I would just ask that the
22 jury be instructed that the references in this particular
23 conversation to Abdel Rahman they were just listening to, it
24 is very hard to distinguish between Abdo and Abdel, and that
25 the Abdo Rahman refers to Mr. Haggag.

1 THE COURT: I will.

2 MS. AMSTERDAM: Judge, I object to the reading at
3 the conclusion of the tape, the reading where Mr. Emad Salem
4 comes in at the end and explains what is happening in the
5 preceding conversation. It is the tail. When he is done
6 and gets out of the car, Emad speaks into a microphone, this
7 is Emad Salem, at this time I have just had this
8 conversation with this person and we discussed this.

9 THE COURT: It doesn't say what was discussed.

10 MS. AMSTERDAM: It will in others. This one I
11 don't mind. In certain instances down the road it will come
12 up again and I would object it it being included.

13 THE COURT: I would suggest that you discuss it
14 with the government.

15 MR. BERNSTEIN: We have, Judge, and we agreed
16 that as to the non-801 material we weren't going to seek it.

17 MR. McCARTHY: That was with respect to the
18 material that are reflected in the envelopes. I don't think
19 it is inadmissible. I don't think it would be inadmissible
20 even if Mr. Jacobs hadn't put it in issue, at least the
21 parts where he is dating and putting in the time of the
22 call. We will talk to counsel as to which ones ought to
23 come in or not.

24 THE COURT: Talk about it. If there is a dispute
25 I will resolve it.

1 (Recess)

2 (Jury present)

3 THE COURT: Mr. McCarthy.

4 MR. McCARTHY: Yes, thank you, your Honor. Your
5 Honor, the government would next move to Government's
6 Exhibit 342T.

7 THE COURT: That is in the same binder, 342T. It
8 is in the 300 series binder.

9 May I see counsel at the side briefly.

10 (At the side bar)

11 THE COURT: This looks like a very long one. Do
12 you have a break point at any point in this transcript?

13 MR. McCARTHY: Yes. What I thought, your Honor,
14 was as we got to sometime between 12:30 and 12:40, wherever
15 we were at that point that seemed appropriate we would stop,
16 unless you have a better idea or someone else does.

17 THE COURT: I don't, unless you have something
18 else you can do for a half hour and then do this this
19 afternoon.

20 MR. McCARTHY: No, your Honor.

21 THE COURT: Then we will have to break at some
22 point.

23 (In open court)

24 THE COURT: Ladies and gentlemen, a couple of
25 things before we start this transcript. In the one that we

1 read earlier, 326T, for those of you who were following the
2 transcript, I am sure you had no difficulty with this. For
3 those who may have been listening only, there were
4 references to two people. There was occasional reference to
5 Dr. Abdel Rahman. There were also references to Abdo
6 Rahman. Abdo Rahman is Abdo Rahman Haggag, who testified
7 here last week, it is not Abdel Rahman. So please keep
8 those two distinct.

9 Secondly, as to the transcript that we are about
10 to read now, it is obviously a very thick one, but please be
11 assured that we are going to break at some point in the
12 middle of the transcript so that you can have lunch. We are
13 not going to go through it without a break.

14 Go ahead.

15 MR. McCARTHY: Your Honor, this is a conversation
16 which occurs on June 14, 1993. We will be reading that
17 portion of the transcript that involves a conversation
18 between Siddig Ali, Emad Salem and Mohammed Abouhalima. The
19 portion we would read from begins on page 3, the end of the
20 sixth attribution, which is to Mr. Salem. Mr. Khuzami will
21 read the attributions to Mr. Salem, Mr. Fitzgerald will read
22 the attributions to Mr. Siddig Ali, and I will read the
23 attributions to Mohammed Abouhalima.

24 (Government's Exhibit 342T read to the jury)

25 JURORS: Excuse me.

1 THE COURT: It is difficult, it is impossible to
2 hear you.

3 JURORS: No, what page?

4 THE COURT: Page 3 of 342T.

5 MR. McCARTHY: Sorry.

6 THE COURT: Start again and indicate which
7 attributions you are starting with.

8 MR. McCARTHY: Yes, your Honor. It is the sixth
9 attribution on page 3 and it is the last sentence of that
10 attribution, which is the third line of the attribution to
11 Mr. Salem, beginning "What's up, man."

12 (Reading resumed)

13 (Continued on next page)

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1 THE COURT: Excuse me. May I see counsel briefly
2 at the side. The government and Ms. Stewart, or Mr. Jabara.

3 (At the side bar)

4 THE COURT: I am assuming that the references in
5 this transcript to Abdel Rahman are in fact references to
6 Abdo Rahman Haggag or so it appears.

7 MR. McCARTHY: Yes, your Honor. That's correct.

8 THE COURT: Who is also called "Abdel Rahman."

9 MR. McCARTHY: That is correct.

10 THE COURT: I assume you would want me to so
11 instruct the jury, particularly since I gave the instruction
12 before.

13 MR. McCARTHY: My recollection of this
14 conversation is that when they speak about the sheik, they
15 call him "the sheik." They don't refer to him as "Abdel
16 Rahman."

17 THE COURT: OK.

18 MR. JABARA: Also, your Honor, in other parts
19 they refer to so and so as "Sheik" and so forth, and they
20 are not referring to --

21 THE COURT: That is an honorific. That depends
22 on the context to determine who it is.

23 MR. JABARA: Right.

24 THE COURT: I think I should give an instruction
25 at this point, if you want one.

1 MR. JABARA: Absolutely we want one. We
2 absolutely would require one.

3 (In open court)

4 THE COURT: Just a couple of things to point out,
5 ladies and gentlemen. In this transcript, there are
6 occasional references to Abdel Rahman with no introduction.
7 In other words, they don't refer to "Sheik Abdel Rahman."
8 They refer to simply "Abdel Rahman." That is a reference to
9 Abdel Rahman Haggag, not to Dr. Abdel Rahman.

10 One other feature of these conversations that I
11 should point out to you, and that is that occasionally the
12 word "sheik" is used to refer to a person. Depending on
13 context, you will have to determine whether that is a
14 reference to Sheik Omar Abdel Rahman or whether it is simply
15 an honorific reference to somebody else who is using the
16 title "sheik," or who is being addressed as "sheik." It's
17 not always the person who is on trial here as Sheik Omar
18 Abdel Rahman.

19 Go ahead.

20 MR. McCARTHY: Your Honor, we are picking up from
21 after the long attribution to Mr. Salem on the beginning
22 of -- or in the middle of page 11.

23 THE COURT: We are on page 11. Go ahead.

24 (Government Exhibit 342T was read to the jury)

25 MR. McCARTHY: Your Honor, would this be an

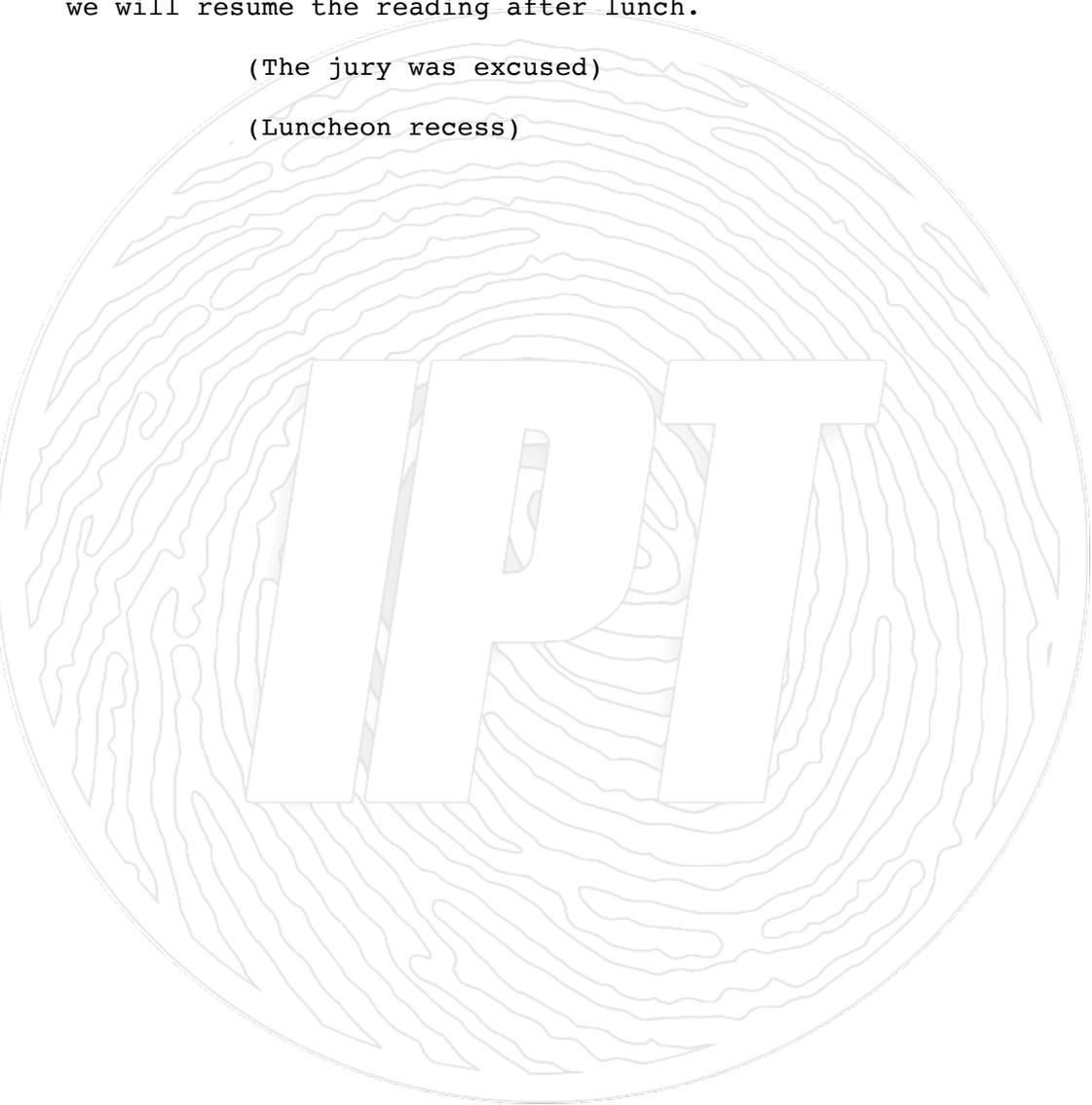
1 appropriate point?

2 THE COURT: All right. Ladies and gentlemen, we
3 are going to break for lunch. Please leave your notes and
4 other materials behind. Please don't discuss the case and
5 we will resume the reading after lunch.

6 (The jury was excused)

7 (Luncheon recess)

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AFTERNOON SESSION

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2:05 p.m.

(In open court; jury not present)

MR. SERRA: Your Honor, a brief request. I spoke to Mr. McCarthy before lunch and the government agrees that the court could instruct the jury, and I am asking the court to to that, that none of the references to Mohammed in any of today's conversations refer to Mohammed the Spanish.

THE COURT: I will so instruct.

MR. McCARTHY: Your Honor, the other thing is, we got into the habit of reading quote unquote in transcripts because it related to the Koran, I think, in the early --

THE COURT: Yes. It is often not necessary. If somebody says I said to him what are you talking about, why not just say I said to him what are you talking about, rather than I said to him quote what are you talking about unquote.

MR. McCARTHY: Right.

THE COURT: Anybody have a problem with that? The context will show clearly what is going on.

MR. McCARTHY: Thank you.

THE COURT: Can I see Mr. McCarthy and Mr. Serra at the side for just a minute.

(At the at the side bar)

THE COURT: I wanted to do this in case the jury

1 walked in, but those have been principally references to
2 Mohammed Abouhalima, haven't they?

3 MR. SERRA: Yes, Judge.

4 THE COURT: Is it all right for me to point that
5 out?

6 MR. SERRA: It is all right for me. My client
7 requested that you specifically say it is not him.

8 MR. McCARTHY: I think when we get to another
9 Mohammed it will be clear from the context.

10 THE COURT: When and if we do?

11 MR. McCARTHY: When and if we do. I think there
12 may be some references to another Mohammed at the end.

13 (In open court; jury present)

14 THE COURT: Ladies and gentlemen, we are going to
15 resume reading from Exhibit 342T, page 17 of that exhibit.
16 That is 342T, page 17.

17 Before the reading resumes, I should point out
18 what I hope is obvious, and that is that in the prior
19 transcript and in this transcript, there have been and will
20 be references to somebody named Mohammed. Those references,
21 I think, were principally if not exclusively to Mohammed
22 Abouhalima, the brother of Mahmoud Abouhalima, but in any
23 event they are not, any of them, references to Mohammed the
24 Spanish, which is one of the names by which Mr. Alvarez is
25 known. So none of these references to Mohammed are

1 references to Mohammed the Spanish.

2 Mr. McCarthy.

3 MR. FITZGERALD: Thank you, Judge. And we will
4 be reading from page 17, middle of the page, beginning with
5 Siddig Ali, I don't know why.

6 (Reading continued)

7 MR. McCARTHY: Your Honor, is this an appropriate
8 point?

9 THE COURT: Yes. Ladies and gentlemen, we are
10 going to break for a short time. Please leave your notes
11 and other materials behind. Please don't discuss the case,
12 and we will resume in a few minutes.

13 (Jury excused)

14 MR. RICCO: Your Honor, Mr. El-Gabrowny would
15 like to be excused for the remainder of the afternoon.

16 THE COURT: Is that correct?

17 MR. NOOTER: My client is in the same position.
18 He has a stomach upset.

19 THE COURT: First come first served. Mr.
20 El-Gabrowny, you want to be excused for the remainder of the
21 afternoon?

22 DEFENDANT EL-GABROWNY: Yes.

23 THE COURT: You understand that we are going to
24 continue.

25 MR. RICCO: He said yes, he would like to go back

1 to the MCC.

2 THE COURT: That we continue?

3 MR. RICCO: Yes, your Honor.

4 THE COURT: Mr. Nooter, your client also wants to
5 go back?

6 MR. NOOTER: He does, your Honor. He does
7 understand the problem.

8 THE COURT: That we will continue? Is that
9 satisfactory?

10 DEFENDANT WAHID SALEH: Yes.

11 THE COURT: Thank you very much. You may both go
12 back.

13 (Recess)

14 MR. McCARTHY: Your Honor, we have concluded the
15 reading of 342T that we would ask to do at this time.

16 THE COURT: All right. That will come as a
17 disappointment.

18 MR. McCARTHY: I see you are getting over it
19 already, though. We probably will not read up to page 81
20 when the discussion with Mr. Abouhalima ends, and at a later
21 point in chronological presentation of the CM's we would
22 probably read from 81 till the end but we don't ask to do
23 that at this time.

24 THE COURT: What are you going to do now?

25 MR. McCARTHY: We are going to recall

1 Mr. Corrigan on the FISA reels relating to Mr. Hampton-El.

2 (Jury present)

3 THE COURT: Ladies and gentlemen, the government
4 will not be reading further now from 342T, which was the
5 transcript that we were hearing before.

6 Mr. Khuzami.

7 MR. KHUZAMI: Your Honor, the government calls
8 Detective Thomas Corrigan at this time.

9 THOMAS CORRIGAN,
10 called as a witness by the government,
11 having been duly sworn, testified as follows:

12 THE COURT: Go ahead, Mr. Khuzami.

13 MR. KHUZAMI: Thank you.

14 (Continued on next page)

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1 DIRECT EXAMINATION

2 BY MR. KHUZAMI:

3 Q Detective Corrigan, you are a supervising
4 detective on this case, is that correct?

5 A That is correct, sir.

6 Q Was one of your duties as a supervising detective
7 the supervision of the electronic surveillance of a
8 telephone line?

9 A Yes, sir.

10 Q Electronic surveillance of a telephone is
11 commonly referred to as a wiretap, is that right?

12 A That is correct, sir.

13 Q On whose telephone was the wiretap placed that
14 you supervised?

15 A Abdel Rashid Abdullah, also known as Clement
16 Hampton-El.

17 Q Do you recall the telephone number of Mr. Rashid
18 that the wiretap was placed on?

19 A I think it was 718-941-0026.

20 Q Where was that telephone line located?

21 A At 1351 New York Avenue, Brooklyn, New York,
22 apartment 5D as in David.

23 Q Do you know who lived at that location?

24 A Mr. Hampton-El and his wife, Mrs. Hampton-El.

25 Q For what time period was the wiretap on the phone

1 at that location?

2 A From April 2, 1993, through June 24, 1993.

3 Q How many days per week was that telephone line
4 monitored?

5 A Seven days a week, sir.

6 Q How many hours a day?

7 A Twenty-four hours, sir.

8 Q Was this a court-authorized wiretap?

9 A That is correct.

10 Q Was it authorized pursuant to the Foreign
11 Intelligence Surveillance Act, or FISA for short?

12 A That is correct, sir.

13 MR. WASSERMAN: Objection.

14 THE COURT: That is sustained. If it was court
15 authorized, it was court authorized. The statute is
16 irrelevant. Go ahead.

17 Q Detective Corrigan, when the wiretap began on
18 April 2, 1993, on what type of equipment were the calls
19 recorded?

20 A The first tape was a cassette tape, roughly
21 lasted approximately 10 hours. Calls after that were on a
22 reel-to-reel tape, lasted approximately two weeks. Then it
23 went back to a cassette tape.

24 Q After it went back to cassette, did it change
25 again after that point?

1 A No, sir.

2 Q How long were calls recorded on the cassette
3 system after it changed from reel-to-reel?

4 A I believe from approximately April 16 of '93
5 through the conclusion of the wiretap, which was on June 24,
6 1993.

7 THE COURT: Excuse me. You are going to have to
8 talk into the microphone. Thank you.

9 Q Detective Corrigan, who operated the cassette and
10 reel-to-reel equipment?

11 A We had five monitoring investigative assistants
12 assigned to the wire.

13 Q Where did the monitoring of this telephone line
14 take place?

15 A On the 24th floor of FBI building in 26 Federal
16 Plaza.

17 Q How was it that the cassette and reel-to-reel
18 recorders were activated? That is, how did they know when
19 to record a call?

20 A The calls were intercepted automatically. When
21 the phone was picked up in apartment 5D at 1351 New York
22 Avenue, it would automatically begin recording.

23 Q Were any steps taken to prevent a tape from
24 running out in the middle of a call or when a call was close
25 to completion?

1 A Yes, sir. The monitoring agents would have
2 cassettes at the ready in the event that during a
3 conversation they had to, you know, stop the tape, pull it
4 out, replace it. If they had some time before the end of a
5 call or at the conclusion of a previous call where they saw
6 that the tape was going to run out, they would change the
7 tapes.

8 Q Did you personally spend time in the rooms where
9 these calls were being intercepted?

10 A Yes, sir, I did.

11 Q How often were you present?

12 A It ranged from 10 to 15 minutes a day, normally
13 six days a week, on occasion seven days a week, anywhere
14 from 10 minutes to two to three hours.

15 Q What did you do while you were in the room where
16 the calls were being intercepted?

17 A I observed the monitoring agents take down the
18 calls, I would read some of the tech cuts that they had
19 prepared, at times I would listen to live conversations as
20 they occurred.

21 Q When the calls were recorded on either
22 reel-to-reel or cassette tapes, was there one copy made or
23 more than one copy?

24 A There was more than one copy made, sir. There
25 was an original copy and usually a working copy, on occasion

1 two working copies.

2 Q Were those copies referred to by any particular
3 names?

4 A They were called working copies.

5 Q And the other one? I am sorry --

6 A I am sorry. What was deemed the original tape
7 would be marked the original tape, the other tapes would be
8 marked working copies.

9 Q What would happen to the original, starting with
10 the reel-to-reel tapes, after it was filled up with calls?

11 A They would be removed from the tape and logged
12 into an evidence bag, a yellow evidence envelope that we
13 have.

14 Q Was there any information recorded on either the
15 reel or the evidence bag?

16 A Yes, sir, usually on both. We would mark the
17 time the reel was put onto the machine, as well as the time
18 it was removed from the machine, and the date of course. I
19 am sorry.

20 Q What happened to the original reel-to-reels after
21 they were placed into these evidence envelopes?

22 A They were put into a sealed evidence room in 26
23 Federal Plaza.

24 Q Who had access to that sealed room?

25 A Myself, Special Agent Liguori, Special Agent

1 Voss, I believe Special Agent McNally, and the monitoring
2 agents, of course.

3 Q Can you describe what happened to the original
4 cassette tapes after they were taken out of the recording
5 equipment?

6 A Same thing, sir. They were moved to a secure
7 evidence room in 26 Federal Plaza.

8 Q What type of information, if any, was written on
9 the cassette?

10 A On the cassette itself, same format. It would be
11 the time on, time off, the date, and then if there was an
12 insert -- I should say there was an insert also placed in
13 the cassette tape that would basically have the same
14 information.

15 Q Who recorded this information on either the
16 reel-to-reel, the cassette or the insert?

17 A For the most part the monitoring agents, sir.

18 Q Did you become familiar with their handwriting as
19 you worked in that room?

20 A Yes, sir, I did.

21 Q Before the reel-to-reels when cassettes were
22 placed in a secure evidence room, were they sealed or marked
23 in any manner?

24 A Maybe I should back you up, sir. We removed some
25 of the tapes to a sealed evidence room and there came a time

1 that it was moved to electronic surveillance, what we refer
2 to as ELSUR unit. They were logged and sealed in that
3 space.

4 (Continued on next page)

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1 Q Were these reels or cassettes sealed up or boxed
2 in any manner before they were placed in the ELSUR evidence
3 room?

4 A That's correct, sir.

5 Q What was done?

6 A They were sealed with evidence tape.

7 Q Who has access to the ELSUR evidence room?

8 A That's a restricted area that's monitored. You
9 have to log in and log out. To get there you would have to
10 show credentials or a shield.

11 Q What happened to the working copies of the
12 reel-to-reels or the cassettes after they were taken from
13 the machines?

14 A They were brought down to another secure evidence
15 room that we have on our working space, and we used to place
16 them there.

17 Q Once the originals were in the ELSUR evidence
18 room, were they ever removed, to your knowledge?

19 A Yes, sir, they were.

20 Q For what purposes?

21 A Duplication purposes, sir.

22 Q Were they at some point brought to the United
23 States Attorney's Office?

24 A Yes, sir, they were.

25 Q Do you recall when that was?

1 A I don't know the date. A few weeks ago, sir.

2 Q Did you examine the items before they were
3 brought to the United States Attorney's Office?

4 A Yes, sir.

5 Q What condition were they in?

6 A They were sealed with evidence tape, boxed and
7 sealed.

8 Q Prior to that time, to your knowledge, had they
9 ever left of the FBI's custody?

10 A No, sir.

11 Q Once they were at the U.S. Attorney's Office did
12 you do anything with them?

13 A Yes, sir. I opened the boxes up and I reviewed
14 them, sir.

15 Q What kind of review did you conduct?

16 A Basically I conducted the dates from the
17 beginning of the wiretap to the conclusion of the wiretap.
18 I would check the tapes to see what time the tape was put
19 on, what time the tape was removed, and see if it would
20 accurately line up with the evidence envelope or the --
21 which I explained earlier, the cassette with the little
22 insert in it.

23 Q Do you recall what period of time those cassettes
24 and reels covered that you examined in the United States
25 Attorney's Office?

1 A From April 2, 1993 through June 24, 1993.

2 Q That was the entire period of the wiretap?

3 A That's correct, sir.

4 Q When you examined them in the United States
5 Attorney's Office, did you recognize the handwriting on
6 those reels and cassettes?

7 A Yes, sir, the same handwriting as the monitoring
8 agents in the room that we had set aside.

9 MR. KHUZAMI: Your Honor, may I approach.

10 THE COURT: Yes.

11 Q Detective Corrigan, if I might refer you first to
12 what's been marked as Government Exhibit 695 for
13 identification, which contains inside envelopes marked
14 individually as Government Exhibits 695A through M and ask
15 you if you recognize that item.

16 A Yes, sir, I do.

17 Q What is it?

18 A It is a box that contains the reel-to-reel tapes,
19 and I believe one cassette.

20 Q How do you know what's in Government Exhibit 695
21 contains one cassette and reel-to-reel tapes?

22 A My initials are on the box and the date that I
23 opened or actually sealed the box, and I just recall from my
24 memory what was in the box.

25 Q Is that one of the boxes that you examined in the

1 United States Attorney's Office prior to your testimony
2 today?

3 A Yes, sir, it is.

4 Q Did you recognize the handwriting on the cassette
5 and the reel-to-reels you saw there?

6 A Yes, sir. I would like to open it up, if I
7 could, though.

8 Q Sure.

9 A Yes, sir. These are the same envelopes.

10 Q Do you recall what period of time the cassette
11 tape and reel-to-reels contained in Government Exhibit 695
12 cover?

13 A I wrote those on the side of the box. They went
14 from April 2, '93 to April 13 '93.

15 Q Let me refer you next to Government Exhibit 696,
16 which contains items marked individually as Government
17 Exhibit 696A through D, and 696E1 through 51, and ask you,
18 as to 696, do you recognize that box?

19 A Yes, sir.

20 Q What is it?

21 A Well, my initials are also on this box, sir.

22 Q What do you recognize the box to contain?

23 A I believe it was four reel-to-reel tapes and an
24 undetermined amount of cassette tapes.

25 Q Do you recall where those reels and cassette

1 tapes came from?

2 A Well, the monitoring room in 26 Federal Plaza,
3 sir.

4 Q How do you know that?

5 A Because of the handwriting, the same handwriting
6 was on -- if I could check, I would like to make sure.

7 Q Sure.

8 A These are the tapes with the signatures that
9 appear in that room, the monitoring room.

10 Q Do you recall for what time period the
11 reel-to-reels and cassette tape contained in Government
12 Exhibit 696 cover?

13 A I believe the reel-to-reels stretch from April
14 13, '93 to April 16 '93, and then the cassettes started up,
15 and I believe they went from the 16th through May 17. I
16 have from 4/13/93 --

17 MR. PATEL: Objection.

18 THE COURT: Sustained.

19 Q One item. Mr. Corrigan, do you recall what the
20 telephone number was for Mr. Hampton-El during the period of
21 time of the wiretap?

22 MR. PATEL: Objection. Asked and answered.

23 A You know to be honest with you -- I'm sorry.

24 THE COURT: Well, it's been testified to.

25 MR. KHUZAMI: OK. I just wasn't sure whether or

1 not I heard the number from the witness, and whether or not
2 it was --

3 THE COURT: He testified to 718-961-0026.

4 MR. KHUZAMI: 0026?

5 THE WITNESS: Your Honor, that's incorrect.

6 Q Do you recall whether or not that is the correct
7 number?

8 A It's not. I wasn't sure. I should have said
9 something when I testified to that. It's 718-941-0226.

10 Q OK.

11 A I'm sorry.

12 Q Lastly, if you might take a look at Government
13 Exhibit 697, which contains items individually marked as
14 Government Exhibit 697A through 697U, and I ask you if you
15 recognize what is in that box.

16 A I will open it up. My initials are on this box
17 along with the date of April 13, 1995 when I opened and
18 resealed the box. Yes, sir, these are the cassettes.

19 Q Did you have an opportunity to review that box
20 before your testimony here today?

21 A Yes, sir, I did.

22 Q Do you know what's contained in that box?

23 A The cassettes from the dates ranging from May 17,
24 1993 --

25 MR. PATEL: Objection.

1 THE COURT: Sustained. There is a way to do it
2 if you want him to read it.

3 Q As you sit here today, without referring to any,
4 do you recall from what dates the cassettes contained in
5 Government Exhibit 696 on cover?

6 A From May 17, 1993 through June 24, '93.

7 Q Did you have an opportunity to review that prior
8 to your testimony today?

9 A Yes, sir, I did.

10 Q How do you recognize the items in Government
11 Exhibit 697 as the cassettes that were made from the wiretap
12 on Mr. Hampton-El's telephone?

13 A These cassettes contain the same handwriting as
14 the monitoring agents. There was five monitoring agents in
15 that room.

16 MR. KHUZAMI: No further questions, your Honor.

17 THE COURT: Mr. Wasserman, representing
18 Mr. Hampton-El. Go ahead.

19 MR. WASSERMAN: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. WASSERMAN:

22 Q Good afternoon.

23 A Good afternoon, Mr. Wasserman.

24 Q Detective, the five monitoring agents, do you
25 recall their names?

1 A Yes, sir. I think it was my Michael LeBlanc,
2 Peter Kohn, Susan Downing, Jody Lee Kessler, and Timothy
3 McCann.

4 Q How about David Coles?

5 A David Coles?

6 Q Yes.

7 A Yes, sir. I think he was a supervisor in the
8 wire room, that's correct.

9 Q And how about Kevin Burd?

10 A Burke? I think he did, he changed one tape, yes,
11 sir.

12 Q Could you take a look at April 6 to April 7 and
13 April 7 to April 8 and tell me who are the monitoring
14 agents.

15 A I'm sorry. April 6?

16 Q April 6 to April 7. That would be tape 9.

17 A Tape 9, sir?

18 Q Yes. Thank you.

19 Could you tell me who logged that in.

20 A I think it's David Coles.

21 Q When you say you think, is it?

22 A I'm not sure. It looks like the signature of
23 David Coles.

24 Q How about number 10?

25 A It's Kevin Burd.

1 Q When you would check these tapes, you wouldn't be
2 around at the time that the tapes were logged in, correct?

3 A For the most -- well, I shouldn't say that, sir.
4 Sometimes I was when they took them out of the tapes, but
5 the majority of the time I wasn't.

6 Q OK. And in terms of spot-checking the accuracy
7 of the tape, all you would do would be to monitor it for ten
8 minutes a day, mostly on a daily basis, correct?

9 MR. KHUZAMI: Objection to form.

10 THE COURT: Sustained as to form.

11 Q Did you do anything to monitor the accuracy of
12 the tape recording of the conversation?

13 A Are you talking about like technical equipment
14 and --

15 Q That the tape recording was an accurate recording
16 of the conversation.

17 A There was times, sir, that I listened to live
18 conversations as they were ongoing, yes, sir.

19 Q There was a log kept of the subject matter of the
20 conversation by the monitoring agents, correct?

21 A That's correct, sir.

22 Q Did you check that log against the tapes?

23 A Well, the logs that they kept were summaries,
24 sir --

25 THE COURT: The question was did you check the

1 log against the tapes?

2 THE WITNESS: Yes, sir.

3 Q Did you have occasion where you would be notified
4 that there was a conversation that you should listen to?

5 A Yes, sir.

6 Q Would it be fair to say that the conversations
7 that were being monitored were in English for the most part?

8 A Most part, peppered with Arabic, sir.

9 Q Arabic greetings and etc.?

10 A Sometimes Arabic phrases or words.

11 Q OK. Now, did you have occasion to monitor the
12 telephone at Rogers Avenue that was under Mr. Hampton-El's
13 name?

14 A The only time that that monitoring came over was
15 when the telephone number 718-941-0226 would place a call
16 to -- I believe Rogers Avenue was 718-771-6423. I believe
17 the only time we would pick that up was when the 941 call
18 would call into the 771 call.

19 Q It is your testimony there was no wiretap to that
20 phone at Rogers Avenue?

21 A That's correct sir.

22 Q And that phone was in Hampton-El's name?

23 A That's correct, sir.

24 Q Did you have occasion to coordinate conversations
25 that were being recorded with surveillance and other means

1 of investigative techniques?

2 A I'm sorry, sir. I missed your question.

3 Q I will withdraw the question. It was a little
4 confusing. You would be called in sometimes if a particular
5 conversation that was of interest. Did you then have
6 occasion to coordinate that with physical surveillance or by
7 discussion with an informant?

8 A There was times that we utilized the calls on the
9 FISA to do other investigative measures, yes, sir.

10 Q Would it be fair to say that there are 89 tapes
11 all told?

12 A I believe so. But I would have to count them or
13 check them to make sure.

14 Q Each tape is an hour and a half?

15 A I don't know, sir. I mean sometimes they were
16 shorter. Sometimes they went to the conclusion of the tape.
17 I don't know how much each side is, if they are 45 minutes,
18 if you wanted to check.

19 Q You are supervising this, is it your testimony
20 that some of the tapes are incomplete?

21 A Not incomplete, sir. As I testified earlier,
22 what would happen is if they got to the end of a tape, say
23 there would be maybe four minutes or five minutes of tape
24 remaining, they would change the tape. Therefore, it
25 wouldn't go to conclusion, if that is your question.

1 Q So other than that the tapes are complete, filled
2 with recordings?

3 A Yes, sir, I believe so.

4 Q And it would be fair to say that there are
5 hundreds and hundreds of conversations that were recorded?

6 A I wouldn't want to put a figure on it. There are
7 a lot of calls, sir.

8 Q And all the calls were included, including calls
9 from Mrs. Hampton-El?

10 A That's correct sir.

11 Q And there was no attempt to minimize the
12 recording at all, so personal conversations were recorded in
13 their entirety?

14 MR. KHUZAMI: Objection to form.

15 THE COURT: Sustained as to form.

16 MR. WASSERMAN: I will rephrase, your Honor.

17 Q All conversations were recorded?

18 A That's correct, sir.

19 MR. WASSERMAN: Thank you, sir. No further
20 questions.

21 THE COURT: Any other cross? Any redirect?

22 MR. KHUZAMI: None, your Honor.

23 THE COURT: Thank you, you are excused.

24 MR. KHUZAMI: Your Honor, may I approach briefly
25 with Mr. Jabara?

1 THE COURT: Yes.

2 (At the side bar)

3 MR. McCARTHY: We are at the point of being ready
4 to begin the reading of CM46. I just want to make sure, the
5 last conversation I had this morning with Ms. Stewart was
6 she was looking over the transcript that went in this
7 morning. My understanding of it was that she expected to be
8 here for this, and the fact that she is not may be of no
9 concern of mine at all, but I just wanted to --

10 MR. JABARA: The last I heard from her was that
11 she was told -- I don't know what happened, but I thought
12 that you were going to read it tomorrow.

13 MR. McCARTHY: No, I told her we might get to it
14 late this afternoon.

15 THE COURT: When you say that she was going to be
16 here for the reading of it, I mean --

17 MR. McCARTHY: The reading is the reading.

18 THE COURT: The state of the bidding is that the
19 transcript has been introduced?

20 MR. McCARTHY: It has, your Honor. It went in
21 this morning with Abdel-Hafiz. But she was going to
22 double-check to make sure there wasn't anything more in
23 dispute, which I told her I didn't have a problem with.

24 THE COURT: May I suggest that we take a short
25 break now and that a call be placed to her to determine what

1 is going on with that process.

2 MR. JABARA: I did call her at the break and she
3 said she was coming back this afternoon. One of the things
4 she was doing she was checking on the 46 for any differences
5 in --

6 THE COURT: Fine, but let's make the call.

7 MR. JABARA: OK.

8 THE COURT: We will take a short break.

9 (In open court)

10 THE COURT: Ladies and gentlemen, we need to take
11 another short break. I hope a very short one. Please leave
12 your notes and other materials behind. Please don't discuss
13 the case, and we will resume, I hope, very soon.

14 (Recess)

15 (Jury not present)

16 MR. JABARA: I was advised, your Honor, that Ms.
17 Stewart was on her way here, had left the office.

18 THE COURT: Well, she is clearly not here yet.

19 MR. BERNSTEIN: May I raise a minor matter while
20 we are waiting for things to happen.

21 THE COURT: I don't know that we are going to sit
22 and wait for things to happen. I would like to use the time
23 if we can.

24 MR. McCARTHY: Your Honor, at the point where we
25 were going to read Exhibit 508 to the jury, which was the

1 telephone chart, the court indicated that we wouldn't be
2 able to read it, but at one point the court would allow the
3 jury to peruse it. Perhaps this time could be used for that
4 purpose.

5 THE COURT: All right. That is 508?

6 MR. McCARTHY: Yes, your Honor.

7 THE COURT: Fine. Let's get them out here and
8 let them do that. Do they have it?

9 MR. McCARTHY: They do, your Honor.

10 THE COURT: All right.

11 MR. McCARTHY: Mr. Stavis reminds me, I shouldn't
12 have called it the telephone chart; activity chart.

13 THE COURT: Why don't we call it the chart.

14 MR. BERNSTEIN: Mr. Jacobs isn't here, but on his
15 behalf and all counsel we renew any objections we had to 508
16 again.

17 THE COURT: Right. I think I renew any rulings
18 that I made on it.

19 (Jury present)

20 THE COURT: All right. Ladies and gentlemen,
21 earlier in the testimony there was received in evidence a
22 chart that the government introduced as Exhibit 508. Is it
23 508?

24 MR. McCARTHY: 508, your Honor.

25 THE COURT: Although I would not let the

1 government read from that chart, it was a chart of telephone
2 calls and certain other activity, and I gave you an
3 instruction at the time about that chart, pointing out that
4 it was a government chart that included certain telephone
5 calls and other activity that they wanted you to focus on,
6 although whether there were other things that should also be
7 focused on was a matter that you would determine. I
8 indicated that at some point you would be permitted to
9 review that chart. This is the point.

10 So if you want to take it out, it is in the 500
11 series volume. It is Exhibit 508, and you may examine it
12 now. The volume in question says "500 to 699."

13 (Pause)

14 THE COURT: The first page simply indicates to
15 whom certain numbers are registered or with whom they are
16 associated and what the source is of that information, and
17 then the chart of activity itself begins on the second page
18 of the exhibit.

19 (Pause)

20 MR. McCARTHY: Your Honor, may Ms. Stewart and I
21 approach while the jury is reviewing the chart?

22 THE COURT: Yes.

23 (At the side bar)

24 THE COURT: Yes?

25 MS. STEWART: I took off the day to try to

1 finally finish up on 46. Mr. McCarthy gave me one draft
2 over the weekend, but it wasn't complete, and then he gave
3 me the final draft this morning. So I was trying to
4 reconcile -- and he said they have adopted most of our
5 translations, which I found to be true. However, I am only
6 up to about 30, and they have not incorporated any of the
7 underlinings that I want to incorporate, in other words, the
8 disputed parts that I want included, and the parts that are
9 now undisputed. I told Mr. McCarthy they aren't major, if
10 indeed it is court's desire that we start reading this now,
11 there is no problem, as long as we understand between the
12 two of us, which he tells me he does, that there will be
13 some parts that are not underlined now that will be in the
14 morning.

15 THE COURT: The record should reflect that it is
16 now eight minutes to five.

17 MR. McCARTHY: Right.

18 THE COURT: The likelihood that we can get
19 anything in -- they have just started looking at a 12-page
20 exhibit. I don't see the sense of starting a portion of a
21 transcript now, and then continuing tomorrow morning.

22 MR. McCARTHY: I agree, your Honor. I mean this
23 is a long transcript. There is no doubt it is going to go
24 through breaks, but I agree with your Honor.

25 THE COURT: I don't see the point. So why don't

1 we do it tomorrow so you can then incorporate whatever
2 underlinings have to be incorporated, and they won't have
3 to --

4 MR. McCARTHY: We will fix it overnight in the
5 meantime.

6 MS. STEWART: You mean I had to appear in front
7 of this jury in my sneakers, when I was unobtrusively hiding
8 in the back row?

9 THE COURT: Please.

10 MR. McCARTHY: They are riveted by the chart.
11 They didn't even notice.

12 THE COURT: This is the yuppie uniform these
13 days. Welcome to the 1990s.

14 (In open court)

15 THE COURT: Ladies and gentlemen, we are going to
16 break for the day. Please leave your notes and other
17 materials behind. Please don't discuss the case, and we
18 will resume tomorrow morning. Good night.

19 (Jury not present)

20 THE COURT: Mr. Bernstein, you had a matter that
21 you wanted to raise?

22 MR. BERNSTEIN: Yes, a minor matter, Judge. I
23 just wanted to raise -- the notes of the juror who has now
24 been excused, I gather, are still in the courtroom. It
25 would be my application that they be taken by the court and

1 ultimately destroyed.

2 THE COURT: I believe they have already been
3 taken, and they will be kept by me.

4 MR. BERNSTEIN: My application would be that they
5 be destroyed. I think that they are at this stage nothing
6 more than the musings of an individual who is no longer
7 deliberating in this case. The existence of them outweighs,
8 and causes the potential in the future that somebody may
9 want to look at them for whatever reason, and I don't see
10 that there is any purpose now that that juror is no longer
11 with us.

12 THE COURT: Me neither. But let me at least
13 think about it overnight.

14 MR. BERNSTEIN: Thank you, Judge.

15 MR. WASSERMAN: Your Honor, just one more thing.
16 I believe the government is going to be turning over to you
17 unredacted material that was provided to us under 3500 in
18 connection with two prospective witnesses.

19 MR. FITZGERALD: Yes. I will confirm I told
20 Mr. Wasserman I would do that after court today.

21 THE COURT: All right.
22 What is the timing of that witness?

23 MR. FITZGERALD: There are actually two
24 witnesses. Tomorrow morning we're reading, I believe, CM46
25 and then Mr. Numan will testify. I don't know how far he

1 will go. There are about four tapes, brief tapes after
2 that, and then Mr. Wilson will testify. I don't know if it
3 is going to be Tuesday afternoon, or, more likely,
4 Wednesday.

5 THE COURT: That sounds like the day after
6 tomorrow. Which witness is it? It is the second of the two
7 witnesses that you referred to?

8 MR. WASSERMAN: Your Honor, there are substantial
9 redactions with respect to both witnesses.

10 THE COURT: OK.

11 MR. FITZGERALD: I will bring both to you.

12 THE COURT: All right. Have you talked about the
13 redactions?

14 MR. FITZGERALD: Yes. I told Mr. Wasserman that
15 the reason they were redacted principally is that the
16 subject matter of their direct is rather limited. I drew a
17 very broad net, but they had extensive material. I think
18 you will find that the materials that are redacted don't
19 pertain to the subject matter of either witness's testimony.

20 MR. WASSERMAN: I would be happy to join in, but
21 I can't see it.

22 THE COURT: So it is basically a relevance
23 redaction?

24 MR. FITZGERALD: Yes. For one witness,
25 Mr. Numan, he dealt with other people in gun transactions

1 and, other than to the extent we bring out how many guns he
2 dealt with with others, any statements about this case,
3 there were other investigations concerned with him and with
4 Mr. Wilson. He also dealt with other people. The substance
5 of his transactions with other people as an undercover
6 witness will not be brought out by the government. Let me
7 make it clearer.

8 THE COURT: Please.

9 MR. FITZGERALD: Mr. Numan is a cooperating
10 witness. He dealt illegally with firearms. He dealt with
11 some other people who are under investigation. He also
12 dealt with Mr. Abu Ubaidah on behalf of the defendant
13 Hampton-El.

14 THE COURT: So you argue.

15 MR. FITZGERALD: So we argue. The materials
16 pertaining to those transaction as well as his plea
17 agreement and the number of guns he dealt with over the
18 years will all be brought out, and we drew a broad net as to
19 what statements or arguable statements by that witness were
20 turned over to Mr. Wasserman. But transactions with other
21 people not even claimed to be connected to the defendants,
22 those transactions, the statements, what people said to him,
23 are not turned over.

24 THE COURT: Those other transactions were
25 transactions that he engaged in --

1 MR. FITZGERALD: Illegally with other people, not
2 involving the defendants who are under investigation.

3 THE COURT: Isn't that going to be the subject of
4 testimony?

5 MR. FITZGERALD: He is going to testify that he
6 dealt illegally in over a hundred guns and he sent 80 guns
7 to those people and that is it. The point is the fact that
8 he engaged in other criminal transactions is no different
9 than a drug person saying I dealt with other people in
10 drugs, and this is the scope of my involvement in illegal
11 drug activity without giving up discovery of another case.

12 THE COURT: I will take a look at it. Your point
13 is that there may be material in there you could mine on
14 cross-examination that's more than simply, "I dealt with
15 Mr. X for a gun"?

16 MR. WASSERMAN: Yes, your Honor. Also, if I may,
17 Judge, but I don't want to take everybody's time, the tapes
18 that will be played tomorrow, there will be a need to
19 discuss that with your Honor and the government in terms of
20 the relevance to this case.

21 MR. FITZGERALD: I told Mr. Wasserman we would
22 talk about that, and I would also talk with him about
23 whether or not he has a tape for me. Why don't we discuss
24 that first among ourselves before we trouble your Honor.

25 THE COURT: All right. When are you going to

1 trouble me with the unredacted material?

2 MR. FITZGERALD: In about ten minutes.

3 THE COURT: All right. Thank you.

4 MR. RICCO: Your Honor, may I see you in the back
5 without the court reporter?

6 THE COURT: Without?

7 MR. RICCO: Yes. We don't need the court
8 reporter.

9 THE COURT: All right.

10 (Proceedings adjourned to Tuesday, May 16, 1995
11 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.

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20 May 16, 1995
9:40 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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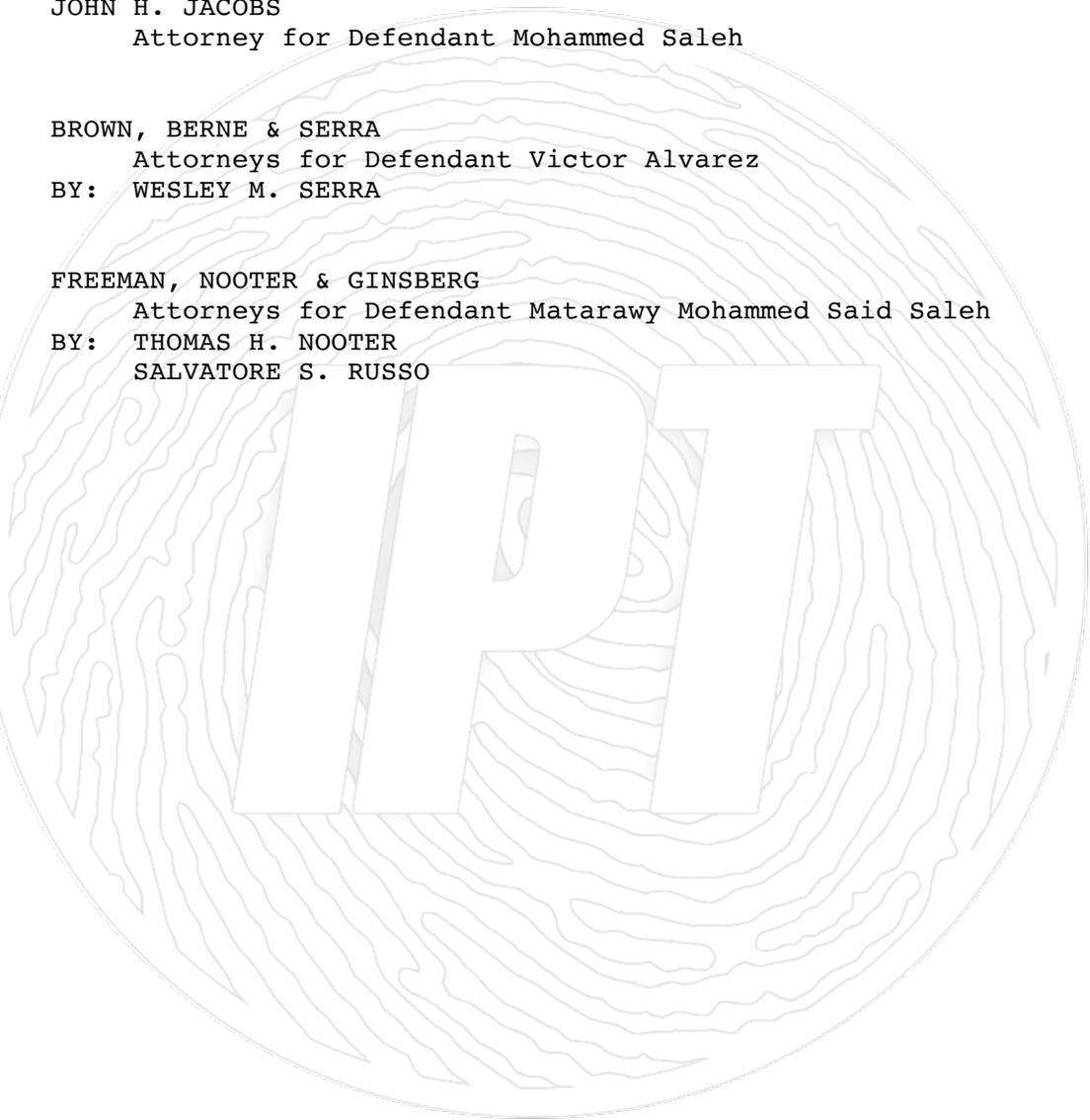
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed; jury not present)

2 MR. WASSERMAN: Your Honor, Ms. Stewart will
3 cover for me during the reading of CM46. My client is
4 agreeable to that.

5 THE COURT: Is that satisfactory?

6 DEFENDANT HAMPTON-EL: Yes.

7 THE COURT: Thank you very much.

8 MR. WASSERMAN: Your Honor, if I may, when does
9 your Honor want to take up the redacted material issue?

10 THE COURT: At the break.

11 Mr. Jacobs?

12 MR. JACOBS: Your Honor, my client is ill this
13 morning. I went back to see him. He is agreed to waive his
14 presence today. I spoke to the government, and he is not
15 going to be mentioned today. We waive his presence.

16 THE COURT: All right. Is that all right,
17 Mr. Saleh, if we go ahead?

18 DEFENDANT MOHAMMED SALEH: Yes.

19 THE COURT: Thank you very much. I hope you feel
20 better.

21 MR. WASSERMAN: Your Honor, mid-morning break or
22 lunch break?

23 THE COURT: Mid morning break.

24 MR. WASSERMAN: Thank you.

25 (Jury present)

1 THE COURT: Good morning, ladies and gentlemen.

2 JURORS: Good morning, your Honor.

3 THE COURT: Mr. McCarthy?

4 MR. McCARTHY: Yes, your Honor. After further
5 discussion with counsel for the defendant Abdel Rahman, the
6 government at this point offers 348T2.

7 THE COURT: T2 being a second edition?

8 MR. McCARTHY: Of T.

9 THE COURT: Of T.

10 MR. McCARTHY: After further discussion among the
11 parties.

12 THE COURT: OK. And this one includes all the
13 underlinings that are necessary?

14 MR. McCARTHY: Yes, your Honor.

15 THE COURT: Is that right?

16 MS. STEWART: That is correct, Judge.

17 THE COURT: OK. 348T2 is received.

18 (Government Exhibit 348T2 for identification was
19 received in evidence)

20 MR. McCARTHY: At this time, we would ask to read
21 from that document.

22 THE COURT: All right. The government is going
23 to read from 348T2, which should be in your 300 series books
24 behind a tab I think marked 348T.

25 MR. McCARTHY: Your Honor, just for everyone's

1 notification, when we get to page 34 of the transcript,
2 there is a portion that continues, I think for about nine
3 pages, that is on tape. At that point we would stop and
4 play the tape.

5 THE COURT: Play the tape itself?

6 MR. McCARTHY: Yes, your Honor.

7 THE COURT: OK. It is all on tape, you say --

8 MR. McCARTHY: I apologize.

9 THE COURT: You're saying it is in English?

10 MR. McCARTHY: Part of it is in English, and part
11 of it is an interpretation in English of what otherwise is
12 being said.

13 THE COURT: What otherwise is being said in
14 Arabic?

15 MR. McCARTHY: Yes, your Honor.

16 MS. STEWART: I would just ask that the jury
17 follow along in their books nonetheless, because there are
18 some poor translations made by Siddig Ali in that
19 translation.

20 MR. McCARTHY: I don't think there is any
21 disagreement. It is a point in the transcript where Siddig
22 Ali is translating the Arabic that's stated by Dr. Abdel
23 Rahman, and there are some responses to questions of
24 reporters.

25 THE COURT: That is the press conference part of

1 it?

2 MR. McCARTHY: Yes.

3 THE COURT: OK.

4 MR. McCARTHY: The reporters' questions and
5 Mr. Siddig Ali's statements are in English. The Arabic is
6 transcribed in the document that we've offered in evidence
7 this morning.

8 THE COURT: OK. Go ahead.

9 MR. McCARTHY: This is Government's Exhibit
10 348T2. It takes place on June 17, 1993. I will be reading
11 the attributions to the defendant Abdel Rahman. Mr.
12 Fitzgerald will read those attributed to Mr. Siddig Ali.
13 Mr. Khuzami will read what is attributed to Emad Salem.
14 Agent Liguori will read what is attributed to Abdo Rahman
15 Haggag, and the remaining attributions will be read by Ms.
16 Chu, starting at page 1.

17 (Government Exhibit 348T2 was read to the jury)

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1 MR. McCARTHY: At this point, your Honor, we
2 would begin playing the tape. There will be a brief pause
3 at the bottom of page 36 for a redacted portion.

4 THE COURT: People need their headphones?

5 MR. McCARTHY: Yes.

6 THE COURT: Ladies and gentlemen, put on your
7 headphones, please.

8 MR. McCARTHY: I will begin the tape.

9 (Tape played)

10 MR. McCARTHY: We will begin the tape again.

11 (Tape played)

12 MR. McCARTHY: Your Honor, we would resume the
13 reading at page 41, the fifth attribute.

14 Should we proceed?

15 THE COURT: Please.

16 (Reading continued)

17 (Continued on next page)

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1 THE COURT: All right. At this point we are
2 going to pause for a short break. Ladies and gentlemen,
3 please leave your notes and other materials behind. We will
4 resume in a few minutes. Please don't discuss the case.

5 (The jury was excused)

6 THE COURT: Mr. Wasserman. I will see you in the
7 robing room, if that is all right.

8 MR. WASSERMAN: That is fine, Judge.

9 (In the robing room)

10 THE COURT: OK. I reviewed the unredacted
11 materials in chambers last night. The redactions fall
12 essentially into three broad categories. One is material
13 that is not his statements at all, but is simply statements
14 in the reports of things that the agents were doing to
15 follow up the investigation, "We were going to talk to this
16 other person or that other person or get a subpoena or
17 whatever." There are descriptions of other steps being
18 taken. That is not by any stretch 3500 material.

19 The second category; there were repetitive things
20 that were redacted. Apparently, they start with an
21 introductory statement in some of those reports about the
22 status of the case. And it appears that it is being
23 reiterated every single time. So for some reason a number
24 of those were taken out. They are simply the same material
25 restated.

1 The third category has to do with reports that
2 were done, as I understand it, by the Navy?

3 MR. FITZGERALD: By the Navy.

4 THE COURT: When he was --

5 MR. FITZGERALD: If I could clarify, there are
6 two different witnesses. The third category particularly is
7 only of concern with regard to Garrett Wilson when it
8 involves the Navy. Mr. Wilson was a cooperating witness
9 with the Naval Investigative Service, so that his file was
10 created, and at a certain point the Naval Investigative
11 Service contacted the FBI.

12 The subject matter of this trial was handled by
13 the FBI and the Naval Investigative Service jointly with the
14 FBI basically writing the reports. Those reports from the
15 NIS that seemed pertinent I produced. I pointed out to the
16 judge that there are reports about other matters he did with
17 the NIS which were not disclosed, which either go to
18 completely unrelated matters, even in Pennsylvania,
19 involving people who the defendants, your client does not
20 know. There is also this matter, and then, in between,
21 there are some matters where Garrett Wilson worked as a
22 cooperating witness in an undercover role or selling things,
23 but advising the NIS and FBI with people that may be known
24 to your client but aren't the subject matter of the
25 testimony. I think that makes, I hope it makes it clearer

1 as to the status of those reports.

2 THE COURT: I don't see a problem with the
3 redactions.

4 MR. WASSERMAN: Your Honor, there are two
5 categories I wish address the court on. First, in the
6 material on Harun, Bilal Harun, who is the first witness,
7 there is the following fact situation: It is a case in
8 itself: He had a gun charge open. He hadn't even been
9 arrested down in Virginia. ATF was using him to try to
10 build enough evidence to arrest the two co-conspirators he
11 had been selling guns to, two people who were up here in New
12 York.

13 That process of his cooperation continued from
14 the time of his arrest, which was, I believe, in '93,
15 February.

16 MR. FITZGERALD: Not arrest, but his
17 confrontation.

18 MR. WASSERMAN: His confrontation, his
19 confession, etc., through the fall of '93. Now, in the fall
20 two events happen. He hires a lawyer, and the Assistant
21 U.S. Attorney who is handling the case tells the lawyer:
22 "Look, I understand you are now representing him. He's
23 facing the following charges. He's cooperating with us.
24 He's confessed to us. And he's promised he is going to wear
25 a wire. He's had conversations with the co-conspirators,

1 and we are continuing to try to build a case against the
2 co-conspirators."

3 There then is a meeting in November of '93 --
4 October, in which David Barrett, who has been something akin
5 to a case agent for the defense, and Ali Abdul Karim go down
6 to Virginia and meet with Bilal Harun.

7 At that meeting, based upon the 302s, there is
8 going to be some claim that Bilal Harun felt pressured by
9 the defense investigators, and I gather that he is going to
10 attribute to that pressure his decision to go to ATF and to
11 the FBI and tell them that six guns originally attributed to
12 the two other co-conspirators in this case actually should
13 be credited to Rashid, my client, and Ubaidah, and that the
14 reason he's coming forward with this information is because
15 in some large part due to defense pressure/intimidation of
16 him.

17 The reason I think that the material is relevant
18 that has been redacted is it shows the status of his
19 cooperation with the government with the co-conspirators of
20 the gun case, and he had attributed, signed a statement of
21 facts, that the guns in question were guns that he had sold
22 to these guys. To the extent that that investigation is
23 going nowhere, I think it's something relevant to my
24 cross-examination.

25 THE COURT: Not cross-examination of him. To the

1 extent he made any statements or signed any statements that
2 attributed guns to other people that were later attributed
3 to your client, you have those.

4 MR. WASSERMAN: Correct. I proffered to your
5 Honor more in terms of what is going to be the allegation on
6 the witness stand, that his sudden conversion to the truth
7 after the defense investigators visited is due to pressure
8 from the defense investigators to keep quiet. And,
9 therefore, I think it is relevant to know what the status of
10 his cooperation with the government was at that time. I
11 mean, we obviously have a very different take on the whole
12 situation.

13 THE COURT: Obviously.

14 MR. WASSERMAN: But I think that is the
15 relevance, your Honor, rather than the attribution.

16 THE COURT: He's not doing the investigating, so
17 I don't see how he can be cross-examined about the "status
18 of the investigation" even if that were relevant from his
19 standpoint, which I am not sure it is.

20 MR. WASSERMAN: I could find out whether he had
21 contact with the co-conspirators, whether he had sold them
22 additional guns or was in the process of selling them
23 additional guns or it was under discussion. His state of
24 mind, I think, in terms of that case he was cooperating on
25 is somewhat relevant.

1 THE COURT: Any statement of his you have.

2 MR. WASSERMAN: But I don't have the statements
3 to his co-conspirators that he undertook to have on the
4 behest of the government. He had conversations with his
5 co-conspirators. He was dealing with them at the behest of
6 the government. I think that is relevant to his subsequent
7 claim that his coming up with the truth about the guns
8 originally attributed to them is due to his reaction to
9 defense pressure rather than due to his decision that he's
10 getting nowhere in his cooperation on the original case or
11 that that case will never close down successfully for him,
12 or that it will. I don't know the state of facts, your
13 Honor.

14 MR. FITZGERALD: Your Honor, Mr. Wasserman has a
15 letter, which I don't object to a limited inquiry on, where
16 it's indicated that he has not yet rendered substantial
17 assistance to the government. If he wants to argue or
18 examine, without getting into details of the current
19 investigation, that as of a certain point in time Mr. Numan
20 understood that he had not rendered substantial assistance,
21 if he wants to make the argument that perhaps he saw an
22 opportunity here, I don't have an objection to that. I
23 don't see what is served by getting into an undercover
24 capacity and asking someone, "What did you say when you
25 called them on the phone after the conspiracy ended, and you

1 were working on behalf of the government? What did they say
2 to you?" It is not relevant to whether or not these
3 particular guns went to Mr. Abu Ubaidah for the benefit of
4 defendant Hampton-El or not. Nor does it go to his
5 credibility, nor is it Jencks material. I don't object to
6 just a limited inquiry, "You are trying to earn a 5K letter,
7 you haven't earned it elsewhere."

8 THE COURT: Why doesn't that solve it?

9 MR. WASSERMAN: I think, your Honor, for the very
10 reason that the government doesn't want to turn it over. My
11 own sense of things, if I may, Judge --

12 THE COURT: This is the first witness?

13 MR. FITZGERALD: The first witness, this
14 afternoon's witness.

15 THE COURT: Let me see the material again.
16 Because to some extent you're fighting over an empty bag
17 here I think.

18 MR. WASSERMAN: Your Honor, you may well be
19 right. I don't know. But if I may just say one thing, your
20 Honor.

21 MR. FITZGERALD: That is the item he would most
22 want if he were right. I believe those are agents' notes.

23 I might want to add something for Mr. Wasserman's
24 benefit.

25 THE COURT: Yes.

1 MR. FITZGERALD: I think, for understandable
2 reasons, he may overstate what he thinks the testimony will
3 be about the November 1994 meeting or October '94 meeting
4 with his defense investigator. The witness will not claim
5 that he told the complete truth after that meeting. We will
6 establish that the witness, when he first cooperated with
7 ATF, when he spoke about the two co-conspirators to whom he
8 sold approximately 78 guns, he attributed 84 to them. The
9 six guns that he falsely attributed to them being the six
10 guns in question.

11 Then, after the meeting with the defense
12 investigator, he decided to contact his lawyer. His lawyer
13 contacted the ATF. He then told them that the guns actually
14 went to Abu Ubaidah, but he did not tell them the complete
15 truth at that point.

16 He then spoke to the FBI and told them that he
17 dealt with Abu Ubaidah and the defendant Hampton-El.
18 However, he still claimed that Ubaidah had not paid him for
19 the weapons, that he suffered that financial loss.

20 When he drafted the statement of facts for his
21 plea, that was inaccurately stated in the statement drafted
22 by the government and sent to him in Virginia, and it
23 incorrectly attributed the six guns back to the first
24 people. He signed that, not paying attention, and made a
25 mistake. But then he was sent the corrected version. When

1 he was given the corrected version, it made clear that those
2 six guns went to Mr. Abu Ubaidah. He then annotated it,
3 saying he never got any money, which he now told us was
4 false. I think there will be ample room for Mr. Wasserman
5 to argue that he's told false statements on a number of
6 different occasions, including the day upon which he was
7 confronted.

8 THE COURT: What is the prejudice in turning this
9 document over?

10 MR. FITZGERALD: The prejudice is that the two
11 people under investigation, the prejudice is to that
12 investigation.

13 THE COURT: Simply the identity of those people,
14 correct?

15 MR. FITZGERALD: And what took place between
16 those two people, who know they are under investigation.

17 THE COURT: They know it took place.

18 MR. FITZGERALD: They don't know what items were
19 taped and which were not and what the government is aware
20 of.

21 MR. WASSERMAN: If I may, I think it probably is,
22 they are quite aware that Bilal Harun is a cooperating
23 individual.

24 One of the conspirators, your Honor, was involved
25 in the shipment or attempted shipment of some guns from a

1 Virginia airport, and that precipitated the arrest of Bilal
2 Harun. That co-conspirator was not arrested, but he was
3 well aware that a problem had arisen, and there were, to my
4 knowledge, no further transactions, no further sales after
5 that date.

6 THE COURT: This is all of such, frankly,
7 tertiary concern, that I don't see the virtue in it. But I
8 am going to direct that this be turned over. However, that
9 is, in essence, a chronology which is by an agent. It's not
10 by him.

11 MR. WASSERMAN: Correct.

12 THE COURT: Understand that.

13 MR. WASSERMAN: Yes, your Honor.

14 THE COURT: It purports to describe certain of
15 his activities, but no copies are to be made of it, and it's
16 to be returned after your cross.

17 MR. WASSERMAN: No problem.

18 THE COURT: It will be made part of the record.

19 MR. WASSERMAN: I have no problem with that,
20 Judge.

21 THE COURT: He couldn't be confronted with this
22 obviously because this is not his statement.

23 MR. WASSERMAN: No problem your Honor. Any
24 condition you put on is fine.

25 THE COURT: All right.

1 MR. WASSERMAN: Because David Barrett will be
2 testifying, I wanted to simply to apprise the court it is my
3 intention to have him present in the courtroom as he has
4 been during all my cross-examinations. I don't think there
5 is anything in the fact that he's -- he certainly is not
6 going to do anything, nor am I going to ask the witness to
7 identify him, so there will be no confrontation.

8 THE COURT: It is a public courtroom.

9 MR. WASSERMAN: That's fine, your Honor.

10 MR. FITZGERALD: One minute with Mr. Wasserman?

11 MR. WASSERMAN: Sure.

12 (Counsel conferred off the record)

13 THE COURT: What?

14 MR. FITZGERALD: I was asking if Mr. Wasserman
15 had a problem if only he reviewed the document and not Abdul
16 Karim.

17 MR. WASSERMAN: I have no problem.

18 THE COURT: It is for your use; not for anybody
19 else.

20 MR. WASSERMAN: No dissemination. That's fine.

21 THE COURT: No dissemination, no copying, or
22 anything, including Mr. Barrett.

23 MR. WASSERMAN: Your Honor, I will follow your
24 directions.

25 THE COURT: OK.

1 MR. WASSERMAN: Thank you, Judge.

2 Just one last thing: My understanding, if I'm
3 correct, is that the reading will continue until the lunch
4 break. Is that a fair assumption?

5 MR. FITZGERALD: Unfortunately so.

6 MR. WASSERMAN: OK. Then I am going to continue
7 the arrangement of not being here if that is OK with your
8 Honor. I just didn't want to interfere with the scheduling
9 or anything. Thank you, Judge.

10 THE COURT: All right.

11 (Recess)

12 (In open court)

13 THE COURT: Off the record.

14 (Discussion off the record)

15 (Jury present)

16 THE COURT: We are going to turn on page 51 of
17 Exhibit 348T2. That is 348T2, page 51.

18 MR. FITZGERALD: Judge, I think we will be
19 starting after the point where it says "Haggag enters," and
20 Agent Liguori will read the part of Mr. Haggag.

21 (Reading continued)

22 (Continued on next page)

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1 THE COURT: Excuse me. Could you come to a break
2 point in the next five minutes.

3 MR. FITZGERALD: This is convenient, Judge.

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 (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: We are going to break today at a quarter to 4. There is a memorial service for Judge Tenney across the street that I should go to and want to go to. So we will sit straight through until then.

MR. McCARTHY: Your Honor, we are going to start about 14 attributions down. It is to Siddig Ali, almost smack in the middle of page 85.

THE COURT: About the middle of 85?

MR. McCARTHY: Yes, your Honor.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

(Continued on next page)

1 THE COURT: We are going to resume in the middle
2 of page 85 of Exhibit 348T. Also, for your information, we
3 are going to be breaking today at a quarter to 4, so we will
4 sit straight through, and then just break at that time.
5 There is something I have to go to at the other building, so
6 we will break for that reason.

7 Go ahead.

8 MR. FITZGERALD: Thank you, Judge. We are on
9 page 85 of 348T2. On page 85 of 348T2, we will be starting
10 with the second time that Siddig Ali speaks, which is about
11 14 attributions down from the top.

12 (Reading continued)

13 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, the government calls
2 Harun Bilal Nu'man, spelled -- I will spell it in a moment.

3 H-A-R-U-N, B-I-L-A-L, N-U-apostrophe-M-A-N.

4 HARUN BILAL NU'MAN,

5 called as a witness by the government,

6 having been duly affirmed, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FITZGERALD:

9 Q Sir, what are in front of you are directional
10 microphones, and if you could speak into them, it will pick
11 up your voice like a flashlight.

12 THE CLERK: Spell your name, please.

13 THE WITNESS: H-A-R-U-N, middle name B-I-L-A-L,
14 last name N-U apostrophe M-A-N.

15 Q Can you tell the jury how old you are?

16 A Thirty-nine.

17 Q Were you born with the name Harun Bilal Nu'man?

18 A No.

19 Q What was the name you were born with?

20 A Aaron Huff.

21 Q Did there come a time when you legally changed
22 your name from Aaron Huff to Harun Bilal Nu'man?

23 A Yes.

24 Q Keep your voice up a little bit because everyone
25 has to hear you in front and back.

1 Can you tell us approximately when you changed
2 your name?

3 A Off the top of my head, 1993.

4 Q When did you convert to Islam?

5 A In 1990.

6 Q Can you tell the jury what you did for a living
7 after you left high school?

8 A I enlisted in the United States Army.

9 Q For how long did you serve in the army?

10 A Eleven years.

11 Q Did you receive an honorable discharge or
12 dishonorable discharge?

13 A I received an honorable discharge.

14 Q What rank were you at when you left the service?

15 A E-4.

16 Q Was there a time when you had a higher rank?

17 A Yes.

18 Q What was the reason for your demotion?

19 A I was reduced from E-5 to E-4 for smoking
20 marijuana.

21 Q After you left the military, what did you do for
22 work?

23 A I had a few jobs until I got a government job in
24 Richmond, Virginia.

25 Q Would you give us the year that you left the

1 military?

2 A 1985.

3 Q Can you tell us what job you had with the
4 government in Richmond, Virginia.

5 A I was a materials sorter classifier.

6 Q Who did you work with?

7 A Defense Depot of Richmond.

8 Q The Defense Department or Depot?

9 A Under the Defense Logistic Agency.

10 Q So you were a civilian employee of the Department
11 of Defense?

12 A Yes.

13 Q Did there come a time when you obtained a federal
14 firearms license?

15 A Yes.

16 Q What year was that?

17 A 1991.

18 Q According to your understanding of the
19 requirements of complying with a federal firearms license,
20 what were you supposed to do if you sold guns to someone?

21 A I was supposed to have documentation for every
22 sale.

23 Q Was it your understanding that you were allowed
24 to buy guns for other people and put them in your name, with
25 a federal firearms license?

1 A I don't understand the question.

2 Q With a federal firearms license, did you
3 understand it to be legal or illegal if someone asked you to
4 buy a gun for them, if you bought the gun and only put it in
5 your name and not theirs?

6 A I understood it to be illegal.

7 Q Did there come a time when you began to do
8 illegal gun sales, where you bought the guns and put the
9 guns in your name but transferred them to other people?

10 A Yes.

11 Q Can you tell the jury about what year it was that
12 you began to do that?

13 A Off the top of my head, 1992.

14 THE COURT: There are translators who have to
15 hear you and they are having difficulty, if you could speak
16 up just a little bit. Thanks very much.

17 A 1992.

18 Q Did there come a time when one of your customers
19 was caught shipping some of those guns?

20 A Yes.

21 Q What year was that?

22 A 1994.

23 Q Between 1992 and 1994, how many guns did you
24 purchase and transfer to someone else without filling out
25 the required documents to keep track of who you sold them

1 to, approximately?

2 A Certain individuals or how many guns --

3 Q Total.

4 A Total 124 guns.

5 Q Of those 124 guns, were there any particular
6 customers that you sold most of your guns to?

7 A Yes, a gentleman by the name of Sultan Abu Bakr,
8 and a person I know by the name of Raof.

9 Q Raof would be R-A-O-O-F?

10 A I guess so.

11 Q And Sultan Abu Bakr, S-U-L-T-A-N, A-B-U, Bakr,
12 B-A-K-R?

13 A Yes.

14 Q What was your understanding at the beginning --
15 were you told by Sultan Abu Bakr or Raof what they wanted
16 the guns for?

17 A Yes. They told me they were doing security work
18 for a certain masjid up here in New York.

19 Q When you say a certain masjid, is that the word
20 for a mosque?

21 A Yes.

22 Q Did there come a time when you had the
23 understanding that they were using guns for something else?

24 A Yes, I did.

25 Q On what did you base that understanding?

1 A On the volumes of guns they were ordering.

2 Q In total, how many guns did you sell those two
3 persons?

4 A Off the top of my head, 78 guns.

5 Q In addition to selling guns to those two people,
6 did you sell guns to other people as well?

7 A Yes.

8 Q Did you make a profit selling those guns?

9 A I made a profit selling most of them.

10 Q Each time you sold a gun to someone without doing
11 the paperwork, you knew that you were doing something
12 illegal, is that correct?

13 A Yes.

14 Q You mentioned earlier that there came a time when
15 one of your customers had a problem in 1994. Do you
16 remember what day of the year it was?

17 A I believe it was Valentine's Day.

18 Q How did you learn that one of your customer's had
19 a problem Valentine's Day?

20 A He called me after he had been interviewed by
21 ATF.

22 Q What did the customer tell you after he had been
23 interviewed in ATF?

24 A He said that they had beeped him and discovered
25 that the box that he was sending was not books and he needed

1 to come back and claim his box.

2 MR. BERNSTEIN: Objection.

3 MS. AMSTERDAM: I am sorry. I can't hear the
4 answer. Apparently there is an objection.

5 MR. BERNSTEIN: Withdrawn, your Honor.

6 THE COURT: The objection is overruled --
7 withdrawn.

8 If you could try to speak up, because the
9 acoustics in here are not good.

10 THE COURT: The substance is that his customer
11 called and they had a problem with ATF and they found out
12 that the box in the shipment was not books.

13 Q What was the customer's name?

14 A The customer was Raoof.

15 Q Where was it ATF found the box?

16 A According to ATF --

17 MS. AMSTERDAM: Objection, your Honor.

18 THE COURT: Sustained.

19 Q Did Raoof tell you where he was calling from,
20 just what state?

21 A Raoof was calling from Virginia.

22 Q Did Raoof tell you what he had told the ATF about
23 this shipment?

24 A Yes.

25 Q What did he tell you?

1 A He said that he had told the ATF that he was
2 shipping a box of books from me to New York and that he had
3 picked up the wrong box.

4 Q Did you know whether that statement was true or
5 false?

6 A It was false.

7 Q After he told you what he told ATF, did there
8 come a time when ATF came to your house and talked to you?

9 A Yes.

10 Q What did you tell the people from ATF when they
11 arrived at your home?

12 A Initially I told them the same story Raof told
13 them.

14 Q In other words, you told them you were trying to
15 ship books?

16 A Yes.

17 Q What happened when you told the ATF that story?

18 A They asked to see the box of books.

19 Q Did you have one?

20 A No.

21 Q What happened then?

22 A After an exchange back and forth, I finally just
23 went on ahead and told them what was going on.

24 Q Had you given guns to this Raof?

25 A Yes, I had.

1 Q After that point, did you attempt to cooperate
2 with ATF, the Bureau of Alcohol Tobacco and Firearms?

3 A Yes.

4 Q Did you tell them everything you knew, 100
5 percent complete, about your gun dealing?

6 A No, sir.

7 Q During that time, did ATF ask you to come in and
8 review various records and indicate which guns you sold to
9 which people?

10 A Yes.

11 Q Did you tell them the complete truth when you did
12 that?

13 A No.

14 Q During the days after they interviewed you, did
15 they have you complete some affidavits, sworn statements?

16 A Yes.

17 Q Did you tell the complete truth in those sworn
18 statements?

19 A No.

20 Q What did you tell them about whether or not you
21 knew you were breaking the law?

22 A I told them that I didn't understand, I didn't
23 know that I was breaking the law as far as selling weapons
24 and not documenting.

25 Q In fact did you know whether you were breaking

1 the law?

2 A Yes, I did.

3 Q Did there come a time when you reached a plea
4 agreement with the prosecutor's office in Virginia?

5 A Yes.

6 Q What was it that you agreed to do as part of that
7 plea agreements?

8 A In cooperation, they were to give me a 5 -- a
9 letter called a 5K if I cooperated.

10 Q Did you agree to plead guilty to a charge?

11 A Yes.

12 Q Did you in fact plead guilty to a charge?

13 A Yes, I did.

14 Q What is your understanding of what the charge is
15 that you pled guilty to?

16 A As far as I understand, the statutes on the
17 charge were just conspiracy, is 0 to 5 years.

18 Q Do you have an understanding as to whether or not
19 the sentencing guidelines apply to your charge as well?

20 A Yes, the sentencing guidelines apply to my charge
21 and my sentencing report recommended 18 to 20 months, which
22 is almost two years.

23 Q What do you understand happens if you get a 5K
24 letter?

25 A It gives the judge the power to go below that.

1 Q When you reached this plea agreement, did there
2 come a time when you were sent a document, a statement of
3 facts which set forth various gun transactions?

4 A Yes.

5 Q Were you given that document to review and sign?

6 A Yes.

7 Q Did you sign that document?

8 A I signed it.

9 Q Let me approach you with what has been premarked
10 as Government's Exhibit 35121-D, E and F. Looking at what
11 has been put in front of you, Government's Exhibit 35121-D,
12 I will ask you to look at the last page and tell me if you
13 recognize the signature in the document.

14 A Yes, I do.

15 Q Whose signature is it?

16 A It's my signature.

17 Q Did you sign that document?

18 A Yes, I did.

19 Q Have you since reviewed that document to see
20 whether it is completely accurate as to who you sold
21 particular guns to?

22 A Yes, I have.

23 Q Is it correct?

24 A No, it is not.

25 Q Are there particular guns that are described as

1 going to the wrong persons?

2 A Yes.

3 Q Can you tell the jury why you signed it when it
4 was inaccurate?

5 A I didn't really go through it completely. I just
6 glanced over it and signed it.

7 Q Did there come a time when you received another
8 version of that statement of facts?

9 A Yes.

10 Q Were you asked to review that one carefully and
11 sign it?

12 A Yes.

13 Q Did you?

14 A Yes, I did.

15 Q When you reviewed it carefully, the revised
16 statement of facts, did you make any corrections to it?

17 A Yes, I did.

18 Q Would you look to your left at Government's
19 Exhibit 35121-F. It should be the second set of papers. I
20 ask you to look at that document and tell us if you
21 recognize the handwriting on that document.

22 A Yes, I do.

23 Q Whose handwriting is that?

24 A It is mine.

25 Q Did you make corrections to the proposed

1 statement of facts on that document?

2 A Yes, I did.

3 Q The corrections you made, were they true or
4 false?

5 A The corrections were false.

6 Q What in essence did you write down as to the
7 corrections on the document?

8 A I said that I had not received any money from Mr.
9 Taylor.

10 Q The person Mr. Taylor, who do you now understand
11 him to be?

12 A Yaya Abu Ubaida.

13 Q Is that spelled Yaya, Y-A-Y-A, Abu, A-B-U,
14 Ubaida, U-B-A-I-D-A, is that correct?

15 A That is correct.

16 Q And you wrote down on that statement that you did
17 not receive money from Yaya Abu Ubaidah, is that correct?

18 A That is correct.

19 Q In fact did Yaya Abu Ubaidah give you money for
20 the guns?

21 A Yes, he did.

22 Q So it is fair to say that the first statement
23 that was incorrect you did not read correctly --

24 MR. BERNSTEIN: Objection, leading.

25 THE COURT: Sustained.

1 Q The document in front of you, 35121-F, you knew
2 that was false when you made those changes on it, is that
3 correct?

4 A Yes, I did.

5 Q Can you tell the jury how you first met Yaya Abu
6 Ubaidah?

7 A I first met Yaya Abu Ubaidah at his wedding.

8 Q Where was his wedding and what year, if you
9 recall?

10 A At a mutual friend of mine's, our house, Ismail
11 Abdul Karim.

12 Q Is that spelled Ismail, I-S-M-A-I-L, Abdul,
13 A-B-D-U-L, Karim, K-A-R-I-M? Is that the name you gave us?

14 A Yes.

15 Q Who did Abu Ubaidah marry?

16 A A young lady that we call Sister Hanifa, who we
17 also knew as Sister Barbara.

18 Q When Abu Ubaidah married Sister Barbara, who
19 performed the wedding?

20 A Ismail Abdul Karim.

21 Q Did you have any conversation with Abu Ubaidah on
22 that occasion?

23 A Yes, we had certain pleasantries and
24 congratulations type conversations.

25 Q Did there come a time when you began to speak to

1 Abu Ubaidah more?

2 A Yes.

3 Q Can you tell the jury what you spoke to him
4 about?

5 A We spoke about everything: political climate in
6 America, Islam, he had given me a few things, teaching me a
7 few things about Islam, and also about guns.

8 Q What did you discuss about guns?

9 MR. STAVIS: Your Honor, can we have a time frame
10 for this conversation?

11 Q Can you tell us what year, what season, and if
12 possible what month this took place?

13 A Not really off the top of my head, no, I can't.

14 Q Did you attend a gun show at one point with Abu
15 Ubaidah?

16 A Yes, I did.

17 Q How long before the gun show did you go to his
18 wedding, if you recall?

19 A I really don't recall. I think it was maybe a
20 month, couple months before.

21 Q The same year as the gun show?

22 A Same year, yes.

23 Q Can you tell the jury what conversation you had
24 with Abu Ubaidah about guns?

25 A Just telling him how much I liked guns and he was

1 telling me how much he liked guns, and then I let it be
2 known that I had a gun dealer's license.

3 Q What did he say?

4 A He started talking about he was working with some
5 people to fight in the Civil War in Yemen and would I be
6 interested in selling any guns, and I was open to that.

7 Q You said the Civil War was in Yemen, Y-E-M-E-N?

8 A Right.

9 Q After he told you that he was interested in
10 purchasing some guns, what further discussion did you have?

11 A He started asking me what did I recommend, and I
12 suggested some certain types of assault rifles that he could
13 invest in.

14 Q Which kind of rifles did you recommend?

15 A I recommended the MAC 90, which is an altered
16 version of AK47 and SKS, which is a predecessor to the AK47.

17 Q Could you briefly describe to the jury what an
18 AK47 is.

19 A AK47 is a weapon used for assault. It is
20 effective in close combat. It is more in the lines of an
21 M16. It is the Soviet bloc counterpart.

22 Q Can you tell the jury the differences between a
23 MAC 90 and an SKS.

24 A SKS, you can, I think the range of the SKS is
25 more accurate in long distance, and the AK, as I said, is

1 more effective in close combat or rapid fire, more for rapid
2 fire than it is for accuracy.

3 Q If you could tell the jury, if you know, where
4 SKS rifles and MAC 90's are manufactured?

5 A These particular rifles are manufactured by
6 Norinco, which is a northern Chinese arms maker.

7 Q Is that N-O-R-I-N-C-O, as far as you know?

8 A Yes.

9 Q Did you have any discussion with Abu Ubaidah as
10 to whether or not these weapons were semiautomatic, fully
11 automatic, things like that?

12 A Yes. We had discussions, conversations about
13 whether they could be converted to automatic, and I told him
14 that I didn't know specifics but we could ask the dealer at
15 the show, and he would tell us.

16 Q You mentioned a show. How did Abu Ubaidah know
17 that there was a gun show coming up?

18 A I brought it up.

19 Q Did you actually go to the gun show with Abu
20 Ubaidah?

21 A Yes, we did.

22 Q Can you tell us, before the gun show did Abu
23 Ubaidah tell you anything about who he was working with?

24 A I believe he had to go to New York to check with
25 some people that he was working with, and he did mention a

1 name.

2 Q He did or did not mention a name?

3 A He did mention a name.

4 Q What name did he mention?

5 A Someone named Sheik Rashid.

6 Q Did there come a time when he came back after he
7 went to New York?

8 A Yes, he came back with some money.

9 Q Where did you first see him when he came back
10 from New York?

11 A At his house, at his wife's house.

12 Q Is that Sister Barbara?

13 A Yes.

14 Q Who was with him besides Sister Barbara?

15 A There was a gentleman with him, a small guy, real
16 thin emaciated-looking guy with a black beard. I believe he
17 was from Yemen. He was Arab American.

18 Q Were you given his name at the time?

19 A Yes. I was introduced to him but I forgot his
20 name.

21 Q And this fellow from Yemen, can you describe what
22 his face looked like?

23 A He had a thin face, beard, glasses, dark hair.
24 That's as close as I can get to a description of him.

25 Q Let me approach you with what has been premarked

1 as Government's Exhibit 291 for identification. I place
2 before you a set of six photographs. Have you seen that
3 before?

4 A Yes, I have seen it before.

5 Q Do you recognize anyone depicted in those six
6 photographs?

7 A Yes.

8 Q Which one of the photographs do you recognize?

9 A The third on the top.

10 Q That's in the top row on which side, left or
11 right?

12 A Right.

13 Q Who do you recognize that person to be?

14 A That is the gentleman that was with Yaya Abu
15 Ubaidah.

16 Q Tell us what happened when you met with the
17 Yemenese person and Abu Ubaidah.

18 A My wife and I went by the house and picked them
19 up. He introduced the gentleman to me, and we gave salaams,
20 shook hands. Then we went to the gun show.

21 Q How did you get to let gun show?

22 A My wife took us there and dropped us off.

23 THE COURT: Could the witness indicate which
24 photograph it is he picked up just by holding up the
25 exhibit.

1 MR. FITZGERALD: Thank you, Judge.

2 Q Could you hold up the exhibit to the jury and
3 tell us which photograph you recognize as the person from
4 Yemen?

5 A This person.

6 MR. FITZGERALD: May the record reflect the upper
7 right photograph of the six. Thank you, Judge.

8 Q What happened when you got to the area of the gun
9 show?

10 A We paid our money to get in, walked around,
11 looked around, browsed around.

12 Q Who actually went into the gun show?

13 A With me?

14 Q Right, who went with you?

15 A Yaya Abu Ubaidah and the other gentleman.

16 Q Tell us what happened as you went around the gun
17 show.

18 A We went to the person that I recommended we get
19 the weapons from, and Yaya saw this MAC 90 with pistol grip,
20 and instantly he fell in love with it, and he gave me the
21 money to buy that, and then after that he inspected two
22 SKS's and gave me the money to buy those.

23 Q What day of the week was this, the first day you
24 went there?

25 A It was on a Saturday.

1 Q Did you buy the MAC 90 and the two SKS's?

2 A Yes, I did.

3 Q In whose name did you purchase them?

4 A In mine.

5 Q The money came from whom?

6 A Yaya Abu Ubaidah.

7 Q Was anything else purchased that day by Yaya Abu
8 Ubaidah, as far as you saw?

9 A He bought some accessories but I am not quite
10 sure what he bought, other than I saw him pick up a flash
11 suppressor. But there were other things that he was looking
12 at, but I was talking to Manny's wife, which was the
13 gentleman that we bought the guns from.

14 Q Your voice is trailing off.

15 THE COURT: He said he bought a flash suppressor
16 and some other things, but he couldn't see what else he
17 bought because he was talking to -- was it Mr. White?

18 Q Manny and his wife?

19 A Right. That was the dealer --

20 Q The dealer's name was Manny, and his wife was
21 there as well?

22 A Yes.

23 Q Can you tell the jury what a flash suppressor is?

24 A Basically just kind of tones down the flash from
25 the gun when it fires off.

1 Q When you fire a rifle, is there a flame that
2 comes out the end?

3 A Yes.

4 Q What does the flash suppressor do with that
5 flame?

6 A It subdues it.

7 Q Did you see Abu Ubaidah look at any other items,
8 any other accessories for guns?

9 A Yes, I saw him looking at the kit that he had
10 discussed with Manny about trying to convert weapons to
11 automatic, but I didn't actually see him buy it, no.

12 Q You saw him look at the kit to convert the
13 weapons but did not actually see him purchase it?

14 A Right.

15 Q At the time that you talked to him about
16 converting the weapons and talked to him about asking the
17 dealer about that, did you have an understanding about
18 whether or not it was legal to convert a weapon to fully
19 automatic?

20 A I had an understanding that it was not legal to
21 convert a semiautomatic weapon to automatic.

22 Q With regard to the SKS rifles, what type of
23 magazine do they come with?

24 A They come with 5 to 10 round magazines. Depends
25 on what magazine they have in the box. That's what they

1 come with.

2 Q What magazines did Abu Ubaidah have for the SKS
3 rifles he purchased?

4 A He bought some additional zitel magazines that
5 hold 35 rounds.

6 Q You mentioned a zitel, Z-I-T-E-L, magazine?

7 A Right.

8 Q Is that a brand name of the magazine?

9 A No, that's a plastic.

10 Q That is the name of the material used to make the
11 magazines?

12 A Right.

13 Q Were any publications purchased that day?

14 A Yes.

15 Q Did you purchase anything?

16 A I bought a couple of books myself, yes.

17 Q Do you recall which books you purchased?

18 A I bought a book on how to make silencers.

19 Q Any other books you recall?

20 A Yes, an army supply manual.

21 Q Do you recall how much money you spent that day
22 on books?

23 A I don't recall how much I spent that day on
24 books. I do recall how much I spent altogether, because I
25 also bought a crossbow, and that was approximately \$41 that

1 I borrowed from him.

2 Q The total price of the books and the crossbow was
3 \$41?

4 A Right.

5 Q Who was the "him" that you borrowed the \$41 from?

6 A Yaya Abu Ubaidah.

7 Q Did you see whether or not Yaya Abu Ubaidah
8 purchased any books that day?

9 A Yes, he purchased a lot of books that day.

10 Q Do you recall any of the particular books that he
11 purchased?

12 A Those that stand out in my mind were a book on
13 poisons, a book on how to kill people with your hands, a
14 Navy Seal training book, and a book on explosives.

15 Q In addition to the flash suppressor and the
16 magazines, the guns and the books, did you see him purchase
17 any other type of weapon that day?

18 A Yes, a Navy Seal knife.

19 Q When you say Navy Seal, is that a particular part
20 of the navy?

21 A It is a military issue knife that the Seals
22 carry.

23 Q What happened when you were done at the gun show
24 that day?

25 A We went back to his house. They got the guns out

1 and started breaking them down, breaking them down meaning
2 taking them apart and putting them back together.

3 Q When you say his house, is this Sister Barbara's
4 house?

5 A Yes, Sister Barbara's house.

6 Q When you say they started breaking them down, who
7 is "they"?

8 A Yaya Abu Ubaidah and the other gentleman.

9 Q When the other gentleman and Mr. Ubaidah were
10 breaking the guns down in the house, who else was there?

11 A In the house were his two stepchildren, my two
12 children, my wife, and Sister Barbara in the kitchen
13 talking, at that time.

14 Q Did you have any particular discussion about the
15 weapons on that day?

16 A I can't recall.

17 Q When he gave you the money on Saturday to buy the
18 weapons, did you make any profit on that day?

19 A No, I didn't.

20 Q Did you have an understanding with him as to
21 whether you would make a profit?

22 A Yes, I did.

23 Q What was your understanding?

24 A I charged him a certain price to get the guns.

25 Q Do you recall as you sit here today what that

1 price was?

2 A \$1,200.

3 Q Did you go back to the gun show that weekend?

4 A Yes, we did, the next day we went back.

5 Q Would that be Sunday?

6 A Yes, Sunday.

7 Q Tell us what happened on Sunday.

8 A On Sunday, the same thing happened. My wife and
9 I picked him up, dropped us off at the gun show, and it was
10 basically the same thing all over again. We weren't there
11 as long, because specifically we had a reason to go back and
12 purchase the SKS's, and left.

13 Q What was purchased on Sunday?

14 A Three SKS's.

15 Q Those are three assault-type rifles?

16 A Yes.

17 Q Again, who gave you the money to purchase the
18 weapons?

19 A Yaya Abu Ubaidah gave me the money then.

20 Q Whose name were they put in?

21 A My name.

22 Q The fellow from Yemen with the glasses and beard,
23 did he purchase anything?

24 A Yes, he purchased a 9-millimeter pistol.

25 Q Who provided the money for the 9-millimeter

1 pistol?

2 A He had the money.

3 Q Who actually purchased the gun?

4 A He gave me the money, I purchased it.

5 Q In your name?

6 A Yes.

7 Q Let me approach you with what has been premarked
8 Government's Exhibit 290. If you could look at Government
9 Exhibit 290, which is a photocopy, do you recognize what
10 Government's Exhibit 290 is a photocopy of?

11 A Yes.

12 Q What is it a photocopy of?

13 A Receipts of purchases on that weekend.

14 Q The MAC 90 you told us about, is that reflected
15 on those documents?

16 A Yes, it is.

17 Q And the SKS rifles from Saturday and Sunday, are
18 they on those documents?

19 A Yes, they are.

20 Q How about the 9-millimeter pistol? Is that
21 reflected on those documents, as far as you can tell?

22 A No, it is not.

23 Q And the books and other items purchased, are they
24 on those documents?

25 A No.

1 Q So this is just a rifles purchase that weekend?

2 A What was that?

3 Q These are just the rifles purchased on that
4 weekend?

5 A Yes.

6 MR. FITZGERALD: Your Honor, I would offer
7 Government's Exhibit 290.

8 MR. WASSERMAN: Brief voir dire.

9 VOIR-DIRE EXAMINATION

10 BY MR. WASSERMAN:

11 Q Good morning. These receipts, where did you
12 place them after you received them?

13 A Where did I place them?

14 Q Yes, sir.

15 A I can't recall where I placed them.

16 Q Did you keep receipts for all the transactions
17 that you sold guns in connection with?

18 A No, I didn't.

19 Q For those transactions that you did get receipts,
20 did you keep them all in the same place?

21 A No, I didn't.

22 Q Do you have any other receipts besides those
23 receipts?

24 A No, I don't.

25 MR. WASSERMAN: No further questions.

1 THE COURT: Do you have any other receipts for
2 the transactions that weekend?

3 MR. WASSERMAN: No, your Honor, for any of the
4 other gun sales.

5 THE COURT: Any of the other gun sales --

6 MR. WASSERMAN: At any time. I believe he
7 testified he sold 124 guns.

8 THE COURT: His question was, do you have any of
9 the other receipts for any of the other 124 guns?

10 THE WITNESS: No, I don't.

11 MR. WASSERMAN: Your Honor, I have no objection.
12 Thank you.

13 THE COURT: 290 is received.

14 (Government's Exhibit 290 received in evidence)

15 BY MR. FITZGERALD:

16 Q Sir, could you tell us the name written as the
17 customer for those three receipts?

18 A Aaron Huff.

19 Q Is that the name you initially obtained your
20 federal firearms license in, Aaron Huff?

21 A Yes.

22 Q By the way, we discussed magazines for rifles.
23 Can you briefly tell the jury what a magazine is for a
24 rifle?

25 A That's a container that you put bullets in and

1 you insert it into the weapon to fire.

2 Q Sometimes called a clip?

3 A Clip, yes.

4 (Continued on next page)

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1 Q Now, what happened on Sunday after the other
2 three SKS rifles were purchased?

3 A Well, we went over -- my wife picked us up, and
4 we went back over to his house. We sat around and just had
5 small talk basically, and then I asked him about when was I
6 going to get my money. He said, he said that, well, let me
7 check with -- I am going to call Dr. Rashid, and I will have
8 your money in the morning, and he went in the back room and
9 closed the door.

10 Q What happened after he went into the back room
11 and closed the door?

12 A I don't know. I mean, I don't know what he did
13 back there. I assumed he had made a phone call, but I don't
14 know.

15 MR. STAVIS: Objection to what he assumed, your
16 Honor.

17 THE COURT: Sustained as to what he assumed. He
18 said he was going to make a phone call; he went in the room
19 and closed the door?

20 THE WITNESS: Right. He went in the room and
21 closed the door. I don't know what he did after that.

22 THE COURT: Do you know if there was a phone in
23 the room?

24 THE WITNESS: Do I know if there was a phone in
25 the room? I don't know if there was a phone in the room or

1 not. I had never been back there.

2 Q What happened when he came out of the back room?

3 A He said he would have my money in the morning.

4 Q Up to this time had you had any discussion with
5 Abu Ubaidah as to what these assault rifles were going to be
6 used for?

7 A Yes, prior to that, he spoke about, in the course
8 of conversations he spoke about training the brothers to go
9 over to Yemen and fight.

10 Q Did he indicate where the training was to take
11 place for the brothers to go fight in Yemen?

12 A Some kind of farm or somewhere up in
13 Pennsylvania.

14 Q After the Sunday in which he told you the money
15 would be there the next day, what did you do the next day?

16 A Well, the next day, I went over there late
17 morning, mid-morning, and his wife came out and she was
18 upset with me and accused me of running guns through her
19 house. And so I basically, you know, after she finished her
20 tirade, I asked her, "Where's Yaya?"

21 She said, "Well, him and the other guy is going
22 to New York."

23 MR. BERNSTEIN: I am sorry, Judge. I can't hear.

24 THE COURT: Could you read back the last part.

25 (Record read)

1 MS. AMSTERDAM: I am going to object to that as
2 to what his wife said, your Honor.

3 THE COURT: Sustained and stricken.

4 Q Did you see Abu Ubaidah at the house at that
5 point in time?

6 A No, I didn't.

7 Q By the way, you mentioned earlier that Abu
8 Ubaidah said he was going into the room to call Dr. Rashid.
9 Did you ever meet anyone by the name of Dr. Rashid?

10 A No.

11 Q What happened after you went to Sister Barbara's
12 house and did not find Abu Ubaidah?

13 A I was a little upset because he had promised me
14 the money the next day. So I called my friend Ismail Abdul
15 Karim and complained.

16 Q Is that the same friend who married Abu Ubaidah
17 at the wedding earlier?

18 A Yes.

19 Q And what did you tell Ismail Abdul Karim had
20 happened?

21 A Just basically told him that he took the guns and
22 didn't pay me, and I wanted my money. And Ismail got upset
23 with me and was -- I guess, he was admonishing me for even
24 doing business with a person like him.

25 Q Did he indicate what had happened to the guns?

1 A Yeah, he heard -- he had found out that Yaya Abu
2 Ubaidah had -- and the other brother had wrapped the guns up
3 in Christmas paper and took the Trailways bus back to New
4 York with them.

5 Q The fellow Abu Ubaidah and the other fellow, did
6 they dress as Muslims?

7 A Abu Ubaidah dressed as a Muslim.

8 Q Your understanding was they took the guns in a
9 box wrapped as a Christmas present?

10 A That's what was told to me.

11 Q Did you speak to Abu Ubaidah again after this?

12 A I think a week later I spoke to him and he had --
13 well, I am not going to get personal. Basically he said
14 that I owed him \$41 and he wanted his \$41. And I said,
15 "Well, \$41, you owe me money."

16 And he was saying, "Well, you shouldn't do this
17 for money. You should do this for the sake of Allah."

18 And I told him I have some mouths to feed. I
19 mean, basically, he told me, in so many words told me, "You
20 must be crazy."

21 He said, well, I didn't like fitnah. "Fitnah"
22 means confusion. And that he had more business for me, and
23 after talking to Ismail, I didn't want to do any more
24 business with him.

25 So I told him, "I don't want to do any more

1 business with you."

2 MS. STEWART: We can't hear a thing he's saying.

3 THE COURT: Could you please try to keep your
4 voice up. Do you want the last part repeated?

5 MS. STEWART: No, as long as he raises his voice.

6 THE COURT: OK.

7 Q If you just speak a little closer to the
8 microphone, it gets a bit easier.

9 If you can just tell us your best recollection of
10 the conversation you had with Abu Ubaidah.

11 A My best recollection is that we had, after the --
12 we accused each other of owing each other money, we kind of
13 had some serious words. I don't really recall the exact
14 words, but they were both spoken in anger, and then he spoke
15 about having more business for me, and I didn't want to do
16 any more business with him. So I basically told him that,
17 "I don't want to do no more business with you." And he
18 said, "Are you sure?" I said, "Yes." So he gave me the
19 salaams and we hung up.

20 Q Did he indicate to you the dollar amount of the
21 future business he wanted to do?

22 A He said he had about five grand.

23 Q After that did you ever speak to Abu Ubaidah
24 again?

25 A No, no.

1 Q Did you ever see him again?

2 A No.

3 Q Did you ever receive any money from him?

4 A No.

5 Q Did there come a time when you met a person by
6 the name of Ali Abdul Karim?

7 A Yes.

8 Q That's A-L-I, A-B-D-U-L, K-A-R-I-M.

9 Can you tell the jury when you first heard that
10 you might be meeting Ali Abdul Karim.

11 A Well, Ismail Abdul Karim called me and said that
12 Ali Abdul Karim was coming down, and he wanted to talk to
13 me.

14 And so I asked, "Who's Ali Abdul Karim?"

15 He said he was head of security for masjid up
16 here in Brooklyn.

17 I said, "Well, what do you want to talk to me
18 about?"

19 He said that he wanted to talk to me about Abu
20 Ubaidah and the purchase of the rifles.

21 I said I didn't particularly want to talk to him
22 about that.

23 Q Can you tell us what year this was and, if
24 possible, what time of year?

25 A What year? No. I believe 1994. I don't know if

1 it was in the summer or the fall.

2 Q After he told you that he wanted to come see you
3 and you said you didn't want to see him, did you have any
4 further conversation with Ismail Abdul Karim about Ali?

5 A Yes.

6 MR. WASSERMAN: Objection, your Honor. That was
7 not the question and that was not the answer. There was no
8 direct conversation between Abdul Karim and this witness.

9 MR. FITZGERALD: I will rephrase it.

10 THE COURT: Would you.

11 Q Did you speak any further to Ismail Abdul Karim
12 about Ali Abdul Karim?

13 A Yes. He called again and said that they would be
14 down here on a Thursday.

15 MR. BERNSTEIN: Objection.

16 THE COURT: Overruled.

17 MR. BERNSTEIN: Withdrawn, your Honor.

18 Q When you said he called again, who is "he"?

19 A Ismail Abdul Karim.

20 Q What did he tell you would happen on Thursday?

21 A That they would come down to talk to me about the
22 deal that was made with Yaya Abu Ubaidah.

23 Q What did you say, if you recall?

24 A I said, "Well, I still don't want to talk to
25 him." You know, I was going to try my best not to be home.

1 Q What happened on Thursday?

2 A Thursday night -- I can't recall the exact time,
3 I think it was between 10:30 and 12 midnight -- there was a
4 knock on my door or -- my doorbell rang. That's the only
5 way you can wake me up. And I went down there, and Ismail
6 Abdul Karim and his wife was standing outside the door. So
7 when I opened the door, behind them, Ali Abdul Karim and
8 another gentleman, I want to say his name was David
9 Wasserman, but I'm not sure, was standing behind him.

10 Q Why don't you describe the person whose name
11 you're not sure about that you called David Wasserman.

12 A He was a tall, thin gentleman with thinning hair,
13 kind of light-colored hair.

14 Q What color hair?

15 A I want to say sandy, but I think it was a little
16 darker than that.

17 Q Not white hair?

18 A No, it wasn't white, I don't believe.

19 Q We will call this person David. When you opened
20 the door, who was there?

21 MR. STAVIS: Objection. Was that a question,
22 your Honor?

23 THE COURT: Overruled.

24 Q Who did you see when you opened the door?

25 A Who did I see when I opened the door? Ismail

1 Abdul Karim, his wife, and two gentlemen, Ali Abdul Karim,
2 and another gentleman, I believe his name was David
3 Wasserman. I'm not sure about that, but that's the name
4 that keeps popping up in my head for some reason.

5 Q Tell the jury what happened next.

6 A Ismail introduced him, and they stated that they
7 were here on behalf of a Dr. Rashid who was on trial for the
8 World Trade Center thing, or, in their words, World Trade
9 Center bombing. They were the paralegals for the defense
10 team, and rather than having the whole neighborhood hear the
11 conversation, I invited them in the house.

12 Q Where had you been before the doorbell rang?

13 A I was in the bed asleep.

14 Q And when the four people came in, where did they
15 each go?

16 A Ismail sat -- when he came upstairs he sat by the
17 door.

18 Q And had Ismail Abdul Karim been to your house
19 before?

20 A Yes.

21 Q Approximately how many times?

22 A Several. I mean, he was welcome to my house any
23 time.

24 Q Had he ever sat by the door before?

25 A No, he usually comes in and makes himself at

1 home.

2 Q Where did his wife go?

3 A His wife went back into our bedroom and they,
4 the -- I would guess they had -- her and my wife had a
5 conversation while we were back in the living room.

6 Q Where did the other two people go?

7 A Ali Abdul Karim came into the living room and sat
8 down and Mr. Wasserman sat down, and I believe I sat beside
9 Ali Abdul Karim.

10 Q Describe the conversation --

11 MR. STAVIS: Objection, your Honor.

12 THE COURT: Overruled.

13 MR. STAVIS: May I have a side bar?

14 MR. WASSERMAN: Your Honor, may I have a moment
15 with counsel?

16 THE COURT: Sure.

17 (Counsel conferred)

18 THE COURT: Do you still want a side bar?

19 MR. STAVIS: No, I withdraw the objection, your
20 Honor.

21 Q Can you tell us what you recall about the
22 conversation in your house on that occasion.

23 A Well, again, I recall that they reiterated that
24 they were paralegals for the defense team of Dr. Rashid, and
25 also I recall Ali Abdul Karim mentioning that Dr. Rashid was

1 doing some work for the Bosnia, you know, relief.

2 MR. BERNSTEIN: I'm sorry, Judge. I can't hear
3 it.

4 THE COURT: Would the reporter read back the end
5 of the last answer.

6 (Record read)

7 Q If you can just lean forward. When you sat close
8 to the microphone before I think we heard you a lot better.
9 If you can sit a little closer.

10 Had you ever heard before of any involvement of
11 Abu Ubaidah or Dr. Rashid in the Bosnian effort?

12 A No, he mentioned Yemen.

13 Q When you say he mentioned Yemen, who is "he"?

14 A Yaya Abu Ubaidah.

15 Q What else did they say?

16 A They just wanted to know, well, they said that
17 they were -- that Yaya Abu Ubaidah had mentioned about the
18 deal between he and I on the guns, the purchase of the guns,
19 and that the FBI were looking for those guns. And he also
20 said that they wanted to hear it from me because they, they
21 basically said Yaya Abu Ubaidah was not reliable when it
22 came to telling the facts.

23 Q Let me interrupt you for a moment. Had you
24 discussed these particular guns with the ATF prior to this
25 time?

1 A No.

2 Q Had you ever talked about the guns?

3 A No.

4 Q Did you ever mention Abu Ubaidah to the ATF prior
5 to this meeting?

6 A No.

7 Q When you went through the records and they showed
8 you those particular guns, who did you say you sold them to?

9 A I said Sultan Abu Bakr and Raof bought those
10 guns.

11 Q What did you tell the people who came to see you
12 that night about the weapons?

13 A In the course of the conversation I did say that
14 as far as I was concerned Sultan Abu Bakr and Raof bought
15 those guns, not Yaya Abu Ubaidah.

16 Q When you said that, did you believe that to be
17 the truth?

18 A No, it wasn't the truth.

19 Q Why can you say that?

20 A Because I didn't want to be -- I mean the rumor
21 was already down there about Yaya Abu Ubaidah's involvement
22 in that, in the World Trade Center.

23 Q Strike the rumor. Did you --

24 MR. BERNSTEIN: Objection, move to strike.

25 THE COURT: Objection sustained. He testified

1 that his reluctance had something to do with the rumor. Go
2 ahead.

3 MR. FITZGERALD: OK.

4 Q Can you tell us how was it left at the end of the
5 meeting.

6 A Well, it was left that the -- the main thing that
7 they were saying is they didn't have no problems with me
8 testifying against Yaya Abu Ubaidah about the guns. But
9 they did advise me to go see my lawyer to find out what I
10 need to do, due to the fact that I had already gave a
11 statement to the ATF about those particular weapons.

12 Q Did they ask you during the course of this
13 interview whether or not Dr. Rashid or Sheik Rashid's name
14 had come up in your conversations with Abu Ubaidah?

15 A Yes, they did.

16 Q What did you tell them?

17 A I told them no.

18 Q Was that the truth when you told it to them?

19 A No, it wasn't the truth.

20 Q Why did you lie to them?

21 A Because I wanted to maintain the story that
22 Sultan Abu Bakr and Raof bought those guns.

23 Q What did you do after this meeting? Who did you
24 speak to, without telling us what you said?

25 A I spoke to my wife after the meeting, and she

1 said, "Well, you know, I think you better go --"

2 THE COURT: Don't tell us what your wife said.

3 You talked to your wife?

4 THE WITNESS: Yes, I spoke to my wife.

5 THE COURT: OK.

6 Q Then, without telling us what was said, who did
7 you speak to next?

8 A My lawyer.

9 Q Who did you speak to next after that?

10 A ATF.

11 Q What did you tell ATF?

12 A Well, I told ATF that -- I don't specifically
13 remember what I told ATF other than that Yaya Abu Ubaidah
14 stole the guns from me, and I gave them a particularly hard
15 time of getting, in getting the real story out.

16 Q When you said that Abu Ubaidah had stolen the
17 guns from you, was that true?

18 A That wasn't true.

19 Q And did there come a time when you spoke to the
20 FBI?

21 A Yes.

22 MR. FITZGERALD: Your Honor, this might be a
23 convenient place to break.

24 THE COURT: All right.

25 Ladies and gentlemen, we are going to break for

1 the day. Please leave your notes and other materials
2 behind. Please don't discuss the case, and we'll resume
3 tomorrow morning.

4 (The jury was excused)

5 THE COURT: You can step down.

6 (Witness excused)

7 THE COURT: Ms. London?

8 MS. LONDON: I have a brief application. For the
9 last 15 minutes there was testimony concerning a visit to
10 this witness after the arrests of the defendants in this
11 case. The testimony concerning Ali Abdul Karim, and the
12 witness said David Wasserman -- who I believe he is mistaken
13 about. It may be David Barrett. I would submit that these
14 are not conversations in furtherance of the conspiracy, and
15 that the jury be given a limiting instruction that they are
16 not admissible against Mr. Elhassan.

17 THE COURT: Mr. Wasserman?

18 MR. WASSERMAN: I have no objection to the
19 limiting instruction. Having opened the door, I welcome the
20 opportunity to walk through when my turn comes. As long as
21 I am able to cross on that, that is fine with me.

22 THE COURT: I will give a limiting instruction.

23 MR. BERNSTEIN: I assume that you will add that
24 it applies to all of the defendants.

25 THE COURT: I suppose what you want me to say is

1 that any inquiry being made at this point in behalf of the
2 defendant who is known as Dr. Rashid relates only to him and
3 not any other defendant in the case.

4 MR. BERNSTEIN: Yes, Judge.

5 THE COURT: Right?

6 MR. WASSERMAN: Yes.

7 MR. FITZGERALD: If I could put one item on the
8 record, I think Mr. Wasserman will agree that I raised the
9 issue with him beforehand, so he knew I was going there, and
10 we talked about whether it could be avoided, and I think we
11 agreed that it couldn't be.

12 MS. LONDON: I'm sorry. I couldn't hear.

13 THE COURT: That is water over the dam, or under
14 the bridge or wherever. The fact is it's been gone into
15 without objection and so it will be explored. Wherever it
16 leads it leads.

17 Mr. Stavis, you sent me a letter asking for some
18 extended period of time after the close of evidence to
19 submit a Rule 29 motion.

20 MR. STAVIS: Yes, your Honor.

21 THE COURT: I can't see it. If you understand
22 what your theory is, and I assume you do understand what it
23 is, then I don't see why you can't start preparing it now.
24 I can anticipate some arguments that I would make if I were
25 in your position with regard to the matter you raised in

1 your letter, but whatever arguments those are, they are
2 apparent, and they have been apparent actually since before
3 the trial started.

4 I am not going to have some long layover
5 depending on when the prosecution's case stops. I will hear
6 Rule 29 motions, but it's not going to be some extended
7 period. If you want to get me something in writing, and I
8 am not asking you to submit it obviously before the
9 government rests, but I should think it could be worked on
10 now.

11 MS. AMSTERDAM: Your Honor, I would just join in
12 Mr. Stavis's application. I don't think anyone anticipates
13 a very lengthy delay, but I would request that the court
14 consider a several-day adjournment for --

15 THE COURT: I will not consider a "several-day
16 adjournment." Thank you.

17 (Proceedings adjourned to Wednesday, May 17, 1995
18 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,"

Defendants.

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S5 93 Cr. 181 (MBM)

May 17, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

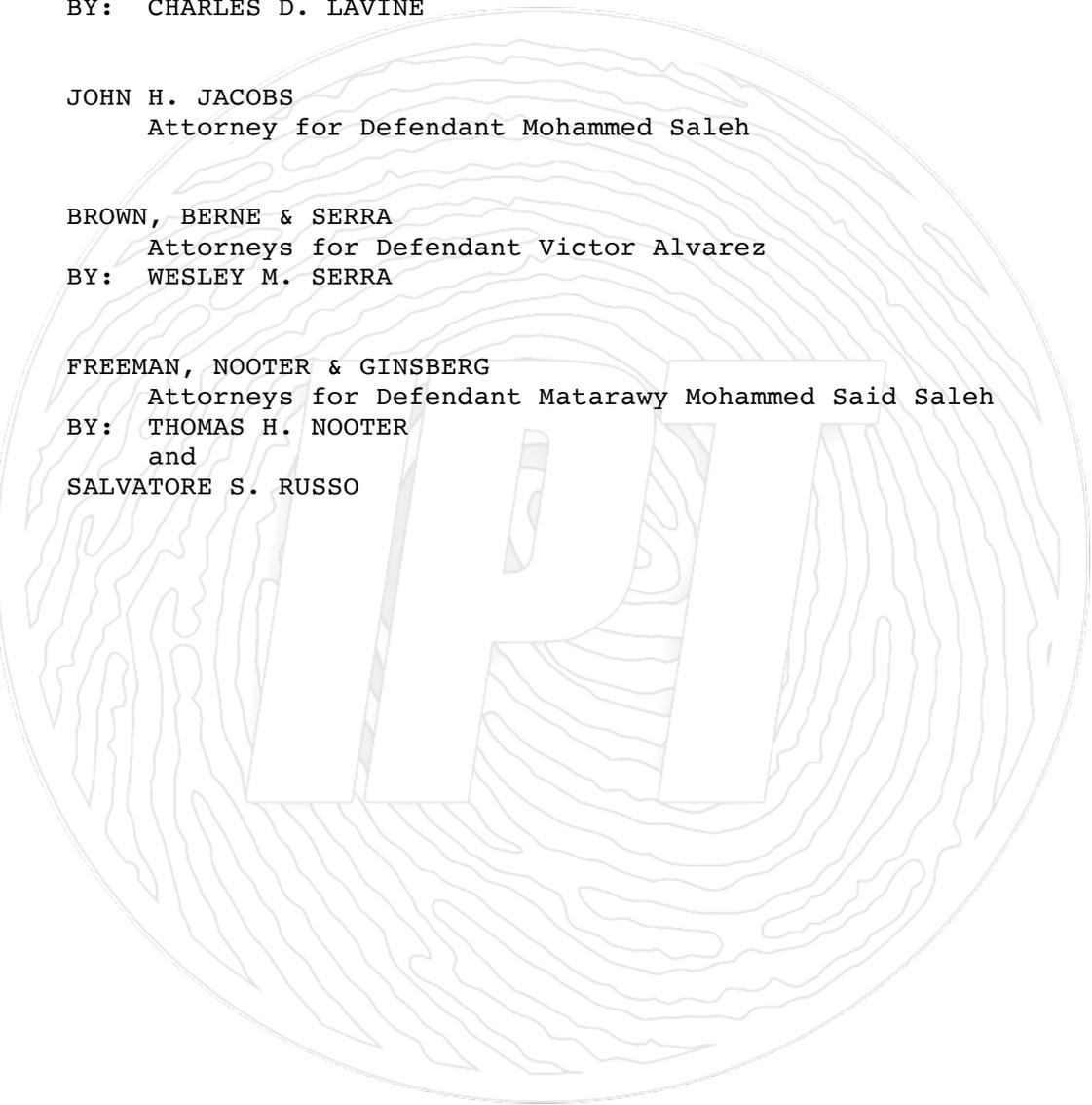
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (In open court; jury not present)

2 MR. NOOTER: Your Honor, my client is not feeling
3 well this morning and would ask to be excused, and of course
4 would consent to the trial proceeding in his absence, and I
5 will remain of course and protect his interests.

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

7 DEFENDANT WAHID SALEH: Yes.

8 THE COURT: You are excused. I hope you feel
9 better.

10 MR. NOOTER: Thank you very much.

11 MR. WASSERMAN: Your Honor, if I may, briefly,
12 after this witness and the cross there is a matter
13 concerning the next witness that I would like to address the
14 court.

15 MR. JACOBS: I am sorry, Judge. I can't hear Mr.
16 Wasserman.

17 THE COURT: He has a matter relating to the next
18 witness.

19 MR. WASSERMAN: I have discussed it with Mr.
20 Fitzgerald, and I think there are two issues --

21 THE COURT: I would rather do it after.

22 MR. BERNSTEIN: Judge, could we have a ruling
23 regarding the limiting instruction with regard to the
24 matters that were raised yesterday?

25 THE COURT: Yes. The jury will be instructed

1 that any statements they find were made during any visit to
2 this witness in -- what was it, the spring of '94?

3 MR. WASSERMAN: In the fall of '94.

4 THE COURT: -- fall of '94, are not attributable
5 to any defendant other than Mr. Hampton-El.

6 MR. BERNSTEIN: Thank you, Judge. And you were
7 going to make a determination as to the notebook of the
8 excused juror.

9 THE COURT: I haven't yet decided that. The only
10 reason I am at all hesitant is that person may want them, I
11 am told.

12 MR. BERNSTEIN: Obviously they are her property.

13 THE COURT: I don't know that it is her property.
14 It is between that and destroying them. I think she may
15 want them. I don't see any reason necessarily to deny it to
16 her. She did sit here for several months and may like them
17 to remember the trial.

18 MR. BERNSTEIN: I assume if the court is going to
19 get a request to turn them back to her, that it will not
20 happen until the end of the trial.

21 THE COURT: That is for sure.

22 MR. WASSERMAN: With respect to the instruction,
23 your Honor, the court's instruction was a little different.
24 Yesterday at the request of Miss London --

25 THE COURT: I have the transcript. What page is

1 it?

2 MR. WASSERMAN: I am sorry, it is 10682.

3 Ms. London put it in terms of the jury be given a limiting
4 instruction that the conversations in question are not
5 admissible against Mr. Elhassan. I would prefer that that
6 kind of limiting instruction be given and even the word
7 "against" not be used but rather "with respect to."

8 THE COURT: I understand what you are saying and
9 I agree with it, and that is the instruction that I will
10 give, that it is not admissible with respect to any
11 defendant other than Mr. Hampton-El.

12 HARUN BILAL NU'MAN, resumed.

13 (Jury present)

14 THE COURT: Good morning, ladies and gentlemen.

15 JURORS: Good morning, your Honor.

16 THE COURT: Before we start, I should point out
17 that the witness testified to certain conversations he says
18 he had with somebody in the fall of 1994, who said he was
19 there investigating the case on behalf of Dr. Rashid, that
20 is, that the person said he was investigating the case on
21 behalf of Dr. Rashid, who is Mr. Hampton-El. Any statements
22 that you find to have been made at that time by that person
23 may not be considered as to any defendant other than
24 Mr. Hampton-El. Any statements you find to have been made
25 are as to only Mr. Hampton-El and not to anybody else.

1 DIRECT EXAMINATION continued.

2 BY MR. FITZGERALD:

3 Q. Good morning, sir. If I could ask you to keep
4 your voice up again and sit as close to the mike as you can,
5 and that will help.

6 Yesterday you spoke about Mr. Abu Ubaidah
7 discussing Yemen with you. Did Mr. Abu Ubaidah ever talk to
8 you about what he thought of the American government?

9 A. Yes.

10 Q. What did he say?

11 A. He said that the American government was the
12 belly of the beast, that it wasn't a God-fearing country.
13 He said that -- well, in so many words he said America was
14 an oppressive country.

15 Q. Did he talk about the relationship between the
16 American government and Jewish people?

17 COUNSEL: Objection, your Honor.

18 THE COURT: Sustained.

19 Q. One last question, sir. The gun show you talked
20 about yesterday where you purchased the six rifles reflected
21 on the receipts, can you just tell us where the gun show
22 took place?

23 A. In Richmond, Virginia.

24 MR. FITZGERALD: Thank you. I have nothing
25 further.

1 THE COURT: Cross, Mr. Wasserman?

2 CROSS-EXAMINATION

3 BY MR. WASSERMAN:

4 Q. Good morning, Mr. Nu'man.

5 A. Good morning, sir.

6 Q. Mr. Nu'man, you had a number of conversations
7 with Abu Ubaidah, did you not, between the time of his
8 wedding and the time that you purchased the guns at the gun
9 show?

10 A. Between the time of his wedding and the time that
11 we purchased the guns?

12 Q. Yes.

13 A. Yes.

14 Q. In fact you described it once to some agents as
15 we spoke about -- in fact, you testified that we spoke about
16 everything, correct?

17 A. What was that, sir?

18 Q. You say that we spoke about everything.

19 A. Yes, we had many conversations about other
20 things, yes.

21 Q. Among the things that you discussed was he wanted
22 the rifles for training, as you described it yesterday, for
23 training at a farm in Pennsylvania, correct?

24 A. Yes.

25 Q. And you testified that you thought it was in

1 respect of something in connection with Yemen, correct?

2 A. Yes.

3 Q. And the person who was with Abu Ubaidah when you
4 bought the rifles was introduced to you as someone from
5 Yemen, correct?

6 A. No. I assumed that.

7 Q. You assumed it. These conversations that you
8 were having in the fall, this was in 1992, correct?

9 A. I believe so. I am not sure.

10 Q. If you look at the receipts, that would refresh
11 your recollection?

12 A. Yes.

13 Q. Does that refresh your recollection?

14 A. Yes, 1992.

15 Q. The guns were purchased on November 21 and
16 November 22 of 1992, correct?

17 A. Yes, sir.

18 Q. And I think you estimated yesterday the marriage
19 of Abu Ubaidah had taken place a couple of months before the
20 gun show, correct?

21 A. I believe I said I wasn't sure. I am assuming it
22 was a couple of months, or I think it was a couple of months
23 before. Maybe it was a month before. I am not really sure.

24 Q. Would it be fair to say that there was a lot of
25 news about Bosnia at that time?

1 A. Yes, sir.

2 Q. And that this was an active topic in the mosque
3 that you attended?

4 A. Yes, sir.

5 Q. And it was an active topic among fellow Muslims
6 that you would meet with?

7 A. Yes, sir.

8 Q. And I would assume it was also an active topic
9 when you discussed matters with Abu Ubaidah, correct?

10 A. Yes, sir.

11 Q. I believe it is also accurate that at one time
12 you described yourself at this time, that is, the fall of
13 '92, you would tell agents subsequently that you were
14 immersed in jihad, something to that effect.

15 A. No, sir.

16 Q. You never said that?

17 A. No, sir.

18 Q. Do you know what jihad is?

19 A. Yes, sir.

20 Q. Would it be fair to say that it is a fight on
21 behalf of Muslims in their countries, is that correct?

22 A. No, sir.

23 MR. FITZGERALD: Objection to form.

24 Q. What is your understanding of jihad?

25 A. My understanding of jihad is struggle.

1 Q. For what --

2 A. It could be personal struggle, it could be
3 spiritual, it could be physical. Jihad has a much deeper
4 and broader meaning than that, sir.

5 Q. In your discussions with Abu Ubaidah about
6 Bosnia, was there discussion about the news coming out of
7 Bosnia, for example, the rape camps, the ethnic cleansing
8 that was going on?

9 MR. FITZGERALD: Objection.

10 A. Yes, sir.

11 MR. WASSERMAN: Your Honor, that is the only
12 question I intend to ask on that.

13 THE COURT: Go ahead.

14 MR. WASSERMAN: Thank you.

15 Q. It would be fair to say that unlike the sales of
16 guns that you had made before Abu Ubaidah -- withdrawn.

17 The sales of guns that you made before Abu
18 Ubaidah in the fall of '92 were done for money, correct?

19 A. Yes, sir.

20 Q. And you were selling basically inexpensive
21 handguns to a couple of people up in New York, correct?

22 A. Yes, sir.

23 Q. And you were making about \$50 a pop, correct?

24 A. Yes, sir.

25 Q. You had sold approximately 10 handguns prior to

1 your meeting with Abu Ubaidah, fair to say, approximately?

2 A. Yes, sir.

3 Q. After you met with him you would continue to sell
4 handguns to these other people, correct?

5 A. Yes, sir.

6 Q. And you would continue that activity through the
7 remainder of 1992, all of '93, and until you were caught by
8 ATF the beginning of '94, correct?

9 A. Yes, sir.

10 Q. During that period, you sold 78 handguns to those
11 two people up in New York, correct?

12 A. Yes, sir.

13 Q. You testified yesterday that you also sold
14 additional weapons but you didn't mention anything about
15 them. Were they also to the same people?

16 A. No, sir.

17 Q. But they were during that same period of time?

18 A. Yes, sir.

19 Q. And you also sold them for money?

20 A. Yes, sir.

21 Q. To make a profit, correct?

22 A. Yes, sir.

23 Q. With Abu Ubaidah you did not make a profit,
24 correct?

25 A. Correct.

1 Q. He just paid you your cost for the weapons,
2 correct?

3 A. Correct.

4 Q. What he told you was that it was for the pleasure
5 of Allah, correct?

6 A. Yes.

7 Q. That in effect you shouldn't make a profit for
8 something that was for the cause of Allah, correct?

9 A. Yes, sir.

10 Q. That was a different purpose than your other
11 transactions, was it not?

12 MR. FITZGERALD: Objection, form.

13 MR. WASSERMAN: Withdraw the question, Judge. I
14 will rephrase it.

15 Q. The people that you were selling the handguns to
16 in Brooklyn and the other people that you sold weapons to,
17 you did not know what they were doing with it, correct?

18 A. No, not specifically, no.

19 Q. In fact, you testified that originally they told
20 you it was for a security firm, but then you began to
21 realize the volume was too high, correct?

22 A. Yes, sir.

23 Q. They never came to you and said we are going to
24 use these handguns for such and such a purpose, correct?

25 A. Yes, sir -- I don't understand the question.

1 Q. They never told you what they were going to use
2 the guns for, correct?

3 A. In the beginning when I first sold them guns,
4 they told me they were helping out security. After that,
5 no.

6 Q. And there was no explanation like Abu Ubaidah,
7 that the guns were to be used for training, was there?

8 A. No.

9 Q. The gun show in question that you went to was a
10 very big one, was it not?

11 A. Yes, sir.

12 Q. Very public, many booths, a lot of activity,
13 correct?

14 A. Yes, sir.

15 Q. Everybody knew that you were going -- everybody.
16 In the sense of your community, it was public knowledge that
17 you went there with Abu Ubaidah, you went there with your
18 wife, correct?

19 A. I am not sure, sir.

20 Q. Would it be fair to say that Abu Ubaidah was
21 known in your community?

22 A. Yes, he was.

23 Q. He lived there?

24 A. Yes.

25 Q. And he had married somebody there, correct?

1 A. Yes.

2 Q. And that it was known among a number of people
3 that he had purchased the guns, correct?

4 A. I am not sure about that, sir.

5 Q. Your wife knew?

6 A. Yes.

7 Q. His wife knew?

8 A. Yes.

9 Q. And you mentioned a bunch of other people who
10 were at the house when he unpacked the guns and was
11 reassembling them and disassembling them, correct?

12 A. The four children, yes.

13 Q. OK. There was no attempt at hiding the fact, was
14 there?

15 A. No, no.

16 Q. And Abu Ubaidah was open with you about where he
17 was going to get the money from, correct? He told you he
18 was going to try to get the money from Dr. Rashid to
19 purchase those weapons, correct?

20 A. Yes.

21 Q. In fact, there came a time you testified to where
22 you wanted to get your profit from Abu Ubaidah and he said
23 wait a minute, I will make a call to Dr. Rashid, correct?

24 A. Yes.

25 Q. You don't know whether he made the call or he

1 didn't, but he certainly told you that that's what he was
2 going to do, correct?

3 A. Yes.

4 Q. Incidentally, you testified yesterday that the
5 investigator's name was David Wasserman, correct?

6 A. I didn't say for sure. I just said that that
7 name seems to pop up in my head.

8 Q. Would it be reasonable that it pops up in your
9 head -- my name is Kenneth Wasserman, I represent
10 Dr. Rashid, Hampton-El.

11 A. All right.

12 Q. Would it be reasonable that the reason you
13 thought it was David Wasserman was that the investigator's
14 name was David Barrett and he gave you my business card?

15 A. Yes, sir.

16 Q. And on the back of that business card he wrote
17 his name and phone number, correct?

18 A. Yes, sir, I remember that.

19 Q. When he came to visit you, that was arranged
20 through Ismail, correct?

21 A. Yes.

22 Q. In fact, the visit was arranged for approximately
23 10:00 in the evening by Ismail because you were not going to
24 be free until after 10?

25 A. Yes.

1 Q. And it is a fact also that you waited at Ismail's
2 house but Abu Ubaidah and Abdul Karim were late and you left
3 Ismail's house, correct?

4 A. That is not correct.

5 Q. The meeting was to take place at Ismail's house,
6 correct?

7 A. That is not correct. I didn't want to talk to
8 them.

9 Q. It is your testimony that you were not present at
10 Ismail's house that evening?

11 A. That is right.

12 Q. You are aware that the meeting was going to be
13 set for after 10 because you would not be available; that's
14 what you just testified to, correct?

15 MR. FITZGERALD: Objection to form.

16 THE COURT: Sustained.

17 Q. You just testified a moment ago that you would
18 not be available for the meeting until after 10, correct?

19 MR. FITZGERALD: Objection.

20 A. Yes, I did.

21 Q. When Mr. Barrett and Mr. Ali Abdul Karim came to
22 your house they came, you estimated, sometime between 10:30
23 and midnight. You don't remember the time, correct?

24 A. Correct.

25 Q. And they came with Ismail and Ismail's wife,

1 correct?

2 A. Correct.

3 Q. And Ismail spoke to you before they entered your
4 house, correct?

5 A. That is correct.

6 Q. After Ismail spoke to you, they entered your
7 house with your permission, correct?

8 A. Correct.

9 Q. And you sat down, in fact, I believe it was on
10 the living room floor, and you had a discussion for about a
11 half hour to 45 minutes, correct?

12 A. Correct.

13 Q. And during that discussion, Mr. Barrett brought
14 you some information, correct?

15 A. Correct.

16 Q. And that information was that the guns would be
17 traced to you, that the serial numbers would be traced to
18 you. Didn't he tell you that?

19 A. He did say that the FBI were looking for the
20 guns.

21 Q. And didn't he tell you that the guns would be
22 traceable to you?

23 A. Yes, sir.

24 Q. And it would be traceable to you because the
25 serial numbers would be tracked to the sale to you as the

1 purchaser of the guns at the gun show, correct?

2 A. Yes, sir.

3 Q. At that point, Mr. Barrett expressed what his
4 interest was, which was to find out what the paperwork was
5 done by Mr. Ubaidah if any during his purchase of the
6 weapons from you, correct?

7 A. I don't recall.

8 Q. He inquired as to the details of Mr. Ubaidah's
9 purchase of the guns, correct?

10 A. He did inquire details of it and I believe I told
11 him, but I don't recall what was said.

12 Q. You don't recall exactly what was said but you
13 told him about the purchase of the guns from you by
14 Mr. Ubaidah, correct?

15 A. Yes, sir.

16 Q. At that time, you asked the advice of Ismail
17 about whether you should tell Mr. Barrett about your
18 troubles with ATF, correct? Correct?

19 A. Yes, that is correct.

20 Q. And Ismail was in a sense an adviser to you, a
21 confidant, a mentor, correct?

22 A. Yes.

23 Q. And he told you go ahead, tell him?

24 A. Yes, sir.

25 Q. And you told him?

1 A. Yes, sir.

2 Q. You told him your misery started on February 14,
3 1994, correct?

4 A. Yes, sir.

5 Q. And that you were facing 10 years at that time,
6 correct?

7 A. I was facing 10 years per gun, yes.

8 Q. And that you were cooperating with ATF, correct?

9 A. Yes, sir.

10 Q. But that the cooperation wasn't working too well,
11 correct?

12 A. Yes, sir.

13 Q. It would be fair to say it wasn't working too
14 well because the people that you were selling the guns to
15 didn't want to deal with you any more, correct?

16 A. That is correct.

17 Q. That the person who at the airport tried to ship
18 the guns as books knew that the guns had been confiscated
19 and that the ATF had visited you, correct?

20 A. That is correct.

21 Q. So all the efforts of the ATF to have you call
22 these people and arrange meetings or have them pick up the
23 guns was for no purpose, correct? It just didn't work.

24 A. I can't say that.

25 Q. Did you try to reach them?

1 A. Did I try to reach them?

2 Q. Yes.

3 A. Yes, I tried to reach them.

4 Q. And you spoke to them, correct?

5 A. Yes.

6 Q. And it didn't work, in the sense that they didn't
7 want to have anything more to do with you?

8 A. That is correct.

9 Q. When you testified yesterday that Mr. Barrett
10 suggested that you speak to your lawyer about correcting the
11 misinformation that you had given to the ATF, correct?

12 A. Correct.

13 Q. And that misinformation was telling the ATF that
14 you had sold the six rifles in question to the two men in
15 New York that you were selling the handguns to, correct?

16 A. Correct.

17 MR. WASSERMAN: No further questions. Thank you,
18 your Honor.

19 THE COURT: Any redirect?

20 MR. FITZGERALD: No, Judge.

21 THE COURT: Thank you very much. You are
22 excused.

23 THE WITNESS: Thank you.

24 (Witness excused)

25 THE COURT: Should we go up to the side for a

1 bit?

2 MR. FITZGERALD: Yes.

3 THE COURT: Mr. Wasserman.

4 (At the side bar)

5 THE COURT: The record should reflect that I
6 simply asked Mr. Wasserman whether this was something we
7 could do at the side bar or we should send the jury out and
8 we are now seeing what we can do at the side bar.

9 MR. FITZGERALD: Our next witness is Corrigan,
10 not Wilson, if that makes a difference.

11 MR. WASSERMAN: As your Honor wishes.

12 THE COURT: It makes a big difference to me.

13 (In open court)

14 MR. KHUZAMI: Your Honor, the government calls
15 Detective Thomas Corrigan as its next witness.

16 THOMAS F. CORRIGAN,
17 called as a witness by the government,
18 having been duly sworn, testified as follows:

19 MR. KHUZAMI: Your Honor, may I proceed and
20 approach?

21 THE COURT: Go ahead.

22 MR. WASSERMAN: Your Honor, very quickly.

23 (At the side bar)

24 MR. WASSERMAN: Your Honor, there were four
25 conversations that I think the government wants to introduce

1 with a fellow named Othman, who is the man who accompanied
2 Abu Ubaidah down to Virginia. My question to Mr. Khuzami
3 was the relevance of these conversations.

4 MR. KHUZAMI: I defer to Mr. Fitzgerald.

5 MR. FITZGERALD: There are four conversations.
6 Detective Corrigan will identify the picture of Mr.
7 Abdullah, of Mr. Abdullah calling Hampton-El with regard to
8 the money owed for the guns. He doesn't talk about the guns
9 or conversations but he says when I went with Ubaidah five
10 months ago, he still owes me the money, and in fact he says
11 for one it was \$135. So if you look at the receipts there
12 is one where two rifles add up to \$268. So it is a call
13 seeking payments.

14 THE COURT: You are saying it corroborates the
15 fact that those receipts were in fact for the stuff that he
16 transferred at that time rather than something else?

17 MR. FITZGERALD: Correct, and that the Ubaidah
18 transaction for guns involved defendant Hampton-El.

19 MR. WASSERMAN: That is not at issue. I can no
20 more eat more of those guns than I have. What I am
21 concerned about in terms of the transcript is that there is
22 one that refers to one particular gun, and my knowledge of
23 the situation is that it has absolutely nothing to do with
24 these rifles at all, zero. It has to do with the gun that
25 he gave to Ubaidah --

1 THE COURT: He who?

2 MR. WASSERMAN: Othman gave to Ubaidah. In the
3 conversation it is very clear it has nothing to do with
4 rifles and it is not connected with rifles at all,
5 particularly in light of this witness' testimony. Othman
6 would not be calling this witness on behalf of the rifles.
7 It is a totally different transaction. It has nothing to do
8 with the rifles.

9 MR. FITZGERALD: My argument would be when he
10 says 135 for one he is talking about one purchase of the two
11 rifles, but if I could ask Mr. Wasserman a question, are you
12 conceding that when Abu Ubaidah purchased those rifles in
13 Virginia that was for defendant Hampton-El?

14 MR. WASSERMAN: It was certainly in conjunction
15 with him. It was used subsequently with his knowledge.
16 Absolutely. I am not arguing with that.

17 MR. FITZGERALD: As long as I have it in a form
18 before a jury that there is no dispute that Abu Ubaidah was
19 buying them --

20 THE COURT: You can work out how it gets put
21 before the jury, but if it is not necessary to get into it
22 with this, let's move on to something else, which means we
23 are now sending the jury out because we have another
24 dispute --

25 MR. FITZGERALD: Not quite, because we have a

1 video and photospread to put in for the next witness Garrett
2 Wilson.

3 THE COURT: Then we will have a break.

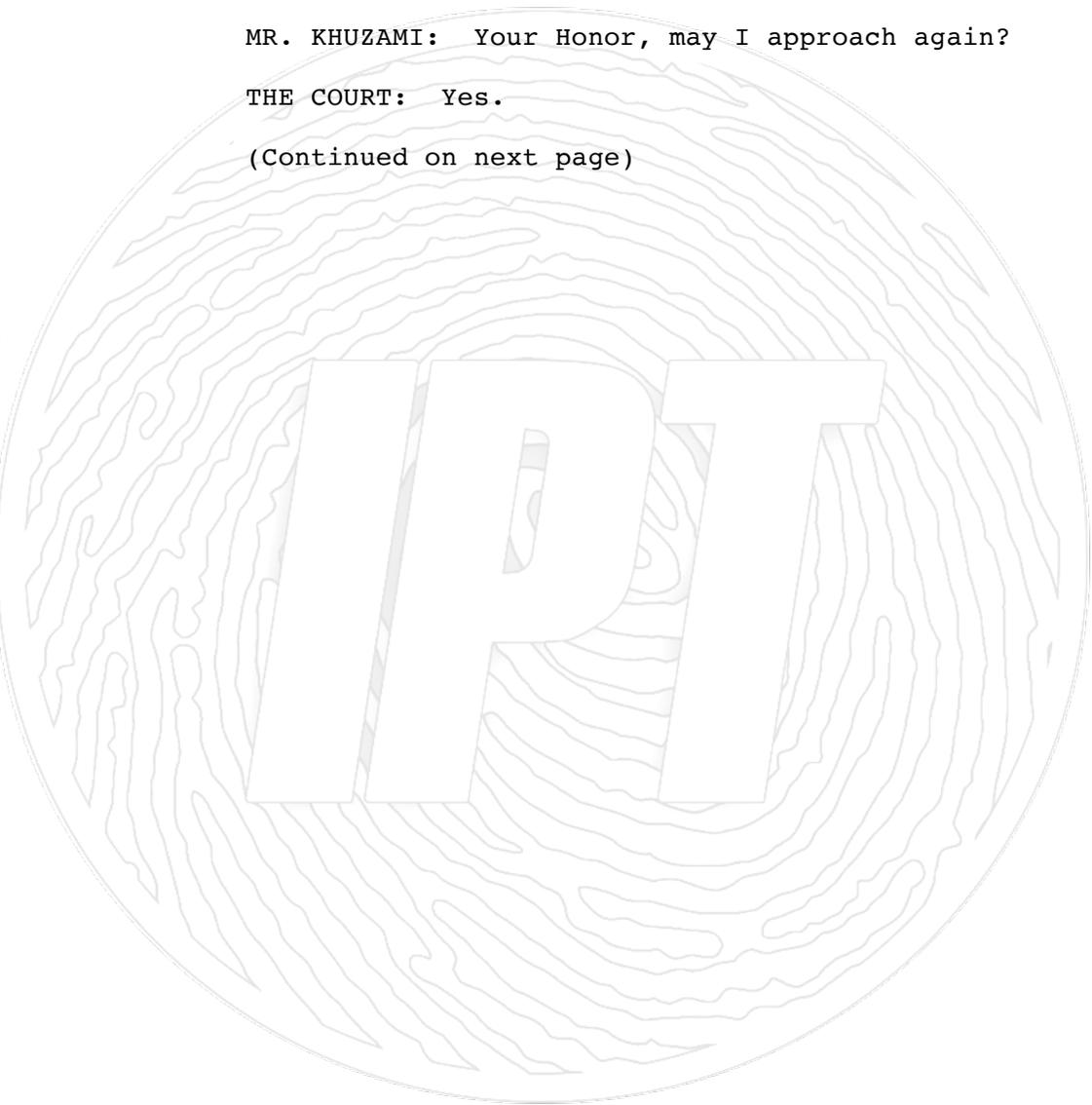
4 (In open court)

5 MR. KHUZAMI: Your Honor, may I approach again?

6 THE COURT: Yes.

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1 DIRECT EXAMINATION

2 BY MR. KHUZAMI:

3 Q. Detective Corrigan, I placed before you on the
4 witness rail a photospread marked as Government's Exhibit
5 291 for identification, and let me ask you whether or not
6 you recognize any of the people depicted in that spread?

7 A. Yes, sir, I do.

8 Q. Who is it that you recognize?

9 A. Othman Hussain Abdullah, in photo number 3.

10 Q. When you say photo number 3 can you describe
11 where in the spread photo number 3 is indicated?

12 A. Top row, right-hand corner.

13 (Continued on next page)

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1 MR. KHUZAMI: Your Honor, at this time I would
2 move into evidence Government's Exhibit 291.

3 THE COURT: Mr. Wasserman, 291 has been offered.
4 That is the photospread.

5 MR. WASSERMAN: If I may see it to verify.

6 MR. WASSERMAN: No objection.

7 THE COURT: 291 is received without objection.

8 (Government's Exhibit 291 received in evidence)

9 MR. WASSERMAN: Your Honor, may I just rethink --
10 your Honor, I am getting some counsel from counsel. May I
11 try the court's patience and convey that to the court at
12 side bar. Sorry.

13 (At the side bar)

14 MR. WASSERMAN: If I can just apologize to the
15 court --

16 THE COURT: I have said before that I thought Mr.
17 Patel was a lawyer's lawyer.

18 MR. PATEL: Thank you, your Honor.

19 MR. WASSERMAN: And you are right. It is just
20 that part of the problem, and it is no fault of my
21 colleagues or from the government, but we are proceeding a
22 little bit fast and haphazardly.

23 THE COURT: Forget the excuses. What is the
24 objection?

25 MR. PATEL: 401, relevance. This is a

1 photospread of what?

2 MR. KHUZAMI: What photospread, the one he just
3 put in?

4 THE COURT: This is a photospread that the prior
5 witness identified as a Yemeni who was along on the
6 expedition to buy the guns.

7 MR. PATEL: He was just along for the ride. What
8 is the relevance of that?

9 THE COURT: He wasn't along for the, quote, ride,
10 as I recall, at all.

11 MR. FITZGERALD: I am not sure the defense wants
12 to leave out who was there. You might be better off making
13 it clear that it is someone not in the courtroom.

14 MR. LAVINE: Can I ask a question? Are you going
15 to be developing other evidence about who this guy is?

16 MR. FITZGERALD: I think we just reached a
17 stipulation on the relevance beyond that. This is the end
18 of Abdullah at this point.

19 MR. WASSERMAN: Why not just put in his picture
20 rather than the spread. Do you have an objection to that?

21 MR. PATEL: I don't see the relevance of his
22 picture or the spread. The picture is better than the
23 spread.

24 THE COURT: He is the person who was along to buy
25 the guns. That is established. He has already been

1 identified by the prior witness. Rather than have it
2 hanging out there, let's at least have the photograph of the
3 gentleman.

4 (In open court)

5 THE COURT: That part of Exhibit 291 that
6 contains Mr. Abdullah's photograph is received.

7 BY MR. KHUZAMI:

8 Q. Detective Corrigan, I wonder if you might pick up
9 what has been placed next to you in the red plastic binder
10 marked as Government's Exhibit 286A through L and 287A
11 through E, and I ask you to take a look at those pictures.

12 A. Yes, sir.

13 Q. Did you take any of those pictures?

14 A. Yes, sir, I did.

15 Q. Which ones did you take?

16 A. 286A through L.

17 Q. Were you present at the scene depicted in
18 Government's Exhibit 287A through E?

19 A. Yes, sir, I was.

20 Q. When was 286A through L taken?

21 A. A through L was taken December 20 of 1992.

22 Q. And the scene depicted in Government's Exhibit
23 287A through E, when was that taken?

24 A. December 28, 1992.

25 Q. Without testifying about who is depicted in those

1 pictures, do you recognize the scenes therein?

2 A. Yes, sir, I do.

3 Q. As to 286A through L, taken on December 20, 1992,
4 what do you recognize that scene to be?

5 A. It is outside the Port Authority on the Jersey
6 side of the Holland Tunnel.

7 Q. Again without testifying as to who is in the
8 pictures, do you recognize the scene depicted in
9 Government's Exhibits 287A through E?

10 A. Yes, sir, I do.

11 Q. Who is that?

12 A. It is outside the India House, which is a
13 restaurant located on Court Street near Atlantic Avenue in
14 Brooklyn, New York.

15 Q. Is 286A through L, taken near the Port Authority
16 building on December 20, 1992, a fair and accurate depiction
17 of what you saw on that day?

18 A. Yes, sir, it is.

19 Q. Is Government's Exhibit 287A through E a fair and
20 accurate depiction of what you saw on December 28, 1992,
21 near the India House restaurant?

22 A. Yes, sir, it is.

23 Q. The date of government 286A through L was
24 December 20, 1992?

25 A. Is that correct?

1 A. That is correct, sir.

2 Q. And the date for Government's Exhibit 287A
3 through E was what date?

4 A. I think I said the 28th but I think it is the
5 29th of December, December 29, 1992.

6 Q. Of what year?

7 A. 1992, sir.

8 MR. KHUZAMI: Your Honor, at this time the
9 government would move into evidence Government's Exhibits
10 286A through L and 287A through E.

11 THE COURT: Mr. Wasserman?

12 MR. JACOBS: There is a 401 objection separate
13 from whatever Mr. Wasserman has.

14 THE COURT: I haven't seen the photographs.

15 VOIR DIRE EXAMINATION

16 BY MR. WASSERMAN:

17 Q. You took only the photographs 286A through L but
18 you were present on both occasions?

19 A. That is correct.

20 Q. And these photographs were taken as a result of
21 Garrett Wilson telling you that the meetings would take
22 place at the time?

23 A. That is correct.

24 Q. So these were prearranged photographs that were
25 taken?

1 A. That is correct.

2 (Continued on next page)

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1 MR. WASSERMAN: I have no further questions.

2 MR. JACOBS: 401.

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

4 (At the side bar)

5 MR. KHUZAMI: Your Honor, these are photographs
6 of two meetings with Garrett Wilson, who is the next
7 witness, wherein the testimony will indicate that there was
8 discussion concerning the purchase of weapons, and which
9 depicts the defendant Clement Hampton-El in these pictures.

10 THE COURT: I don't understand the 401.

11 MR. JACOBS: Your Honor, the basis of the 401
12 objection is that we believe whatever conspiracy this is, it
13 has nothing to do with the conspiracy that is charged here,
14 that this is a multiple conspiracy having no relevancy to
15 the charges here whatsoever and later will form the basis of
16 whatever Kodiakis arguments we are going to make on multiple
17 conspiracy. But so far the proof doesn't link up at all
18 with the conspiracy charged in this case, which is seditious
19 conspiracy.

20 THE COURT: Yes.

21 MR. KHUZAMI: Your Honor, it is the government's
22 position these items were purchased and used in the
23 Pennsylvania training. Some of them turned up at Rogers
24 Avenue --

25 THE COURT: Some of the items purchased?

1 MR. KHUZAMI: Some of the items purchased.

2 THE COURT: The objection is overruled.

3 MR. WASSERMAN: There were no items transferred
4 on those two days.

5 THE COURT: Negotiations are enough.

6 MR. KHUZAMI: So we don't have to have another
7 meeting, the other item going in is a video of the
8 surveillance of one of these two meetings.

9 THE COURT: Same ruling.

10 (In open court)

11 THE COURT: Ladies and gentlemen, I am sorry for
12 the frequency of the side bars today. They are an
13 occasionally efficient way of getting things done and this
14 happens to be one of the occasions. Sometimes it is
15 necessary to go over there. I have told you this before and
16 I will tell you again, the purpose is not to keep secrets
17 from you but to be sure that the only evidence that is
18 received is evidence that is properly admissible.

19 286A through L and 287A through E are received.
20 The objection is overruled.

21 (Government Exhibits 286A through L and 287A
22 through E were received in evidence)

23 MR. KHUZAMI: At this time I would request
24 permission that the jury be permitted to open their binders
25 and examine the photographs as Detective Corrigan describes

1 the scenes depicted therein.

2 THE COURT: There is a binder marked 152 to 299.
3 That binder would include 286 and 287. It is a binder
4 marked 152 through 299.

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1 MR. KHUZAMI: Just so the record is clear, your
2 Honor, these are Exhibits 286A through L and 287A through E.

3 THE COURT: OK.

4 Q. Detective Corrigan, I wonder if you might pick up
5 the binder of pictures and, starting with the first one,
6 286A, and continuing through the remainder, just describe
7 the scene and the persons depicted in the photos.

8 A. And name the persons?

9 Q. Yes.

10 A. 286A is Garrett Wilson by his vehicle.

11 286B is Garrett Wilson, sittings in his vehicle.

12 286C is Clement Hampton-El, also known as
13 Dr. Rashid, walking towards Mr. Wilson's vehicle.

14 286D is Dr. Rashid looking into Mr. Wilson's
15 vehicle.

16 MR. STAVIS: Can we just ask that the witness
17 slow down a little bit so we can follow.

18 THE COURT: Sure.

19 THE WITNESS: I'm sorry, sir.

20 THE COURT: Take it one at a time and slowly.

21 THE WITNESS: OK.

22 A. 286E is Dr. Rashid looking into Garrett Wilson's
23 vehicle.

24 286F is Dr. Rashid looking into Garrett Wilson's
25 vehicle.

1 286G is Dr. Rashid with the door open at Garrett
2 Wilson's vehicle.

3 286H is Dr. Rashid walking away from Dr. -- I
4 mean Dr. Rashid walking away from Garrett Wilson's vehicle.
5 I'm sorry.

6 286I is Garrett Wilson at Dr. Rashid's vehicle
7 with Dr. Rashid in the driver's seat.

8 286J is Dr. Rashid by his vehicle along with Abu
9 Ubaidah at Dr. Rashid's vehicle.

10 286K is Abu Ubaidah and Garrett Wilson standing
11 by a lamp post.

12 Q. Just for clarification, who is on the left and
13 who is on the right in 286D?

14 A. 286K, Abu Ubaidah would be on the left-hand side;
15 Garrett Wilson is on the right-hand side.

16 286L is Dr. Rashid on a pay phone and Abu Ubaidah
17 standing behind him. So Rashid would be to the left; Abu
18 Ubaidah would be to the right.

19 Q. Just for clarification, 286L and all the previous
20 photographs you identified took place where?

21 A. On the Jersey side of the Holland Tunnel across
22 from the Port Authority building. OK. I'm done with that.
23 Do you want me to continue?

24 Q. Continue.

25 A. OK. 287A is Abu Ubaidah standing in front of the

1 India House on 4th street in Brooklyn.

2 287B is Garrett Wilson entering the India House.

3 He's by the door there that says 139.

4 287C is Dr. Rashid walking way from the India
5 House up towards Atlantic Avenue.

6 287D is Abu Ubaidah with the bag in his left hand
7 walking away from the India House towards Atlantic Avenue.

8 And 287E is a passing of the bag by Abu Ubaidah
9 to Dr. Rashid. That is up towards Atlantic Avenue.

10 Q. Who is holding the bag in 287E?

11 A. 287E Dr. Rashid has taken custody of the bag.

12 Q. Finally, Detective Corrigan, if you would pick up
13 the videotape marked as Government Exhibit 286 for
14 identification and I ask you if you have seen that before.

15 A. Yes, sir, I have.

16 Q. Have you had an opportunity to review the
17 videotape before your testimony today?

18 A. Yes, sir, I have.

19 Q. And what is it a videotape of?

20 A. It's basically a videotape of the meeting
21 described in Government Exhibit 286 A through L, a videotape
22 basically describing these still photos.

23 Q. That is the December 20, 1993 meeting at the Port
24 Authority on the Jersey side of the Holland Tunnel?

25 A. That's correct, sir.

1 Q. You were present that day?

2 A. Yes, sir. I was.

3 Q. Is that videotape a fair and accurate depiction
4 of what you saw?

5 A. Yes, sir, it is.

6 MR. KHUZAMI: Your Honor, I would move Government
7 Exhibit 286 into evidence.

8 MR. BERNSTEIN: Previous objections.

9 THE COURT: Previous objections are overruled.
10 286 is received.

11 (Government's Exhibit 286 for identification was
12 received in evidence)

13 MR. KHUZAMI: I'm sorry, your Honor. I believe I
14 misspoke. That's December 20, 1992, and I said '93.

15 THE COURT: '92. All right. 286 is received.

16 MR. KHUZAMI: No further questions.

17 THE COURT: Cross? No cross?

18 All right. You are excused. Thank you.

19 (Witness excused)

20 MR. FITZGERALD: Your Honor, the next witness is
21 Garrett Wilson, but I think we should approach.

22 THE COURT: All right. Ladies and gentlemen, we
23 are going to take a short break at this point. Please leave
24 your notes and other materials behind. Please don't discuss
25 the case, and we will resume in a few minutes.

1 (Jury not present)

2 THE COURT: OK. What is the issue with regard to
3 Mr. Wilson? Mr. Wasserman?

4 MR. WASSERMAN: Yes, your Honor. There was
5 taping done by Mr. Wilson of Ali Abdul Karim in as late as
6 '94, and reference is made in, I think, EE of the
7 disclosure, 3500, and those were tapes, body wire tapes worn
8 by Garrett Wilson.

9 I have several objections. First of all, I have
10 not heard the tapes. Second of all, there's disclosures in
11 the 3500 material which indicate that Garrett Wilson was
12 milking Ali Abdul Karim for information. He was taping when
13 he was well aware, it having been disclosed in the prior
14 documents, he was aware that Abdul Karim was engaged as a an
15 investigator/paralegal for several people in the defense,
16 not just confined to my client, but for a number of people.

17 Furthermore, there are redactions in EE which
18 refer to conversations clearly with Ali Abdul Karim
19 concerning, I believe, Kelvin Smith. Smith is mentioned in
20 there, and I think it is mentioned clear enough as being in
21 reference to Kelvin Smith who was involved with the
22 Pennsylvania place. I want those redactions unredacted.
23 There is, I think, an impropriety in having Garrett Wilson
24 initiating these contacts. I believe there is a reference
25 in there that the FBI had the tapes. Then there is the

1 redaction problem. Then there is the fact that I haven't
2 heard the tapes.

3 MR. FITZGERALD: Your Honor, if I could --

4 THE COURT: I am not sure that I understand to
5 what objection is being made. In fact, I am sure I don't
6 understand to what objection is being made. You are
7 objecting to some item that you think he's going to testify
8 about? You're objecting to the tapes being received?

9 MR. WASSERMAN: Your Honor, I am objecting first
10 that I haven't heard the tapes. I don't know what was said
11 in those conversations. Second, I'm objecting to the
12 redactions, which refer to those conversations which
13 apparently, from my reading, involve Kelvin Smith, who is
14 very much a relevant figure in this case. Third, I have an
15 objection to the propriety of those conversations having
16 been taped in the first place. For the moment I'm
17 interested in discovery. The impropriety aspect is
18 something that doesn't have to be litigated until the
19 testimony.

20 MR. FITZGERALD: If I can briefly address the
21 alleged impropriety. I would point out that I believe there
22 are two references to tapes of Ali Abdul Karim, one of which
23 was made by Mr. Wilson without any direction of the
24 government. Then, when it was learned, it was documented,
25 and we disclosed that to Mr. Wasserman. The second one was

1 not handled by anyone on the prosecution team.
2 Mr. Wasserman has been on notice for a long time that
3 Mr. Ali Abdul Karim was a person who was viewed as a
4 co-conspirator and was under investigation and played a role
5 in the events before the arrests were made.

6 Merely dubbing him a defense investigator doesn't
7 give him a halo that shields him from any investigation. I
8 have not heard that tape. I have been walled off from that
9 proceeding. I think the intimation that there is something
10 improper about the government going around investigating
11 people involved in the facts of a crime is inappropriate,
12 but I don't think we need to resolve it any further here
13 today.

14 THE COURT: What do we need to resolve here?

15 MR. FITZGERALD: I offered to Mr. Wasserman that,
16 if he alone listens to those tapes, we will make those tapes
17 of the conversations between Mr. Wilson and Ali Abdul Karim
18 available to him. I'm having someone make a copy of that.

19 I have not heard the latter conversation myself.
20 The witness will not be testifying about those taped
21 conversations, so it is not something that is coming out in
22 direct. We are not offering those tapes.

23 THE COURT: What about the redactions?

24 MR. FITZGERALD: I believe there is one redacted
25 report, and I think if I have a moment I can revisit whether

1 or not I will consent to having Mr. Wasserman read the
2 redacted section.

3 THE COURT: OK.

4 MR. FITZGERALD: I don't think it is relevant to
5 the witness's direct. It will not be elicited on his
6 direct, but we may be fighting over something that is not
7 really important.

8 THE COURT: All right. Why don't you take a
9 minute and do that.

10 MR. WASSERMAN: I have no objection, but I would
11 just like to be able to have that material before cross.

12 THE COURT: "That material" being the unredacted
13 report if you're going to get it?

14 MR. WASSERMAN: Yes, and the tape.

15 MR. FITZGERALD: Your Honor, our intention with
16 the tape was to make a tape available for Mr. Wasserman to
17 listen to, but not to disseminate that tape. I don't think
18 there is any need to take a separate investigation and
19 disseminate materials from that. If Mr. Wasserman wants to
20 satisfy himself that there's nothing there for
21 cross-examination, we will reluctantly agree.

22 THE COURT: That means --

23 MR. FITZGERALD: To him alone reviewing that
24 tape.

25 THE COURT: OK. What does that do to the timing

1 of the calling of the witness?

2 MR. FITZGERALD: I think the tapes may be here.
3 We could do direct and break and see at that point, or, if
4 he wants to do his cross and then break at the end of the
5 cross and reopen at lunchtime if he reviews the tape and
6 sees that there is anything there.

7 MR. WASSERMAN: Your Honor, if I may, the cross
8 hopefully is something of a unified whole. I don't want to
9 find out something after my cross and try to reopen. It's
10 just not something I want to do. The other thing, if I just
11 may touch on it very briefly, not to litigate the matter
12 now, but I want to correct the record. Mr. Ali Abdul Karim
13 was identified to me as a subject, as compared to the
14 identification by the government of Abu Ubaidah as a target.
15 That identification never changed until there was a list of
16 like 171 names circulated.

17 THE COURT: And knowing that he was a subject, he
18 got hired anyway.

19 MR. WASSERMAN: That notification was submitted
20 to me approximately eight months to a year after he had been
21 hired.

22 MR. McCARTHY: That is absolutely wrong. I
23 explicitly told Mr. Wasserman, both orally and I think one
24 time in writing, what the status of this person is.

25 THE COURT: The bottom line is that there is no

1 impropriety in the government investigating whoever it
2 thinks is properly to be investigated for commission of a
3 crime. If you want to hire people, you could investigate
4 who you hire.

5 MR. WASSERMAN: Judge, if I may, the subject
6 matter of the conversation was, as far as I know based upon
7 the redacted report, was to seek information about what
8 information the defense had on a particular subject matter,
9 not another investigation, this case, this defense's
10 position.

11 THE COURT: He hasn't heard the tape; you haven't
12 heard the tape.

13 MR. WASSERMAN: I have read the report, though,
14 Judge, and that's what the report seems to say.

15 MR. PATEL: Your Honor --

16 THE COURT: Yes.

17 MR. PATEL: -- I am rising to ask for an offer of
18 proof as to why this witness is being called. We have heard
19 a lot of testimony about training in Pennsylvania. My
20 understanding is that this witness had nothing to do with
21 the actual training that took place. There were discussions
22 about training.

23 THE COURT: I thought that the testimony was
24 going to be that this witness sold guns that were used --

25 MR. PATEL: No.

1 THE COURT: No?

2 MR. FITZGERALD: Your Honor, among other things,
3 this witness will indicate that he was approached about
4 providing training in Pennsylvania, which was ultimately
5 canceled, but he was approached. Among the topics discussed
6 was whether or not he could provide detonators, clean guns,
7 and there was also discussed transporting rifles to southern
8 Jersey for training. I think that the direct will be clear.

9 THE COURT: Approached my whom?

10 MR. FITZGERALD: Directly by defendant Hampton-El
11 and Abu Ubaidah.

12 MR. PATEL: Is the offer of proof that he
13 transported the guns or there was just discussions?

14 THE COURT: He was approached I think is what the
15 testimony was.

16 MR. FITZGERALD: Yes, he was going to transport
17 it, and it was canceled.

18 THE COURT: All right.

19 MR. PATEL: Your Honor, I believe this is an
20 invitation to some confusion since there's been a photograph
21 introduced of actual training, that the jury be very aware
22 that this is not the person who had anything to do with the
23 actual training. These were just discussions.

24 THE COURT: I think it is apparent from his
25 testimony that he had nothing to do with it, and there is no

1 need for an instruction.

2 MS. AMSTERDAM: May I have one moment, your
3 Honor.

4 (Counsel conferred)

5 THE COURT: It seems to me the next order of
6 business is that you have to determine what is going to be
7 shown to Mr. Wasserman and when it is going to be shown.

8 MS. LONDON: I am sorry, your Honor. I can't
9 hear.

10 THE COURT: I'm sorry. I said the next order of
11 business is they have to determine what is going to be shown
12 to Mr. Wasserman and when.

13 MR. FITZGERALD: Your Honor, I will allow
14 Mr. Wasserman to review the portion of that report that he
15 complains of that's redacted, and I believe the tapes may be
16 here.

17 THE COURT: All right. Then why don't we break,
18 let Mr. Wasserman look and listen, and reconvene.

19 MR. FITZGERALD: Thank you, Judge.

20 MR. WASSERMAN: Thank you.

21 THE COURT: All right.

22 (Recess)

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1 (In open court; jury not present)

2 THE COURT: Where are we?

3 MR. FITZGERALD: I don't know. I would have to
4 ask Mr. Wasserman. He is listening to the tapes. I don't
5 know how long they are. I have not heard them.

6 MR. WASSERMAN: Your Honor, I listened to the
7 March 17, 1995 tape, and that was for the duration of the
8 break. I have just started the other one. I have no idea
9 as to how long it is.

10 MR. FITZGERALD: Can I have one moment with Mr.
11 Wasserman?

12 THE COURT: Yes.

13 MR. FITZGERALD: Your Honor, what I was going to
14 you go was that we do direct, break, and over lunch if we
15 broke a little early Mr. Wasserman could listen to the rest
16 of the tape and start cross.

17 THE COURT: How long is direct going to be?

18 MR. FITZGERALD: My guess is that it will
19 probably take us to the lunch break. It may be short but it
20 can take us maybe to an early lunch.

21 THE COURT: Let's do that.

22 MR. WASSERMAN: One slight request, and that is a
23 little bit of extra time to add to the lunch break.

24 THE COURT: Fifteen minutes? That's a little
25 bit.

1 MR. WASSERMAN: A little bit more.

2 THE COURT: Let's go.

3 (Jury present)

4 THE COURT: Sorry for the length of that break,
5 ladies and gentlemen, but it really couldn't be avoided.
6 Mr. Fitzgerald.

7 MR. FITZGERALD: The government calls Garrett,
8 G-A-R-R-E-T-T, Wilson.

9 GARRETT WILSON,
10 called as a witness by the government,
11 having been duly sworn, testified as follows:

12 THE COURT: Mr. Wilson, you are going to have to
13 lean into that microphone a little bit.

14 THE WITNESS: This one?

15 THE COURT: Either one of them, because the
16 acoustics in here are terrible and the translators need to
17 hear you.

18 (Continued on next page)

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1 DIRECT EXAMINATION

2 BY MR. FITZGERALD:

3 Q. Mr. Wilson, could you tell the jury how old you
4 are.

5 A. I am 45 years old.

6 Q. Can you tell the jury what you did for a living
7 after you left high school.

8 A. I joined the military, United States Army, as a
9 military policeman.

10 Q. What years did you serve in the United States
11 Army?

12 A. From 1969 to 1983.

13 THE COURT: Sorry. The translators can't hear
14 you unless you talk into the microphones.

15 Q. Can you tell the jury what you did after you left
16 the United States Army?

17 A. Yes. I became a member of the Department of
18 Defense police in Philadelphia.

19 Q. What year did you join the Department of Defense
20 police in Philadelphia?

21 A. In 1983.

22 THE COURT: Mr. Fitzgerald or Mr. McCarthy, can
23 somebody position the microphones better, move them up or
24 whatever.

25 Q. When did you leave the Department of Defense

1 police?

2 A. In 1993.

3 Q. What did you do for work after that?

4 A. I became a private detective.

5 Q. Have you been promised a payment of money from
6 the Federal Bureau of Investigation?

7 A. Yes.

8 Q. What is the sum of money you have been promised?

9 A. \$40,000.

10 Q. What do you understand the \$40,000 is for?

11 A. To assist me in relocating to another location
12 and to take care of expenses as far as furniture and things
13 like that is concerned.

14 Q. Are you scheduled to enter the Witness Protection
15 Program?

16 A. Yes, sir, I am.

17 Q. Is this money for the relocation into the Witness
18 Protection Program above and beyond the subsistence payments
19 that the marshals will provide you at the start?

20 A. Yes, it is.

21 Q. Did there come a time in addition to working for
22 the Department of Defense that you also had a side business?

23 A. Yes.

24 Q. Can you tell the jury what your side business
25 was.

1 A. I was involved in training law enforcement
2 personnel in the art of rappelling, firearms and bomb
3 identification and search procedures.

4 Q. Can you tell the jury briefly what rappelling is.

5 A. Rappelling is an art or a style where you attach
6 a rope to the top of a building and you attach the rope to a
7 person's body by the use of a D ring, and he slides down to
8 the ground.

9 Q. Have you also taught people outside of law
10 enforcement rappelling and other items?

11 A. Yes.

12 Q. Can you tell us generally who you taught?

13 A. I taught members of a martial arts group. The
14 location was in New Jersey.

15 Q. The location where you taught?

16 A. Yes, sir.

17 Q. During the time that you taught this business,
18 did there come a time when you met a person by the name of
19 Ali Abdul Karim?

20 A. Yes, sir.

21 Q. Can you tell us approximately when you first met
22 Ali Abdul Karim?

23 A. It was approximately in 1983 when I first met Ali
24 Abdul Karim.

25 Q. Was he in one of your classes?

1 A. Yes, sir, he was.

2 Q. After that, did you have a continuing
3 relationship with Ali Abdul Karim?

4 A. Yes, I did.

5 Q. Can you explain that to the jury?

6 A. What it was is that after the first class that I
7 had with a group of martial arts students, a member of the
8 class was named Ali Abdul Karim. After class we became
9 friends, and therefore he asked if I could teach other
10 members of his martial arts group.

11 Q. Did you do that?

12 A. Yes, I did, sir.

13 Q. Can you tell us approximately how many different
14 classes of Ali Abdul Karim's martial arts group you taught
15 rappelling over the years?

16 A. Approximately 8 to 10 different classes.

17 Q. Can you tell us about how many students were in
18 each class?

19 A. No more than 12 and no less than 8 people.

20 Q. Over the years, did you ever teach to people --
21 did you ever teach anything other than rappelling to people
22 introduced to you by Ali Abdul Karim?

23 A. Yes, sir, I taught firearms and bomb
24 identification and search procedures.

25 Q. Did you make money teaching these seminars or

1 these classes to students brought to you by Ali Abdul Karim?

2 A. Yes, sir.

3 Q. Did you also engage in any other side business
4 besides teaching?

5 A. Yes, sir, I sold equipment.

6 Q. Can you tell us what type of equipment you sold?

7 A. Bulletproof vests, gas masks, ballistic
8 shields -- let me think.

9 Q. Let me stop you there.

10 A. Yes, sir.

11 Q. Who did you sell these items to?

12 A. Ali Abdul Karim.

13 Q. Did you sell them to other people as well?

14 A. Yes, sir, police officers and security-related
15 people.

16 Q. Did you sell to any people that Ali Abdul Karim
17 introduced you to?

18 A. Some, yes.

19 (Continued on next page)

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1 Q. Can you tell us, focusing specifically on Ali
2 Abdul Karim or people he introduced you to, can you tell us
3 what types of items you sold to them?

4 THE COURT: Can we get an indication of when?

5 MR. WASSERMAN: Your Honor, can we have a side
6 bar? I have a long objection.

7 THE COURT: I will hear you at the side.

8 (At the side bar)

9 THE COURT: It seems to me unless you can focus
10 this more narrowly than Ali Abdul Karim's circle of friends,
11 then I have some question about where it goes and what it
12 proves.

13 MR. FITZGERALD: I will focus it specifically on
14 Ali Abdul Karim, and what it proves is a relationship
15 spanning about a decade of trust.

16 THE COURT: That I understand. People in his
17 calling circle --

18 MR. FITZGERALD: Objection.

19 MR. WASSERMAN: Where are you going with Ali
20 Abdul Karim?

21 MR. FITZGERALD: He is going to say what type of
22 items he sold to him and then in the fall of '92 Abu Ubaidah
23 calls him and makes reference to Ali Abdul Karim, and that
24 is his introduction, and then Abu Ubaidah speaks to
25 Rashid --

1 MR. BERNSTEIN: I object to Ali Abdul Karim, what
2 he sold him before, if in fact it has nothing to do with the
3 conspiracy.

4 MR. WASSERMAN: That is the essence of my
5 objection. I don't mind you talking about the decade of
6 trust --

7 THE COURT: Do you want an instruction?

8 MR. WASSERMAN: No, I am just trying to think it
9 through --

10 MR. BERNSTEIN: I don't see how if Ali Abdul
11 Karim bought a bulletproof vest 10 years ago as an example,
12 what relevance it has unless there is a nexus to the
13 conspiracy.

14 THE COURT: All he is trying to show is that he
15 did business for a long time with Ali Abdul Karim.

16 MR. BERNSTEIN: He established that.

17 MR. FITZGERALD: He also shared in 10 percent of
18 sales made to other people.

19 THE COURT: Who did?

20 MR. FITZGERALD: Ali Abdul Karim.

21 THE COURT: You can bring that out and then move
22 on --

23 MR. FITZGERALD: The only reason, Judge, it might
24 strike the jurors odd that defendant Hampton-El the first
25 time he meets someone is asking about detonators, clean

1 guns, things like that, and lock-picking sets. That is not
2 what he asked for, that is what he had sold earlier, tear
3 gas, ballistic shields --

4 THE COURT: In that event, I will let you bring
5 it out. I will also instruct that the earlier sales to Ali
6 Abdul Karim have nothing to do with this conspiracy and are
7 not to be considered against any defendant in this case and
8 only for the purpose of proving whatever this man's
9 relationship was with Ali Abdul Karim.

10 MR. BERNSTEIN: My concern is that Mr. Karim has
11 been identified as connected to the postarrest defense
12 process. The further the record amplifies his
13 nonconspiratorial but similar kind of act involvement years
14 before taints many of the defendants whether they have
15 direct contact or don't have direct contact with cream.

16 THE COURT: I understand your objection. That is
17 not sufficient. Somebody should have been making smarter
18 hiring decisions.

19 MS. AMSTERDAM: May I just ask one question?
20 When is the sales to Dr. Rashid, the time period?

21 MR. FITZGERALD: The meeting is fall of '92,
22 November, December of '92, into January 1993.

23 MS. AMSTERDAM: I have a separate objection,
24 which is that at this point I believe that all of these
25 sales link up to is the Pennsylvania training, and this

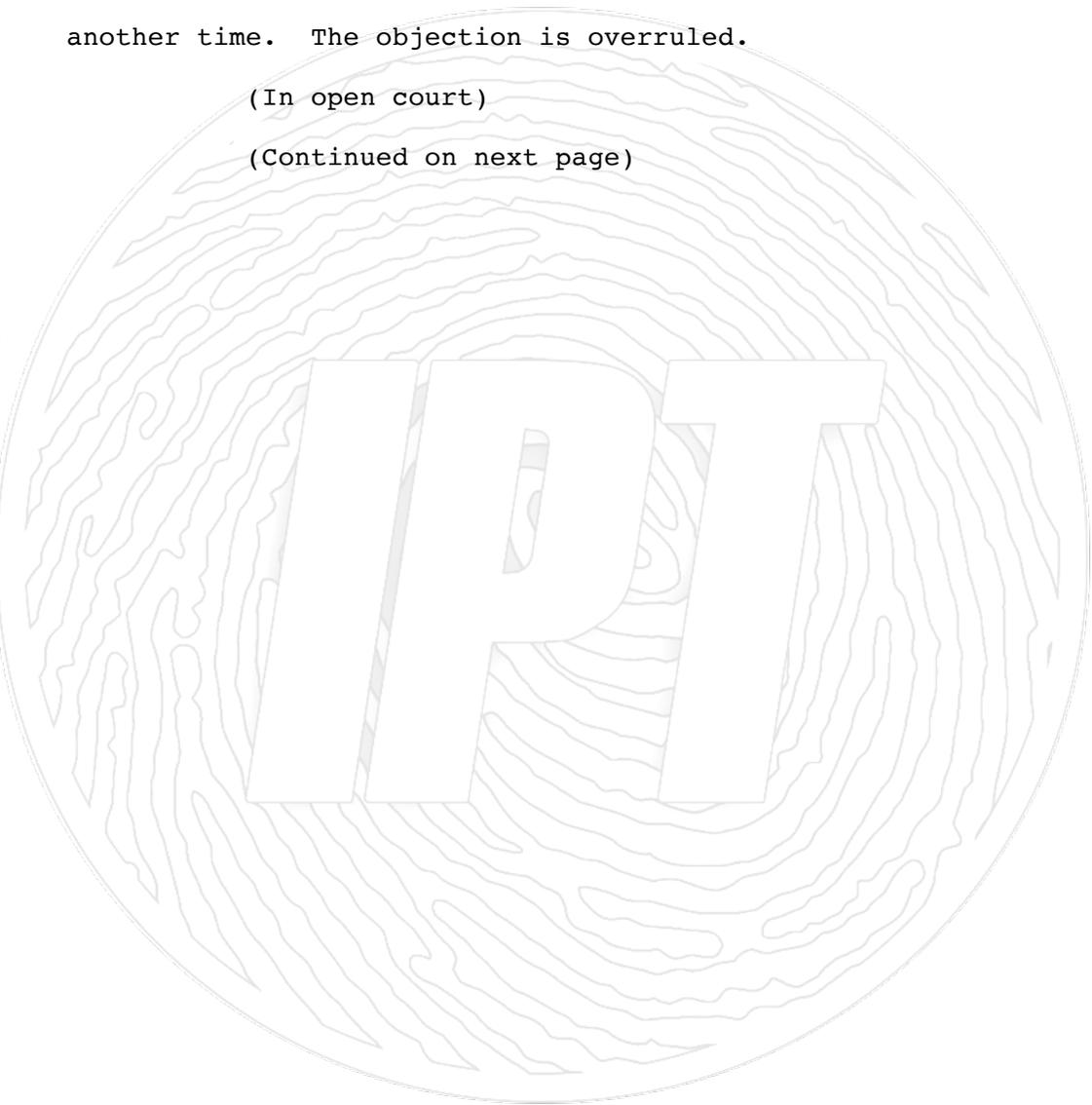
1 record is devoid of any evidence to suggest that the
2 Pennsylvania training was in any way criminal by nature.
3 The government's own witnesses have said that.

4 THE COURT: That is something we can discuss
5 another time. The objection is overruled.

6 (In open court)

7 (Continued on next page)

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1 BY MR. FITZGERALD:

2 Q. Mr. Wilson, over the course of the years did you
3 sell equipment directly to Ali Abdul Karim?

4 A. Yes.

5 Q. Did you have any business relationship with Ali
6 Abdul Karim concerning equipment you sold to other people?

7 A. No, not really, sir.

8 Q. Did you ever pay Ali Abdul Karim any money?

9 A. Yes.

10 Q. What would you pay him money for?

11 A. As a commission on sales.

12 Q. Sales to whom?

13 A. Members who he might have brought to me, or
14 introduced to me as people who wanted to purchase some type
15 of equipment.

16 Q. Can you tell us over the course of the years what
17 type of --

18 THE COURT: Course of which years?

19 MR. FITZGERALD: I am sorry.

20 Q. When did you begin to sell equipment to Ali Abdul
21 Karim?

22 A. Approximately 1984 up until 1992.

23 Q. Over the course of those years, can you tell us
24 what type of equipment you sold to Ali Abdul Karim?

25 A. Rappelling equipment, bulletproof vests, gas

1 masks, ballistic shields, compasses, binoculars -- that type
2 of equipment.

3 Q. Can you tell us what a ballistic shield is?

4 A. A ballistic shield is a --

5 MS. AMSTERDAM: Objection, your Honor.

6 THE COURT: Sustained.

7 Q. Did you sell any communications equipment to Ali
8 Abdul Karim?

9 A. Yes, sir.

10 Q. What type of equipment?

11 A. Just basic walkie-talkies, that type.

12 Q. Did you sell any surveillance or
13 countersurveillance equipment?

14 A. Yes, sir, bug detectors.

15 Q. Did you sell any books to Ali Abdul Karim?

16 A. Yes, sir, books.

17 Q. What type of books?

18 A. Books that pertained to SWAT tactics,
19 antiterrorist tactics, bomb identification, search
20 procedures, countersurveillance -- those types of things.

21 Q. Did you sell him any telephone equipment?

22 A. Yes, sir, telephone man butt sets.

23 Q. What is a butt set?

24 A. Butt set is a phone set --

25 MS. AMSTERDAM: Objection, your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: May I continue, sir?

3 THE COURT: Yes.

4 A. A butt set is a telephone man's hand set that is
5 used to connect to telephone wires so that you can make a
6 telephone call.

7 Q. Did there come a time when you began to work as a
8 cooperating witness for the Naval Investigative Service?

9 A. Yes.

10 THE COURT: Let me stop here for a minute. The
11 witness' testimony with regard to his dealings with Mr.
12 Abdul Karim from, as he testified, '84 to '92 are not to be
13 considered as proof in connection with any defendant in this
14 case, but only to show what the witness' relationship was
15 with Mr. Abdul Karim. That is the only purpose for which it
16 may be used. There is no claim that any of the material
17 that he sold to Mr. Abdul Karim during that period has
18 anything to do with any defendant in this case.

19 Go ahead.

20 MR. FITZGERALD: Thank you, Judge.

21 Q. Did there come a time when you began to work as a
22 cooperating witness for the Naval Investigative Service?

23 A. Yes, sir.

24 Q. Can you tell the jury approximately when that
25 was?

1 A. It was approximately 1989 when I first became a
2 cooperating witness with the Naval Investigative Service.

3 Q. Did there come a time when the Naval
4 Investigative Service placed you in contact with the FBI?

5 A. Yes, sir.

6 Q. Without telling us what was said, did you tell
7 the Naval Investigative Service and FBI the nature of your
8 dealings with Ali Abdul Karim as they happened?

9 A. Yes, sir.

10 Q. Over the course of the years, did you receive
11 some payments from the Naval Investigative Service?

12 A. Yes.

13 Q. Did they consist of expenses as well as
14 inducements or reward?

15 A. Yes, sir.

16 MR. BERNSTEIN: Objection to leading, your Honor.

17 THE COURT: That is overruled.

18 Q. Did you receive some payments from the FBI?

19 A. Yes, sir.

20 Q. Can you tell us approximately how much you
21 received from the Naval Investigative Service as rewards or
22 inducements?

23 A. Approximately \$4,000.

24 Q. Did that include expenses or not?

25 A. That included expenses, yes, sir.

1 Q. How much did you receive from the FBI?

2 A. Only approximately -- less than \$2,000.

3 Q. Did there come a time in the fall of 1992 when
4 you spoke to a man by the name of Abu Ubaidah?

5 A. Yes, sir.

6 Q. Can you tell us what it was that you first spoke
7 to him about?

8 A. I received a telephone call from a gentleman by
9 the name of Abu Ubaidah, and that telephone conversation was
10 in regards to training personnel.

11 Q. Did Abu Ubaidah tell you how he knew to contact
12 you?

13 A. Yes. He said that he had talked to Ali Abdul
14 Karim and that it was all right for him to talk to me.

15 Q. What did he tell you about the training he
16 wanted?

17 A. He told me that he wanted to train a group of 10
18 people in commando tactics.

19 Q. Did there come a time when you spoke or met with
20 a man by the name of Rashid?

21 A. Yes, sir.

22 Q. Can you tell the jury approximately when that was
23 in relation to your phone call with Abu Ubaidah?

24 A. Yes. I first met Dr. Rashid approximately
25 December of 1992.

1 Q. Where were you when you first met Dr. Rashid?

2 A. I first met Dr. Rashid, I was parked alongside of
3 the road outside the Holland Tunnel in New Jersey, right by
4 a gas station off to the right.

5 Q. What type of car were you in?

6 A. Me personally?

7 Q. Yes.

8 A. It was my personal car. It was a 4-door Toyota
9 Corolla.

10 Q. Who chose that location to meet?

11 A. Abu Ubaidah.

12 Q. What did he say when you arranged to meet at that
13 location?

14 A. He gave me instructions as to where to go and to
15 park over on the side and await his arrival.

16 Q. What happened that day when you parked and
17 awaited their arrival?

18 A. We had a prescribed time. I don't remember the
19 exact time, but they were approximately an hour late. Then
20 all of a sudden I was sitting in my car with the window
21 rolled up and I observed an individual in Muslim garb
22 walking up to the right side of my vehicle. He walked over
23 and identified himself and asked are you Garrett, and I said
24 yes.

25 Q. Did he identify himself to you?

1 A. Yes. He was identified as Dr. Rashid.

2 Q. What happened next?

3 A. I got out of the vehicle, I walked over, we shook
4 hands. I also met Abu Ubaidah, which was in the vehicle
5 also, waiting. We just had a general conversation on the
6 sidewalk.

7 Q. Then what happened?

8 A. Then Dr. Rashid left and went and made a
9 telephone call from a pay phone outside of a little
10 restaurant on that particular street.

11 Q. Then what happened?

12 A. Then they told me OK, follow -- they were trying
13 to give me some kind of directions as to where I was going
14 to go and follow them, and I followed him in my vehicle,
15 followed him in his vehicle, and we appeared to be a little
16 lost or disoriented but we eventually got on the right road
17 and went to a location.

18 Q. When you say you followed him in his vehicle, who
19 are you referring to?

20 A. Dr. Rashid in his vehicle.

21 Q. How many people were in Dr. Rashid's vehicle?

22 A. There were two people.

23 Q. Who were they?

24 A. Abu Ubaidah and Dr. Rashid.

25 Q. Who was driving?

1 A. Dr. Rashid.

2 Q. What if anything did they tell you about the
3 place you were going to?

4 A. They didn't really tell me much. They just said
5 it was a safe house.

6 MR. FITZGERALD: Your Honor, at this time the
7 government would request to play a portion of the videotape
8 Government's Exhibit 286.

9 Q. Mr. Wilson, if you could tell us where your
10 vehicle is in the vehicle being played, hopefully, on the TV
11 set in front of you.

12 A. Is my monitor supposed to be --

13 (Videotape played)

14 Q. If you could tell us which vehicle is yours,
15 Mr. Wilson.

16 A. Yes, sir, that is the white vehicle parked half
17 on the sidewalk, right in front of the two vehicles that are
18 near a building.

19 Q. Do you see a person walking toward the vehicle?

20 A. Yes, sir.

21 Q. Do you know who that is?

22 A. That is the person who was identified to me as
23 Dr. Rashid.

24 Q. Can you tell us what is happening now?

25 A. That was when he opened up the door and says are

1 you Garrett? I responded yes.

2 Q. What vehicle is the white vehicle appearing in
3 the picture?

4 A. That was the vehicle operated by Dr. Rashid at
5 the time.

6 Q. Who is the gentleman standing next to that car?

7 A. That is myself walking up to the vehicle and
8 shaking hands with a gentleman by the name of Abu Ubaidah.

9 Q. Were you aware that there was surveillance being
10 conducted at that time?

11 A. Yes, sir.

12 Q. Can you identify who just exited the passenger
13 seat?

14 A. Yes, sir. That's Abu Ubaidah.

15 Q. Do you know where the person you identified as
16 Rashid, Dr. Rashid is at this point?

17 A. Yes. He walked over to a telephone that was
18 outside of what I believe a restaurant and making a
19 telephone call.

20 Q. Where is the restaurant in relation to the white
21 car behind you?

22 A. Just back behind the car. Well, it would be over
23 to the right of the screen.

24 Q. Prior to this day, had you ever met Abu Ubaidah
25 before?

1 A. Yes, sir, I did.

2 Q. Approximately how many times?

3 A. Only once.

4 Q. Had you met Dr. Rashid before?

5 A. Never, sir.

6 Q. As you sit here today, do you recall what you
7 were discussing at this particular point in time?

8 A. It was a general conversation as to why they were
9 late dealing with the traffic and the traffic problems at
10 that time, and it was just, you know, like two guys would be
11 together, say hi, how you doing, how's everything.

12 MR. FITZGERALD: I think Agent Liguori could fast
13 forward a little bit until there is some change in the
14 setting.

15 Q. Can you tell us what we are seeing now?

16 A. You are looking at Dr. Rashid on the telephone
17 and Abu Ubaidah walking towards him. He is having a
18 conversation with an unidentified person. I don't know who.

19 MR. FITZGERALD: If we could now fast forward to
20 a point where the setting changes again.

21 Q. Did you have anything to do with that taxi?

22 A. No, sir.

23 Q. At this point in time, did you know if you were
24 going to someplace else?

25 A. It was later explained to me by Dr. Rashid, he

1 was giving me some directions as to where we were going to
2 travel to what he identified or was identified as a safe
3 house.

4 MR. FITZGERALD: If we could fast forward, and we
5 can stop there.

6 Q. Do you recall what you were discussing at this
7 point with Dr. Rashid?

8 A. No, sir, I don't.

9 Q. Do you know where Abu Ubaidah is at this point?

10 A. He is back at the restaurant or that diner there,
11 getting something to eat.

12 MR. FITZGERALD: If we could fast forward. Thank
13 you.

14 Q. Who is that who just rejoined you?

15 A. That is Abu Ubaidah.

16 MR. FITZGERALD: If we could fast forward to the
17 point where people enter their cars.

18 Q. Which car is moving now?

19 A. That is the one operated by Dr. Rashid.

20 Q. What is the second car?

21 A. That is the vehicle operated by myself.

22 MR. FITZGERALD: We can stop the tape there.

23 Q. Did you eventually arrive at a location?

24 A. Yes, sir.

25 Q. As you sit here today, do you know the address of

1 the location you went to?

2 A. I remember over the top of the door the building
3 had numbers of 135.

4 Q. And the building with the number 135 on it, do
5 you remember the name of the street or avenue it was on?

6 A. No, sir, I don't.

7 Q. What happened when you got to the vicinity of the
8 building numbered 135?

9 A. I exited my vehicle and I met with Dr. Rashid and
10 Abu Ubaidah. We got together and we entered the building.

11 Q. What did you do once the three of you got inside
12 the building?

13 A. We made contact with an individual who identified
14 himself as a superintendent. The only reason I knew about
15 that was because he had a lot of keys on his side.

16 Q. What happened when they contacted the person with
17 a lot of keys on his side?

18 A. We then moved out of the hallway and went to an
19 apartment which was opened by the person identified as the
20 superintendent of the building.

21 Q. Describe to the jury what you saw when you
22 entered the apartment.

23 A. I walked into the apartment and I entered by way
24 of getting into the kitchen. I noticed off to the left-hand
25 side that there was a television set, a floor model, over to

1 my left on the floor, a kitchen table and a series of bunk
2 beds laying horizontal, stacked side by side. I went to the
3 wall and I made a right and I walked into a room that was
4 sparsely furnished, and I sat down. I was directed to sit
5 down.

6 Q. What room were the beds stacked up in?

7 A. In the kitchen.

8 Q. And the room that you said was sparsely
9 furnished, can you describe what it looked like?

10 A. That particular room had a rug on the floor, it
11 had a couple of chairs off to the right-hand side, but it
12 also had a series of little gym bags strategically located
13 throughout the room on the floor, like little cubby holes
14 where people would go with their personal gym bags on the
15 floor.

16 Q. Let me approach you with what has been premarked
17 as Government's Exhibit 292. I ask you to take a look at
18 that photograph and tell us if you recognize who is in the
19 picture?

20 A. Yes, sir. That was the individual that was
21 identified as the superintendent of the building and the one
22 that let us into the room.

23 Q. Can you compare your recollection of his
24 appearance with that photograph?

25 A. Yes, sir. Do you want a description?

1 Q. Yes.

2 A. Negro male. At the time he had a hat on, I
3 believe a knit-type cap, later identified as the type of
4 khufi type cap. Approximately five nine, five ten, layers
5 of clothing on. And he had a mustache type that came down
6 below the corners of his mouth.

7 Q. Is Government's Exhibit 292 a fair accurate
8 picture of the person that you were introduced to as the
9 superintendent?

10 A. Yes, sir.

11 Q. Can you tell us what happened once you were in
12 this room that had the gym bags in it?

13 A. Once I was in the room, an individual who spoke
14 Arabic, who did not come with us, who was already in the
15 apartment, walked over and said something in Arabic which I
16 could not understand, and then somebody translated it into
17 English and said do you want some tea and cookies. The next
18 thing, he exited the room, he came back, and then they began
19 to have a prayer session there in the room. Then I sat off
20 on the side because I am not Muslim, so it wasn't right for
21 me to pray.

22 Q. Did there come a time when the prayers ended?

23 A. Yes, sir.

24 Q. What happened then?

25 A. Once the prayers had ended, Dr. Rashid, who sat

1 over to my right, Abu Ubaidah, who sat over to my left,
2 began the conversation about training.

3 Q. At this point in time where was the person you
4 identified as the superintendent?

5 A. He was out of the room at the time, in the
6 kitchen watching television with the other person that was
7 in the room.

8 Q. And the other person, you mean the
9 Arabic-speaking person?

10 A. Yes, sir.

11 Q. Can you tell us about the conversation that took
12 place when you were in the room with Dr. Rashid and Abu
13 Ubaidah?

14 A. It was a general conversation in regard to
15 training, that they wanted to train a group of people in
16 commando tactics, and we discussed about weapons, we
17 discussed about the type of training techniques, locations,
18 different type of training things, equipment, bomb
19 identification, talked about boobytraps, different things
20 like that.

21 Q. Why don't we first talk about weapons. Did you
22 have any discussion about what weapons you would provide
23 training concerning?

24 A. Yes, sir. Abu Ubaidah had mentioned that he had
25 access to the SKS's. I asked what type of weapons are they

1 going to be fired. He replied SKS's and one AK47.

2 Q. When you say he replied, who is he?

3 A. That is Abu Ubaidah.

4 Q. Did you have any further discussion about
5 weapons?

6 A. Yes, sir. He indicated that he goes down to
7 Virginia to pick up weapons for the brothers.

8 Q. Was there going to be any firearms training on
9 things other than rifles?

10 A. Yes, sir, handguns and shotguns.

11 Q. Who was to provide the handguns and shotguns?

12 A. I was to provide the handguns and the shotguns.

13 Q. You mentioned different training techniques. Do
14 you recall any techniques discussed in particular that day?

15 A. Abu Ubaidah was concerned about what is called
16 sentry neutralization techniques, how to neutralize a
17 sentry.

18 Q. Is a sentry a guard?

19 A. Yes, a guard.

20 Q. Any other things that were particularly discussed
21 that afternoon?

22 A. Abu Ubaidah seemed very peculiar or interested
23 into Navy Seal techniques, tactics and techniques. They
24 were also concerned about Israeli police tactics and Israeli
25 bomb squad methods, and wanted to see videos and that type

1 of thing.

2 Q. Do you recall who asked about the Israeli police
3 tactics?

4 A. Yes.

5 Q. Who was that?

6 A. Dr. Rashid.

7 Q. Did you indicate whether you had any such videos
8 that they were interested in?

9 A. Yes, I did, I had the videos that I had gotten
10 off the television.

11 Q. Did you offer to provide such videos?

12 A. Yes, I did.

13 Q. Were you given an address to send the videos to?

14 A. Not I couldn't say just the videos but any
15 training information that I had put together, yes, sir, I
16 have, a location in Brooklyn.

17 Q. Do you recall the specific street address for
18 that location?

19 A. No, I don't, sir.

20 Q. Do you recall the name given to mail the items
21 to?

22 A. Yes, Hampton-El.

23 Q. At that time, did you know who Hampton-El was?

24 A. No, I didn't.

25 Q. Was there any discussion as to what training you

1 would provide?

2 A. Yes, sir.

3 Q. Do you recall particular items you were supposed
4 to instruct on?

5 A. Yes. I was supposed to instruct on rappelling
6 techniques, weapons, firearms, boobytrap identification and
7 how to build boobytraps, location and identification of
8 boobytraps, countersurveillance tactics and techniques, the
9 use of chemical agents, how to put a gas mask on -- those
10 type of skills.

11 Q. Did you have any discussion with either
12 Dr. Rashid or Abu Ubaidah as to what the purpose of this
13 training was?

14 A. Abu Ubaidah I had a conversation with, and his
15 comment was that they were training to go to Bosnia.

16 Q. Was there any discussion as to when this training
17 would take place?

18 A. Yes, sir. Early part or later part of '92 or in
19 early '93.

20 Q. Where was it to take place?

21 A. It was to take place in the general area of Fort
22 Dix, New Jersey.

23 Q. Did they ask for any items that you indicated you
24 would not provide?

25 A. Yes. During the course of the conversation

1 Dr. Rashid asked about can you get any detonators, and Abu
2 Ubaidah mentioned something about can you get any clean
3 weapons, clean guns.

4 Q. First, what did you understand clean guns to
5 mean?

6 A. I had the meaning -- I mean -- correction. It
7 was the meaning that weapons that could not be traced or not
8 have been used in the commission of a crime.

9 Q. What did you tell Abu Ubaidah when he asked you
10 to provide clean guns?

11 A. I says I don't want to get involved in anything
12 that might come back to bite me in the ass.

13 Q. What did you say to Dr. Rashid when he asked you
14 to provide detonators?

15 A. I said I don't even discuss that, that is not a
16 topic of discussion with me.

17 Q. Did there come a time when you met again with
18 Dr. Rashid and Abu Ubaidah?

19 A. Yes.

20 Q. Do you recall where it was that you met with him
21 again?

22 A. Yes, sir, that was at India House in Brooklyn.

23 Q. What is India House?

24 A. India House is a restaurant, sir.

25 Q. Indian food, I take it?

1 A. Yes, sir, or Middle Eastern type foods.

2 Q. Can you tell us what happened at the meeting at
3 India House restaurant?

4 A. I arrived, we had a general conversation, a
5 greeting, whatever. At that time I presented them a
6 training manual that I had put together, some plastic
7 knives, and I received some payment at the time from them.

8 Q. Can you briefly describe what these plastic
9 knives looked like?

10 A. One of the specific ones was a high impact black
11 plastic, jet age type plastic that was known, or the name
12 was referred to as a Tonto. That was the brand name of
13 them. Another one was a small type knife with a triangular
14 blade, and that was known as a Delta Dart.

15 Q. Who did you provide the Tonto to and who did you
16 provide the dart to?

17 A. The Tonto was provided to Abu Ubaidah and the
18 Delta Dart was given to Dr. Rashid.

19 Q. You mentioned you received payment on this
20 occasion.

21 A. Yes, sir.

22 Q. Do you recall about how much money you received?

23 A. Approximately 1,200.

24 Q. Who did you receive it from?

25 A. From Dr. Rashid.

1 Q. Do you recall the type of bills?

2 A. Yes, it was all one-hundred-dollar bills.

3 Q. Do you recall any other general topics of
4 conversation during your meeting at India House?

5 A. Just general conversation as to the types of
6 videotapes that I would provide, other equipment in general,
7 just conversation in regards to training and how would I do
8 it, the different type of training locations that we would
9 go to.

10 Q. When you received this payment, how much money
11 had you received by that point in time total, from either
12 Dr. Rashid or Abu Ubaidah?

13 A. None at the time I had -- I received an initial
14 payment of half, \$1,200.

15 Q. Did there come a time when you received more
16 money?

17 A. Yes.

18 Q. How much in total did you receive?

19 A. \$2,500.

20 Q. Who did you receive the rest of the money from?

21 A. Dr. Rashid.

22 Q. Did you have any discussion of how the SKS rifles
23 were to get to the camp where the training would take place?

24 A. Yes, sir, I did.

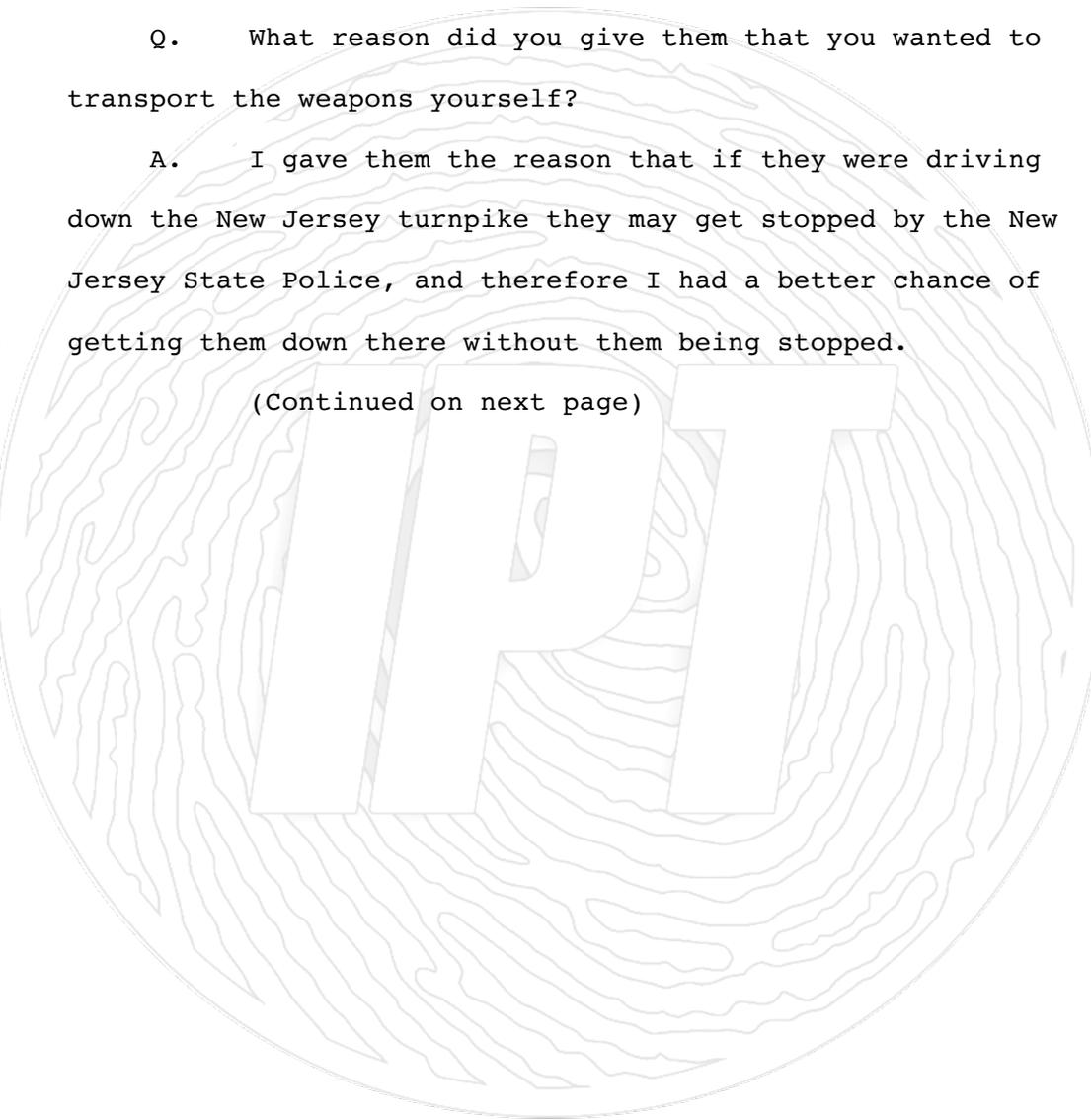
25 Q. Can you tell us about that conversation?

1 A. I had a discussion with Abu Ubaidah, and
2 generally what I wanted to do was I wanted to collect all
3 the weapons at one time, and then transport them down to the
4 training site.

5 Q. What reason did you give them that you wanted to
6 transport the weapons yourself?

7 A. I gave them the reason that if they were driving
8 down the New Jersey turnpike they may get stopped by the New
9 Jersey State Police, and therefore I had a better chance of
10 getting them down there without them being stopped.

11 (Continued on next page)



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1 Q. What was the reaction when you proposed this?

2 A. They agreed.

3 Q. Did there come a time when you were supposed to
4 actually go and pick up the weapons for transport?

5 A. Yes, sir.

6 Q. Where were you to go and who were you to see?

7 A. I was to go to Brooklyn, and I was to meet with
8 Dr. Rashid.

9 Q. Where were you to meet with Dr. Rashid to get the
10 weapons?

11 A. At a location called Junior's.

12 Q. What is Junior's?

13 A. From what I understand Junior's is a restaurant
14 in Brooklyn somewhere.

15 Q. Do you recall approximately where in Brooklyn
16 it's located?

17 A. Well, I can say that I drove through the Holland
18 Tunnel, down to Canal Street, and I made a right on Canal
19 Street, drove across the Manhattan Bridge, and I think it's
20 Flatbush Avenue, and it is kind of right over on the
21 right-hand side. But -- yeah, right over like to the
22 right-hand side.

23 Q. Can you tell us approximately when it was that
24 you were scheduled to go to Junior's to meet with
25 Dr. Rashid.

1 A. Sometime in January.

2 Q. Did you actually show up at Junior's restaurant
3 that day?

4 A. No, sir, I didn't.

5 Q. Without telling us what was said, did you have a
6 conversation with the FBI that day?

7 A. Yes, sir, I did.

8 Q. Without telling us any reasons given to you, can
9 you tell us what your instructions were from the FBI?

10 A. My instructions --

11 MR. STAVIS: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. At this time were you working as a cooperating
14 witness with the FBI?

15 A. Yes, sir.

16 Q. Were you keeping them apprised of steps you were
17 taking?

18 A. Yes, sir.

19 Q. Would you seek advance approval for different
20 steps you took?

21 MR. STAVIS: Objection, your Honor.

22 THE COURT: I will allow that.

23 Q. Yes or no. Did you seek advance approval for
24 steps you took?

25 A. Yes, sir.

1 Q. Did you apprise the FBI and the NIS of your plan
2 to take the rifles to a training camp?

3 A. Yes, sir.

4 Q. Did you speak with the FBI on the day you were
5 going to pick up the rifles?

6 A. Yes, sir.

7 Q. Did you get approval to do that?

8 A. No, sir.

9 MR. STAVIS: Objection, your Honor.

10 THE COURT: Sustained.

11 Q. What did you do after you spoke to the FBI?

12 A. After I -- I didn't do anything. I didn't go up.

13 Q. Did you speak to either Dr. Rashid or Abu
14 Ubaidah?

15 A. Yes, sir.

16 Q. What did you tell them?

17 A. I gave them a story that I couldn't come up,
18 something happened, I had a problem.

19 Q. And did you actually go to Junior's restaurant?

20 A. No, I didn't, sir.

21 Q. Did you have a discussion during this time period
22 with either Dr. Rashid or Abu Ubaidah as to who would be at
23 the training camp?

24 A. I'm sorry, sir?

25 Q. Did you discuss with Dr. Rashid or Abu Ubaidah as

1 to what people would attend the training camp?

2 A. Yes, sir.

3 Q. What were you told about who would attend the
4 camp?

5 A. I was told by Abu Ubaidah that ten people would
6 be in the training, nine of which were not Americans. One
7 was an American and that would have been him.

8 Q. At the point where you made an excuse not to go
9 to Junior's restaurant, did you have the \$2500?

10 A. Did I have it? No, I purchased the equipment.

11 Q. What did you do with the equipment you purchased?

12 A. I later -- a meeting was later arranged in
13 Bordentown, New Jersey, Exit 7 on the New Jersey Turnpike,
14 at the Sandman Hotel.

15 Q. Did you go to the Sandman Hotel?

16 A. Yes, sir, I did.

17 Q. Who did you see at the Sandman Hotel?

18 A. I saw -- I met with Abu Ubaidah and two
19 individuals who I do not know the name of.

20 Q. Had you ever seen those two individuals before?

21 A. No, sir.

22 Q. Did you ever see them after?

23 A. No, sir.

24 Q. Can you describe their general appearance?

25 A. Well, they were extremely tall, approximately

1 6'1", 6'2", Middle Eastern in appearance, dark hair, beards.
2 One of them spoke strictly Arabic, and one of them had a
3 little -- spoke a little English, too, Abu Ubaidah.

4 Q. And what did you do with the equipment at the
5 Sandman Hotel?

6 A. I transferred the equipment over to control of
7 Abu Ubaidah.

8 Q. Can you tell the jury what type of equipment you
9 turned over at that point.

10 A. I turned over a crossbow, throwing axes,
11 ammunition, exploding targets, cannon fuse, an M60 fuse
12 igniter, other various types of equipment.

13 Q. Did you provide any books or videos --

14 A. Yes, sir, books and video, videotapes.

15 Q. Did you provide any matches of any sort?

16 A. Yes. A packet of what is called electric
17 matches.

18 Q. At that point in time, once you turned over the
19 equipment, did you have an understanding as to whether or
20 not you owed any money to Abu Ubaidah or Dr. Rashid?

21 A. No, sir.

22 Q. No, you didn't have an understanding, or, no, you
23 didn't owe any money?

24 A. No. I didn't have an understanding that I owed
25 them any money after that.

1 Q. Following that meeting, did there come a time
2 when you spoke to either Dr. Rashid or Abu Ubaidah about
3 money?

4 A. Yes.

5 Q. Can you tell you also who you spoke to and what
6 was said.

7 MR. STAVIS: Can we have a date of the
8 conversation, your Honor.

9 THE COURT: Yes.

10 Q. Do you know the exact date of the conversation?

11 A. No, I don't, sir.

12 Q. Can you tell us the month and the year, if you
13 know?

14 A. The conversation, I believe, was in January of
15 1993.

16 Q. Who did you speak to?

17 A. Abu Ubaidah.

18 Q. What did he say to you?

19 A. He was telling me that I owed them -- they wanted
20 to return the toy guns, replica weapons that I provided
21 them, and they wanted a refund.

22 Q. Can you just briefly describe what these replica
23 weapons were like.

24 A. Well, the replica weapons, one of them was a
25 replica, a movie replica of an Uzi and a Browning high-power

1 automatic handgun.

2 Q. Were they actually operable weapons?

3 A. No, sir.

4 Q. Did you have a discussion about whether you would
5 take these items back?

6 A. Yes, sir.

7 Q. Did you have a discussion about money you would
8 owe?

9 A. Yes, sir.

10 Q. What did you arrange during the phone call?

11 A. We would just -- that I would, you know, give the
12 money back or I would show -- I explained, and that I had
13 general telephone -- you know, expenses, that type of thing.

14 So they says, "Well, that's the cost of doing
15 business."

16 So, you know, I would accept that, and, you know,
17 in fair play, whatever, I would take the toys back in
18 exchange.

19 Q. During this time period of December 1992 and
20 January 1993, did Abu Ubaidah ask you about any other
21 weapons he sought or types of weapons?

22 A. Any other weapons?

23 Q. Any other type of weapons.

24 A. Just we had the conversation about clean weapons.

25 I mean, yes, there was another conversation in regards to

1 sniper rifles.

2 Q. Can you tell us about that conversation.

3 A. Well, it was a general conversation after we
4 canceled the initial training. He wanted training for three
5 people. One of them was him and the other -- there was
6 another, two other people which I didn't know. They wanted
7 sniper training on a sniper rifle.

8 Q. Did you actually provide that training?

9 A. No, sir, I didn't.

10 Q. Did there come a time when, on St. Patrick's Day
11 of that year where you went to a meeting?

12 A. Yes, sir.

13 Q. Where was the meeting?

14 A. The St. Patrick's Day meeting, it was at the
15 India House in Brooklyn.

16 Q. Who did you go to meet at the India House?

17 A. I initially wanted to go meet with Dr. Rashid.

18 Q. Did he show up?

19 A. No, he didn't.

20 Q. Who did you actually meet with?

21 A. Abu Ubaidah.

22 Q. What did you generally discuss?

23 A. We generally discussed how much money I owed
24 them, that I would, you know, give it back. We had a
25 general discussion about the World Trade Center bombing

1 thing, the incident. And it was just a general conversation
2 between, you know, people about tactics and training and
3 what type of equipment they would need to purchase, purchase
4 to do rappelling.

5 Q. Did anyone else show up at the meeting?

6 A. Yes, sir.

7 Q. Who?

8 A. Ali Abdul Karim.

9 Q. Did there come a time when you scheduled another
10 meeting with Dr. Rashid?

11 A. Yes, sir.

12 Q. Do you recall approximately when that was?

13 A. Not really, but it was after, it was after
14 January -- it was after the 15th of January. In '93, when I
15 had the initial meeting there.

16 Q. Did the meeting take place?

17 A. No, sir, it didn't.

18 Q. What happened that the meeting did not take
19 place?

20 A. I was instructed by Dr. Rashid that once I got to
21 Brooklyn I was to call his beeper. I was supposed to go in
22 and do a countersurveillance sweep to see if his phone was
23 bugged or tapped.

24 I had made a call to his beeper and got, from a
25 pay phone and got a call back from somebody other than

1 Dr. Rashid.

2 Q. Do you know who that was?

3 A. Yes, Abu Ubaidah.

4 Q. And what did Abu Ubaidah tell you?

5 A. He told me that it was cancelled. It was off
6 because it was too hot, and that him and Dr. Rashid had
7 switched beepers.

8 Q. What did you understand "too hot" to mean?

9 A. That meant that somebody had him under
10 surveillance or was following them around law
11 enforcementwise.

12 Q. Could you just answer this question yes or no.
13 Did there come a time when you learned that
14 Dr. Rashid had been arrested?

15 A. Yes, sir.

16 Q. After that occasion, were you given an
17 opportunity to review various items seized?

18 A. Yes, sir.

19 Q. Did you recognize any of the items seized as
20 items you had provided?

21 A. Yes, I did.

22 Q. Can you tell us the items you recognized.

23 A. The items I recognized was the cannon fuse, the
24 M60 igniter, some of the videotapes and manuals and stuff
25 that I had provided. A crossbow, some bolts that are

1 launched in the crossbow, darts from a blow gun.

2 Q. Did you recognize any ammunition?

3 A. Yes, sir. Ammunition, shotgun ammunition and
4 some AK-47 ammunition.

5 Q. What type of shotgun ammunition?

6 A. There was some special ammunition that Abu
7 Ubaidah ordered or wanted. He had this fascination with
8 this particular type of ammunition. They were called
9 devastators.

10 Q. Can you describe that ammunition.

11 A. Well, devastators is a --

12 MS. AMSTERDAM: I would object, your Honor.

13 THE COURT: Overruled.

14 A. Can I continue? Devastators is a particular type
15 of shotgun ammunition or round that contains a solid slug on
16 the inside. That solid slug is in the shape of an
17 hourglass. That hourglass slug is held in place by two
18 pieces of plastic until that bullet could go out and hit the
19 impending target.

20 Q. What happens when it hits the target?

21 MR. STAVIS: Objection, your Honor.

22 THE COURT: Overruled.

23 A. This particular type of ammunition when it hits a
24 target will mushroom open to .50 caliber.

25 Q. Are you familiar with what is known as a Sabot

1 round?

2 A. Yes.

3 Q. What is the difference between a Sabot round and
4 a devastator round?

5 A. I'm sorry. What I meant was -- I'm sorry, sir,
6 just terminology. That was a Sabot round. It was -- what I
7 meant was in terms of devastation, when it hits something.

8 Q. You mentioned that you provided cannon fuse at
9 the Sandman Hotel?

10 A. Yes.

11 Q. Can you tell the jury what condition the cannon
12 fuse was in when you provided it?

13 A. The cannon fuse was a 50-foot length of standard
14 cannon fuse that was placed in a plastic bag that was tied
15 and sealed.

16 Q. When you saw the cannon fuse later, was it in the
17 same condition?

18 A. No, sir, it wasn't.

19 Q. After you learned that Dr. Rashid had been
20 arrested, did you have any contact with Ali Abdul Karim?
21 Yes or no.

22 A. Yes, sir, I did.

23 Q. Did you have any discussion with him about Abu
24 Ubaidah?

25 A. Yes, sir, I did.

1 Q. Can you tell us what that discussion was.

2 MR. STAVIS: Objection, your Honor.

3 MR. WASSERMAN: Objection.

4 THE COURT: Let me see counsel at the side.

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1 (At the side bar)

2 MR. FITZGERALD: Your Honor, the last question,
3 which is the last question, the expected answer is that Ali
4 Abdul Karim told him that they were looking for Abu Ubaidah,
5 and they were afraid he might talk to the government. The
6 reason I offer that is from the last witness they indicated
7 that it is OK to implicate Abu Ubaidah.

8 MR. WASSERMAN: Please.

9 MR. STAVIS: I object.

10 THE COURT: The objections are sustained.

11 MR. WASSERMAN: Thank you, Judge.

12 (Continued on next page)

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1 (In open court)

2 MR. FITZGERALD: I have nothing further, Judge.

3 THE COURT: Ladies and gentlemen, we are going to
4 break early for lunch. We may get started a little bit
5 after 2. I have some things to deal with with the lawyers.
6 Please leave your notes and other materials behind. Please
7 don't discuss the case, have a pleasant lunch, and we will
8 resume this afternoon.

9 (Jury not present)

10 THE COURT: You can step down.

11 THE WITNESS: Thank you.

12 (Witness excused)

13 THE COURT: Mr. Jacobs?

14 MR. JACOBS: Your Honor, Mohammed Saleh is not
15 feeling well again. He took some medicine. He would like
16 to be excused for the afternoon. We can proceed without
17 him.

18 THE COURT: All right. Is that correct,
19 Mr. Saleh.

20 DEFENDANT MOHAMMED SALEH: Yes.

21 THE COURT: I hope you feel better, too. You are
22 excused for the afternoon.

23 Mr. Jacobs, may I see you in the robing room.

24 (Page 10781 was sealed by order of the court)

25 (Luncheon recess)

1 AFTERNOON SESSION

2 2:15 p.m.

3 (In open court; jury not present)

4 THE COURT: Miss Stewart?

5 MS. STEWART: Yes, Judge. Mr. McCarthy has
6 alerted us that he intends in the latter part of the
7 afternoon to introduce Exhibit 803 and 803T, which is a tape
8 and transcript of a sermon seized from Mr. Haggag's house.
9 We are objecting to that on the same grounds that we
10 objected to 808, which is the Saudi Arabian writing that Mr.
11 Haggag had in his possession possession, and we are
12 objecting for the same reasons, that it is duplicative, it
13 is redundant and prejudicial, and for that reason it should
14 not come in.

15 THE COURT: I don't have that exhibit in front of
16 me. I have it in my book but I haven't reviewed it. Where
17 with respect to the break is that going to come?

18 MR. McCARTHY: It depends on the
19 cross-examination, your Honor. He is the next witness.

20 THE COURT: We will just break before the next
21 witness.

22 MR. McCARTHY: Your Honor, it is going to be our
23 contention that the relevant part of that, as far as we are
24 concerned, is the end, page 8 and forward.

25 GARRETT WILSON, resumed.

1 (Jury present)

2 THE COURT: Good afternoon, ladies and gentlemen.

3 JURORS: Good afternoon.

4 THE COURT: Mr. Wasserman representing
5 Mr. Hampton-El, cross. Go ahead.

6 MR. WASSERMAN: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. WASSERMAN:

9 Q. Good afternoon, Mr. Wilson.

10 A. Good afternoon, sir.

11 Q. Mr. Wilson, the time that you met Dr. Rashid and
12 Abu Ubaidah there was the videotape that was played for the
13 jury?

14 A. Yes, sir.

15 Q. You were not wearing a wire, were you?

16 A. No, sir.

17 Q. With all that elaborate production of the videos,
18 you were not frisked by them, were you?

19 A. By whom, sir?

20 MR. FITZGERALD: Objection to form.

21 Q. By Abu Ubaidah or Dr. Rashid?

22 MR. FITZGERALD: Objection.

23 THE COURT: The objection to form is sustained.

24 The only part that is admissible is the first part of the --

25 MR. WASSERMAN: I will rephrase it.

1 Q. You were not frisked the first time, is that
2 correct?

3 A. No.

4 Q. You mentioned that you had known Ali Abdul Karim
5 for a number of years, is that correct?

6 A. Yes.

7 Q. You had trained with him?

8 A. Yes.

9 Q. You had taught him?

10 A. Yes.

11 Q. And he would call you big brother, correct?

12 A. Yes, sir.

13 Q. And he would bring people to buy equipment from
14 you, correct?

15 A. Yes.

16 Q. And he would also bring people to train with you
17 and learn with you, correct?

18 A. Yes, sir.

19 Q. This went on about beginning in the early
20 eighties, correct?

21 A. Yes, sir.

22 Q. You had a long relationship with him, correct?

23 A. Yes, sir.

24 Q. Did you know that his brother was a police
25 officer?

1 A. I found that out later, yes, sir.

2 Q. And that some of the people that he brought to
3 train with you and to learn from you were also police
4 officers?

5 A. That is correct, sir.

6 Q. And that he had a security company?

7 A. Yes, sir.

8 Q. And that some of the people who came were to be
9 trained with reference to that security company?

10 A. Yes, sir.

11 Q. And some of the people who came came with
12 reference to providing security for the mosque which he
13 attended?

14 A. Yes, sir.

15 Q. Thank you. I want to just give one example. You
16 testified about the types of equipment that you would sell
17 to Ali Abdul Karim, right?

18 A. Yes.

19 Q. And there was one mention there of ballistic
20 shields?

21 A. Yes, sir.

22 Q. And a whole slew of equipment, riot control gas,
23 gas masks, etc., etc. That sale was in connection with a
24 drug fighting program by Mr. Karim, was it not?

25 MR. FITZGERALD: Objection, foundation.

1 Q. If you know.

2 THE WITNESS: Can I answer?

3 THE COURT: You can answer if you know.

4 A. Could you repeat the question, please.

5 Q. Sure. That equipment, which included the
6 ballistic shields, was in reference to a drug fighting
7 program that Mr. Karim informed you about, correct?

8 A. Yes, sir.

9 Q. And that program was conducted by his mosque to
10 clean the neighborhood of Bedford-Stuyvesant and the
11 immediate area of the drug dealers that were a real hazard;
12 isn't that what he told you?

13 A. Yes, sir.

14 Q. And the ballistic shields were designed to
15 protect those who were trying to sweep the drug dealers off
16 the streets from drive-by shootings. Isn't that what he
17 told you?

18 A. Yes, sir.

19 Q. Through Mr. Karim, you met quite a number of
20 people in the Brooklyn community, am I correct?

21 A. Yes, sir.

22 Q. May I ask you, sir, was it to conduct
23 surveillance on those people that you became an informant
24 for naval intelligence?

25 A. No, sir.

1 Q. Was it in connection with any Neutrality Act
2 violations that you became affiliated with navy
3 intelligence?

4 A. No, sir.

5 Q. One of the people that Ali Abdul Karim introduced
6 you to in October of '92 was a man, to use the phonetic that
7 you have used, Tehar, T-E-H-A-R?

8 A. Yes, sir.

9 Q. I believe his name is Tehar, and if it is OK with
10 the court I will refer to him as Tehar from now on. You
11 made a report concerning your meeting with Tehar, correct?

12 A. Yes, sir.

13 Q. And that report concerned a range of equipment
14 that he was interested in buying from you, correct?

15 A. Yes, sir.

16 Q. That equipment included night vision goggles and
17 scopes used on rifles?

18 A. Yes, sir.

19 Q. And binoculars, correct?

20 A. Yes, sir.

21 Q. In your report, you mentioned that the items that
22 Tehar wanted were going to be used by Muslims in Bosnia,
23 correct?

24 A. Yes, sir.

25 Q. And you also mentioned that it appeared that the

1 money that was financing the purchase of that equipment was
2 coming from Saudi Arabia, correct?

3 A. I don't remember that part, sir. In other words,
4 I don't have a recollection.

5 Q. Would it refresh your recollection -- your Honor,
6 may I approach?

7 THE COURT: Yes.

8 Q. If you could look at the bottom of that report,
9 does that refresh your recollection, sir?

10 A. Could you allow me to read that, please.

11 Q. Please, sir.

12 THE COURT: Can we get an exhibit number, Mr.
13 Wasserman?

14 MR. FITZGERALD: Your Honor, I believe it is
15 35120-A.

16 THE COURT: Thank you.

17 A. Yes, I am finished.

18 Q. Does that refresh your recollection, sir?

19 A. Yes, sir.

20 Q. Did it not appear to you at that time that the
21 money to finance the purchase of those items for the Muslims
22 in Bosnia was going to come from Saudi Arabia?

23 A. No, sir, it says Yugoslavia.

24 Q. The equipment to go to Yugoslavia but the money
25 to come from Saudi Arabia.

1 A. Right, sir, down at the bottom.

2 Q. So your recollection is refreshed?

3 A. Yes, from this.

4 Q. In fact, did you not meet a man named Bilal at
5 that same time as you met Tehar?

6 A. Yes, sir.

7 Q. And I believe you described Bilal as a man of
8 about 40, Jamaican, dark-skinned, and he was interested in
9 buying some debugging equipment from you, correct?

10 A. Sir, you mentioned Jamaican. I don't know if it
11 was Jamaican.

12 Q. West Indian --

13 A. Something --

14 Q. What is your recollection?

15 A. It happened a while back. I don't think I
16 referred to anybody as a Jamaican, though.

17 Q. Were you aware that he was living in Saudi
18 Arabia?

19 A. No, sir.

20 Q. Were you given his full name of Bilal Phillips?

21 A. No, sir.

22 Q. If I may, in your report, now that your
23 recollection has been refreshed --

24 MR. FITZGERALD: Objection to form.

25 THE COURT: Sustained.

1 Q. What made you conclude that the money was coming
2 from Saudi Arabia for the equipment that would go to Bosnia?

3 A. My only recollection at this time is that it came
4 up during a conversation.

5 Q. At that time?

6 A. At that time.

7 Q. With Tehar?

8 A. A one-on-one type conversation.

9 Q. Did you ever sell the equipment to Tehar?

10 A. No, sir.

11 Q. Is the reason that you did not sell the equipment
12 to Tehar because of instructions from naval intelligence,
13 that it might violate the Neutrality Act?

14 A. No, sir.

15 Q. Did naval intelligence guide you in not selling
16 this?

17 A. No, sir.

18 Q. Tehar just didn't buy from you, is that correct?

19 A. No, he didn't buy -- he bought something but he
20 didn't buy that.

21 MR. LAVINE: I am sorry to interrupt but it is
22 becoming very difficult to hear the witness back here.

23 THE COURT: You have to project a little bit.

24 Q. Of the people that Ali Abdul Karim introduced you
25 to, you testified that Abu Ubaidah was one of them, correct?

1 A. Yes, sir.

2 Q. That occurred in the fall of '92, correct?

3 A. I believe so, sir.

4 Q. The first time that you meet with Abu Ubaidah is
5 on December 20 of 1992, correct?

6 A. No, sir.

7 Q. When was that?

8 A. If I am not mistaken -- I don't recall the exact
9 date, but when I met him it was in the evening, in the
10 presence of an individual by the name of Zindani.

11 Q. Yes. Zindani is also somebody that bought
12 merchandise from you, is that correct?

13 A. Yes, sir.

14 Q. And Zindani is someone who didn't pay his full
15 debt to you, is that correct?

16 A. That is correct.

17 Q. And Zindani is someone that Abu Ubaidah warned
18 you about as somebody not to be trusted, is that correct?

19 A. That is correct.

20 Q. And there came a time that you discussed with
21 Rashid how to collect the money from Zindani, correct?

22 A. Yes, sir.

23 Q. And Rashid advised you to go to the mosque or go
24 to the office and beard him there and say pay me the money,
25 correct?

1 A. Well, yes, confront him there, yes.

2 Q. There came a time when Ubaidah and Rashid at the
3 first meeting with you together on December 20 told you of
4 their desire for commando training, correct?

5 A. Yes, sir.

6 Q. In fact it was Rashid who told you that his
7 purpose was to assemble people to go to Bosnia, correct?

8 A. Yes, sir.

9 Q. And that that's what the training was for,
10 correct?

11 A. That is correct.

12 Q. They told you at the same time, don't tell
13 Zindani and please don't tell Ali Abdul Karim, we don't want
14 any leaks, correct?

15 A. I remember them saying do not tell Ali Abdul
16 Karim, but I cannot recall the Zindani part.

17 Q. You testified that the meeting that took place on
18 December 20 began on the Jersey side of the Holland Tunnel,
19 correct?

20 A. Yes, that is correct.

21 Q. And you have testified that that was Ubaidah's
22 suggestion, not yours?

23 A. That is correct.

24 Q. You had a lot of time to prepare for that
25 meeting, correct?

1 A. Right, sir.

2 Q. So you could arrange for the video surveillance
3 and pictures, correct?

4 A. Sir, I don't arrange for any video surveillance,
5 I just pass the information on and I receive my
6 instructions.

7 Q. In that arrangement of receiving instructions,
8 there is a coordination that goes on so that you know what
9 is taking place, correct?

10 A. Yes, sir.

11 Q. Again just to make sure everybody understands,
12 you did not wear any wire, correct?

13 A. No, sir.

14 Q. Subsequently you would wear a wire, correct?

15 A. I am not sure, sir.

16 (Continued on next page)

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1 Q. Certainly when you had a meeting at the India
2 House you wore a wire, correct, on March 17, 1993.

3 MR. PATEL: Objection.

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

6 (At the side bar)

7 THE COURT: Two things. First of all, I would
8 like to get back to the practice, if we ever had it, or at
9 least to do it if we never had it, of getting up when people
10 make objections, only because it makes it easier for me to
11 detect that an objection has been made, because sometimes I
12 don't hear and things sail by.

13 Your objection is as to?

14 MR. STAVIS: Scope. This is outside the scope of
15 direct. It is opening a door that we would not open on
16 cross-examination and it is outside the scope of direct.

17 MR. WASSERMAN: I think the fact that he wears a
18 wire sometimes and not other times is extraordinarily within
19 the scope.

20 THE COURT: I am going to allow it.

21 MR. STAVIS: The conversation concerns Meir
22 Kahane and things of that nature, which is why we are up
23 here right now.

24 MR. WASSERMAN: If I may, there is one reference
25 where there is a sentence that goes -- when he said anything

1 about Meir Kahane, nothing is discussed about it.

2 THE COURT: He hasn't gone into the substance of
3 the conversation, just that he wore a wire doing it.

4 MR. STAVIS: My concern is opening the door into
5 redirect, your Honor.

6 MR. FITZGERALD: So far I don't intend to go
7 through that door. I can't make promises but I am not
8 looking to.

9 (In open court)

10 THE COURT: The objection is overruled. Let's
11 go.

12 (Continued on next page)

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1 BY MR. WASSERMAN:

2 Q. Mr. Wilson, the St. Patrick's Day meeting, I
3 think it was March 17, 1993 that you had at the India House,
4 was taped, correct?

5 A. Yes, sir.

6 Q. And you wore a body wire at that meeting,
7 correct?

8 A. Yes, sir.

9 Q. It was quite by happenstance that Ali Abdul Karim
10 came by, correct?

11 A. Yes, sir.

12 Q. Let's go back to the December 20 meeting, which
13 is your first meeting with Rashid, correct?

14 A. Yes, sir.

15 Q. In telling you that he wanted the training for
16 Bosnia, did he not stress to you that he was looking for
17 sophisticated training, that in his opinion the Serbs were
18 terrific fighters and a very relentless and ruthless enemy?

19 A. I am not sure about that, I just know that he
20 stressed that he wanted training for people for Bosnia.

21 Q. He did not discuss in any way the need that the
22 training be good training so that the people would be able
23 to deal with the Serbs in Bosnia?

24 A. He expressed he wanted quality training, but as
25 far as dealing with anybody in particular, no, I don't

1 recall that.

2 Q. In terms of quality training, the reason they
3 came to you was you had certain specific areas of expertise,
4 correct?

5 A. Yes, sir.

6 Q. One of them is rappelling, which is being able to
7 climb using ropes and pinions?

8 A. I am sorry, sir.

9 Q. Let me ask you to define rappelling for the jury.

10 A. Rappelling?

11 Q. I am sorry.

12 A. Rappelling is the method or technique by which a
13 rope is used to come down the side of the building,
14 attaching your body to it, having the rope go through what
15 is called a D ring.

16 Q. This was one of your areas of expertise, correct?

17 A. Yes, sir.

18 Q. In terms of quality training, part of your
19 reputation was of being someone who was totally legitimate,
20 correct?

21 A. Yes, sir.

22 Q. And that you didn't do illegal acts, correct?

23 A. That is correct.

24 Q. They came to you to get this training, as they
25 stated, so they could have people train for Bosnia, correct?

1 A. Yes, sir.

2 Q. Among the things that was discussed at this
3 meeting by Rashid with you was the need also for medical
4 training, correct?

5 A. I don't recall.

6 Q. I believe that you reported that Ubaidah and
7 Rashid emphasized weapons training and medical training in a
8 field environment.

9 MR. FITZGERALD: Objection, your Honor, to form.
10 He says he reported.

11 THE COURT: Do you want to rephrase it.

12 MR. WASSERMAN: Yes.

13 Q. Didn't you report that Ubaidah and Rashid had
14 told you that they were most interested in the weapons
15 training and in medical training in a field environment?

16 A. I remember the weapons training, but I am not
17 clear on the medical part.

18 MR. WASSERMAN: Your Honor, may I approach?

19 THE COURT: Yes.

20 Q. Mr. Wilson, could you take a look at the bottom
21 paragraph, sir, and does that refresh your recollection?

22 A. The very bottom one?

23 Q. I don't have a copy with me. It is the last full
24 paragraph on that page.

25 THE COURT: Why don't you go up there and point

1 to it.

2 MR. WASSERMAN: Yes, Judge.

3 A. Yes, sir.

4 Q. It does refresh your recollection?

5 A. Yes, sir.

6 Q. The particularity of the medical training sought
7 was first aid for gunshot wounds, correct?

8 A. Yes, sir.

9 Q. Among the other things that was looked for by
10 Rashid was the ability for people to be trained to detect
11 boobytraps and land mines, correct?

12 A. Yes, sir.

13 Q. Part of that was a personal matter on his part,
14 because he had been wounded by a land mine and he told you
15 that, correct?

16 A. Yes, he did.

17 Q. And he told you his wound, correct?

18 A. Yes, sir.

19 Q. And he had been wounded in his left leg and right
20 arm by the land mine, correct?

21 A. I am not familiar with the arm portion. I knew
22 that one of his ankles had been injured.

23 Q. He didn't show you the shrapnel in his right arm?

24 A. I don't recall.

25 Q. But he was interested in training on that area,

1 correct?

2 A. Yes, sir.

3 Q. In fact that you would later supply the electric
4 matches and the fuse lighter and what you call the safety
5 fuse, it was designed for that kind of field training, it
6 was designed to supply that need on their part, correct?

7 A. Yes, it was designed for identification of what
8 it actually looked like.

9 Q. Did Rashid discuss with you any of the stories
10 that were motivating him to take part in the effort to
11 relieve the people of Bosnia?

12 A. No, I didn't get into that political part, no.

13 Q. You proposed to them that day, did you not, a
14 training program, a list of options, correct?

15 A. Which day was that, sir?

16 Q. On the 20th.

17 A. Yes, sir.

18 Q. Included on that list was martial arts
19 hand-to-hand combat, correct?

20 A. Yes, sir.

21 Q. And weapons training, electronic counter
22 measures?

23 A. Yes, sir.

24 Q. Surveillance techniques?

25 A. Yes, sir.

1 Q. Knife fighting and disarming techniques?

2 A. Yes, sir.

3 Q. Rappelling, rescue and escape techniques?

4 A. Yes.

5 Q. Medical treatment in a field environment?

6 A. Yes, sir.

7 Q. Small unit tactical operations?

8 A. Yes, sir.

9 Q. Pathfinder operations?

10 A. Yes, sir.

11 Q. Tactical use of chemical agents?

12 A. Yes, sir.

13 Q. How to use a gas mask?

14 A. Yes, sir.

15 Q. Basic and special shooting techniques?

16 A. Yes.

17 Q. Intelligence data accumulation?

18 A. Yes.

19 Q. Lock picking and bypass techniques?

20 A. Yes.

21 Q. All this was passed on by you with respect to
22 their request for the training for Bosnia, correct?

23 A. Yes.

24 Q. Let me just touch upon one thing. The place that
25 you say you had the meeting at on December 20, you described

1 it as a safe house, correct?

2 A. Yes, I did, sir.

3 Q. The meeting was held there at Dr. Rashid's
4 request, correct?

5 A. That is correct.

6 Q. Did he not tell you that the reason for going is
7 he wanted to find out about Tehar, whether he was dead or
8 not, and there was someone there who knew?

9 A. I am not familiar with that. It wasn't directed
10 towards me.

11 Q. Was there not in your report mention of a
12 conversation about whether Tehar was alive or not in the
13 conversation that took place?

14 MR. FITZGERALD: Objection to form.

15 MR. WASSERMAN: I will try to phrase it more
16 clearly, Judge.

17 Q. At the meeting you had, was there a conversation
18 which touched upon -- between Rashid and other people --
19 whether Tehar was dead or not?

20 A. I can't recall. Can you show me something?

21 Q. Yes, I will. I show you page 2 of the same
22 exhibit.

23 MR. FITZGERALD: Which is, I believe, 35120-E.

24 MR. WASSERMAN: Yes.

25 A. Yes.

1 Q. Does that refresh your recollection?

2 A. Yes, sir.

3 Q. In fact, what happened was that Tehar who was
4 thought dead was alive, correct?

5 A. I don't know, sir.

6 Q. That was the conversation. I am not saying that
7 you know, but that was the conversation?

8 A. Yes.

9 MR. FITZGERALD: Objection, your Honor.

10 THE COURT: That is sustained.

11 Q. Was that the understanding you had of the
12 conversation that Tehar was alive?

13 A. Yes, sir.

14 Q. You testified that there were four or five bunk
15 beds in the kitchen. Was this not the apartment or like the
16 den of the super of that building?

17 A. I wouldn't know. I know that there were bunk
18 beds in the apartment, yes.

19 Q. Didn't you report that there were like four or
20 five mattresses standing up right against the wall?

21 A. Behind the bunk beds also, yes.

22 Q. Did you report bunk beds?

23 A. Did I report bunk beds?

24 Q. Yes, sir.

25 A. I know that there were beds, folded up beds.

1 Q. Folded up beds.

2 Didn't you report that there were some bags of
3 luggage and carrying bags scattered on the floor?

4 A. Yes.

5 Q. And the bags appeared to have clothing in them?

6 A. That is what it appeared to me, yes.

7 Q. And the person who let you in was the
8 superintendent of the building, correct?

9 A. The person who let me in the room?

10 Q. Yes.

11 A. Yes, sir.

12 Q. It is your testimony that Rashid described this
13 place to you as a safe house?

14 A. Yes, sir.

15 Q. He was meeting you for the first time, correct?

16 A. Right, sir.

17 Q. He was discussing with you training of people for
18 Bosnia that might touch upon the Neutrality Act, correct?

19 A. I am not sure about the Neutrality Act. I know
20 that we discussed that, but I am not familiar with the
21 actual act itself.

22 Q. But it is your testimony that first off upon
23 meeting you he tells you we are going to a safe house?

24 A. That was in a conversation over a telephone.

25 Q. Was that taped?

1 A. No, sir.

2 Q. This is the first conversation he has with you on
3 the phone?

4 A. I believe so.

5 Q. In other words, when you meet at the Holland
6 Tunnel he tells you that you are going to meet at the
7 Holland Tunnel and then go to a safe house?

8 A. At which conversation, sir?

9 Q. You said there was a conversation that preceded
10 the meeting at the Holland Tunnel.

11 A. I was given directions how to get to a particular
12 location. I asked during the course of the conversation is
13 it safe and he answered yes, it's a safe house.

14 Q. And this conversation takes place at the Holland
15 Tunnel?

16 A. I believe so, sir, yes.

17 Q. Didn't you just testify that the conversation
18 took place on the phone?

19 A. There was a conversation we had on the telephone,
20 but there was also a conversation that we had at the vehicle
21 and outside --

22 Q. When did this conversation on the phone take
23 place?

24 A. I can't remember, recall a date.

25 Q. In other words, before you met at the Holland

1 Tunnel you had a conversation with Rashid on the phone?

2 A. Before I had a conversation with Rashid, yes,
3 sir.

4 Q. When did this conversation take place?

5 A. I can't recall. I believe that it was around the
6 time when I had initial conversations while setting up the
7 meeting.

8 Q. So before you met at the Holland Tunnel you knew
9 you were going to a safe house afterwards?

10 A. I know that I was going to a safe house, yes.

11 Q. You testified that Ubaidah asked you for clean
12 weapons, correct?

13 A. Clean guns, yes, sir.

14 Q. And you testified that clean can mean either
15 weapons that have had the serial number taken off or weapons
16 that haven't been used in a crime, correct?

17 A. Yes.

18 MR. FITZGERALD: Objection to form.

19 THE COURT: Could you rephrase it?

20 MR. WASSERMAN: Yes, Judge.

21 Q. It is your testimony that clean weapon means a
22 weapon from which the serial numbers have been taken off?

23 A. Yes, sir.

24 Q. It doesn't mean a legal weapon?

25 A. No, it could be that also.

1 Q. It could be. How does one distinguish if one is
2 using the same term clean as between a rifle or gun that has
3 had the serial numbers removed, which is illegal, and a gun
4 that is legal? How do you distinguish that if you are using
5 the same term?

6 A. I could probably -- I could say the way that an
7 individual would, say, try to explain it to me during the
8 course of the conversation.

9 Q. They were talking about weapons in connection
10 with the training, correct?

11 A. Yes, sir.

12 Q. The last thing about that meeting on December 20
13 is that you reported that you thought the individuals were
14 very serious, correct?

15 A. Yes, sir.

16 Q. About the training to send people to Bosnia,
17 correct?

18 A. Yes, sir.

19 Q. And that they considered themselves mujahiden.

20 A. That is correct.

21 Q. And mujahiden means warriors on behalf of Islam,
22 correct?

23 A. I am not familiar with that.

24 Q. You never heard the term?

25 A. Yes, I heard the term mujahiden, but after they

1 mentioned the word mujahiden, they said we're already dead.

2 Q. We're already dead, meaning that if they martyr
3 themselves for Allah they go to heaven, correct? You don't
4 know that?

5 A. I am not familiar with the Muslim terminology or
6 religion.

7 Q. The term and the reference was all in connection
8 with the training for Bosnia, correct?

9 A. Yes, sir, I was led to believe that.

10 Q. The weapons were discussed with you that would be
11 used during this training, correct?

12 A. Yes, sir.

13 Q. Both Abu Ubaidah and Rashid discussed with you
14 using SKS weapons and one AK47, correct?

15 A. Yes.

16 Q. And there were several conversations in which
17 these weapons were referenced as weapons that were going to
18 be used in the training, correct?

19 A. Yes, sir.

20 Q. In fact, I believe as early as -- let me see if I
21 can find the reference here. Certainly on January 10, 1993,
22 you were going to meet with Rashid to pick up the SKS
23 weapons to be used in the upcoming training, correct?

24 A. Yes, sir.

25 Q. In that meeting the weapons weren't picked up

1 because the training wasn't going to take place, correct?

2 A. Yes, sir.

3 Q. On March 10, 1993, Ubaidah told you the weapons
4 were available to be used in the training, correct?

5 A. March 10?

6 Q. Sorry. I believe that is December 20 that
7 Ubaidah told you that.

8 A. Yes.

9 Q. That the SKS weapons were available for the
10 training?

11 A. That is correct, sir.

12 Q. The type of weapons --

13 THE COURT: December 20 --

14 MR. WASSERMAN: 1992, your Honor.

15 THE COURT: '92, good.

16 Q. These types of weapons, are you familiar with the
17 SKS and the AK47?

18 A. Yes, I am.

19 Q. Those are battle weapons, correct, combat
20 weapons?

21 A. Yes, sir.

22 Q. And they are produced by members of the Soviet
23 bloc, correct?

24 A. And also Chinese.

25 Q. In fact, China is a large producer of the SKS

1 weapon, correct?

2 A. From what I understand, yes, sir.

3 Q. So is Yugoslavia, correct?

4 A. From what I understand, yes, sir.

5 Q. In fact Yugoslavia produces more AK47's than any
6 former member of the Soviet bloc. Are you aware of that?

7 A. No, I am not, sir.

8 Q. The use of the SKS and the AK47 was explained to
9 you, was it not, as making sense because those are the
10 weapons that are used in Yugoslavia, used in Bosnia. That's
11 what the people use who are fighting over there.

12 A. I am not familiar with that, sir.

13 Q. You are not familiar with that?

14 A. No, sir. I don't recall that, I am sorry.

15 Q. That is fine. Are you familiar with the fact
16 that in combat --

17 MR. FITZGERALD: Objection, your Honor.

18 MR. WASSERMAN: I will strike the "Are you
19 familiar" and just ask the question.

20 Q. Do you know if in combat when you use a weapon
21 like an M16 or an SKS, any of the rifles that are used in
22 combat, that you use a clip of 30 rounds rather than a clip
23 of 10 rounds?

24 A. Yes, but the SKS does carry a magazine of a
25 10-round capacity.

1 Q. Easily adaptable to a round of 30, correct?

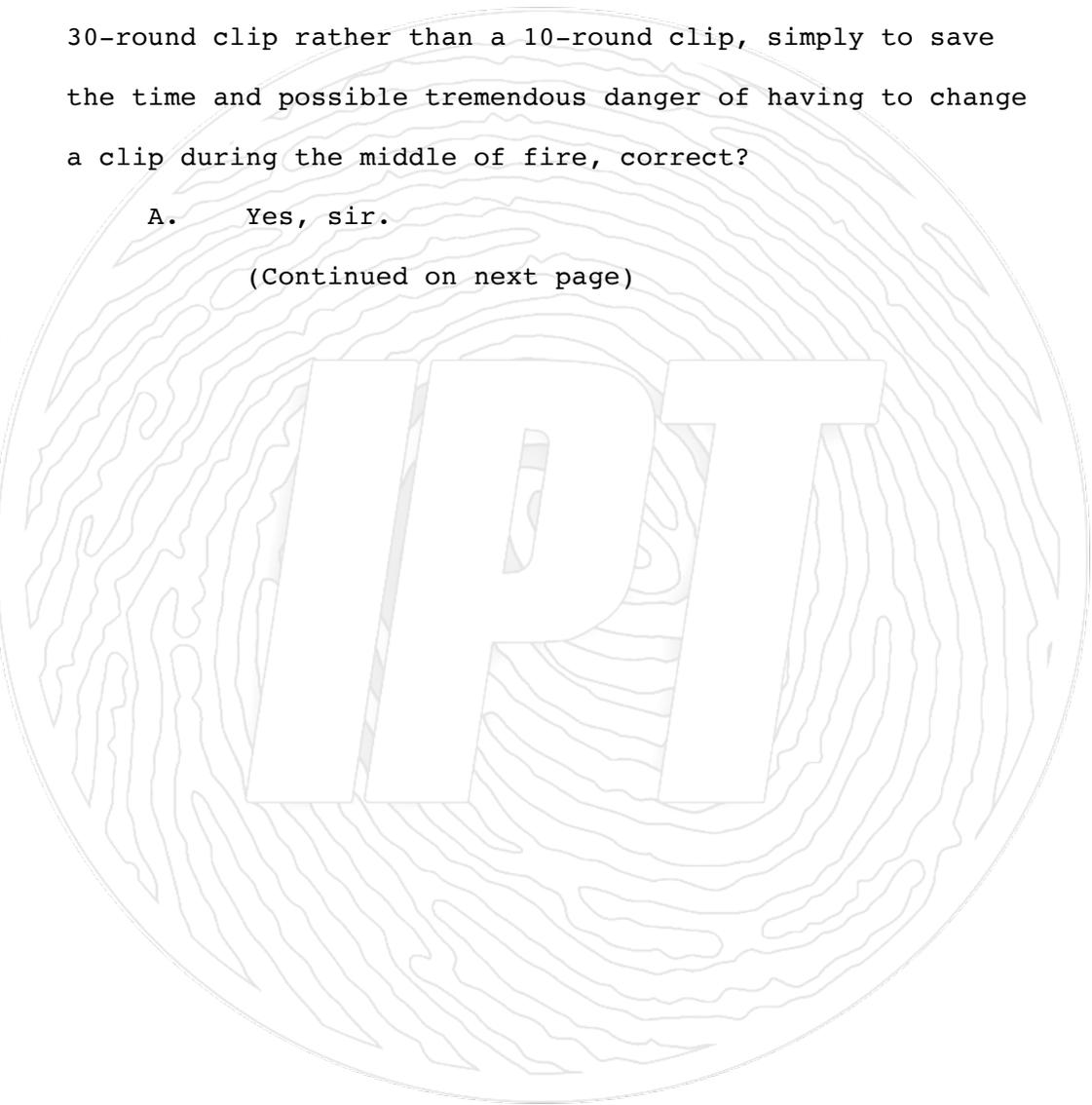
2 A. Yes, sir.

3 Q. The point is, sir, in combat as in wars that are
4 going on in Bosnia at the time and still is, one uses a
5 30-round clip rather than a 10-round clip, simply to save
6 the time and possible tremendous danger of having to change
7 a clip during the middle of fire, correct?

8 A. Yes, sir.

9 (Continued on next page)

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1 Q. I'm sorry?

2 A. Yes, sir.

3 Q. Thank you.

4 Both Rashid and Ubaidah were very open with you
5 about their ability to provide six weapons for the training,
6 correct, the five SKS's and the AK-47?

7 A. I'm not familiar with that number. I knew that
8 it was related to me as one SKS and -- correction, one AK-47
9 and SKS's.

10 Q. And did not Ubaidah tell you that he had
11 purchased the weapons at a gun show in Virginia?

12 A. No, he didn't tell me he purchased those.

13 MR. WASSERMAN: Your Honor, may I just have a
14 moment.

15 (Pause)

16 MR. WASSERMAN: Your Honor, may I approach.

17 THE COURT: Yes.

18 MR. WASSERMAN: Thank you.

19 Q. I am going to show you F, page 2.

20 MR. WASSERMAN: I'm sorry. What do you have? F
21 in that exhibit number series?

22 MR. FITZGERALD: The one you have been showing
23 him?

24 MR. WASSERMAN: No, the one after that.

25 MR. FITZGERALD: If it's after E, F.

1 Q. F, page 2. If you could take a look at the
2 bottom two paragraphs.

3 A. This one?

4 Q. Yes.

5 MR. FITZGERALD: That would be 35120F.

6 Q. Does that refresh your recollection, sir?

7 A. Yes, sir.

8 Q. In fact, does it also refresh your recollection
9 as to the mentioning by Ubaidah of exactly five SKS weapons?

10 A. Yes, sir.

11 Q. Thank you.

12 Now, there came a time when you sold equipment to
13 Rashid and Ubaidah for approximately \$2500, is that correct?

14 A. Yes, sir.

15 Q. I would like to show you as Government Exhibit
16 35120D.

17 Sir, is that the list of equipment that you sold
18 to them?

19 A. Yes, sir.

20 Q. Could you read to the jury the equipment that you
21 sold to them.

22 A. In its entirety?

23 Q. Yes, sir.

24 A. Yes, sir.

25 It says, "Manual printing."

1 It says: Blank videotapes; training aids and
2 knives; light sticks, books, video, early warning devices,
3 training aids, G accessories; map cases, and there's a
4 C-O-M-P, which stands for compasses, flashlights, covers,
5 binos, meaning binoculars, Steiner used; crossbow, bolts,
6 cocking arm, wax, armbands; knives, axes, B-G w/special
7 ammo; ammo, SG, .38, .45, AK-47, cable saws, camo cloth,
8 add. ammo, miscellaneous items; camo suit, electric mat,
9 miscellaneous training aids; light sticks, wrist coms,
10 tac-ammo vest, LS holders, comp cases, etc.; noise making,
11 targetdot, additional printing; spring-loaded baton,
12 grappling hook kit.

13 Q. I don't see any -- withdrawn.

14 MR. WASSERMAN: Your Honor, I would like to move
15 that exhibit into evidence.

16 MR. FITZGERALD: No objection.

17 THE COURT: 35120D?

18 MR. FITZGERALD: Yes, Judge.

19 THE COURT: Is that a particular page from it or
20 is that the exhibit?

21 MR. FITZGERALD: One page.

22 THE COURT: One page. All right. That's
23 received.

24 (Government's Exhibit 35120D for identification
25 was received in evidence)

1 MR. WASSERMAN: Your Honor, I would like to
2 approach again, if I may, with 35120X.

3 THE COURT: Go ahead.

4 Q. Sir, is that the training program that you
5 proposed?

6 A. Yes, sir.

7 MR. WASSERMAN: Your Honor, I would simply move
8 that into evidence and ask that it be published after the
9 testimony.

10 MR. FITZGERALD: Can I have the reference again.
11 You said X?

12 MR. WASSERMAN: X.

13 MR. FITZGERALD: Oh, double X I think you mean.

14 MR. WASSERMAN: Is it double X?

15 MR. FITZGERALD: If I could have one moment.
16 No objection.

17 THE COURT: It's X?

18 MR. FITZGERALD: It is XX.

19 MR. WASSERMAN: It is XX. I stand corrected.

20 THE COURT: 35120XX is received without
21 objection.

22 (Government's Exhibit 35120XX for identification
23 was received in evidence)

24 Q. That training did not take place, correct?

25 A. That is correct.

1 Q. You could not recall the story that you told
2 Ubaidah and Rashid as to why it did not take place, correct?

3 A. I can give it to my best recollection.

4 Q. OK.

5 A. Would you like to hear it again?

6 Q. Sure.

7 A. Yes.

8 I informed them that there was an incident that
9 occurred outside the country, and that since I was with the
10 DOD police, I had a special assignment to protect someone.
11 So I was called up in a security capacity and I could not
12 conduct the training.

13 Q. The equipment was sold to them after this?

14 A. After what, sir?

15 Q. After canceled the training.

16 A. After I canceled the training, they requested the
17 equipment, yes, sir.

18 Q. You met with Ubaidah at the Sandman Motel or
19 Hotel. Do you recall the date?

20 A. No, I can't, sir.

21 Q. Video surveillance was arranged for that date as
22 well, was it not?

23 A. I'm not -- I know there was surveillance on me,
24 but I don't know whether it was video or 35.

25 Q. I withdraw the video question.

1 I believe, if you recall, it was 35. In other
2 words, it was picture surveillance rather than video
3 surveillance?

4 A. Yes, sir.

5 Q. But there was no wire warrant at that time,
6 correct?

7 A. No, sir.

8 Q. At that time you told Ubaidah, did you not, that
9 you had thrown in as extras the cannon fuse and fuse lighter
10 and electric matches, correct?

11 A. No, sir.

12 Q. Did you not deliver it to them at that time?

13 A. Yes, sir.

14 Q. It was not on your invoice, was it?

15 A. Not named specifically, no.

16 Q. Where would one find that on the invoice?

17 A. Well, you have the inventory if I'm not mistaken.
18 If you could bring it up forward I would appreciate it.

19 THE COURT: That is 35120D in evidence.

20 A. It would be listed under "Early Warning Devices
21 and Training Aids."

22 Q. Did you tell them that you were going to show
23 them how to use it?

24 A. Yes, sir. I was going to train them how to use
25 it.

1 Q. Later on there came a time when you were asked to
2 look at material that had been seized from 251 Rogers Avenue
3 in Brooklyn, correct?

4 A. That is correct.

5 Q. In doing that review, you came across a lot of
6 items that were items that you had sold to Rashid and
7 Ubaidah back in January, correct?

8 A. Yes, sir.

9 Q. That would include a crossbow rifle?

10 A. Yes, sir.

11 Q. And crossbow darts and crossbow bolts, correct?

12 A. Yes, sir.

13 Q. And the safety fuse, correct?

14 A. That is correct.

15 Q. And the exploding targets, correct?

16 A. Yes, sir.

17 Q. Exploding targets are used for marksmanship
18 purposes, correct, to give the shooter a visual and audible
19 reality to his hitting the target, correct?

20 A. Yes, sir.

21 Q. You also recognized two large blow guns and darts
22 that you had sold to them, correct?

23 A. That is correct.

24 Q. And the electric matches, correct?

25 A. Yes, sir.

1 Q. The fuse lighter, correct?

2 A. Which number was that, sir?

3 Q. The M60 fuse lighter.

4 A. That is correct.

5 Q. The Sabot shotgun shells?

6 A. Yes, sir.

7 Q. And the throwing hatchets?

8 A. Yes, sir.

9 Q. Hatchets?

10 A. Yes, sir, two, sir,

11 Q. Two, OK.

12 As well as the videotapes that you had supplied

13 to them?

14 A. Yes, sir.

15 Q. That was videotapes that you had supplied on Navy

16 Seal training, correct?

17 A. Yes, sir.

18 Q. Sentry neutralization?

19 A. Yes, sir.

20 Q. Let's see, evasive driving?

21 A. Yes, sir.

22 Q. New identification?

23 A. Yes, sir.

24 Q. Debugging techniques?

25 A. Yes, sir.

1 Q. Death trap?

2 A. Yes, sir.

3 Q. That's a type of booby trap explosives?

4 A. That is correct.

5 Q. That is also known as early warning devices,
6 correct?

7 A. Right, sir.

8 Q. And silencers?

9 A. Silencers and suppressors.

10 Q. And that's flash suppression, correct?

11 A. Negative. That's just another name for a
12 silencer, a suppressor.

13 Q. Flash suppression -- excuse me. Flash
14 suppressors are rather standard equipment on an M-14 or an
15 AK-47 or an SKS in combat, yes?

16 A. A?

17 Q. Flash suppressor.

18 A. Yes, sir.

19 Q. That is designed to cut down on the, so the enemy
20 can't spot you by the flames coming out of the muzzle,
21 correct?

22 A. That is correct.

23 Q. There were two FM-100 field manuals that you had
24 supplied to them that you recognized at Rogers Avenue,
25 correct?

1 A. You would have to refresh my memory as to the
2 title on the field manuals.

3 Q. I will in a moment. I will come back to it.
4 Now, when you recognized that material --
5 withdrawn.

6 The electric matches and the safety fuse, which
7 is also known as cannon fuse and the fuse lighter, did you
8 not purchase that from "American Survivalist"?

9 A. No, sir.

10 Q. Where did you purchase it?

11 A. Which items, sir?

12 Q. The one I just mentioned.

13 A. There were different locations.

14 Q. Different locations. Where did you get the
15 safety fuse?

16 A. The safety fuse was purchased at Harris Army and
17 Navy store in Bordentown, New Jersey.

18 Q. And the electric matches, sir?

19 A. The electric matches I do believe were purchased
20 from a company called Aztec out of Arizona, Aztec or
21 Phoenix, out of Arizona.

22 Q. And the fuse lighter?

23 A. The fuse lighter also.

24 Q. The fuse lighter and the electric matches are all
25 used in connection with the safety fuse, right?

1 A. Yes, sir.

2 Q. Did you at any time tell Ubaidah about this
3 publication called the "American Survivalist"?

4 A. I'm not familiar with the -- hold on, sir. You
5 mean "American Survivalist" magazine?

6 Q. Catalog.

7 A. I'm not familiar with a catalog called "American
8 Survivalist."

9 Q. All right.

10 MR. WASSERMAN: Your Honor, I would like to
11 approach with what I have marked as Hampton-El F for
12 identification.

13 THE COURT: Go ahead.

14 MR. WASSERMAN: Thank you.

15 That is what I showed you.

16 MR. FITZGERALD: That's right.

17 Q. Sir, I have shown you what's been marked for
18 identification as Hampton-El F.

19 Do you recognize the document?

20 A. Yes, sir.

21 Q. That is one of your brochures, correct?

22 A. I'm sorry. Could you say that again, please.

23 Q. That is one of your brochures for training and
24 sales?

25 A. That was a brochure, yes.

1 Q. And it's called "Midnight Technologies"?

2 A. Yes, sir.

3 MR. WASSERMAN: Your Honor, I would like to move
4 that into evidence.

5 MR. FITZGERALD: No objection.

6 THE COURT: Hampton-El F is received without
7 objection.

8 (Defendant Hampton-El Exhibit F for
9 identification was received in evidence)

10 Q. One of the people that you trained in the 1980s
11 from Brooklyn is someone that you knew or would come to know
12 worked for the Interior Department, a man named Kelvin
13 Smith?

14 A. Yes, sir.

15 Q. You kept up something of a relationship with him
16 through the years, correct?

17 A. Yes, basically.

18 Q. You are aware that he moved to Pennsylvania,
19 correct?

20 A. Yes, sir.

21 Q. And he had taken on an Arabic name as a Muslim,
22 Mohaimin?

23 A. Yes, Abdul Mohaimin.

24 Q. And your nickname for him was grizzly bear,
25 correct?

1 A. Not grizzly bear. It was -- no, not grizzly
2 bear. I am trying to think of the nickname, but it wasn't
3 grizzly bear.

4 Q. It had something to do the with the fact that he
5 had settled in a rural community?

6 A. And he had a beard.

7 Q. And a beard?

8 A. Yes, sir.

9 Q. And a bunch of kids?

10 A. I didn't know if he had any children or not. I
11 never met them.

12 Q. OK. But you kept up with him in Pennsylvania,
13 correct?

14 A. Yes, sir.

15 Q. OK. Did you know that the training ultimately
16 took place at his place in Pennsylvania?

17 A. Yes, sir.

18 Q. Did you also not keep up with Rashid during the
19 spring of 1993? That is, you had telephone calls with him
20 during the spring of 1993, correct?

21 A. What would you consider spring?

22 Q. May.

23 A. May of '93?

24 Q. Yes.

25 A. Could be. I --

1 Q. One conversation in May was about trying to
2 collect from Zindani, you happened to be in Brooklyn and you
3 called Rashid, does that ring a bell?

4 A. I know that I wanted to collect some money from
5 Zindani, but I don't know the exact date. I don't remember
6 the exact date.

7 Q. Did you not also have a conversation with Rashid
8 on May 31 of 1993?

9 A. I could have, but I don't remember the exact
10 date.

11 MR. WASSERMAN: One moment, your Honor.

12 (Counsel conferred)

13 Q. During what I have referred to as the spring or,
14 more specifically, May of 1993, or at any time after your
15 meetings with Rashid in December, did you provide any other
16 material other than the material that you have described to
17 the jury today to Rashid or to Ubaidah?

18 A. What type of material was that, sir?

19 Q. Well, did you give him anything.

20 A. Right now I can't recall.

21 MR. WASSERMAN: Well, I think the government will
22 stipulate there were conversations in May, and particularly
23 May 31.

24 Q. Were you requested for anything at any time?

25 MR. FITZGERALD: Your Honor, I will stipulate

1 that there were two conversations, one on May 27, one on May
2 31, 1993.

3 Q. Do you recall those conversations at all?

4 A. I can't remember the exact dates. It's been a
5 little while.

6 Q. Now, did there come a time when -- that
7 conversation on May 31, were you directed to have that
8 conversation with Rashid by the FBI?

9 A. Like I said before, I can't remember the exact
10 context of that conversation.

11 Q. Would it be fair to say that after the training
12 that you heard about in Pennsylvania and after the material
13 that you had supplied for the training for the people to go
14 to Bosnia, that after that, there was no request of any
15 material from you of any kind?

16 A. No.

17 Q. There was no request, correct?

18 A. Not that I know of.

19 Q. Fine. Thank you.

20 MR. WASSERMAN: No further questions.

21 THE COURT: Anyone else on cross?

22 No. Any redirect?

23 MR. FITZGERALD: Yes, Judge.

24 THE COURT: Go ahead.

25 REDIRECT EXAMINATION

1 BY MR. FITZGERALD:

2 Q. Mr. Wilson, Mr. Wasserman asked you some
3 questions about reports.

4 A. Yes, sir.

5 Q. Did you yourself complete reports after meetings
6 you held?

7 A. No, I didn't.

8 Q. What did you do?

9 A. I would go in, obtain the information or do
10 whatever I had to do to make a discussion, then I would come
11 back outside and I would be debriefed by the FBI and agents
12 from the NIS.

13 Q. Who would write the reports?

14 A. They would.

15 Q. Would they show you the reports for you to review
16 and sign?

17 A. No, sir, none.

18 Q. Prior to testifying here today, were you shown
19 the reports?

20 A. No, sir. I wasn't.

21 Q. Were you testifying on memory?

22 A. That's right, sir.

23 Q. So when Mr. Wasserman, for example, showed you
24 35120E and showed you particular sections, you had not seen
25 those sections of the report before?

1 A. No, sir, I hadn't.

2 THE COURT: You didn't write any of those
3 reports?

4 THE WITNESS: No, sir, I did not.

5 THE COURT: Go ahead.

6 Q. Let me approach you with that same report,
7 35120E, and show you page 4.

8 MR. WASSERMAN: Your Honor, I object to this as a
9 question.

10 THE COURT: There is going to be a question.

11 Q. As you sit here today, Mr. Wilson, do you
12 remember everything that happened during that meeting?

13 A. No, I don't, sir.

14 Q. Let me show you page 4 of 35120E, the document
15 Mr. Wasserman showed you.

16 A. Right, sir.

17 MR. WASSERMAN: Your Honor, I would object to the
18 question before the witness's recollection is refreshed.

19 THE COURT: Sustained.

20 Q. As you sit here today, Mr. Wilson, do you
21 remember exactly what was said when you spoke about the
22 request for clean guns and the request for detonators?

23 A. Yes, sir.

24 Q. What type of detonators were requested?

25 A. There was no specific type of detonators

1 requested, they just, in a general conversation it came up,
2 "Can you get any detonators?"

3 Q. I asked you to look at 35120E, page 4, the fourth
4 paragraph down.

5 MS. AMSTERDAM: Objection, your Honor.

6 MR. WASSERMAN: Objection, your Honor. Same
7 objection.

8 THE COURT: Overruled.

9 A. Yes, sir. I'm looking at it.

10 Q. If you could read to yourself the fourth full
11 paragraph of page 4 of 35120E.

12 A. Yes, sir.

13 Q. Having read that, simply answer this question yes
14 or no: Is your recollection any different as to whether or
15 not the type of detonators were specified? Yes or no.

16 A. No, sir.

17 Q. OK. You were asked questions about guns.

18 A. Yes, sir.

19 Q. Abu Ubaidah indicated to you that he could get
20 guns from a gun show in Virginia, is that correct?

21 A. He could, yes, sir.

22 Q. Have you been to gun shows yourself?

23 A. Yes, sir, I have.

24 Q. When they sell guns at gun shows, do those guns
25 come with serial numbers?

1 A. Yes, sir.

2 Q. On the day, December 20, 1992, when Abu Ubaidah
3 asked you for clean guns, and you said in response you
4 wouldn't do anything that would bite you in the ass, did he
5 indicate to you in any way that you misunderstood him?

6 A. No, sir.

7 MR. FITZGERALD: Thank you. Nothing further.

8 THE COURT: Is that it?

9 Anything else, Mr. Wasserman?

10 (Pause)

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

12 No. Thank you, Judge.

13 THE COURT: You are excused. Thank you.

14 THE WITNESS: Thank you, sir.

15 (Witness excused)

16 MR. McCARTHY: Your Honor, there was --

17 THE COURT: We have to talk about an issue?

18 MR. McCARTHY: Yes, your Honor.

19 THE COURT: Ladies and gentlemen, we are going to
20 take a break now. Please leave your notes and other
21 materials behind. Please don't discuss the case and we will
22 resume, I hope, in a few minutes.

23 (Jury not present)

24 (Continued on next page)

25

1 THE COURT: OK. We are talking about what, 803T
2 at the moment?

3 MR. McCARTHY: Yes, your Honor.

4 MS. STEWART: Pardon me, Judge?

5 THE COURT: I said we are talking about 803T at
6 the moment?

7 MS. STEWART: Yes, Judge.

8 THE COURT: Mr. McCarthy?

9 MR. McCARTHY: Yes, your Honor. Your Honor, the
10 portion we would argue is clearly relevant to this case and
11 to the issues that are very crystallized at this point in
12 the case begins at page 8, but really in earnest at page 9
13 and continuing there throughout, where Dr. Abdel Rahman
14 essentially lays at the feet of the United States the
15 problems that he's been railing about and exhorting violence
16 about, if the government's proof at trial is taken as a
17 whole.

18 THE COURT: I'm sorry. One second.

19 MR. McCARTHY: I guess --

20 THE COURT: One second.

21 MR. McCARTHY: OK. I'm sorry.

22 THE COURT: OK. Ms. Stewart?

23 MS. STEWART: Judge, our argument is that they
24 must have upwards of 20 sermons and tapes of sermons that
25 say basically exactly the same thing. There is nothing

1 unique about this and nothing different from what they have
2 already advanced time and time again.

3 THE COURT: I have to admit I haven't been
4 keeping count.

5 MR. McCARTHY: I actually think your Honor has
6 kept out at least as much as you have allowed us to put in,
7 but I don't think it's upwards of 20.

8 I think it is the main issue in the case, I don't
9 think Ms. Stewart, of course, is going to stipulate that we
10 have made out strongly corroborative of intent for purposes
11 of the solicitation count directed at the American military,
12 and it is a case which is boiled down to, I think, really a
13 single, hotly contested issue. At least it could be argued
14 that way.

15 THE COURT: I don't know about a single, hotly
16 contested issue.

17 MR. McCARTHY: I didn't mean to suggest -- what I
18 meant to say, your Honor, is on that particular point.

19 Not to undercut, hopefully, the argument that we
20 made with respect to the other Haggag exhibit that Ms.
21 Stewart challenged, which I think is 808. This doesn't
22 present any of the same -- I shouldn't say "any." It is way
23 overstating it. It doesn't present a number of the unique
24 claims that she made with respect to that one, authorship
25 and the like. This is clearly Dr. Abdel Rahman.

1 THE COURT: Ms. Stewart?

2 MS. STEWART: Judge, it does not rise to the same
3 level of prejudice. I mean, I know there is no name-calling
4 as such in this.

5 THE COURT: When you say "prejudice," prejudice
6 is one of those funny words. Obviously they are not going
7 to introduce anything that they don't think is prejudicial.

8 MS. STEWART: Right.

9 THE COURT: That's why they are trying to
10 introduce it. The question is whether it's proper or
11 improper prejudice. You have argued, both in explicit
12 argument and in implicit argument in questions, your
13 client's view of the United States. They've argued
14 something obviously very different. There are things that
15 you have brought out that are consistent with your view, and
16 there are things that they have put in consistent with
17 theirs, and that's for them, I suppose, to decide.

18 I am loath to keep it out. I am going to receive
19 it. I am going to admit it. 803T.

20 MS. STEWART: Then I would ask that, that is
21 really one of those documents where it is a sermon. It is a
22 unit. It is not just the paragraphs they want to read. It
23 begins with a long explanation of an historical period in
24 the religious life of Mohammed, and bases the duty of
25 Muslims to act upon that historic period, and then goes on

1 to exhort people in this era to act likewise. To leave out
2 that initial historical and religious view detracts --

3 THE COURT: Not to push the metaphor too far, but
4 I think you may be preaching to the converted.

5 MR. McCARTHY: With one caveat, at least as to
6 me.

7 THE COURT: What is that?

8 MR. McCARTHY: This is the same issue that came
9 up with respect to 479, which is a different exhibit that
10 your Honor previously ruled on, but it hasn't been presented
11 to the jury. Back on May 1 we had an argument. What your
12 Honor said was that --

13 THE COURT: Then it was a question of picking out
14 those parts of it that were necessary to put in context the
15 parts that you put in.

16 MR. McCARTHY: Right.

17 THE COURT: I think she is arguing that this one
18 is a seamless web.

19 MR. McCARTHY: Right. Your Honor, I may have
20 confused you about what I meant. The resolution of 479 was
21 your Honor said if we wanted in the parts that we wanted in,
22 we would have to read the whole thing to the jury, which is,
23 I think, sort of the same argument that Ms. Stewart is
24 making now.

25 I really don't think in fairness that the part

1 that we want to read needs to have the context of what Ms.
2 Stewart wants in in order for the jury to get the accurate
3 flavor of it.

4 However, I have no objection to putting the whole
5 thing in, and, if Ms. Stewart feels the way that she's
6 expressed, and I have no doubt that she does, allow us to
7 read what we want to read, and she can get up and read the
8 parts that she thinks in fairness ought to be considered
9 with what we've read.

10 Barring that, I will agree to read the whole
11 thing. But I really think it detracts from what we're
12 trying to home their attention in on.

13 MS. STEWART: What do we do? It is a seamless
14 web. I start reading, and then I stop, and then they read
15 the parts that they want? To have me go after them in sort
16 a cross-examination style does not then preserve what I'm
17 objecting to.

18 THE COURT: Well, your objection is a 106
19 objection, correct?

20 MS. STEWART: Right.

21 THE COURT: The fairness is what?

22 MS. STEWART: That to present this idea in
23 context -- in other words, the portion they want to read,
24 taken alone, could come out of any political speech that has
25 anything to show the context in which Dr. Abdel Rahman

1 preaches, which is that it is based on his interpretation of
2 the Koran and how that plays a role in all of this. It is
3 lost if you just read one -- I think it's about a paragraph
4 or maybe a page and a half following that.

5 THE COURT: That may be true as a theological
6 matter or as a political matter. The question is, from the
7 standpoint of this case, where the issue is somebody's
8 intent, what is it about the remainder that establishes an
9 intent that is different from the part that he referred to?

10 Let me ask the question another way. To use
11 another illustration, if somebody were to say, some domestic
12 southern secessionist were to say, "I think somebody should
13 plug the president," would it add anything for him to say,
14 "Remember what John Wilkes Booth did to President Lincoln.
15 Do thou likewise."

16 I can understand that it adds an historical
17 context to the message to have the reference to John Wilkes
18 Booth. On the other hand, I don't think that it is an issue
19 of fairness.

20 MS. STEWART: I can beg off by saying I am not
21 theologically prepared to argue, but I would say, Judge,
22 that it seems to me it exhorts them to follow the word of
23 God, when he is saying, in essence, one should stay on the
24 side of the believers. And he does not prescribe one should
25 act as John Wilkes Booth. He just prescribes that one

1 should stay on the side of the believers. That is what
2 leads up to this entire, "The Muslims are invited today to
3 see the ignorance" -- and we can have some quibbles about
4 how that is translated with Mr. Abdel-Hafiz.

5 But it all reverts back to his earlier words,
6 which are telling people this is part of the heritage and,
7 does not prescribe what they are to do, which I say --

8 THE COURT: There is talk in here about hacking
9 off people's limbs and so forth.

10 MR. McCARTHY: Your Honor, if I may, also, I
11 think that there is a difference between the issues of
12 introduction into evidence and presentation to the jury. I
13 think under the rules I would probably be allowed to offer
14 into evidence only the parts that we contended were
15 relevant, and leave it to Ms. Stewart to introduce whatever
16 she thought had to be introduced under Rule 106.

17 I am not putting her to that. I am offering to
18 put in the whole thing. The only thing we are talking about
19 right now is what gets read to the jury now, so that it's
20 really not a question of keeping from them whatever context
21 ultimately needs to bear on whatever --

22 THE COURT: Her point is that once the pursuer
23 catches up with that message, then the effect is lost. That
24 to a certain extent is correct. But the issue is, if the
25 things have to be delivered at the same time in order for a

1 statement to be considered fairly and in context, then it
2 matters not whether you pick out a part or not. You have to
3 either present it all, present at the same time what is
4 necessary to put in context under 106 or not. You can't
5 pick out a part of what would otherwise be admissible under
6 106 and present it in your case, not with something like
7 this.

8 MS. STEWART: I guess bottom line question is
9 seditious intent and how the rest of the sermon takes it
10 away from that by putting it within the context of a Middle
11 Eastern intent, I guess.

12 THE COURT: I don't think that necessarily every
13 statement that is admitted to show intent has to show
14 seditious intent. Intent, including going so far as to
15 advocate violence, whether the violence then becomes or
16 became focused or not is for other proof presumably. Which
17 parts did you intend to offer? You are intending to offer
18 the whole thing, but which parts did you intend to read.

19 MR. McCARTHY: Page 8 until the end. The
20 beginning of the first full paragraph on page 8.

21 THE COURT: If you are going to read the first
22 paragraph on page 8, then in fairness you ought to read the
23 bottom of page 7, because that, I think, shows who the
24 "they" are on page 8. "They" are the Egyptians, not
25 Americans.

1 MR. McCARTHY: Right.

2 THE COURT: I don't want any confusion about
3 that. That really is an issue of fairness.

4 MS. STEWART: Judge, if I may just point out what
5 I'm referring to also. At the bottom of page 8 they say
6 Dr. Abdel Rahman says, "The Surah of Hud brought him gray
7 hair." Taken out of context, it doesn't mean anything. But
8 if you hear the beginning parts, where it talks about how
9 the Prophet Mohammed suffered and suffered so greatly that
10 his hair turned gray, then that reference makes some sense.
11 Without hearing the beginning part of the sermon, it doesn't
12 make much sense.

13 THE COURT: That can be remedied by reading the
14 third and fourth paragraphs on page 1 over on to the first
15 full paragraph on page 2.

16 No. Sorry.

17 The reference at the bottom of page 8 to the
18 Surah of Hud bringing him gray hair is simply, without any
19 context, a transitory reference of the sort that I don't
20 think would be particularly jarring. But you can include
21 whatever you think is necessary to establish the context for
22 that, but not more. Why don't you try to work it out?

23 MR. McCARTHY: OK.

24 THE COURT: Do you want to talk about the other?

25 MR. McCARTHY: I would, if your Honor, please.

1 THE COURT: Let's talk about it now, the other
2 exhibit.

3 MR. McCARTHY: This is 163.

4 THE COURT: Ms. Stewart is in the middle of two
5 conversations here.

6 MS. STEWART: Actually three, Judge.

7 THE COURT: Three. The one you wrote the letter
8 about.

9 MS. STEWART: Right, 808.

10 THE COURT: Your argument on that, Ms. Stewart,
11 is what?

12 MS. STEWART: Judge, basically that it is
13 duplicative, that it is yet another, that it is unreliable
14 because it does not seem to follow -- the introduction of
15 the item was that it was written by Haggag supposedly with
16 the sheik's approval and then with his signature at the end.
17 It does not seem to be the most reliable of documents for
18 that reason.

19 THE COURT: That it seems to me is a question for
20 the jury. Haggag says in essence he took dictation on this
21 document and that it is Dr. Abdel Rahman's words, or most of
22 it. I think you told me the last time in essence that it is
23 in inelegant Arabic, and I can't pass on that. So that is a
24 credibility question. What gave me pause most particularly
25 about that exhibit was the thrust of a good deal of your

1 cross-examination, particularly the end of it, in which you
2 in essence appeared to challenge Haggag's suggestion that
3 Dr. Abdel Rahman had urged certain things by focusing him on
4 a tape that he had in his house in which the issue of jihad
5 in America came up.

6 What you suggested in essence was that he was not
7 focused on America at all, but rather on other parts of the
8 world. That I took to be the thrust of your question. In
9 essence, you told the witness, the fact that it is your
10 tape, in the sense that it's a tape that you have got, and
11 so this is your own possession belies your suggestion, was
12 the way the cross appeared to go.

13 Given that, it seems to me not unreasonable to
14 permit the witness at least to testify to an exhibit that he
15 also had or that somebody had that he claims are Dr. Abdel
16 Rahman's words that if they go not in 180 degrees the
17 opposite direction, something close to it.

18 MS. STEWART: Judge, we pointed out in our letter
19 that we didn't think that was true. That specific
20 cross-examination was to a statement on his direct that he
21 had heard twice Dr. Abdel Rahman preaching, and after the
22 sermons he was asked a question, "What shall we do?" and the
23 answer he gave was, "We should bomb military camps and rob
24 from banks or steal from banks."

25 The question was that on the only tape we have

1 and the tape that was in his possession it said you should
2 go to Bosnia, you should go to the south of Sudan.

3 It doesn't say anything with --

4 THE COURT: No. I think that's too narrow. I
5 mean, you're being too modest about your cross-examination.
6 Very becoming, but not very accurate.

7 The thrust of it was a lot broader than that. I
8 think it is fair to admit the exhibit.

9 MS. STEWART: Judge, would you redact that
10 portion of it that talks about the children of the pigs and
11 monkeys as being so prejudicial as to cross the boundary of
12 a 403 objection?

13 THE COURT: That I thought was a substantial part
14 of why they were offering it.

15 MS. STEWART: That may be, but I would still
16 object to that portion of it.

17 THE COURT: But that is part of the point, isn't
18 it? Or is it?

19 MR. MCCARTHY: It is.

20 THE COURT: That is what I meant the last time
21 when we talked about the exhibit, and you said there was
22 more heat than light, and I thought that in this case the
23 heat was the light.

24 MS. STEWART: I also did talk about the Americans
25 in Saudi Arabia without using pejorative words.

1 THE COURT: I think on balance it comes in.

2 MR. SERRA: Your Honor?

3 THE COURT: Yes.

4 MR. SERRA: I don't have this particular exhibit
5 in front of me, but I believe that last week I spoke briefly
6 as to why reading from Mr. McCarthy's letter and quoting
7 from McCarthy's comments on the record, why this exhibit
8 should be admitted as an admission by Dr. Abdel Rahman
9 rather than a statement in furtherance of the conspiracy.

10 THE COURT: Let me just deal with the question of
11 the exhibit itself, and then we will talk about what
12 instructions go with it, if any.

13 MR. SERRA: I don't need to talk further at all.
14 I just want to remind the court that there is that
15 application.

16 THE COURT: I remember it. That would go only to
17 his intent. To the question of whether they found that it
18 said anything at all about his intent -- what it said about
19 his state of mind. I would rather put it in terms of state
20 of mind than intent. I would rather talk about intent when
21 I give the charge. I will talk about state of mind.

22 MR. McCARTHY: I don't disagree that it should be
23 limited to Dr. Abdel Rahman's intent, if that is the court's
24 question.

25 THE COURT: Do you want to discuss mechanics

1 about how to do that?

2 MR. McCARTHY: You mean propose an instruction
3 or --

4 THE COURT: Both an instruction and how it is the
5 exhibit comes in. Because, as I understood it, Ms. Stewart
6 wanted to cross-examine the witness as to authorship or as
7 to some of the language in it.

8 MS. STEWART: I am also mindful of the fact that
9 I also objected on ground that it would highlight this
10 document out of context with everything else. So at this
11 point I would not ask that Mr. Haggag be called back. I
12 would, at this point, given your Honor's ruling --

13 THE COURT: That is a wiser decision.

14 MR. McCARTHY: Does your Honor want to take up
15 163?

16 THE COURT: Which is 163?

17 MR. STAVIS: That is Mr. Nosair's tape from
18 Rikers Island.

19 THE COURT: Right. What is the issue?

20 MR. McCARTHY: There is a redacted, albeit not
21 much redacted, version. This is another issue, your Honor,
22 that came up on May 1, not that I think your Honor should
23 remember that off the top of your head.

24 THE COURT: Maybe I should, but I don't. I'm
25 sorry.

1 MR. McCARTHY: This is a speech. There were two.

2 THE COURT: Right.

3 MR. McCARTHY: 163 and 162.

4 THE COURT: Right.

5 MR. McCARTHY: That were largely duplicative.

6 THE COURT: I thought I had ruled on this.

7 MR. McCARTHY: We had argument about it, and,
8 your Honor, I basically offered to go back and try to redact
9 it, and we'd come back to you after that was done. I
10 promised that we'd get back to you the next day, so here I
11 am two weeks later.

12 THE COURT: I see. OK. The basis for the
13 objection is?

14 MR. STAVIS: It was a Rule 403 objection. On the
15 record at page 9672, your Honor indicated that you were
16 disposed against the tape. Then Mr. McCarthy indicated that
17 there is a part of the tape or the speech that relates
18 specifically to the Meir Kahane homicide. At page 9675 of
19 the record, Mr. McCarthy said that it was his suggestion
20 that he redact it down to just the Meir Kahane portion.
21 There hasn't been much redaction, your Honor, and Exhibit
22 163R includes things like, on the bottom of page 1, "We are
23 from the east side of the river and they are from the west
24 of the river, and, with God's permission, we will kill all
25 the Jews."

1 I don't think that that relates specifically to
2 the Meir Kahane homicide. There is also a great deal of
3 polemics here concerning Jewish immigration to Palestine,
4 things of that nature, and there's some general discussions
5 of jihad. I don't believe that it's been redacted, your
6 Honor, and I would renew my objection under Rule 403.

7 MR. McCARTHY: Your Honor, if I may just respond
8 to that, when I went to redact it, before I redacted it, or
9 tried to, I went back to look at Mr. Stavis's opening, Mr.
10 Stavis's cross-examination of Gottesmann and some of the
11 other witnesses and some of the issues that are open and on
12 the table.

13 Mr. Stavis opened to the jury that, as far as El
14 Sayyid Nosair was concerned, jihad was not in America. He
15 said that jihad, as Nosair understood it, was about
16 T-shirts, cassette tapes and CD's, not what's expressed
17 here.

18 He also argued to the jury very literally that he
19 considered his confinement to be an alibi. He specifically
20 used the word "alibi" with the jury. He told the jury that
21 Mr. Nosair couldn't have been doing jihad and couldn't be
22 responsible for the things that were going on during the
23 time he was incarcerated, because you can't do jihad behind
24 bars. As he put it, he couldn't even go to the bathroom
25 without the FBI knowing about it.

1 A lot of the things that come up in Mr. Nosair's
2 speech are directly counter to the way the case was pitched
3 to the jury, if you will, in the opening.

4 This speech shows a number of things. For one
5 thing, it certainly shows that Mr. Nosair considered what
6 went on with Meir Kahane in Manhattan to be jihad. It also
7 shows that his jihad was not limited to Afghanistan. It
8 also shows that to the extent that he took a position on
9 Afghanistan it was because it was a Muslim position, not a
10 pro-American position. Again, that's an argument that he's
11 making to the jury, and no doubt will continue to make,
12 aimed at the seditious conspiracy count.

13 The speech goes on to his intent to commit
14 virtually every crime that he's charged with in the
15 indictment, and the subject matter of the speech goes to
16 another important issue that he's contested; namely, he's
17 challenged the testimony of Mr. Abdel-Hafiz on the question
18 of whether Mr. Nosair is the person who was correctly
19 identified as a speaker on Government Exhibit's 851, which
20 is a conversation between Mr. Nosair, we allege, and Sheik
21 Abdel Rahman. We sought to shore up that identification
22 with two witnesses who Mr. Stavis will argue are incredible:
23 Salem and Haggag.

24 That's the state of our proof on that. The
25 subject matter of this speech is exactly what Mr. Nosair and

1 Dr. Abdel Rahman were talking about in the conversation that
2 we allege Mr. Nosair is a participant in.

3 THE COURT: Yes. Although that is a weak
4 argument.

5 MR. McCARTHY: Your Honor --

6 MR. STAVIS: It's so weak I didn't make it, your
7 Honor. I am not contesting that, the 851 tape.

8 MR. McCARTHY: If I may, I am not talking about a
9 microlevel commentary on Palestinian issues. I am talking
10 specifically about the emigration of Russian Jews to Israel.

11 THE COURT: That is not particularly a focus of
12 Mr. Nosair either. There are other people who have said
13 similar statements in many, many, many other tapes.

14 MR. McCARTHY: I think, your Honor, it is a fair
15 argument that we don't have to prove identification with one
16 piece of evidence. If the one piece of evidence had to be a
17 winner every time, we wouldn't get very far. It is a piece.
18 I'm not contending that it clinches the identification. All
19 I am saying is that I think it would be fair, even absent
20 the --

21 THE COURT: That more strongly goes to the Kahane
22 part of this, but go ahead.

23 MR. McCARTHY: I think that in the absence of
24 affirmative defense positions that have been taken here,
25 that given the charges in this case that this speech would

1 be admissible in light of the way that the case has been
2 argued to the jury, particularly in light of the way Mr.
3 Stavis has cast jihad, has basically said that the
4 government's --

5 THE COURT: Two things: First of all, do you
6 have a proposed redacted -- I mean, it's not up to you to
7 redact their exhibits. I understand that. But do you have
8 a proposed redacted edition of this or not?

9 MR. STAVIS: Just redact everything except the
10 top of page 2, which deals with Kahane. That is how I
11 thought it was going to be redacted, your Honor.

12 THE COURT: No. That is not the only part that
13 deals with Kahane. I now understand. I will review his
14 opening and the exhibit and I will get back to you.

15 MR. STAVIS: Your Honor, just one point.

16 THE COURT: Sure.

17 MR. STAVIS: When I opened to the jury, I opened
18 that Mr. Nosair was not performing jihad in America and was
19 performing jihad in Afghanistan and, when your Honor reviews
20 my opening statement, in Palestine --

21 THE COURT: I will review it.

22 OK. Yes?

23 MR. McCARTHY: Your Honor, I have a proposal to
24 make about the schedule. I don't know if your Honor wants
25 to take it up now, but I would suggest that it would not be

1 a bad time to take it up.

2 THE COURT: OK. Then it is a good time to take
3 it up. What is the proposal?

4 MR. McCARTHY: I would ask your Honor to consider
5 allowing us to sit half a day tomorrow and to convene in the
6 absence of the jury on Monday. Let me explain the reasons
7 why.

8 THE COURT: Yes.

9 MR. McCARTHY: We are getting down, faster than
10 we anticipated for sure, to the end of the government's
11 case. What we have left after this block of proof, which I
12 think will culminate tomorrow with the search of the Rogers
13 Avenue -- as we allege it, the safe house, is basically the
14 CM conversations and the proof that deals with the Queens
15 garage and what we've called the phase 2 plot.

16 THE COURT: Right.

17 MR. McCARTHY: We have been slashing evidence,
18 probably slashing more evidence than we try to put in.

19 THE COURT: I am not questioning your --

20 MR. McCARTHY: I know that. I think it would be
21 a more useful use of our time for the following reasons:
22 We've gotten about --

23 THE COURT: I am skeptical whenever somebody
24 feels I ought to spend a day talking to lawyers.

25 MR. McCARTHY: I wasn't suggesting that you spend

1 the day talking to the lawyers.

2 THE COURT: When you suggest we convene in the
3 absence of the jury --

4 MR. McCARTHY: I didn't mean to suggest for a
5 whole day of your Honor's time.

6 THE COURT: I dread spending a day talking to
7 lawyers. Go ahead.

8 MR. McCARTHY: We've gotten close to halfway
9 through what we think we want to put in with respect to the
10 CM's, and have begun circulating those pages to the defense
11 lawyers. They are going to have Rule 106 issues.

12 THE COURT: All right.

13 MR. McCARTHY: We think that we can resolve most
14 of them, but your Honor may have to resolve a number of
15 them, and then we can mass-produce -- what I would like to
16 avoid is giving the jury three books that look like the
17 Manhattan phone book if in fact we are going to be dealing
18 with less pages than that.

19 THE COURT: OK. I understand.

20 Does anybody else want to be heard?

21 MR. JACOBS: We have conferred, and have agreed
22 with the schedule Mr. McCarthy had suggested.

23 THE COURT: All right. Then in the hope that I
24 have to spend as little time on, no offense, but -- OK.

25 Fine. I am going to tell them this afternoon

1 that that's what we are going to do.

2 MR. McCARTHY: Thank you, your Honor.

3 THE COURT: OK. Thank you.

4 One more thing.

5 MR. McCARTHY: Yes, your Honor.

6 THE COURT: Is there any projection that I can
7 start to give them -- it doesn't have to be today, but I
8 would like to at least begin to think about telling them
9 something about how much longer this has to go.

10 Mr. Patel is shaking his head.

11 MR. PATEL: No, your Honor. In all candor, the
12 answer is no.

13 THE COURT: OK.

14 MR. PATEL: This has come up a little faster than
15 we expected.

16 THE COURT: Right. Understood.

17 (Recess)

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1 (In open court; jury present)

2 THE COURT: Mr. McCarthy.

3 MR. McCARTHY: Thank you, your Honor. The
4 government recalls Gamal Abdel-Hafiz.

5 GAMAL ABDEL-HAFIZ,

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: Please.

10 DIRECT EXAMINATION

11 BY MR. McCARTHY:

12 Q. Good afternoon, Mr. Abdel-Hafiz.

13 A. Good afternoon, sir.

14 Q. Sir, I have placed before you a tape marked
15 Government's Exhibit 803 and a transcript marked 803T. Do
16 you recognize those items?

17 A. Yes, sir.

18 Q. Did you make the transcript that is the English
19 transcript that is 803T from listening to the Arabic on the
20 tape that is 803?

21 A. Yes, sir, I did.

22 Q. Who was the speaker?

23 A. The speaker here was Sheik Omar Abdel Rahman.

24 Q. Is 803T, the transcript, a true and accurate
25 English translation of the Arabic words on the tape that is

1 803?

2 A. Yes, sir, it is.

3 MR. McCARTHY: Your Honor, the government offers
4 803 and 803T.

5 THE COURT: Those are subject to prior objections
6 which have been overruled. 803 and 803T are received.

7 (Government's Exhibits 803 and 803T were received
8 in evidence)

9 MR. McCARTHY: I have no further questions at
10 this time.

11 THE COURT: Cross, Miss Stewart.

12 CROSS-EXAMINATION

13 BY MS. STEWART:

14 Q. Good afternoon, Mr. Abdel-Hafiz.

15 A. Good afternoon.

16 Q. Exhibit 803T is a transcript of a sermon, is that
17 correct?

18 A. Yes, ma'am, that is correct.

19 Q. In the course of the sermon, indeed in the third
20 paragraph, if you have a copy of it there --

21 A. Yes, ma'am.

22 Q. You have translated that the Surah of Hud -- is
23 that correct?

24 A. Of Hud.

25 Q. Yes.

1 A. Yes.

2 Q. Could you just tell us what the meaning of Surah
3 is, the general meaning?

4 A. Surah is a chapter from the Koran.

5 Q. This is a sermon, then, based on this Surah, is
6 that correct?

7 A. That is correct, ma'am.

8 Q. In the course of the translation, you have
9 translated the word Allah as God in some instances and in
10 other instances you have translated it just as Allah, is
11 that right?

12 A. That is correct, and when it is quotation from
13 the Koran, the translation of the meaning of the Koran
14 translated as Allah. When I write it myself, most of the
15 time I write it as God.

16 Q. But there are places when it is not in quotation
17 marks in any event and yet you have still translated it as
18 Allah, is that fair to say?

19 A. Yes.

20 Q. But it means, if it were translated it would be
21 God, is that right?

22 A. Yes, ma'am.

23 Q. There are places in this particular transcript
24 where you have translated Arabic names into the English
25 equivalents, is that correct?

1 A. I don't recall, if you refresh my memory with
2 which ones.

3 Q. If you would look on page 2, Sheik Omar is
4 preaching about Noah, N-O-A-H, and in Arabic that is Nuh, is
5 that right, N-U-H?

6 A. There are some names that don't have any
7 equivalent to the English speaker. In this case it has to
8 be written as is. In some other cases, the name Noah is
9 known to any English speaker as Noah, and if I write it
10 Noah, it will be N-O-O-H, and Noah is just close and it is
11 known.

12 Q. It is the translation of Nuh, isn't that right?

13 A. It is not really a translation. You don't
14 translate names. You write them as they are known. When I
15 first wrote my name, Gamal, in English, I just wrote it as
16 close as I can possibly get it. If there were any
17 references in the English books or English literature that
18 had that name written different, for sure I would have used
19 the other spelling for the name instead of my own spelling.
20 That's why I prefer to use Noah as it is known to any
21 English speaker.

22 Q. I don't think I am asking you to go back to the
23 original ancient language that Noah was written about in the
24 Old Testament and then later in the Koran, but it is the
25 same Noah, is that right, as far as you know?

1 A. Yes, it's the same Noah, yes, ma'am.

2 Q. And there is a reference on page 5 to Lott, which
3 you have spelled L-O-T-T. Is that the same as Lot, L-O-T?

4 A. That is Lot, yes.

5 Q. In the very first page, in the fourth paragraph
6 down, you make reference to honored lady Khadijah.

7 A. Yes, ma'am.

8 Q. Was that the wife of the Prophet Mohammed?

9 A. Yes, ma'am.

10 Q. And you make reference to Quraysh, Q-U-R-A-Y-S-H.
11 It's about five lines or --

12 A. Yes, Quraysh, yes.

13 Q. That is the tribe that Mohammed the prophet
14 belonged to, is that right?

15 A. Yes, ma'am.

16 Q. The word, the name Eisa?

17 A. Yes.

18 Q. What is the name, the English equivalent for
19 that?

20 A. Jesus.

21 Q. So if it appeared in your translation as Eisa, it
22 would in your translation in English mean Jesus, is that
23 right?

24 A. It should mean Jesus, yes.

25 Q. On page 9, Mr. Abdel-Hafiz, the last paragraph,

1 the first line of that paragraph -- first, the word Muslim
2 itself has a meaning in English, does it not? Does it not
3 mean one who submits to the will of God?

4 A. That's the explanation, not the meaning, not the
5 translation.

6 Q. It is the definitional meaning, you mean?

7 A. Yes, just definition, yes.

8 Q. That sentence which says the Muslims are invited
9 today to see the ignorants.

10 A. Yes.

11 Q. In the original didn't that refer -- forgive my
12 pronunciation once again, the jahiliah?

13 A. Jahiliah, yes.

14 Q. Is that not a reference to an age of ignorance
15 that existed before the coming of the Prophet Mohammed and
16 Islam?

17 A. Yes, true.

18 Q. So it could have been translated the Muslims are
19 invited today to see the age of ignorance?

20 A. It could have.

21 Q. Because the next line goes on to say the
22 ignorance, which was in the time of the people of Noah, etc.

23 A. Yes.

24 Q. So would it be fair to say that also could be
25 translated as the age of ignorance?

1 A. That's what is meant by it, yes.

2 Q. At the very end, page 11, the very last
3 paragraph, where it starts God, please send your prayer and
4 peace upon our master Mohammed and all of his family?

5 A. Yes.

6 Q. This is the prayer that follows the preaching, is
7 that right?

8 A. Yes.

9 Q. It is called the dudua, is that right?

10 A. Yes, ma'am.

11 Q. And each of these lines are followed by the words
12 of the congregation saying amen, is that right?

13 A. Amen.

14 Q. And that means amen as we would say it?

15 A. Yes.

16 (Continued on next page)

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1 MS. STEWART: Nothing further, Judge. Thank you.

2 THE COURT: Anyone else? Anything else?

3 MR. McCARTHY: No redirect, your Honor.

4 THE COURT: You are excused.

5 (Witness excused)

6 MR. McCARTHY: Your Honor, at this time I would
7 ask to read from two exhibits in evidence.

8 THE COURT: Go ahead, which?

9 MR. McCARTHY: 803T and 808T.

10 THE COURT: All right.

11 MR. McCARTHY: I believe they are in the jury's
12 books, your Honor.

13 THE COURT: They are in the book that is marked
14 700 series, which goes in fact past 800. It is a thick
15 heavy one, if that helps.

16 MR. McCARTHY: Your Honor, I will be beginning at
17 803T on the first page.

18 THE COURT: Go ahead.

19 MR. McCARTHY: And the third paragraph of the
20 first page.

21 (Mr. McCarthy read to the jury from Government's
22 Exhibit 803T)

23 MR. McCARTHY: I move at this point to page 6,
24 the second full paragraph on that page.

25 (Reading continued)

1 MR. McCARTHY: Skipping the one paragraph and
2 moving to the last paragraph on that page.

3 (Reading continued)

4 MR. McCARTHY: I will now read from Government's
5 Exhibit 808T.

6 MR. SERRA: Your Honor, may I have a moment with
7 Mr. McCarthy?

8 May we approach at side bar?

9 THE COURT: Yes.

10 (At the side bar)

11 MR. SERRA: Your Honor, this is the exhibit that
12 I had asked the court to give a limiting instruction. I
13 don't think that what I am asking for is anything
14 complicated at all, simply an instruction that the jury
15 should only consider this exhibit when they are considering
16 the case against Dr. Abdel Rahman and no other defendant.

17 MS. STEWART: That is fine.

18 THE COURT: Also, do you know how long it takes
19 to read this? One of the jurors has a doctor's appointment.

20 MR. McCARTHY: It is two pages. I can do it
21 first thing tomorrow or now.

22 THE COURT: It is 10 of. Let's break now and
23 start tomorrow with the instruction. Then you can read it
24 and we will go on to something else.

25 (In open court)

1 THE COURT: Ladies and gentlemen, we are going to
2 break. Please leave your notes and other materials behind.
3 Please don't discuss the case. We will resume tomorrow at
4 9:30.

5 Let me just tell you a couple of things about
6 schedule, at least in the near time. Tomorrow, Thursday, we
7 are going to sit for only half a day. We will break at
8 lunchtime for the day and for the week. We will not sit on
9 Monday, because the lawyers have to get together and talk
10 about some issues and I have to meet with them at that time.
11 So rather than having you wait while we do that, it will be
12 better if you didn't come in at all. We will sit on
13 Tuesday. So you can make whatever plans you have to make
14 for Monday. See you tomorrow.

15 (Jury excused)

16 THE COURT: May I see counsel in the robing room.

17 (Pages 10863 through 10868 sealed)

18 (Proceedings adjourned until 9:30 a.m., Thursday,
19 May 18, 1995)

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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,"
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.

20 -----X

May 18, 1995
9:40 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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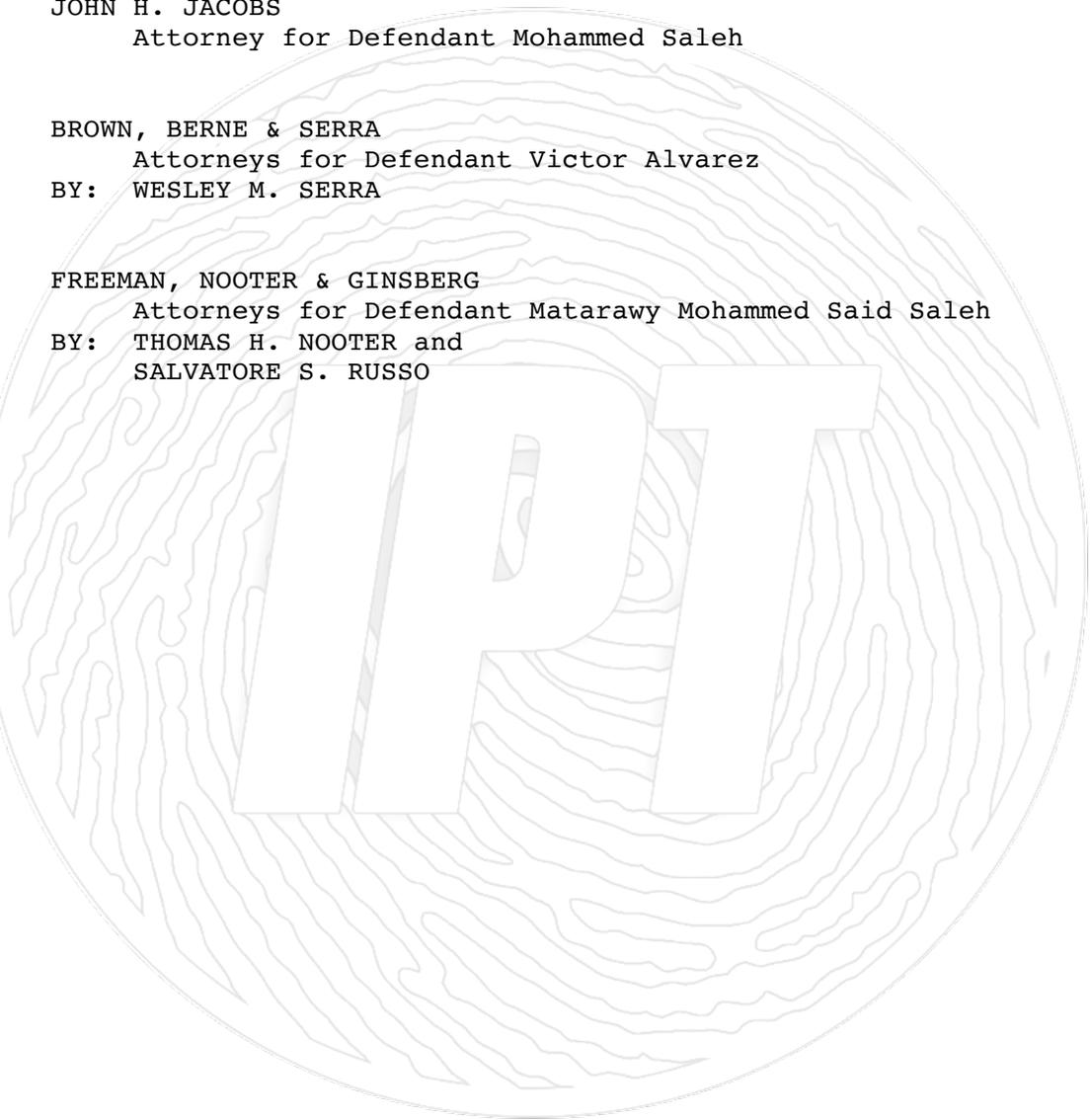
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (Jury not present)

3 MR. PATEL: Your Honor --

4 THE COURT: Yes.

5 MR. PATEL: -- the government, I have been given
6 to understand, is about to go into the Rogers Avenue search
7 and will be seeking to introduce certain items of evidence,
8 specifically, crossbows, blow guns, blow gun darts, knives,
9 BB guns, brass knuckles, things of that nature.

10 I rise to object to that in advance of the offer
11 of that evidence. The only testimony to date is that these
12 materials were to be used for training for Bosnia, nothing
13 domestically. They were all acquired subsequent to my
14 client, Mr. Nosair, being incarcerated.

15 There's been absolutely no testimony that this
16 was part of the overall conspiracy. Certainly there was no
17 discussion about blowing up the United Nations with blow
18 darts or anything of that nature. This is very dramatic
19 stuff. It is highly prejudicial, and there's been testimony
20 about it. The government has sufficient evidence in the
21 record that they can argue whatever they need to argue to
22 the jury. But to have the additional prejudice of bringing
23 in the materials and the photographs of these materials, I
24 would ask your Honor to exclude it under 403.

25 THE COURT: Wait a second. I don't like when

1 people leap on phrases of mine, so I don't want to leap on a
2 phrase of yours, but you said the government has enough to
3 argue to the jury what?

4 MR. PATEL: Your Honor, from Mr. Wilson the
5 government elicited a laundry list of equipment that
6 Mr. Hampton-El had purchased from him. So whatever they
7 would seek to argue from the introduction of the physical
8 things, they already have that in the record.

9 THE COURT: But I understood you to be saying at
10 the beginning that they shouldn't be allowed to make any
11 argument at all about that material.

12 MR. PATEL: What I am saying, your Honor, is that
13 the introduction of the physical exhibits and the
14 photographs of the physical exhibits is an emotional play to
15 the jury rather than an intellectual one. That is what I am
16 asking your Honor to prohibit.

17 THE COURT: All right.

18 MR. STAVIS: May I just have one moment?

19 THE COURT: You may.

20 (Pause)

21 MR. PATEL: Your Honor, we also, just to make it
22 clear, object to these items in addition to various marshal
23 arts and military type equipment, the things that Mr. Wilson
24 testified, and also photographs. I don't know if your Honor
25 has seen those.

1 THE COURT: I have seen what, the photographs?

2 MR. PATEL: The photographs.

3 THE COURT: I think I recall at some stage seeing
4 some photographs. I don't know what --

5 MR. PATEL: These are the photographs from the
6 search of Rogers Avenue. I believe your Honor ruled at a
7 hearing --

8 THE COURT: I did.

9 You are speaking to this point?

10 MR. NOOTER: It is a more specific evidentiary
11 objection to an exhibit that is going to be offered this
12 morning.

13 THE COURT: What is it?

14 MR. NOOTER: An exhibit called 830. It is a
15 documentary exhibit. It is a manual that was apparently
16 seized in the Rogers Avenue search. I am moving for the
17 redaction of about three or four pages of that exhibit which
18 relate to a discussion by somebody with handmade drawings of
19 RPG's. RPG's were mentioned by Mr. Haggag in his testimony,
20 but there is nothing related to the offer in the Rogers
21 Avenue situation or the defendant Clement Hampton-El that
22 relates to RPG's.

23 What these pages amount to is a sort of unsworn
24 expert testimony about this kind of weapon which I can't
25 cross-examine, which I have no idea of the source of it or

1 the reliability of it.

2 If the jury has an opportunity to review that,
3 even though presumably these things are being offered
4 against the defendant Hampton-El only, they may draw
5 conclusions about things which they shouldn't. So I am
6 asking that the three or four pages that relate to that be
7 redacted.

8 THE COURT: Mr. Khuzami?

9 MR. KHUZAMI: Your Honor, as to Mr. Patel's
10 point, I would just state that the intent to use force is an
11 element of Count One in this indictment. Mr. Stavis opened,
12 again, on the notion that jihad had a peaceful element; it
13 consisted of T-shirts and CD's.

14 THE COURT: His argument is one that perhaps
15 really should be made more properly by Mr. Wasserman, which
16 is that there is no connection between this material and any
17 activity here.

18 MR. KHUZAMI: As the testimony indicated,
19 Mr. Salem met with Mr. Hampton-El and Mr. Siddig Ali at the
20 location where these items were seized. I think that the CM
21 recording of that conversation, which will come into
22 evidence in the next week or so, will indicate that
23 Mr. Hampton-El's jihad was here in America and that they
24 went to him for certain supplies.

25 This evidence also corroborates the testimony of

1 Mr. Wilson, and I think it is perfectly proper.

2 MR. PATEL: As I recall, your Honor, no one
3 contested that point with Mr. Wilson. Your Honor, to say
4 that this corroborates Mr. Salem -- I don't recall whether
5 there was any testimony on him seeing these items, but it is
6 using a very big hammer for a very small nail.

7 To say that these very dramatic items, and I
8 would say unfairly prejudicial items, are to corroborate a
9 minute part of Mr. Salem's testimony, that he went to Rogers
10 Avenue, so here are all the weapons from Rogers Avenue, I
11 don't see how that --

12 THE COURT: No. I think the point is simply that
13 he goes to Rogers Avenue to have a discussion which the
14 government argues concerned a certain kind of activity.

15 For the government to show that there was
16 material available at Rogers Avenue to use in furtherance of
17 that activity it seems to me is not an unfair piece of
18 proof.

19 MR. PATEL: If he had gotten something from
20 Rogers Avenue, I would agree with your Honor. But he
21 didn't. And the kinds of things that he was looking for, to
22 my understanding, with one or two exceptions, is not what
23 they are seeking to introduce here. He was not going there
24 looking for crossbows. He was not going there looking for
25 blow gun darts.

1 THE COURT: Understood. But if you need a
2 certain piece of equipment in order to play the game, that's
3 not to say that you don't need other equipment, too.

4 MR. PATEL: There's been no testimony -- I mean,
5 you don't blow up bridges and tunnels with Japanese swords.

6 THE COURT: I don't know that they're putting in
7 Japanese swords.

8 MR. KHUZAMI: Your Honor, to make it clear, Mr.
9 Patel mentioned knives, BB guns, and brass knuckles. Those
10 items are not going into evidence.

11 MR. PATEL: I am sorry. I didn't hear.

12 THE COURT: He said those items -- knives, BB,
13 guns and --

14 MR. KHUZAMI: Marshal arts equipment and brass
15 knuckles.

16 THE COURT: Is not?

17 MR. KHUZAMI: Is not going in.

18 THE COURT: Is not going in.

19 MR. PATEL: Blow guns?

20 MR. KHUZAMI: Blow guns, yes.

21 MR. PATEL: Crossbows, shotgun shells, M60 fuse
22 lighter, cannon fuse.

23 MR. WASSERMAN: Your Honor, if I may, I have a
24 106 objection. For the government to selectively take those
25 items out --

1 THE COURT: You want the marshal arts equipment?

2 MR. WASSERMAN: I want everything that was
3 seized. I am not going to have them pick and choose.

4 MR. PATEL: Then it's time for a motion for a
5 severance.

6 MR. WASSERMAN: I don't want it out of context.
7 If your Honor wants to keep everything out and this is not
8 germane, that's fine. But to selectively choose it simply
9 is unfair to my client.

10 MS. AMSTERDAM: Your Honor, as a possible
11 compromise, I would submit to the court that perhaps they
12 could just bring out the testimony as to what items were
13 seized at Rogers Avenue without actually having it displayed
14 to the jury.

15 THE COURT: No. If you are going to prove that
16 some equipment was available, then I think it's reasonable
17 to show people what it is and have them understand what it
18 can be used for by seeing it. I don't think that is
19 unfairly prejudicial.

20 MR. WASSERMAN: Your Honor, if I may --

21 MS. AMSTERDAM: I just think that in a situation
22 where the probative value is not that great, adding that
23 extra component is inflammatory, that is, displaying these
24 items to the jury.

25 THE COURT: I don't see that it's inflammatory.

1 We live after all in New York City.

2 MS. AMSTERDAM: In New York City very few of my
3 clients are ever arrested with crossbows, dart guns and
4 things like that.

5 THE COURT: No, but New York City is a place
6 where people proverbially have what's arguably worse than
7 that.

8 Yes?

9 MR. NOOTER: I don't think the government has
10 addressed my specific issue of these several pages, which is
11 a different issue. It's simply material that seems to have
12 very low relevance, but I am prejudiced because it contains
13 this basically unsworn expert testimony about the subject
14 with a different witness on a completely different issue.

15 MR. KHUZAMI: I don't quite understand the
16 objection. I mean the government is permitted to
17 corroborate its witnesses. Although I must say in this case
18 I would be hard pressed to think that the jury would draw a
19 connection between two pages in a Redweld full of documents
20 that refer to rocket-propelled grenades in the testimony of
21 Mr. Haggag, when there was no testimony as to the connection
22 between the two of them.

23 THE COURT: I don't see that.

24 MR. NOOTER: Let me then explain. If you open
25 this book and you see the big bold letters "RPG," the

1 jurors, having heard that term from Mr. Haggag, are likely
2 to look at it to see what it is.

3 If the government wants to offer an expert on
4 what it is because they think that's somehow relevant and I
5 can cross-examine the expert, that's one thing.

6 What we have here is a hand-prepared manual by
7 somebody that is not even a Marine Corps. manual, the way
8 some of these things are, or something like that.

9 It's some survivalist or something that's made
10 diagrams of RPG's and discussed what they think they are for
11 and how they work, and it's inappropriate for the jury to
12 start drawing conclusions about that in an effort to
13 corroborate Haggag's testimony when I don't have any way of
14 knowing the source or dealing with it on cross-examination.
15 It is not a proper way to present that evidence.

16 THE COURT: I have your point.

17 MR. KHUZAMI: I think, your Honor, there is
18 relevance because there are suggestions here that the jihad
19 Army was a fabrication and this goes to whether or not that
20 is true or not.

21 Second of all, the government would consider not
22 offering it for its truth if that would satisfy Mr. Nooter's
23 concerns. Third of all, it is not something that somebody
24 simply put together. I mean, it is a mercenary association
25 field manual. I would be happy to hand it up to the court.

1 THE COURT: May I see it?

2 MR. NOOTER: The pages are just slightly before
3 the middle. There are no consecutive page numbers but --
4 it's about three or four pages of two different kinds of
5 RPG's.

6 I would specifically point out there is some
7 reference to the PLO in there. It is just not appropriate
8 for the jury to start drawing conclusions about whether the
9 PLO -- if you remember Haggag's testimony, he referred to
10 the PLO in connection with the RPG's. This is not a proper
11 way to corroborate that testimony.

12 THE COURT: In what improper respect is it
13 corroborative of his testimony? The only incriminating part
14 of his testimony is that it was your client who was involved
15 in that kind of activity.

16 MR. NOOTER: He testified my client made a
17 proposal to ship RPG's with the help of the PLO in the
18 Middle East.

19 THE COURT: Right.

20 MR. NOOTER: This seems to corroborate the idea
21 that the PLO has access to RPG's, and explains what RPG's
22 are, but it was not really explained in Haggag's testimony.

23 As I say, if the government is going to offer
24 some sort of proper form of proof about it, that's one
25 thing. What they have here is some unknown person's

1 opinions about it which I can't cross-examine or test.

2 THE COURT: You can certainly put on an expert to
3 testify that something that's in here is not true, couldn't
4 you?

5 MR. NOOTER: Why should I have to fight against
6 something that is being offered for a totally different
7 purpose but that in fact doesn't really relate to anything
8 directly?

9 THE COURT: Because that's life.

10 Yes?

11 MR. WASSERMAN: I have a similar 106 motion in
12 connection with the documentary evidence. If the government
13 is going to pick and choose from among the documents, I
14 would like to have the ability to present to the appropriate
15 witness who is testifying the other documents from which the
16 excerpts have been selected.

17 MR. KHUZAMI: Your Honor, this material has been
18 shown repeatedly, including to Mr. Wasserman last night, as
19 to the specific items the government was putting in.

20 I am hearing now for the first time that he wants
21 additional items shown. I don't know that I have a problem
22 with some of that, but just logistically it's difficult at
23 this point.

24 MR. WASSERMAN: I'm sorry, your Honor. I did not
25 mean to not alert the government. I just wasn't focused on

1 that. My assumption was based upon the prior proceeding,
2 which was the suppression hearing where everything was in a
3 sense dealt with. What I looked at last night was not in
4 terms of establishing what else was not going to be brought
5 in. I want everything available --

6 THE COURT: If you want to put it in, you can put
7 it in on your case.

8 MR. WASSERMAN: Your Honor, if I may, my case
9 doesn't come up for several months.

10 THE COURT: Several months?

11 MR. WASSERMAN: The government is not going to be
12 finished for a month. Am I correct, your Honor? I am
13 just --

14 THE COURT: The heads at the front table are
15 shaking back and forth, indicating a negative response.

16 MR. WASSERMAN: Your Honor, if I may, there is a
17 prejudice to the government extracting a small quantity of
18 stuff from the context. The context is very important here.
19 If there are 50 videos, and they pull out one that they want
20 to show and the other 49 are entirely different matters.
21 Where they take one document and the other manuals are
22 entirely different matters, I'm prejudiced.

23 MR. McCARTHY: Judge, there is about three or
24 four boxes. We will bring them down at the break.

25 THE COURT: Fine.

1 MR. McCARTHY: We probably won't get to it until
2 then.

3 MR. NOOTER: Excuse me, your Honor.

4 THE COURT: Yes.

5 MR. NOOTER: If your Honor is ruling that those
6 pages aren't being redacted, I would like the instruction
7 that they are not being offered for the truth and the
8 limiting instruction with respect to which defendant it is
9 being offered against.

10 THE COURT: I am not going to give a limiting
11 instruction as far as who it is offered against. I will say
12 that it is not being offered for the truth. But if this is
13 available to a group of which it is claimed your client is a
14 member, I don't see why you get a limiting instruction.

15 MR. McCARTHY: We agree.

16 THE COURT: I also, frankly, don't see the
17 prejudice once somebody knows that an RPG is a
18 rocket-propelled grenade. That is not news.

19 MR. LAVINE: Judge, I am sorry.

20 THE COURT: Yes.

21 MR. LAVINE: Are the rest of the materials found
22 in Rogers Avenue not coming into evidence?

23 THE COURT: "Not" did you say, or "now"?

24 MR. LAVINE: Are they coming in?

25 THE COURT: As I understand it, Mr. Wasserman

1 wants to offer a substantial part of it under 106 in aid of
2 his argument that this is a marshal arts, I guess, kind of
3 enterprise and not something else.

4 MR. WASSERMAN: And would relate to the training
5 in Pennsylvania and not something else.

6 THE COURT: Right.

7 MR. WASSERMAN: Your Honor, also, if I may, it
8 may be that I can accomplish most of what I want to
9 accomplish through testimony, simply reading off to the
10 witness what the other items were that the witness seized.

11 THE COURT: How you do it is up to you.

12 Yes, Ms. Stewart?

13 MS. STEWART: To make your day complete, Judge,
14 there are again two more sermon/speeches to be offered
15 against the sheik, and everyone else I guess, this morning.
16 We would like to be heard before they are offered. My book
17 is in the other room. I didn't know about it until this
18 morning.

19 THE COURT: I'm sorry. When did you plan to get
20 to that?

21 MR. McCARTHY: This morning. I mean 479 has
22 already been ruled on. I wanted to put in two pages. The
23 court told me if I wanted two pages I had to read the whole
24 thing, so I have to read the whole thing.

25 THE COURT: OK.

1 MR. McCARTHY: 461, redactions were made about
2 the shakes meanderings on the American family. That having
3 been taken out, the part --

4 THE COURT: I said that had to be stricken.

5 MR. McCARTHY: You did, and we redacted it. But
6 it sort of takes out the rest of that section of the speech,
7 which is about the relationship between men and women, which
8 we really don't have an interest in going into.

9 Pages 11 to 13 deal with issuing fatwas about
10 people like Kahane and Sadat, which we do have an interest
11 in, and that's the portion we intend to read.

12 MS. STEWART: I am not prepared to deal with it
13 at this moment because I haven't looked at it again for like
14 a month now. So until I read it over, I can't offer
15 argument. That is why I said before it's done, if we can
16 just be heard.

17 THE COURT: You will get a chance.

18 MS. STEWART: Thank you.

19 MR. WASSERMAN: If I may, Judge, there is one
20 item of evidence that the government wants to introduce
21 which is an article on blowing up bridges. My motion in
22 connection with that is it has nothing to do with my
23 client's alleged involvement in this conspiracy. The
24 testimony has been that it was proposed by Emad Salem and
25 Siddig Ali concerning the UN, nothing about any bridges

1 tunnels or anything like that. I don't think that article
2 has any relevance to the charges against him or to any
3 evidence that's being produced today.

4 MR. KHUZAMI: Your Honor, Mr. Rashid was
5 approached for the purpose of providing detonators and
6 explosives. In addition, I believe there's been a
7 suggestion during the course of the trial that this
8 discussion on Rogers Avenue on May 30 was referred to as
9 basically a bull session, and I think this shows that
10 perhaps that's not an accurate characterization.

11 THE COURT: The objection is overruled.

12 MR. MCCARTHY: Your Honor, do you want to give
13 the instruction about 808, which is the two-page --

14 THE COURT: Before you read it?

15 MR. MCCARTHY: Yes.

16 THE COURT: Yes. Is that what you are going to
17 read at the beginning?

18 MR. MCCARTHY: I was going to start with it. If
19 you want me to wait, I will wait.

20 THE COURT: No. If you intend to start with
21 that, then what I will tell them is the exhibit they are
22 about to hear may be considered only with respect to
23 Dr. Abdel Rahman's intent or state of mind.

24 Yes?

25 MR. WASSERMAN: I'm sorry, Judge. The last

1 thing. I'm sorry if we are being scattered.

2 There were a couple exhibits that were put in
3 during the cross-examination of Mr. Garrett Wilson. I would
4 ask that they be published to the jury this morning.

5 THE COURT: OK. Which are they?

6 MR. WASSERMAN: One was a brochure of his; one
7 was a list of merchandise that he had sold.

8 THE COURT: Do you have them?

9 MR. WASSERMAN: I believe --

10 THE COURT: The government has them. They are
11 part of the 3500 material, right?

12 MR. WASSERMAN: I have the list of items that he
13 sold. I believe Ms. Schwartz has Hampton F, which is the
14 brochure.

15 THE COURT: OK.

16 MR. WASSERMAN: I have copies of the other.

17 THE COURT: Why don't we start by passing those
18 around. After we pass those around, I will give the
19 instruction. You will then do that exhibit, and we will
20 then proceed.

21 MR. McCARTHY: OK.

22 THE COURT: OK.

23 MR. WASSERMAN: Excuse me, your Honor, may I
24 leave right here the copies?

25 THE COURT: Yes.

1 MR. WASSERMAN: Thank you.

2 (Jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning.

5 THE COURT: Again, my apologies for the late
6 start, but this was another case of spending a little time
7 to save a lot, hopefully.

8 There were a number of exhibits that were
9 received during the cross-examination of a witness who
10 testified yesterday, Mr. Garrett Wilson. We are going to
11 pass those to you now for you to look at.

12 Those, for the record, are 35120D, 35120XX and
13 Hampton-El F.

14 (Governments Exhibits 35120D, 35120XX and
15 Hampton-El Exhibit F were published to the jury)

16 MR. McCARTHY: Your Honor, may I have a moment
17 with Mr. Wasserman?

18 THE COURT: Yes.

19 (Continued on next page)

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1 THE COURT: I will see Mr. Wasserman and the
2 government at the side.

3 (At the side bar)

4 THE COURT: At this rate, this is going to cost
5 us another half hour. The brochure exhibit is up to juror
6 number 4.

7 MR. WASSERMAN: Judge, I will defer to you. I
8 understand your scheduling.

9 THE COURT: Do we have a copy that we can
10 distribute?

11 MR. KHUZAMI: Might I suggest this, your Honor.
12 The government would request to publish some of the
13 materials that come in today. We can do it the most
14 expedient way possible, save it until the end and include it
15 with what we are publishing to the jury as well.

16 MR. WASSERMAN: OK. I think we may have worked
17 out a way of shortening some of the cumbersomeness of
18 putting in some of the seizures.

19 MR. KHUZAMI: I think some of the marshals have a
20 concern about some of the items coming into the courtroom as
21 well.

22 THE COURT: It is a trial with evidence. I am
23 not going to start turning handsprings because somebody is
24 worried. Can we stop at least the manual and say that we
25 will copy and distribute it at a later time?

1 MR. WASSERMAN: Yes, your Honor.

2 (In open court)

3 THE COURT: Ladies and gentlemen, with regard to
4 the documents that are going around, rather slowly, what we
5 have decided to do is to have one or two of them copied so
6 that each of you will have an individual copy and there is
7 no need to pass them around. We will do that later in the
8 day, and you will get an opportunity, those of you who have
9 not seen these documents, to see them at that time. So
10 understand that we will be passing around individual copies.

11 Are we up to the document?

12 MR. McCARTHY: Yes, your Honor.

13 THE COURT: Which exhibit was that?

14 MR. McCARTHY: 808T.

15 THE COURT: There is about to be read to you a
16 document, 808T, that I believe was testified to in part by
17 Mr. Haggag. This document is being received, and you may
18 consider it, only insofar as it may relate to the intent or
19 state of mind of Dr. Abdel Rahman. You may not consider it
20 with respect to any other defendant.

21 MR. McCARTHY: Thank you, your Honor. 808T, I
22 believe, is in the binder marked 700.

23 May I proceed, your Honor?

24 THE COURT: Yes.

25 (Mr. McCarthy read to the jury from Government's

1 Exhibit 808T in evidence)

2 MR. KHUZAMI: Your Honor, the government calls
3 Edward Craig as its next witness.

4 EDDIE CRAIG,

5 called as a witness by the government,
6 having been duly sworn, testified as follows:

7 MR. KHUZAMI: May I proceed?

8 THE COURT: Please.

9 DIRECT EXAMINATION

10 BY MR. KHUZAMI:

11 Q Mr. Craig, how are you employed?

12 A I am a special agent for the Federal Bureau of
13 Investigation.

14 Q How long have you been a special agent?

15 A Twelve years.

16 Q What is your current assignment?

17 A I am a special agent with the Newark, New Jersey,
18 division on a Special Operations Group.

19 Q What is a Special Operations Group?

20 A I am a one-person, one out of five-man team that
21 we specialize in surveillance.

22 Q I am sorry, in what?

23 A Surveillance.

24 Q If you could try and keep your voice up a little
25 so that everyone can hear you.

1 A OK.

2 Q Thank you. Directing your attention to January
3 23 of 1993, do you recall what your assignment was on that
4 day?

5 A Yes, I do.

6 Q What was that?

7 A I was a member of a surveillance team working in
8 the state of Pennsylvania.

9 Q Do you recall where in Pennsylvania?

10 A The nearest town was New Bloomfield,
11 Pennsylvania.

12 Q What type of surveillance was being conducted on
13 that day?

14 A Our job that day was to watch a particular group
15 of unknown males that were in and around a home out in the
16 country there.

17 Q What was your particular role that day?

18 A Was to watch them completely, monitor their
19 activities and record such.

20 Q I am sorry, and what?

21 A And record their activities.

22 Q Did you take any photographs on that day?

23 A Yes, I did.

24 MR. KHUZAMI: Your Honor, may I approach?

25 THE COURT: Yes.

1 Q Let me show you what has been marked Government's
2 Exhibit 812A for identification and ask you to take a look
3 at it. Do you recognize that photo?

4 A Yes, I do.

5 Q Did you take it?

6 A Yes.

7 Q How do you recognize that as a photo that you
8 took?

9 A I remember it, the day that I took it, and also I
10 remember doing the photographs when they came back from the
11 laboratory.

12 Q Does that photo fairly and accurately depict one
13 of the scenes that you saw that day when you were on
14 surveillance?

15 A Yes, it does.

16 MR. KHUZAMI: Your Honor, I would move
17 Government's Exhibit 812A into evidence.

18 MR. BERNSTEIN: No objection.

19 THE COURT: 812A is received without objection.
20 (Government's Exhibit 812A received in evidence)

21 Q Is there anything in that photograph that is
22 different from the one that you recall taking on that day?

23 A There are some markings on it. There have been
24 some initials.

25 MR. KHUZAMI: No further questions, your Honor.

1 THE COURT: Cross? Mr. Bernstein, representing
2 Mr. Amir Abdelgani. Go ahead.

3 CROSS-EXAMINATION

4 BY MR. BERNSTEIN:

5 Q Good morning, Agent Craig.

6 A Good morning.

7 Q Agent Craig, going back to that morning of
8 January 23, would it be fair to say that that was a Saturday
9 morning, if you recall?

10 A I don't recall the day of week.

11 Q Sir, I am showing you what is marked 35122-B for
12 identification. May I approach, your Honor?

13 THE COURT: Yes.

14 Q Would you look at the bottom right-hand corner of
15 35122-B and tell me if it refreshes your recollection as to
16 whether it was a Saturday morning?

17 A Yes, it does.

18 Q Would it be fair to say that it was a cold, clear
19 Saturday morning in January 1993?

20 A Yes, it was.

21 Q Would it also be fair to say that this was a
22 rural area that you were doing surveillance in, a farm-type
23 area?

24 A It was a state park where the photographs were
25 taken.

1 Q You actually at some point were staking out or
2 surveilling a house and adjoining buildings in the initial
3 stage of the surveillance, correct?

4 A Yes, I was.

5 Q Would it be fair to say that that house wasn't on
6 the state park property?

7 A That is correct.

8 Q Would it be fair to say that the area, the
9 general area in which you were observing that day was a
10 rural area?

11 A I would say that.

12 Q Would it be fair to say that the population of
13 the area that you were in was basically a Caucasian or white
14 population, generally?

15 A Really, I didn't see that many people around that
16 day.

17 Q Have you done surveillance in that area or been
18 in that area on other occasions?

19 A No, I haven't.

20 Q This is in Pennsylvania. What town is near it,
21 sir?

22 A New Bloomfield.

23 Q You set up surveillance sometime around 7:00 that
24 morning?

25 A Yes.

1 Q Would it be fair to say that when you set up
2 surveillance, you set up surveillance near this house and
3 adjoining building complex, correct?

4 A Correct.

5 MR. BERNSTEIN: Your Honor, I would like to show
6 the witness an exhibit. I am not sure whether I am at D or
7 E, Amir Abdelgani. My apology.

8 THE COURT: You are at F.

9 Q I am showing you what has been marked Amir
10 Abdelgani F4 and ask if you recognize the scene depicted in
11 F4?

12 A Yes, I do.

13 Q Can you tell the ladies and gentlemen what it
14 appears to be?

15 THE COURT: Mr. Bernstein, your questions can't
16 be heard by the translators. You can either share the
17 witness' microphone or go back to the lectern.

18 MR. BERNSTEIN: I will be happy to, Judge.

19 Q What does F4 depict, if you recall?

20 THE COURT: But if you share the microphone you
21 will have to let him use it when he answers.

22 A This is a photograph from the air of the home we
23 had under surveillance.

24 Q Is it a fair and accurate representation of what
25 you observed that morning?

1 A Yes.

2 MR. BERNSTEIN: I offer Abdelgani F4, your Honor.

3 MR. KHUZAMI: No objection.

4 THE COURT: F4 is received without objection. Go
5 ahead.

6 (Defendant Amir Abdelgani Exhibit F4 received in
7 evidence)

8 Q I am showing you Amir Abdelgani F5 and ask if you
9 recognize the scene portrayed therein. I will show you F6
10 at the same time and ask whether or not you recognize the
11 scenes depicted therein from your surveillance of January
12 23, 1993?

13 A It appears to be the same place. It looks a lot
14 different from the air but I remember a lake or pond next to
15 the house.

16 Q So it is a fair and accurate representation of
17 the area that you saw that day?

18 A To the best of my knowledge, yes.

19 MR. BERNSTEIN: I offer F5 and 6.

20 MR. KHUZAMI: No objection.

21 THE COURT: F5 and 6 are received without
22 objection. Go ahead.

23 (Defendant Amir Abdelgani Exhibits F5 and F6 were
24 received in evidence)

25 Q Agent Craig, when you set up that morning and you

1 were observing this house and adjoining buildings, would it
2 be fair to say there were a number of cars and vehicles and
3 vans parked in and around that complex of buildings?

4 A Yes, there was.

5 Q Would it be fair to say that sometime in or
6 around 8 or 8:30 that morning, you observed a black woman
7 leave the premises and drop off two young or two black
8 children at a local school?

9 A I remember that happening.

10 Q You do remember that happening, correct?

11 A I remember it happening, yes.

12 Q You didn't take photographs of that, did you?

13 A No, I didn't.

14 Q As the morning progressed, you ultimately took
15 photos in the period between, I think, 10:30 and 11:40
16 during the day.

17 A Yes.

18 Q Would it be fair to say that 812A which you have
19 identified is one of the photos you took in that 10:30-11:30
20 period?

21 A Yes, it is.

22 Q Sir, on that day what kind of lens were you using
23 to take that and the other photos you took that day?

24 A Without looking at my log, probably a 300
25 millimeter telephoto lens with a times 2 extender, at least.

1 Q So something fairly large that would bring things
2 into focus from a distance?

3 A Yes.

4 Q Sir, I am showing you what have been marked
5 Elhassan C1, 2, 3 and 4 in evidence, and ask whether or not
6 these are photographs you took on that same day?

7 A They appear to be copies of my photographs.

8 Q That is within that series of photographs that
9 you took in that one-hour range, correct?

10 A Correct.

11 Q Would it be fair to say that you only took
12 approximately 13 or 14 photos that whole day?

13 A That day, is correct.

14 Q Would it be fair to say that you had with you
15 more film than that which you shot and used?

16 A I had more film in my car. I had plenty of film.

17 Q So you could have taken more photos if there was
18 anything that you wanted to take photos of that you
19 observed?

20 A Yes, I could.

21 Q On that day, did you follow this woman to the
22 school and then follow her back to the premises that she
23 started out from that morning?

24 A If I recall correctly, I did not myself.

25 Q As the day progressed, you saw some people leave

1 the premises and go to Little Buffalo State Park, correct?

2 A Correct.

3 Q It was while they were in that state park that
4 you took the photographs of them, correct?

5 A Yes, it was.

6 Q The state park was an exercise area that you
7 watched them in, correct?

8 A It appeared to be an exercise area.

9 Q And when you say an exercise area, the exercise
10 equipment was equipment on that public land that you saw
11 them utilizing, correct?

12 A At the time of the photographs, yes.

13 Q They didn't bring that equipment with them; you
14 didn't see them do that, did you?

15 A They brought some equipment with them down the
16 highway as they were coming to this location.

17 Q As they left the area where the compound of
18 houses were, would it be fair to say that you observed them
19 leave in a van, Chrysler mini-van type?

20 A It was a van. I don't remember the model.

21 Q Did you see the men get into the van?

22 A No, I didn't.

23 Q But ultimately you saw a bunch of men who had
24 been in that van doing exercises in the public park?

25 A Yes.

1 Q Would it be fair to say that you characterized
2 them all as black males?

3 A They were unknown males to me, but as I took the
4 photographs, I knew that at least one of them possibly could
5 have been white. I didn't know for sure. He had red hair
6 and a red beard.

7 Q When they left the compound, they went out on
8 public state road?

9 A Yes.

10 Q And you observed that, correct?

11 A Yes, I did.

12 Q As they were out on state road, was one man out
13 of the van followed by the van on that public road?

14 A Yes, it was.

15 Q Was that man holding what appeared to be some
16 kind of wooden 5-foot long pole or stick, possibly tree log?

17 A Yes, they did.

18 Q Do you know what it was?

19 A I just called it a telephone pole, 5 or 6 foot
20 long.

21 Q Big heavy thing being held up with one of these
22 gentlemen running down the road, correct?

23 A That is correct.

24 Q And then what you observed was the van following
25 at a slow pace behind that person, correct?

1 A Correct.

2 Q That was on this public road in this rural farm
3 area?

4 A Yes.

5 Q At some point you would see that person go back
6 into the van and another person take up this big telephone
7 pole and do the same thing, continue to exercise with this
8 pole in front of the van, going down this public road,
9 correct?

10 A That is correct.

11 Q And this is about 10:30, 11:00 in the morning?

12 A I think I started my photographs at 10:30, so it
13 was previous to them arriving at the state -- that's how
14 they got to the state park.

15 Q In that sequence of getting in and out of the van
16 carrying this pole, correct?

17 A Correct.

18 Q You took photographs of them doing exercises and
19 some of that is depicted in the photograph that is in front
20 of you now, 812, and Elhassan C1, 2, 3 and 4, correct?

21 A That is correct.

22 Q Sir, I am showing you what has been marked
23 Abdelgani F1, 2 and 3 -- may I approach, your Honor?

24 THE COURT: Yes.

25 Q I ask you to look at Abdelgani F1, 2 and 3 and

1 ask if those photographs are fair and accurate depictions of
2 what you have just described, of the gentleman carrying the
3 telephone pole going down the road.

4 A Yes, they are.

5 Q That is what you saw that morning, correct?

6 A Yes.

7 Q You didn't take those photographs, did you?

8 A No, I didn't.

9 Q But it is a fair and accurate depiction of what
10 you saw that morning, correct?

11 A Yes.

12 MR. BERNSTEIN: Your Honor, I would offer
13 Abdelgani F1, 2 and 3.

14 MR. KHUZAMI: No objection.

15 THE COURT: Abdelgani F1, 2 and 3 are received
16 without objection.

17 (Defendant Amir Abdelgani Exhibits F1, F2, and F3
18 received in evidence)

19 Q Sir, later on as you continued your surveillance
20 that morning and into the early afternoon, you observed
21 tents set up on the hill, correct?

22 A I did not see them.

23 Q By the way, during the surveillance that you were
24 conducting when you took the black and white photos, which
25 are Elhassan 1, 2, 3 and 4 and Government's Exhibit 812 in

1 evidence, did you see one of them act as an instructor or
2 leader?

3 A Yes, I did.

4 Q Was that as depicted in 812 the gentleman with
5 the black, dark watch cap in the far left background?

6 A Yes, it is.

7 Q Sir, later that day did you note that this group
8 of men also did canoeing at a local pond or lake?

9 A At least some of them, I think three.

10 Q Would that pond or lake be depicted in what I
11 think is Abdelgani F5 and 6 in evidence?

12 A I think you have those.

13 Q I am sorry. May I approach, Judge?

14 THE COURT: Yes.

15 Q I show you what are in evidence as Abdelgani F4,
16 5 and 6. Is that the lake or pond that you saw them
17 canoeing in that is depicted in those photos?

18 A Yes.

19 Q It is right next to the house complex, correct?

20 A Yes, it is.

21 Q Right next to the public road?

22 A Correct.

23 Q Sir, did you observe them go in a canoe and
24 circle that little pond -- by the way, is that a lake or
25 pond, from your sense of things?

1 A I called it a pond.

2 Q And you saw them do what in that pond?

3 A Just for a brief moment, I saw three unknown
4 males in a canoe.

5 Q Would that boat hold much more than three, from
6 your observations?

7 A I didn't have time to see how large it was.

8 Q Did you terminate your surveillance at that
9 point? You said you only saw it for a brief moment.

10 A No, I didn't. I had driven by. The time that I
11 saw them by in a canoe, I drove by in a vehicle. It was the
12 only way I could see them.

13 Q So you weren't at that point doing what is called
14 a stationary surveillance, you were moving down the road,
15 and as you were driving by you looked toward the right or
16 the left, depending which direction that pond was, and
17 noticed them in the boat?

18 A That is correct.

19 Q And these were some of the same men that are
20 depicted in 812A, one of the photographs you took?

21 A Yes, it is.

22 Q Sir, on that occasion -- you said you remember a
23 five-man team, is that correct?

24 A Yes.

25 Q When I say man, I don't know whether there were

1 men or women on that team. You were on ground level,
2 correct?

3 A Correct.

4 Q Were the other four members of your team also on
5 ground level?

6 A Yes.

7 Q Was there another team there at the same time, to
8 the best of your knowledge?

9 A No.

10 Q A helicopter team?

11 A No.

12 Q To the best of your knowledge when you arrived
13 were there only your team of five involved in the
14 surveillance?

15 A I said a team of five. Sometimes we have people
16 on vacation or something, and I have to look at the log to
17 see how many of us were there. We have four, five or six
18 men.

19 Q Was it only your team there, to the best of your
20 knowledge?

21 A Yes.

22 Q Who else took photographs besides you that day?

23 A We had an aircraft fly over and take these
24 photographs. I don't know if these were taken at that day
25 or not.

1 Q You mean the color photographs that you are
2 looking at?

3 A Something similar to this, I presume. I didn't
4 take them.

5 Q When you say you had an airplane fly over, was
6 that an FBI plane?

7 A Yes, it was.

8 Q To the best of your knowledge?

9 A Yes, it was.

10 Q So there was some other team there beyond your
11 own surveillance team?

12 MR. KHUZAMI: Objection to form.

13 THE COURT: Sustained.

14 Q Were there other agents that you called in --

15 THE COURT: Are you talking about that day?

16 MR. BERNSTEIN: Yes, Judge.

17 THE COURT: All right, go ahead.

18 Q There was some sort of fly-by by FBI agents who
19 you called in or your team called in for surveillance, is
20 that correct?

21 A That is correct.

22 Q And that is when you were there, correct?

23 A Yes.

24 MR. BERNSTEIN: I have no further questions of
25 this witness, Judge. One further question.

1 Q This took place January 23, 1993, correct?

2 A Correct.

3 Q Are you familiar with when the World Trade Center
4 explosion took place?

5 A I forgot the day. It was sometime later.

6 Q Sometime later than the surveillance was taken?

7 A Yes.

8 MR. BERNSTEIN: Thank you very much. No further
9 questions. Your Honor, I would publish these to the jury
10 but I would wait till the examinations are completed.

11 THE COURT: Ms. London?

12 MS. LONDON: Your Honor, I have a couple of
13 questions while Mr. Bernstein publishes the photographs.

14 MR. BERNSTEIN: Your Honor, I would just publish
15 the ones that I have put in evidence. I think the Elhassan
16 photographs have previously been shown to them.

17 THE COURT: If you want to publish them, you can.

18 MR. BERNSTEIN: Are we including 812A?

19 MR. KHUZAMI: That is fine.

20 CROSS-EXAMINATION

21 BY MS. LONDON:

22 Q Sir, did you conduct surveillance at this
23 location at any other time than this January 1993 time
24 period?

25 A I remember this day.

1 Q I am sorry. I don't hear you.

2 A I only remember this day. It is possible I could
3 have went up another time. I don't remember.

4 Q To your knowledge, were there other surveillance
5 excursions or trips to that area in that time period?

6 A Yes.

7 Q Were those surveillances conducted by your
8 office?

9 A Yes, at least one of them was.

10 Q Do you know how many other surveillance jobs were
11 undertaken?

12 A I don't know for sure. I know at least one other
13 surveillance team was there.

14 Q Do you know if photographs were taken on those
15 surveillance missions?

16 A I don't know.

17 Q Did you have occasion to see other photographs of
18 this location other than what was shown to you today?

19 A No, I haven't.

20 MS. LONDON: I have no further questions.

21 THE COURT: Any other cross? Mr. Lavine,
22 representing Fadil Abdelgani. Go ahead.

23 CROSS-EXAMINATION

24 BY MR. LAVINE:

25 Q Good morning, Mr. Craig.

1 A Good morning.

2 Q Mr. Craig, during the course of your observation
3 on January 23, did you see anyone training with blow guns?

4 A Not --

5 Q Do you know what a blow gun is?

6 A Yes, I do.

7 Q Do you remember seeing anyone train with a blow
8 gun?

9 A Not a blow gun.

10 Q Do you remember seeing anyone train with
11 torpedoes?

12 A No.

13 Q Do you remember seeing anyone train with
14 crossbows?

15 A No.

16 Q Did you see Fadil Abdelgani on that day -- Judge,
17 can Mr. Abdelgani stand up?

18 THE COURT: OK. Did you see that gentleman on
19 that day?

20 Q Do you remember seeing him on that day?

21 A I don't remember.

22 Q Do you know if he can swim?

23 A No, I do not.

24 Q When you saw people in the canoe, did any of them
25 have life preservers on, Mr. Craig?

1 A No. All I saw was dark clothing. That's it.

2 MR. LAVINE: Thank you, Mr. Craig.

3 THE COURT: Anyone else? Any redirect?

4 MR. KHUZAMI: None, your Honor.

5 THE COURT: You can step down.

6 (Witness excused)

7 MR. KHUZAMI: The government calls Don Haldimann,
8 H-A-L-D-I-M-A-N-N.

9 DONALD PATRICK HALDIMANN,
10 called as a witness by the government,
11 having been duly sworn, testified as follows:

12 MR. KHUZAMI: May I proceed?

13 THE COURT: Could you move forward and try to
14 talk in one of those directional microphones, because
15 otherwise you can't be heard by the translators.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MR. KHUZAMI:

20 Q Mr. Haldimann, how are you employed?

21 A I am a special agent with the Federal Bureau of
22 Investigation.

23 Q How long have you been a special agent?

24 A Eleven years.

25 Q What is your current assignment?

1 A Atlanta, Georgia.

2 Q If you could try and move forward just a little
3 closer to the microphones and speak up. Thank you.

4 What was your assignment in June of 1993?

5 A I was a special agent in the New York division on
6 the Joint Terrorist Task Force.

7 Q Do you have any special expertise as a special
8 agent?

9 A Yes. I am a bomb technician as well as a
10 firearms instructor with the FBI.

11 Q Directing your attention to June 24 of 1993, were
12 you involved in the search of a certain premises on that
13 day?

14 A Yes, sir, I was.

15 Q Where was that premises?

16 A It was 251 Rogers Avenue, in Brooklyn.

17 Q Was that search conduct pursuant to a search
18 warrant?

19 A Yes, it was.

20 Q What was your role that day?

21 A I was the team leader for the team that was going
22 to search that particular premise.

23 Q What are the duties and responsibilities of a
24 team leader on a search?

25 A To supervise photography, to supervise the

1 individual agents that are engaged in various objects as
2 described in the warrant.

3 Q Were you involved in giving out assignments on
4 that day?

5 A Yes, I was.

6 Q Do you recall other members of the search team,
7 who they were?

8 A Yes.

9 Q Who were they?

10 A Merkle Dennison, special agent with the FBI in
11 New York; Joe Cordaro with the New York City Police
12 Department assigned to the Joint Terrorist Task Force;
13 Campusano, another detective with the task force, as well as
14 some other agents.

15 Q Can you describe the physical layout of the
16 premises at 251 Rogers Avenue that you searched?

17 A It was a building in the middle of the block,
18 basically in the middle of the block. After you entered the
19 door you entered into a very large room. There were several
20 small rooms in the back to this room as well as a staircase
21 that goes up to a second floor and third floor of the
22 apartment.

23 Q Do you recall what areas were searched that day?

24 A Yes. We searched the first floor and the third
25 floor, as well as the basement.

1 Q Can you describe what happened when you entered
2 the apartment that day?

3 A I guess what I need to start with there is, SWAT
4 went in and cleared the building to make sure there weren't
5 any people in the building. I went in second as the bomb
6 technician to make sure that there was nothing in there that
7 would hurt any of the members of my team. And then we did a
8 complete walk-through with the team to show them the areas
9 to be searched.

10 Q Aside from your duties as a team leader, were you
11 responsible for searching any particular area of the
12 premises?

13 A Yes. In that first room after entering from the
14 street, I noticed several things there in plain view that
15 fell within my scope as a bomb technician.

16 Q What area was that that you searched?

17 A That was a lower room, street level, larger room,
18 right inside the door.

19 MR. KHUZAMI: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q Special Agent Haldimann, I have placed before you
22 what have been marked for identification as Government's
23 Exhibits 839A through C, 840A through E, 841A through B,
24 842A through C, 843A and B, and 844A through D, and 845, and
25 ask you, have you had an opportunity to review those items

1 prior to your testimony today?

2 A Yes, I have.

3 Q When did you do that?

4 A Last evening.

5 Q Do you recognize those items as items that you
6 seized during the search of 251 Rogers Avenue?

7 A Yes, sir.

8 Q How do you recognize these items as items you
9 seized that day?

10 A All of the items that I examined last night,
11 which apparently are here today, have my initials and the
12 date, which I inscribed on there at the time that I seized
13 them.

14 Q If you might just take a brief look at them and
15 satisfactory yourself that those items are in fact items
16 with your initials and the date that you seized them.

17 (Pause)

18 A Yes, they are.

19 MR. KHUZAMI: Your Honor, at this time I would
20 move into evidence Government's Exhibits 839A through C,
21 840A through E, 841A and B, 842A through C, 843A and B, 844A
22 through D, and 845.

23 THE COURT: The objections to those have been
24 previously ruled on and are overruled. Those exhibits, the
25 839 series, the 840 series, the 841 series, 842 series, 843

1 series, the 844 series and 845 are received.

2 (Government's Exhibits 839A through C, 840A
3 through E, 841A and B, 842A through C, 843A and B, and 844A
4 through D, and 845 were received in evidence)

5 Q Special Agent Haldimann, I wonder if you might,
6 as to those items, pick up each item, give its exhibit
7 number and describe briefly what it is.

8 A Exhibit 839C --

9 Q Pardon me for interrupting you. If you might
10 hold it up so that people in the courtroom can see.

11 A This is a dart pistol, shoots an arrow.

12 Government's Exhibit 839A is a crossbow that also
13 shoots an arrow or a bolt.

14 Government's Exhibits 840D, 840B, 840A and 840C
15 are blow guns that shoot a small dart, which are attached.

16 Government Exhibit 839B are the bolts for the
17 crossbow, as well as the crossbow pistol.

18 844A is three 12-gauge shotgun shells, slugs.

19 841A is cannon fuse.

20 Q If I might stop you there, Special Agent Holland
21 man, what is cannon fuse?

22 A Cannon fuse, or hobby fuse as it is commonly
23 known, is used to initiate explosives or gunpowder.
24 Primarily it is used for Civil War reenactment, to light off
25 cannons and that type of thing.

1 Q Thank you.

2 A 845 are electric matches.

3 Q Can you describe what the function of electric
4 matches is.

5 A When you initiate an electric current through
6 these wires, it sets up a chemical reaction at the end and
7 creates a very hot flame that can be used to initiate cannon
8 fuse or time fuse.

9 844B, 22 12-gauge shotgun shells.

10 844D1 are rifle bullets, 7.62 by 39 millimeter,
11 and I have 120 of those.

12 840E are darts to be used in the blow guns.

13 844C is five rounds of 12-gauge shotgun shell
14 slugs.

15 841B is a military M60 fuse lighter.

16 Q Special Agent Haldimann, can you describe what
17 the function is of an M60 military fuse lighter?

18 A Yes. This device is utilized by the military and
19 in other applications to initiate time fuse. It has a
20 spring loaded firing pin and has a number 11 primer on the
21 inside of it, and basically you just insert the time fuse,
22 pull it, and it sends a charge down and lights the time
23 fuse. It is used in demolition, military demolition quite a
24 bit.

25 843A and 843B are two boxes of exploding targets.

1 Q Can you describe what an exploding target is,
2 please.

3 A It is a very sensitive, shock-sensitive type
4 material, either flash powder or black powder, that when a
5 bullet hits it it actually explodes and sends off a loud
6 noise.

7 842A, 842B and 842C are rifle magazines.

8 Q When you say magazines, what do you mean?

9 A These are loaded with bullets and then inserted
10 into the magazine well of a particular type of rifle.

11 Q Do you know how many bullets fit in those
12 magazines that you just identified?

13 A Between 20 and 30, but I am not sure. I would
14 have to load them up.

15 And that's all.

16 MR. KHUZAMI: Your Honor, may I approach?

17 THE COURT: Yes.

18 Q Special Agent Haldimann, I have just handed you
19 what have been marked as Government's Exhibits 816A through
20 M for identification and I ask you if you might look through
21 those.

22 THE COURT: Excuse me. Is that 816?

23 MR. KHUZAMI: 816, that is correct.

24 A Yes, sir.

25 Q Do you recognize what is depicted in those

1 pictures?

2 A Yes, I do.

3 Q What is it?

4 A This is the room that I searched in the first
5 entry room from the street at 251 Rogers.

6 Q Is that the condition of the room prior to the
7 commencement of your seizure?

8 A Yes, it is. Everything in these photographs was
9 photographed in place before we started removing items.

10 Q Do those pictures fairly and accurately depict
11 the first floor of the premises at 25 Rogers A?

12 A Yes, they do.

13 MR. KHUZAMI: Your Honor, I would move 816A
14 through M in evidence.

15 MR. BERNSTEIN: No objection,.

16 THE COURT: 816A through M are received.
17 Previously noted objections are overruled.

18 (Government's Exhibits 816A through M were
19 received in evidence)

20 Q Aside from the items that you identified, did you
21 seize other materials from the premises that day?

22 A Yes, we did.

23 Q Can you generally describe what those items are
24 were?

25 A We seized videotapes, and computers, and computer

1 hard disk drives, computer monitors, various other diaries
2 and telephone directories. We seized knives and swords and
3 other dangerous type weapons.

4 (Continued on next page)

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1 MR. WASSERMAN: Objection.

2 THE COURT: Strike the "dangerous type" and make
3 it "other weapons."

4 MR. KHUZAMI: Your Honor, included in my direct
5 examination I would request permission at the conclusion of
6 the witness to publish the items seized from the search to
7 the jury.

8 THE COURT: Ladies and gentlemen, we are going to
9 break for a few moments. Please leave your notebooks and
10 other materials behind, and. Don't discuss the case, and we
11 will resume in a few minutes.

12 (Jury excused)

13 THE COURT: You can step down.

14 (Witness excused)

15 MS. AMSTERDAM: Your Honor, at some point I need
16 to speak with with your Honor in the robing room concerning
17 a personal matter involving my client. We can either do it
18 now or later.

19 THE COURT: Let's do it now.

20 (Pages 10924 through 10925 sealed)

21 (Recess)

22 (Continued on next page)

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1 (Jury present)

2 THE COURT: Cross, Mr. Wasserman?

3 MR. WASSERMAN: Yes, your Honor.

4 THE COURT: Representing Mr. Hampton-El.

5 Go ahead.

6 CROSS-EXAMINATION

7 BY MR. WASSERMAN:

8 Q Good morning, sir.

9 A Good morning.

10 Q The search that you conducted on June 24 was a
11 surprise visit, was it not?

12 A Yes, sir.

13 Q No one knew you were coming as far as you knew?

14 A As far as I knew, no, sir.

15 Q And the people in the building that you entered
16 were asleep, were they not?

17 A I believe so.

18 Q And there were people living on the second floor
19 and the third floor, correct?

20 A To my best recollection, yes.

21 Q The warrant covered the first floor and the third
22 floor, but not the second?

23 A That's correct.

24 Q Now, the people who were living on the third
25 floor were a family, if you recall?

1 A I believe so.

2 Q There was a man, a woman and a boy of about 9, I
3 believe?

4 A I believe that's correct, yes.

5 Q And that person you would later learn was Abu
6 Ubaidah, correct?

7 A Yes, sir.

8 Q You woke them up, correct?

9 A I didn't, no, sir. I believe the SWAT team that
10 went in before the search team actually woke them up.

11 Q So by the time you about the walked through they
12 were up?

13 A Yes, sir, they were up and out of the area
14 basically.

15 Q When you went down to the first floor -- that is
16 a converted storefront, that first floor, would that be a
17 fair description?

18 A All I know is that it was a large open room. I
19 don't know what the facility was before.

20 Q And it had carpet on the floor?

21 A I believe it had mats and carpet, yes.

22 Q And it had all these marshal arts weapons on the
23 walls, correct?

24 A Yes, sir.

25 Q And all the of this stuff -- let me show you a

1 couple of the pictures that have been introduced. Do you
2 recall the toy pistol was hanging on the wall?

3 A I believe there was a BB gun pistol hanging on
4 the wall.

5 Q And a thing called nun chuks?

6 A Yes, sir.

7 Q Or nun chukis?

8 A Yes, sir.

9 Q And that is a marshal arts device?

10 A I believe so.

11 Q It's two sticks connected with a chain?

12 A Yes, sir.

13 Q And there were throwing hatchets, correct?

14 A Yes, sir.

15 Q If fact, there were several pair of nun chuks?

16 There were throwing stars?

17 A Yes, sir.

18 Q Japanese ceremonial swords?

19 A Japanese style swords, yes, sir.

20 Q All of this stuff was openly displayed, correct?

21 A Yes, sir, it was.

22 Q In fact, in an orderly, almost stylish way?

23 A Very, very orderly.

24 Q Thank you.

25 Now, the items that you've gone through for the

1 jury were found basically in one place, were they not, in a
2 duffel bag, I believe?

3 A Several bags located to the left of the door
4 against the wall.

5 Q OK. But those were not secreted in any cellar,
6 correct?

7 You did search the basement, correct?

8 A Yes, sir, we did.

9 Q And you didn't find them in the basement,
10 correct?

11 A No, we didn't.

12 Q You found them, they weren't hanging on the wall,
13 because they were in all in a bag, correct?

14 A Several bags, yes, sir.

15 Q Among the items that you found were what you
16 described as cannon fuse, correct?

17 A Yes, sir.

18 Q Also known as hobby fuse?

19 A That's correct.

20 Q And safety fuse?

21 A Yes, sir.

22 Q And you described that the reason it's called
23 hobby fuse is that among its uses are civil war
24 reenactments, to light the cannon you put a piece of fuse in
25 and you light the fuse, correct?

1 A That's one of the uses, yes.

2 Q OK. When you light that cannon, you don't use an
3 M60 fuse lighter, you use a match, right?

4 A That's correct.

5 Q OK. And cannon fuse is easy, right, and the only
6 reason you would use a -- withdrawn.

7 The fuse lighter and the electric matches have
8 particular utility in the field, do they not?

9 A In the explosive field, yes.

10 Q In the -- but what I am saying is they have
11 utility in terms of being usable in wet terrain, usable
12 under wet conditions, correct?

13 A Yes, sir. And for exploding explosives or
14 initiating explosives.

15 Q OK. And you can initiate an explosive with a
16 match, too, correct?

17 You can light a cannon fuse with a match,
18 correct?

19 A Well, if you classify a cannon fuse as an
20 explosive, yes, but you can light gunpowder with a match.
21 That's what cannon fuse is primarily composed of is black
22 powder in a waterproof wrapping.

23 Q Are you aware that the electric matches and the
24 fuse lighter were sold together with a cannon fuse to be
25 used together?

1 A I have no idea how they were purchased or for
2 what reason they were purchased.

3 Q OK. And that they were sold for use in the
4 field, they were sold for use in field training --

5 MR. KHUZAMI: Objection.

6 Q -- are you aware of that?

7 THE COURT: Sustained.

8 Q The cannon fuse that you looked at is Government
9 Exhibit 841A, have you examined the pieced in this bag?

10 A Yes, sir, I have.

11 Q And would it be fair to say that there are about
12 eight pieces?

13 A I believe so.

14 Q And the longest is about four or five feet, six
15 feet?

16 A I'll concede to that, yes.

17 Q OK. And the rate of burn for a cannon fuse is
18 approximately, I believe it's one foot for 30 seconds,
19 approximately?

20 A I have no idea.

21 Based on the cannon fuse or time fuse being very
22 hydrosopic, meaning that any contact with air or moisture
23 would also determine what that burn rate would be. So
24 depending on the conditions that this cannon fuse or any
25 cannon fuse was located, whether it would be wet or moist or

1 how old it was would determine that rate of burn, which
2 could be 30 seconds or 30 minutes, depending on what it was
3 subjected to.

4 Q I'm sorry. Your testimony is that a foot could
5 take 30 minutes to burn?

6 A It depends on how unstable or how damaged or how
7 wet that black powder is.

8 Q Sir, assume the worst wetness. It's going to
9 take 30 minutes for a foot to burn?

10 A No.

11 Q Thank you.

12 Would it be fair to say that if you are going to
13 initiate any explosive with a cannon fuse, the length of
14 time, the length of time before the booby trap or the early
15 warning device would explode or the cannon at the Civil War
16 reenactment is going to go off is going to be measured by
17 the length of the fuse?

18 MR. KHUZAMI: Objection to form.

19 THE COURT: Can you rephrase it.

20 MR. WASSERMAN: Yes, Judge.

21 Q The length of fuse will determine how long before
22 whatever you're trying to set off goes off, correct?

23 A That's correct.

24 Q OK. So if you want a lead time of 20 minutes,
25 you better use something like 50 feet of cannon fuse or 40

1 feet of cannon fuse, correct?

2 A Whatever the length, it would be substantially
3 longer than waiting for one minute, yes.

4 Q And it would be substantially longer than the
5 pieces that are contained in this packet, correct?

6 MR. KHUZAMI: Objection to form.

7 Q The longest piece in this packet is five feet,
8 approximately?

9 A Yes, that's correct, but I would have no idea
10 what was in the mind of person that was lighting the fuse.

11 Q Sir, without entering the mind, would it be fair
12 to say that at a burn rate of approximately 30 seconds per
13 foot, five feet's going to give you two and a half minutes?

14 A Yes.

15 Q Thank you.

16 Now, incidentally, cannon fuse is purchased in
17 one length, correct?

18 In other words, when you go buy it, you can buy
19 it at an Army/Navy store, correct?

20 A I believe you can, yes, or through mail.

21 Q I'm sorry for interrupting you, sir.

22 A I'm sorry. Or through the mail, yes, sir.

23 Q When you buy it, you buy it in one length,
24 correct?

25 A To tell you the truth, I've never bought it, so I

1 have no idea.

2 Q Now, one of the items that you seized were what
3 you called exploding targets?

4 A I believe that's how they're labeled on the box
5 as well.

6 Q I believe the label reads "Bullseye Targets."

7 MR. WASSERMAN: Your Honor, may I remove one from
8 the box?

9 THE COURT: Yes.

10 MR. WASSERMAN: Thank you, Judge.

11 May I approach the witness, your Honor?

12 THE COURT: Yes.

13 MR. WASSERMAN: Thank you.

14 Q Sir, if you can hold that up so the jury could
15 see it.

16 That's used by taking the adhesive off the back
17 and placing it against an object, correct?

18 A That's correct, yes, sir.

19 Q Then you shoot at that object and it pops?

20 A It explodes, yes.

21 Q And what that's designed to do is to give you
22 some indication that you've hit the target, correct?

23 A That's correct.

24 Q And that's used in the field, correct?

25 A Yes.

1 Q OK. Thank you. Let me take it back.

2 THE COURT: That's part of 843A or B, is it?

3 MR. WASSERMAN: 843B, your Honor.

4 THE COURT: 843B, go ahead.

5 Q I believe that the ammunition that you seized was
6 two kinds, shotgun shells, correct?

7 A Yes, sir.

8 Q And ammunition that would fit in an SKS rifle,
9 correct?

10 A Rifle ammunition, or an AK-47.

11 Q Or an AK-47?

12 A Whatever it was chambered for, yes.

13 Q Thank you.

14 Now, the crossbow and blow guns and shotgun
15 shells, have you come to learn that those were supplied by
16 Garrett Wilson?

17 A No, sir. I have no knowledge of that.

18 Q OK. And you also saw rappelling gear?

19 A Rappelling gear.

20 Q I'm sorry rappelling gear?

21 A Yes.

22 Q You did not seize that, correct?

23 A No, sir.

24 Q But there was rappelling gear and ropes and other
25 climbing stuff, correct?

1 A Yes.

2 Q OK. Now, the purpose for this search, in fact,
3 the warrant specifications were you were to look for
4 explosives and related material, fair enough?

5 A In general, yes.

6 Q OK. You didn't find any C-4, did you?

7 A No, I did not.

8 Q Did you find any hand grenades?

9 A No, sir.

10 Q Did you find any detonators?

11 A No, sir.

12 Q Did you find any dynamite?

13 A No, sir.

14 Q TNT?

15 A No, sir.

16 Q Nitroglycerin?

17 A No, sir.

18 Q Timers?

19 A No, sir.

20 Q Any potassium nitrate?

21 A No, sir.

22 Q Urea?

23 A No, sir.

24 Q Fertilizer?

25 A No.

1 Q Nitric acid?

2 A No, sir.

3 Q Sulfuric acid?

4 A No, sir.

5 Q Ammonium nitrate?

6 A No, sir.

7 Q Did you do swabs of different places?

8 A No, sir.

9 Q Did you do any swabs or take any traces from the
10 bag that you found the cannon fuse, the exploding targets,
11 the electric matches and the fuse lighter?

12 A No, sir.

13 Q So you are not able to say that there were any
14 traces of any chemicals in that place, correct?

15 A That's correct.

16 Q But you didn't make the test, correct?

17 A That's correct.

18 MR. WASSERMAN: OK.

19 I have no further questions. Thank you, your
20 Honor.

21 THE COURT: Any other cross of this witness?

22 Any redirect?

23 MR. KHUZAMI: None, your Honor.

24 THE COURT: All right. You are excused. Thank
25 you.

1 THE WITNESS: Thank you.

2 (Witness excused)

3 MR. KHUZAMI: The government calls Joseph
4 Cordaro, C-O-R-D-A-R-O, as its next witness.

5 JOSEPH CORDARO,

6 called as a witness by the Government,
7 having been duly sworn, testified as follows:

8 MR. KHUZAMI: May I proceed?

9 THE COURT: Please.

10 DIRECT EXAMINATION

11 BY MR. KHUZAMI:

12 Q Mr. Cordaro, how are you employed?

13 A I'm employed by the New York City Police
14 Department.

15 Q If I might ask you to pull forward as close as
16 you can and speak directly into the microphone so everyone
17 can hear you.

18 Thank you. I'm sorry.

19 You are employed by whom?

20 A The New York City Police Department.

21 Q What's your rank?

22 A My rank is detective investigator.

23 Q How long have you been with the New York City
24 Police Department?

25 A 21 years.

1 Q And what is your current assignment?

2 A My current assignment, I am assigned on the Joint
3 Terrorist Task Force.

4 Q OK. Directing your attention to June 24, 1993,
5 what was your assignment on that day?

6 A Also assigned to the Joint Terrorist Task Force.

7 Q On that date did you participate in the execution
8 of a search warrant?

9 A Yes, sir.

10 Q Do you recall where that was?

11 A Yes, sir. 251 Rogers Avenue.

12 Q What did you do in the course of that search?

13 A My assignment for that search was to photograph
14 everything that I saw in the apartment and the evidence.

15 Q Did you also seize any items?

16 A Yes, I did.

17 Q What area of the premises did you examine for the
18 purpose of seizing items?

19 A It was the first floor, back room.

20 MR. KHUZAMI: Your Honor, may I approach the
21 witness.

22 THE COURT: Yes.

23 Q Detective Cordaro, if you might pick up what's
24 been previously marked for identification as Government
25 Exhibits 823 through 829, 830 A through C, 831 A through C,

1 832 A through G, and 833 A and B, and I ask you to just take
2 a look through those and see if you recognize them.

3 A All but one have my initials on them.

4 Q I'm sorry?

5 A All but one have my initials.

6 Q OK. Do you recognize those items as items that
7 you seized on June 24, 1993?

8 A Yes, sir.

9 Q How do you recognize them?

10 A By my initials and the date.

11 Q The one item that doesn't have your initials, do
12 you recognize that as an item that you seized?

13 A It's Executive Protection Products, Inc.

14 Q Do you remember seeing that on June 24 when you
15 seized these items?

16 A I believe so. I think it was on my inventory
17 sheet.

18 MR. KHUZAMI: Your Honor, at this time I would
19 move Government's Exhibits 823 through 829, 830 A through C,
20 831 A through C, 832 A through G, and 833 A and B into
21 evidence.

22 MR. WASSERMAN: Objection.

23 THE COURT: That is overruled. 823 through 829
24 as well as the 830 through 833 series are received.

25 (Government's Exhibits 823 through 829, 830 A

1 through C, 831 A through C, 832 A through G, and 833 A and B
2 for identification were received in evidence)

3 Q Detective Cordaro, I wonder if you might just
4 pick up each of the items and indicate its exhibit number
5 and the title or other identifying information on the front
6 cover.

7 A Exhibit 829, "Combat Skills of Soldier."
8 Do you also want the number on it from the --

9 Q I am sorry?

10 A Do you also want the number that is on the top?

11 Q The exhibit numbers, please. That's all.

12 A I gave you the exhibit, 829.

13 Q That's fine.

14 A 831A is "Field Firing Techniques."

15 831B, "Sniping."

16 830A, "Mercenary Association Field Manual,"
17 headquarters training department.

18 831C, "Machine Guns and Machine Gun Gunnery."

19 830C, it's an SKS instructional manual for
20 shooting and maintenance.

21 830B, SKS, AK-47 owner's manual.

22 Exhibit 827, service manual for a 7.62 millimeter
23 Kalashnikov rifle.

24 823, manual FM5-31 on booby traps and the
25 Department of Army Field Manual.

1 824, "Death Trap Improvised Booby Trap Devices."

2 825, "Silent Death, Titled by Uncle Fester."

3 826 "21 Techniques of Silent Killing."

4 832A was an expense report with the name on top
5 of Dr. Rashid Abdullah.

6 832C was a page from a magazine highlighted with
7 a Spectre gun, just highlights on it, different highlights
8 on that page.

9 Q When you say "highlights," you mean yellow
10 highlights?

11 A Highlights, yes. Yellow highlights.

12 832D, another page from the magazine with firearm
13 training.

14 832F, again a page out of a gun magazine with
15 highlighted different guns, 12 gauge 31 two-inch chamber
16 Colt Sporter.

17 832G, another highlighted page from a gun
18 magazine.

19 832E, again, another page from a gun magazine
20 with the American Arms Inc. semiautomatic pistol
21 highlighted, also best buy with a star by it.

22 832B, again a page out of another magazine, also
23 showing blowing up bridges, a closeup and a blowup on that
24 page.

25 And the last one, 828, surveillance privacy and

1 security investigation tools. Executive Production
2 Products, Inc.

3 Q Also contained, I believe, in the Redweld are
4 Government Exhibits 833A and B.

5 A Yes, this is a hand grip from a gun and also a
6 piece of metal about five inches long with holes which
7 belongs to some kind of weapon.

8 THE COURT: Which is which?

9 THE WITNESS: I am sorry. 833B is the metal, and
10 833A is the grip.

11 Q In addition to those items, Detective Cordaro,
12 did you seize other items during the course of your search
13 that day?

14 A Yes.

15 Q Can you briefly describe what those items were.

16 A Other magazines and books, papers, newspapers
17 with different circled items, different guns circled.

18 MR. KHUZAMI: No further questions.

19 THE COURT: Cross, Mr. Wasserman?

20 MR. WASSERMAN: Yes. May I just consult with
21 counsel for a moment?

22 THE COURT: Yes.

23 MR. WASSERMAN: Your Honor, may I take the
24 exhibits there?

25 THE COURT: Yes.

1 MR. WASSERMAN: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. WASSERMAN:

4 Q Good morning, sir.

5 I believe you testified at a prior proceeding in
6 connection with this case, correct?

7 A Yes.

8 Q I just have a few questions to ask you.

9 The items that you did not describe specifically
10 that were seized, do you recall Special Forces
11 Ranger-UDT/Seal Hand-to-Hand Combat, Special Weapons,
12 Special Tactics?

13 A I prefer to see my inventory sheet first before
14 I --

15 MR. WASSERMAN: Mr. Khuzami, could you provide
16 it.

17 (Counsel conferred)

18 A Can you repeat that one again?

19 Q Sure. Special Forces Ranger, UDT/Seal.

20 MR. KHUZAMI: The bottom of page 1.

21 THE WITNESS: OK.

22 A Here it is, Special Forces Ranger, right.

23 Q A bunch of SKS, AK-47 owner's manuals?

24 A OK.

25 (Pause)

1 A Four manuals, SKS 7.62 X 39, yes.

2 THE COURT: Do you intend to question him about
3 each of those? Because, if not, maybe the government can
4 stipulate them in.

5 MR. WASSERMAN: There is just going to be very
6 few of what's not been included, Judge.

7 THE COURT: OK. A couple of things: First of
8 all, let's designate them with exhibit numbers, and,
9 secondly, if you could stipulate them in, it might help move
10 it along.

11 MR. WASSERMAN: I'm sorry, Judge?

12 THE COURT: Give them exhibit numbers.

13 MR. WASSERMAN: Your Honor, could we deem it
14 marked after by stipulation with the government?

15 THE COURT: Fine.

16 MR. WASSERMAN: Thank you.

17 MR. KHUZAMI: That's fine.

18 Q The Mercenary Association field manual, FM-1-00.

19 A Yes.

20 Q OK. 1993 "Annual 'Guns & Ammo' Buyer's Guide."

21 MR. WASSERMAN: Will the government stipulate
22 just to save --

23 MR. KHUZAMI: Stipulated.

24 Q Are you aware that the FM-1-00 manual that was
25 just mentioned was supplied by Garrett Wilson?

1 A No.

2 MR. WASSERMAN: May I approach, your Honor.

3 THE COURT: Yes.

4 Q Showing you what's been marked Government Exhibit
5 832A, do you recognize that document?

6 A Yes.

7 Q And that's a list of marshal arts and field
8 training material, correct?

9 A It's a list of materials that I picked up there
10 and took as evidence.

11 Q OK. And are you aware that that's the list of
12 items supplied by Garrett Wilson?

13 A I don't know, no.

14 Q OK. 831B, which I believe has been introduced,
15 is "Sniping," do you recall that?

16 A Yes.

17 Q And 831C, "Machine Guns and Machine Gun Gunnery"?

18 A Yes.

19 Q 831A -- again, it's been introduced -- called
20 "Firing Techniques"?

21 A Yes.

22 Q Are you aware that these manuals are published by
23 the U.S. Marine Corps?

24 A If it's on the bottom, I am aware of that. I
25 read the bottom.

1 MR. WASSERMAN: I think the government will
2 stipulate it.

3 MR. KHUZAMI: Stipulated.

4 Q And "Combat Skills of the Soldier," which has
5 been marked as 829, is published by the United States
6 government?

7 MR. KHUZAMI: Stipulated.

8 A If it's on the bottom.

9 Q Sir, you took the pictures during the search,
10 correct?

11 A Yes.

12 Q OK. I would like to show you three pictures that
13 I've marked for identification as Hampton-El G, H, and I.

14 MR. WASSERMAN: May I approach, your Honor?

15 THE COURT: Yes, you may.

16 MR. KHUZAMI: May I have one moment with counsel.

17 (Counsel conferred)

18 Q We'll stick with G and H for the moment.

19 G I believe is a picture of the kitchen on the
20 third floor.

21 A I don't recall.

22 Q You took the pictures?

23 A I took the photos, but I don't see my initials on
24 the back, so --

25 Q H. You do you recall H as a picture of the

1 living room?

2 A That I can say is the living room, yes.

3 Q OK. And is that a fair and accurate
4 representation of how that room looked when you took the
5 picture?

6 A Yes.

7 MR. WASSERMAN: Your Honor, I would move H into
8 evidence and ask the government to stipulate to G.

9 MR. KHUZAMI: Stipulated. No objection.

10 THE COURT: All right. G and H are received
11 without objection.

12 (Hampton-El Exhibits G and H for identification
13 were received in evidence)

14 Q Just incidentally, in H, on top of the TV, do you
15 recognize what's on top of the TV? It's a little white
16 round circular object, needlepoint hoop?

17 A I'm sorry?

18 Q It's a needlepoint hoop.

19 Do you recognize that?

20 A I can see it is a needlepoint hoop now.

21 MR. WASSERMAN: OK. Thank you.

22 Your Honor, may I just have one second.

23 (Pause)

24 (Continued on next page)

25

1 Q Did you meet on June 24 Abu Ubaidah during the
2 search?

3 A Did I meet him? I seen him but I didn't meet him
4 that day.

5 Q That day June 24?

6 A June 24 --

7 THE COURT: He said he saw him but he didn't meet
8 him.

9 MR. WASSERMAN: I am sorry, your Honor.

10 Q Did you see his wife and child?

11 A Would you repeat that.

12 Q Did you see his wife and child?

13 A Yes.

14 Q Abu Ubaidah is someone that you had met before,
15 correct?

16 A Yes.

17 Q Approximately on May 10, 1993, you had occasion
18 to meet Abu Ubaidah, correct?

19 A Yes.

20 Q At that time, you were seeking to enter the
21 premises that is the first floor and the third floor at 251
22 Rogers Avenue, were you not?

23 A Yes.

24 Q At that time, you identified yourself as a
25 building inspector, correct?

1 A Yes.

2 Q And you were accompanied by someone who also
3 identified himself as a building inspector, correct?

4 A Yes.

5 Q You told Mr. Ubaidah that there were some
6 violations in the building that had to be checked out,
7 correct?

8 A I didn't, my partner did.

9 Q Your partner did, OK. Your partner was a man
10 named Frank Florida?

11 A Correct.

12 Q He was wired, was he not? He wore a body wire?

13 A Yes.

14 Q He also wore a transmitter, correct?

15 A No.

16 Q A Kel transmitter?

17 A No.

18 Q He did not.

19 A Just a tape recorder, that's it.

20 Q Just a tape recorder, OK.

21 You told Mr. Ubaidah that you were there to check
22 for violations, and what did he do?

23 A He let us in.

24 MR. KHUZAMI: Objection, 401. Scope.

25 THE COURT: Do you want to come up to the side?

1 MR. WASSERMAN: Sure.

2 (At the side bar)

3 THE COURT: What is this relevant to?

4 MR. WASSERMAN: It is really just two things,
5 Judge. I am not going to relitigate the whole issue about
6 the tape but what I want to get at is that Ubaidah was very
7 cooperative, which is something he testified to before, that
8 he checked the basement, the first floor and the third
9 floor, and that there was conversation between Florida and
10 Ubaidah during the inspection. I think that that is
11 relevant.

12 MR. KHUZAMI: I don't think that the events of
13 May 10 are relevant to the question of the search or the
14 witness' credibility, so without some connection to either
15 of those two I don't think that those conversations are
16 relevant.

17 MR. WASSERMAN: I think that certainly Ubaidah,
18 who has been alleged as a coconspirator here, to the extent
19 that you have a search and prior behavior as part of his
20 testimony -- without calling him as a witness. He testified
21 he met Ubaidah before.

22 THE COURT: You already established that.

23 MR. WASSERMAN: And that Ubaidah showed him
24 around.

25 THE COURT: That you can establish in two

1 questions.

2 MR. WASSERMAN: OK.

3 THE COURT: Good.

4 (In open court)

5 (Continued on next page)

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1 BY MR. WASSERMAN:

2 Q During this visit on May 10, Mr. Ubaidah took you
3 around to the seller, correct?

4 A Yes.

5 Q And through the first floor, correct?

6 A Yes.

7 Q And up to the third floor and through that,
8 correct?

9 A Yes.

10 Q Would it be fair to say that he was very
11 cooperative with you?

12 A Yes.

13 MR. WASSERMAN: No further questions.

14 THE COURT: Anyone else? Any redirect?

15 MR. KHUZAMI: No redirect, your Honor.

16 THE COURT: Thank you. You are excused.

17 (Witness excused)

18 MR. KHUZAMI: The government calls Julio
19 Campuzano, C-A-M-P-U-Z-A-N-O, as its next witness.

20 JULIO CAMPUZANO,

21 called as a witness by the government,

22 having been duly sworn, testified as follows:

23 THE COURT: You are very soft spoken. If you
24 could try to talk up and project a little bit, otherwise
25 nobody is going to hear you. You can start with your name

1 again.

2 THE WITNESS: Julio Campuzano.

3 THE COURT: Do you want to spell both names.

4 THE WITNESS: J-U-L-I-O, C-A-M-P-U-Z-A-N-O.

5 THE COURT: Go ahead.

6 DIRECT EXAMINATION

7 BY MR. KHUZAMI:

8 Q Mr. Campuzano, how are you employed?

9 A I am employed with the New York City Police
10 Department.

11 Q Directing your attention to June 24, 1993, were
12 you involved in a search on that day?

13 A Yes, I was.

14 Q Do you recall where that search took place?

15 A 251 Rogers Avenue, Brooklyn.

16 Q Were you assigned a specific area within that
17 premises to search?

18 A Yes. I searched the third floor.

19 MR. KHUZAMI: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q Detective Campuzano, I have placed before you
22 what have been marked as Government's Exhibits 836 and 837A
23 through D, and I ask you to take a quick look at them.

24 A OK.

25 Q Do you recognize them?

1 A Yes, I do.

2 Q What do you recognize them to be?

3 A These items I seized during the search at 251
4 Rogers.

5 Q Was that on the third floor?

6 A Yes, it was.

7 MR. KHUZAMI: Your Honor, I would move
8 Government's Exhibits 837A through D and 836 into evidence.

9 MR. WASSERMAN: No objection.

10 THE COURT: And objections that were previously
11 stated are overruled. Those exhibits are received.

12 (Government's Exhibits 836 and 837A through D
13 received in evidence)

14 Q Mr. Campuzano, if you would briefly give the
15 exhibit number and describe each of the five items.

16 A 837A, it's two pieces of paper. One says
17 "Startup Budget for Training Program." 837B, it's a list
18 and says "Personal Gear Required."

19 MR. BERNSTEIN: I am sorry. Can the witness
20 speak up a little louder.

21 THE COURT: It's a list and it says "Personal
22 Gear Required."

23 A 837C and D are two pieces of paper with
24 directions.

25 Q Do you know where the directions are to?

1 A One is to New Bloomfield and another one --

2 THE COURT: Wait a second, wait a second. Which
3 one is which?

4 THE WITNESS: I am sorry, your Honor.

5 A 837C has one to New Bloomfield and says 15 miles
6 Marysville, and the other one is 837D, has directions to
7 just New Bloomfield. 836D, it's a brown pouch, leather
8 pouch.

9 THE COURT: I am sorry, I thought it was just
10 836.

11 THE WITNESS: I said 836D.

12 Q 836D is the pouch?

13 A Yes, sir.

14 MR. KHUZAMI: That might be my mistake, your
15 Honor.

16 THE COURT: 836D that you offered?

17 MR. KHUZAMI: Yes.

18 THE COURT: 836D received.

19 Q In addition, Mr. Campuzano, did you seize other
20 items that day?

21 A Yes, I did.

22 Q What did you seize, briefly?

23 A I seized a lot of business cards, paperwork,
24 documents.

25 MR. KHUZAMI: No further questions.

1 THE COURT: Cross, Mr. Wasserman?

2 CROSS-EXAMINATION

3 BY MR. WASSERMAN:

4 Q Good afternoon, sir.

5 A Good afternoon.

6 Q The paperwork and business cards and related
7 documents, do you recall to whom they belonged?

8 A I don't recall who they belonged to. They were
9 just in the apartment, and I seized it.

10 Q There were a lot of papers, though, correct?

11 A There was documents and business cards, a lot.

12 Q Among the papers that you seized was a postcard
13 addressed to Carlos Taylor?

14 A Yes.

15 Q Do you know that that is the former name of Abu
16 Ubaidah?

17 A I didn't know that at the time.

18 Q And you testified about some directions to New
19 Bloomfield, Pennsylvania.

20 A Yes, I did.

21 Q That you seized some papers containing those
22 directions, correct?

23 A Correct.

24 Q Are you aware that New Bloomfield, Pennsylvania,
25 is where Kelvin Smith lives with his family?

1 A I didn't know that at the time, sir.

2 Q Are you aware that that is the place where the
3 training in Pennsylvania was done in connection with Bosnia?

4 MR. KHUZAMI: Objection.

5 THE COURT: Sustained.

6 MR. WASSERMAN: No further questions, your Honor.

7 THE COURT: Any other cross? Any redirect?

8 MR. KHUZAMI: None, your Honor.

9 THE COURT: You are excused. Thank you.

10 (Witness excused)

11 MR. KHUZAMI: Your Honor, the government calls
12 James Owens, O-W-E-N-S, as the next witness.

13 JAMES OWENS,

14 called as a witness by the government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KHUZAMI:

18 Q Mr. Owens, if you could speak as close to the
19 microphone as you can so that you can make yourself clear so
20 that everyone can hear you. Thank you.

21 Mr. Owens, how are you employed?

22 A I am a special agent with the Federal Bureau of
23 Investigation.

24 Q If you could speak up just a little louder. Did
25 you have an opportunity on June 24, 1993, to participate in

1 search?

2 A Yes, I did.

3 Q Where was that search located?

4 A 251 Rogers Avenue in Brooklyn.

5 Q Did you have responsibility to search a
6 particular area of that premises?

7 A Yes, on the third floor I was assigned to the
8 kitchen.

9 Q Did you seize any items that day?

10 A Yes, I seized several documents.

11 MR. KHUZAMI: Your Honor, may I approach?

12 THE COURT: Yes, you may.

13 Q I have placed before you what have been marked as
14 Government's Exhibits 835A through D, and ask if you
15 recognize them?

16 A Yes, I do.

17 Q What are they?

18 A These are documents I seized in the kitchen, I
19 believe in a drawer.

20 Q How do you recognize those as the documents you
21 seized?

22 A I recognize them from the same documents, but I
23 also have my initials and dates on them.

24 MR. KHUZAMI: Your Honor, I would move
25 Government's Exhibits 835A through D.

1 MR. BERNSTEIN: If I could just see them for a
2 moment.

3 THE COURT: Do you want to show them to Mr.
4 Bernstein.

5 Objections previously stated, to the extent they
6 have been stated, are overruled. Those are received.

7 (Government's Exhibits 835A through D were
8 received in evidence)

9 Q Special Agent owns, as to Exhibit 835A, could you
10 just please pick that up and briefly describe what that is.

11 A This is a receipt in the name of Robert
12 Hampton-El for rent at 251 Rogers Avenue.

13 Q And Government's Exhibit 835B?

14 A This is a Con Ed bill, Con Edison bill in the
15 name of Robert Hampton-El also, at 251 Rogers Avenue, for
16 the third floor.

17 Q And lastly, Government's Exhibits 835C and D?

18 A These are two birth certificates, and they had
19 been altered, whited out the names.

20 Q What name is indicated on the birth certificates?

21 A Yahya Abu Muhammad, and the same one on the next
22 one but it is not as marked out. It is Yahya Abu Ubaidah
23 Abdul Ibn Mohammed.

24 Q In addition to those materials, did you seize
25 other materials on that day?

1 A Yes, I believe there were other documents.

2 Q Briefly, what were they?

3 A At the moment I can't recall. I would have to
4 see the inventory sheet.

5 Q Were they documents of one sort or another?

6 A Yes, they were documents in the drawer.

7 MR. KHUZAMI: No further questions.

8 THE COURT: Cross, Mr. Wasserman?

9 MR. WASSERMAN: May I approach to get the
10 exhibits, your Honor?

11 THE COURT: Yes, you may.

12 CROSS-EXAMINATION

13 BY MR. WASSERMAN:

14 Q Good afternoon, sir.

15 A Good afternoon.

16 Q Just a couple of very quick questions. The rent
17 receipt and the Con Ed bill, they were all in the kitchen
18 drawer, is that correct?

19 A I believe so. I believe that is where I obtained
20 all the documents.

21 Q And the rent receipt was May 25, 1993, and it is
22 a receipt evidencing that Robert Hampton-El has paid his
23 rent, correct?

24 A That's what it looks like to me, yes.

25 Q Similarly for the Con Ed bill, that is made out

1 to Robert Hampton-El at 251 Rogers Avenue, correct?

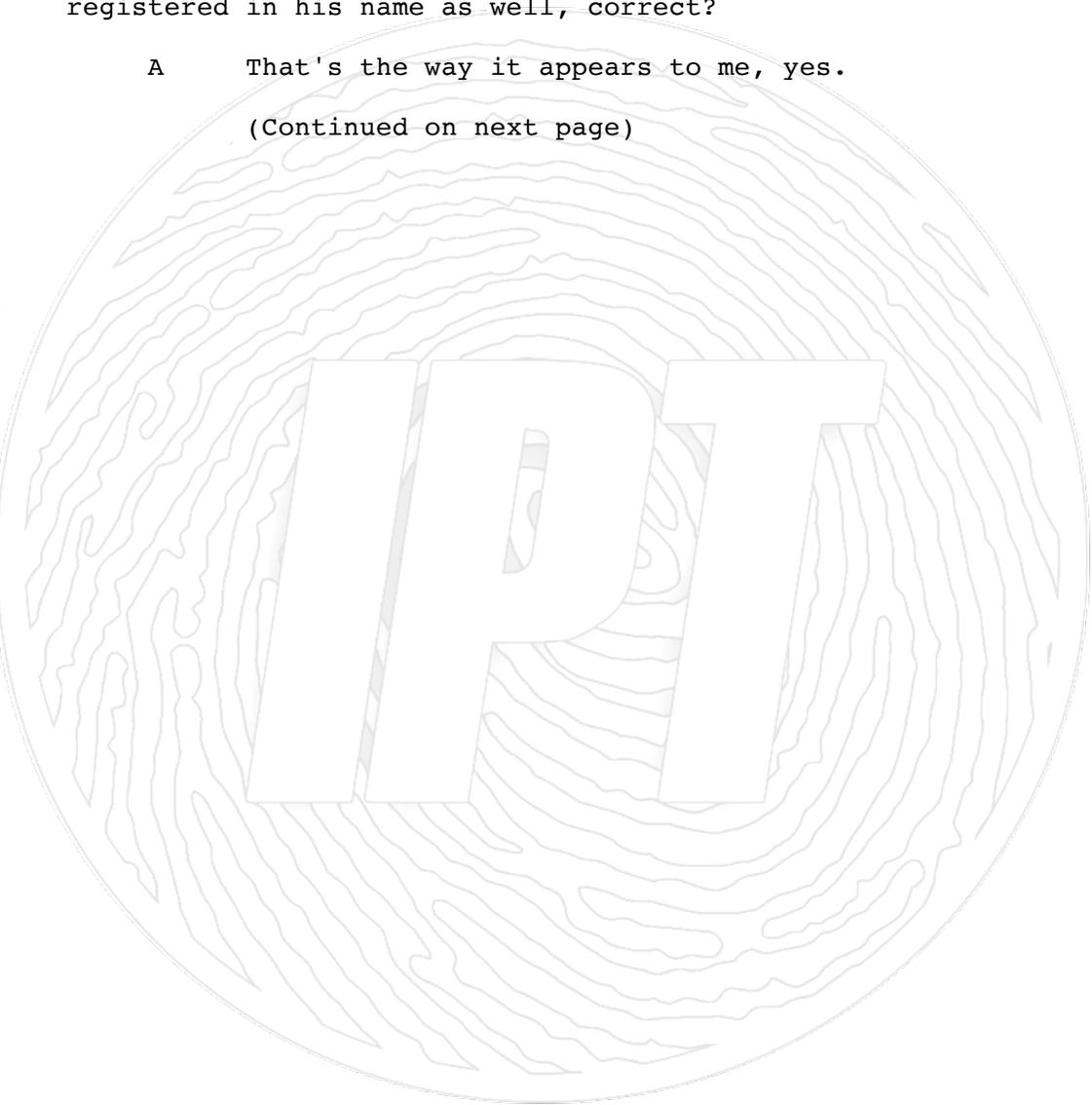
2 A That is correct.

3 Q And it is a current electric bill for 25.75 --
4 withdraw the amount. That simply means that Con Ed was
5 registered in his name as well, correct?

6 A That's the way it appears to me, yes.

7 (Continued on next page)

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1 MR. WASSERMAN: Thank you. No further questions.

2 THE COURT: Any other cross? Any redirect?

3 MR. KHUZAMI: None, your Honor.

4 THE COURT: Thank you. You are excused.

5 (Witness excused)

6 THE COURT: May I see Mr. Wasserman and Mr.

7 Khuzami briefly.

8 (At the side bar)

9 THE COURT: My question here is how much more of
10 this --

11 MR. KHUZAMI: There are three more witnesses.
12 They are all about as long as the last witness.

13 MR. WASSERMAN: The video witness might be a
14 little longer because I intend to bring out all the videos,
15 but just by reciting and Mr. Khuzami stipulating. Who are
16 the others?

17 MR. KHUZAMI: Merkle Dennison and Michael Tyms
18 who got the videos, and Joseph Hummel, who had some
19 documents.

20 MR. WASSERMAN: What are Hummel's documents and I
21 can tell you how long it will be.

22 MR. KHUZAMI: I have them here.

23 THE COURT: If we can finish it today I would
24 like to finish it today.

25 MR. WASSERMAN: I think we can.

1 THE COURT: Less than a half hour, you think?

2 MR. WASSERMAN: I think so.

3 THE COURT: Let's give it a try.

4 (In open court)

5 MR. KHUZAMI: Your Honor, the government calls

6 Joseph Hummel as its next witness.

7 JOSEPH HUMMEL,

8 called as a witness by the government,

9 having been duly sworn, testified as follows:

10 MR. KHUZAMI: May I proceed?

11 THE COURT: Please.

12 DIRECT EXAMINATION

13 BY MR. KHUZAMI:

14 Q Mr. Hummel, how are you employed?

15 A I am employed by the Federal Bureau of
16 Investigation in the New York office.

17 Q If you could speak a little closer into the
18 plaintiff so everyone can hear you. Thank you.

19 On June 24, 1993 were you involved in a search at
20 251 Rogers Avenue?

21 A Yes, I was.

22 Q Did you seize any items that day?

23 A Yes, I did.

24 Q What area of the premises did you seize items
25 from?

1 A I was assigned to the third floor, room
2 designated as room number 2.

3 MR. KHUZAMI: Your Honor, may I approach?

4 THE COURT: Go ahead.

5 Q I have placed before you what have been marked as
6 Government's Exhibits 838A through F and G1 through G13, and
7 I ask you to take a look at those, please.

8 Do you recognize those exhibits as items you
9 seized on June 24, 1993, from 251 Rogers Avenue?

10 A Yes, I do.

11 MR. KHUZAMI: Your Honor, at this time I would
12 move Government's Exhibits 838A through F and G1 through G13
13 into evidence.

14 MR. WASSERMAN: No objection, your Honor.

15 THE COURT: 838A through F and G1 through 13 are
16 received. Go ahead.

17 (Government's Exhibits 838A through F and 838G-1
18 through 13 were received in evidence)

19 Q Agent Hummel, if you would pick up each of the
20 items and describe briefly what they are.

21 A This is a green folder.

22 Q When you say "this," would you give an exhibit
23 number, please.

24 A 838E is a green folder with several pages of
25 looseleaf paper with writing on it, pertaining to compasses

1 and various military equipment.

2 838D is a single piece of white lined paper,
3 again with numerous notations pertaining to military
4 equipment.

5 838A is an envelope, again with writing on it
6 pertaining to military equipment.

7 838B is a yellow lined paper pertaining to
8 military equipment.

9 838C is two pieces of yellow lined paper
10 pertaining to military equipment.

11 838G is a green date book, address book with
12 writing in it. Also inside are numerous pages from an
13 address book with addresses and telephone numbers, also
14 business cards.

15 Q Are those items that you just described the items
16 that are marked individually as 1 through 13? Are those the
17 items, the business cards and documents inside Government's
18 Exhibit 838G marked individually as 1 through 13?

19 A Yes, they are marked.

20 MR. KHUZAMI: No further questions -- I am sorry,
21 one other item.

22 A 838F is a manila envelope. Inside it is a
23 catalog of military suppliers, approximately 28 pages long,
24 of various suppliers of military equipment.

25 MR. KHUZAMI: No further questions.

1 THE COURT: Mr. Wasserman, cross?

2 MR. WASSERMAN: Your Honor, just a moment with
3 Mr. Khuzami.

4 Your Honor, may I approach and pick up the
5 exhibits?

6 THE COURT: Yes, you may.

7 MR. WASSERMAN: Thank you.

8 Your Honor, for all this is taking, it will only
9 be a few questions. May I approach briefly?

10 THE COURT: Yes.

11 CROSS-EXAMINATION

12 BY MR. WASSERMAN:

13 Q Sir, showing you 838I -- correct?

14 A Right.

15 Q That notebook begins, if you look at the first
16 page, with writing in it, supplies to be purchased from
17 Garrett Wilson?

18 A That is correct.

19 MR. WASSERMAN: Your Honor, I am going to mark
20 this as Hampton-El J, I believe, for identification.

21 THE COURT: J.

22 MR. WASSERMAN: May I approach, Judge?

23 THE COURT: Yes.

24 Q Sir, what has been marked Hampton-El J for
25 identification, could you describe what that is? Actually

1 first let me ask you, is that one of the items that you
2 seized?

3 A Yes, it is.

4 Q Would it be fair to say that it is an airplane
5 ticket issued to Yahya Mohammed?

6 A That is correct.

7 Q And it is to travel to Vienna on January 21, I
8 believe, of 1993?

9 A That is correct.

10 Q And then there is a return back to New York,
11 correct?

12 A Correct.

13 Q You seized an item that you described as a
14 catalog of military suppliers?

15 A That is correct.

16 Q That has been introduced into evidence --
17 MR. WASSERMAN: Your Honor, if I may, I would
18 like to move into evidence the airplane ticket as Hampton-El
19 J.

20 MR. KHUZAMI: No objection.

21 THE COURT: Hampton-El J is received without
22 objection.

23 (Defendant Hampton-El Exhibit J was received in
24 evidence)

25 Q Do you recall that in that catalog under medical,

1 that there is a category called medical and survival
2 equipment?

3 A I don't recall.

4 Q If I may read off the following, and then I will
5 show it to you and ask you to confirm, that there is an
6 asterisk by the following: Acme cotton products for
7 bandages, gauze, first aid kits, asterisk --

8 MR. KHUZAMI: Objection to form.

9 MR. WASSERMAN: Your Honor, I can do it another
10 way.

11 Q Sir, I am showing you a page from that catalog.
12 Do you recognize that that is a page from that catalog?

13 A Yes.

14 Q Would it be fair to say that there is an asterisk
15 by the first item, Acme cotton products, bandages, gauze,
16 first aid kits?

17 A That is correct.

18 Q And an asterisk by James Alexander Corp. for
19 medical solutions, correct?

20 A Correct.

21 Q And a bracket and a rectangle with a phone number
22 around snake bite kits?

23 A That is correct.

24 Q And an asterisk by M. Aviation Marine for
25 aircraft, boat personal survival kits?

1 A That is correct.

2 Q And an asterisk by F & L Packing Co. for small
3 individual first aid kits?

4 A That is correct.

5 Q And an asterisk by Johnson & Johnson for first
6 aid supplies, cotton and gauze kits?

7 A That is correct.

8 Q An asterisk by Lab Supplies Co. for first aid
9 kits large and small?

10 A That is correct.

11 Q An asterisk by Morris Lawing for military
12 survival kits?

13 A That is correct.

14 Q And finally an asterisk by Lily White Sales Corp.
15 for gauze, bandages and cotton.

16 A That is correct.

17 MR. WASSERMAN: No further questions. Thank you,
18 your Honor.

19 THE COURT: Anything else?

20 MR. KHUZAMI: One brief question, your Honor.

21 THE COURT: Go ahead.

22 REDIRECT EXAMINATION

23 BY MR. KHUZAMI:

24 Q Let me show you what has been introduced in
25 evidence as Government's Exhibit 838G, the manual, and ask

1 you if you look on this page under the heading 15 if you see
2 any asterisks on that page?

3 A Yes, I do.

4 Q What is the heading underneath which those
5 asterisks appear?

6 A Pyrotechnics and explosives.

7 MR. KHUZAMI: No further questions.

8 THE COURT: Anything else, Mr. Wasserman?

9 MR. WASSERMAN: No further questions.

10 THE COURT: Thank you. You are excused.

11 (Witness excused)

12 MR. KHUZAMI: The government calls Michael Tyms
13 as the next witness.

14 THE COURT: Before the next witness testifies,
15 the last exhibit you showed was which?

16 MR. KHUZAMI: It is F, your Honor.

17 THE COURT: 838F.

18 MICHAEL C. TYMS,
19 called as a witness by the government,
20 having been duly sworn, testified as follows:

21 THE COURT: Go ahead.

22 DIRECT EXAMINATION

23 BY MR. KHUZAMI:

24 Q Mr. Tyms, how are you employed?

25 A I am a special agent with the Federal Bureau of

1 Investigation.

2 Q On June 24 of 1993, did you participate in a
3 search at 251 Rogers Avenue?

4 A Yes, I did.

5 Q What area inside those premises were you
6 responsible for searching?

7 A On the third floor there is a room I describe as
8 a TV room which I believe was designated room number 3.

9 MR. KHUZAMI: May I approach, your Honor?

10 THE COURT: Yes.

11 Q Special Agent Tyms, I have placed before you what
12 have been marked as Government's Exhibits 817A through D,
13 818A through E, and 819 through 821, and ask you if you have
14 seen those items before?

15 A There is the videotapes. What I see here are the
16 videotapes and the notebook.

17 Q Do you recognize those items?

18 A Yes, I do.

19 Q Are those items you seized on June 24, 1993 from
20 251 Rogers Avenue?

21 A Yes, they are.

22 MR. KHUZAMI: I would move Government's Exhibits
23 817A through D, 818A through E, and 819 through 821 in
24 evidence.

25 MR. WASSERMAN: No objection, your Honor.

1 THE COURT: Those items are received.

2 (Government's Exhibits 817A through D, 818A
3 through E, and 819 through 821 were received in evidence)

4 Q Special Agent Tyms, I wonder if you might quickly
5 read the titles of the videotapes that have been received in
6 evidence.

7 THE COURT: Let's indicate which exhibit is
8 which, and let's go quickly.

9 A This one is marked Government's Exhibit 819 and
10 it is called "Advanced Handgun Disarming."

11 This tape is number 818A, labeled "SWAT Team
12 Night Combat."

13 Exhibit 818B, labeled "SWAT Team, Building
14 Assault, Entry and Clearing."

15 Exhibit number 817A, labeled "Navy Seals,
16 America's Elite Warriors."

17 Exhibit 818E, labeled "SWAT Team Tactical
18 Rappelling."

19 Exhibit 818C, and that is "SWAT Team, Counter
20 Sniper Rifle."

21 818D, "SWAT Team Counter Sniper Team."

22 817B, labeled "Vietnam Navy Seals, the Real
23 Story."

24 Exhibit 820, and it is a handwritten label, it
25 says "Military Israel Police, 82nd Airborne."

1 Exhibit 817D, another one that is handwritten,
2 "Sniper/Sniper Navy Seals Sentry Takeout."

3 Exhibit 817C is a tape labeled "Navy Seals
4 Training Techniques."

5 And then Exhibit 821 is a spiral notebook.

6 Q In addition to these items, did you seize other
7 videotapes on that day?

8 A Yes, we did.

9 Q Can you briefly describe the titles of those
10 videotapes, or subject matter?

11 A There were some martial art videotapes taken,
12 other videotapes, I believe, of a military type of stuff,
13 some referencing the Coast Guard. I believe there were some
14 army ranger type of things.

15 MR. KHUZAMI: No further questions.

16 THE COURT: Cross, Mr. Wasserman?

17 MR. WASSERMAN: Thank you. Your Honor, I will
18 try to be brief in view of the hour.

19 THE COURT: Thank you.

20 CROSS-EXAMINATION

21 BY MR. WASSERMAN:

22 Q Good afternoon.

23 A Good afternoon.

24 Q Do you recall all the videos that you saw by
25 title and what they contained?

1 A I never viewed the videotapes, so I don't know
2 what they contain.

3 MR. WASSERMAN: Your Honor, if I may, I will work
4 by stipulation with the government. I would just read off
5 some selected from the list.

6 THE COURT: Fine.

7 Q There were seized by you the following:
8 approximately 19 karate, judo or martial arts videos;
9 approximately 18 military videos; 12 on Islam; and 8 on
10 entertainment, as categories. A representative sampling
11 would be the following: Number 1, "Mastering Aiki Jujitsu."
12 Number 3, "Shorri Jikempo Tournament." Number 5, "Islamic
13 Lesson Sufism. Sheik Abdullah Hakim." Number 7, "The
14 Mountain, About Mujahiden Warrior in Afghanistan." Number
15 8, "1991 Show of the Black Belts." Number 10, Preserve the
16 Sunna, Religious Tape." Number 11 Project Bos, Tape Made on
17 May 10, 1993, Clement Hampton-El narrates the tape."

18 MR. KHUZAMI: Objection to continued description.

19 MR. WASSERMAN: I will move that tape into
20 evidence.

21 MR. KHUZAMI: No objection.

22 THE COURT: That tape is received, designated as
23 what?

24 MR. WASSERMAN: Your Honor, if I may, what I will
25 do is, all the tapes that I will introduce I will put under

1 K and assign numbers at the break so that we can save the
2 jury time.

3 THE COURT: Fine.

4 MR. WASSERMAN: Then under 14, Afghanistan tape.
5 Number 16, 17, 18, Islamic tapes. 19, 20 and 21, also
6 Islamic tapes. 22, "The Jackie Robinson Story." 23, "The
7 Dead End Kids." Number 32, "1991 Show of Black Belts."
8 "NBA Basketball Tape" is number 34. And then number 45,
9 "Combat Aiki Jujitsu with Ronald Duncan." Then numbers 46
10 through 51 are also judo and martial arts tapes. Number 52,
11 "NBA Basketball." And numbers 53, 54, 55, 56 are also
12 martial arts tapes. Number 57 and 58, the Arabic version of
13 the movie "The Messenger." Number 59, "Mastering Ninja
14 Combat Techniques." Number 60, "Mastering Ninja Weapons."
15 Number 61, "Ronald Duncan Disarming Techniques and Aikido
16 Combat-Knife Defenses." That was 61.

17 MR. KHUZAMI: So stipulated.

18 MR. WASSERMAN: I would like to have the
19 government stipulate to those and move them into evidence as
20 well.

21 THE COURT: They have stipulated that those items
22 were seized and those are going to be received.

23 MR. WASSERMAN: One addition, 13F. "Survival
24 Afghanistan and The Secret War." I will move that in as
25 well.

1 MR. KHUZAMI: So stipulated.

2 THE COURT: Those are all received as the
3 Hampton-El K series, to be designated.

4 MR. WASSERMAN: Thank you, your Honor.

5 THE COURT: Anything else? No? Any other cross?
6 Any redirect?

7 MR. KHUZAMI: No, your Honor.

8 THE COURT: You are excused.

9 (Witness excused)

10 MR. KHUZAMI: The government calls as the final
11 witness this morning Merkle Dennison, M-E-R-K-L-E,
12 D-E-N-N-I-S-O-N.

13 MERKLE M. DENNISON,

14 called as a witness by the government,
15 having been duly sworn, testified as follows:

16 THE COURT: If you could try to sit up close to
17 that microphone and move up to it and talk into it,
18 everybody will be able to hear. Thank you.

19 MR. KHUZAMI: May I proceed?

20 THE COURT: Please.

21 DIRECT EXAMINATION

22 BY MR. KHUZAMI:

23 Q Ms. Dennison, how are you employed?

24 A As a special agent with the Federal Bureau of
25 Investigation.

1 Q On June 24, 1993, did you participate in a search
2 at 251 Rogers Avenue in Brooklyn?

3 A Yes, I did.

4 Q Were you responsible for searching any particular
5 area?

6 A Yes, I searched on the first floor, what was
7 designated as room number 4.

8 Q Did you seize any items?

9 A Yes, I did.

10 Q I have placed before you what have been marked as
11 Government's Exhibits 834A and B for identification and ask
12 if you recognize them?

13 A Yes, I do.

14 Q Are those items that you seized on that day?

15 A Yes.

16 MR. KHUZAMI: Your Honor, I would move
17 Government's Exhibits 834A and B into evidence.

18 MR. WASSERMAN: No objection, your Honor.

19 THE COURT: Government's Exhibits 834A and B are
20 received.

21 (Government's Exhibits 834A and B were received
22 in evidence)

23 Q I wonder if you might indicate the exhibit
24 number, Agent Dennison, and describe each of the two items
25 you seized.

1 A On Exhibit number 834A, it is a flash suppressor
2 for an AK47, and Exhibit number 834B is a partial box of 24
3 automatic ammunition.

4 MR. KHUZAMI: No further questions.

5 MR. WASSERMAN: Very brief.

6 THE COURT: Cross, Mr. Wasserman.

7 CROSS-EXAMINATION

8 BY MR. WASSERMAN:

9 Q Good afternoon, Agent. The flash suppressor, are
10 you familiar with its function?

11 A Yes.

12 Q That it is designed to cut down on the flash in
13 the field of a rifle that is being fired, correct?

14 A Yes.

15 Q Are you aware that that is the flash -- did you
16 find any other flash suppressors?

17 A Not in the location where I searched, in the
18 specific area.

19 Q Are you aware of any other flash suppressors
20 being seized?

21 A At this location?

22 Q Yes.

23 A I don't really recall.

24 (Continued on next page)

25

1 Q Are you aware that this flash suppressor was
2 purchased by Abu Ubaidah in Virginia?

3 MR. KHUZAMI: Objection.

4 THE COURT: Sustained.

5 MR. WASSERMAN: No further questions.

6 THE COURT: Any other cross? Any redirect?

7 MR. KHUZAMI: None, your Honor.

8 THE COURT: Thank you very much. You are
9 excused.

10 (Witness excused)

11 THE COURT: Ladies and gentlemen, thank you for
12 your patience. We are going to break now for the remainder
13 of the day, and obviously for tomorrow as well. As I said,
14 we will not sit on Monday, so we will see you again on
15 Tuesday morning at 9:30. Please don't discuss the case.
16 Please leave your notes and other materials behind, and have
17 a pleasant weekend and a good day.

18 (Jury excused)

19 MR. SERRA: Your Honor, may Mr. Alvarez take what
20 should be about one minute of the court's time in the robing
21 room?

22 THE COURT: Sure. I would like to get what is
23 unmarked marked before the end of the day so that that
24 doesn't get left hanging. Is that all right? Can you stay
25 and do that?

1 MR. WASSERMAN: I will stay with the reporter and
2 Mr. Khuzami.

3 THE COURT: There was the K series. There were
4 also some others that you were holding up, I think, correct,
5 some manuals?

6 MR. WASSERMAN: Your Honor, I don't think I put
7 any manuals in. I don't recall. Your Honor, if I may, I
8 will work with Mr. Khuzami and the reporter and clarify
9 everything.

10 THE COURT: You wanted to take my time for a
11 minute?

12 MR. SERRA: For a moment in the robing room, your
13 Honor. We will need a Spanish interpreter also.

14 THE COURT: Finally, where are we with the charge
15 requests?

16 MR. STAVIS: They are due tomorrow.

17 MR. WASSERMAN: Your Honor, I am a little behind.
18 I would ask the court for about a week. Mine are not volume
19 but very specific.

20 THE COURT: I will give you all a week -- no, no,
21 wait a second. I want what you have got as soon as you have
22 got it. Speaking of deluges, I don't want the roof to fall
23 in in a week. I would like what you have as soon as you
24 have it, but nothing beyond a week. Yours are coming when?

25 MR. McCARTHY: We are going to try for tomorrow,

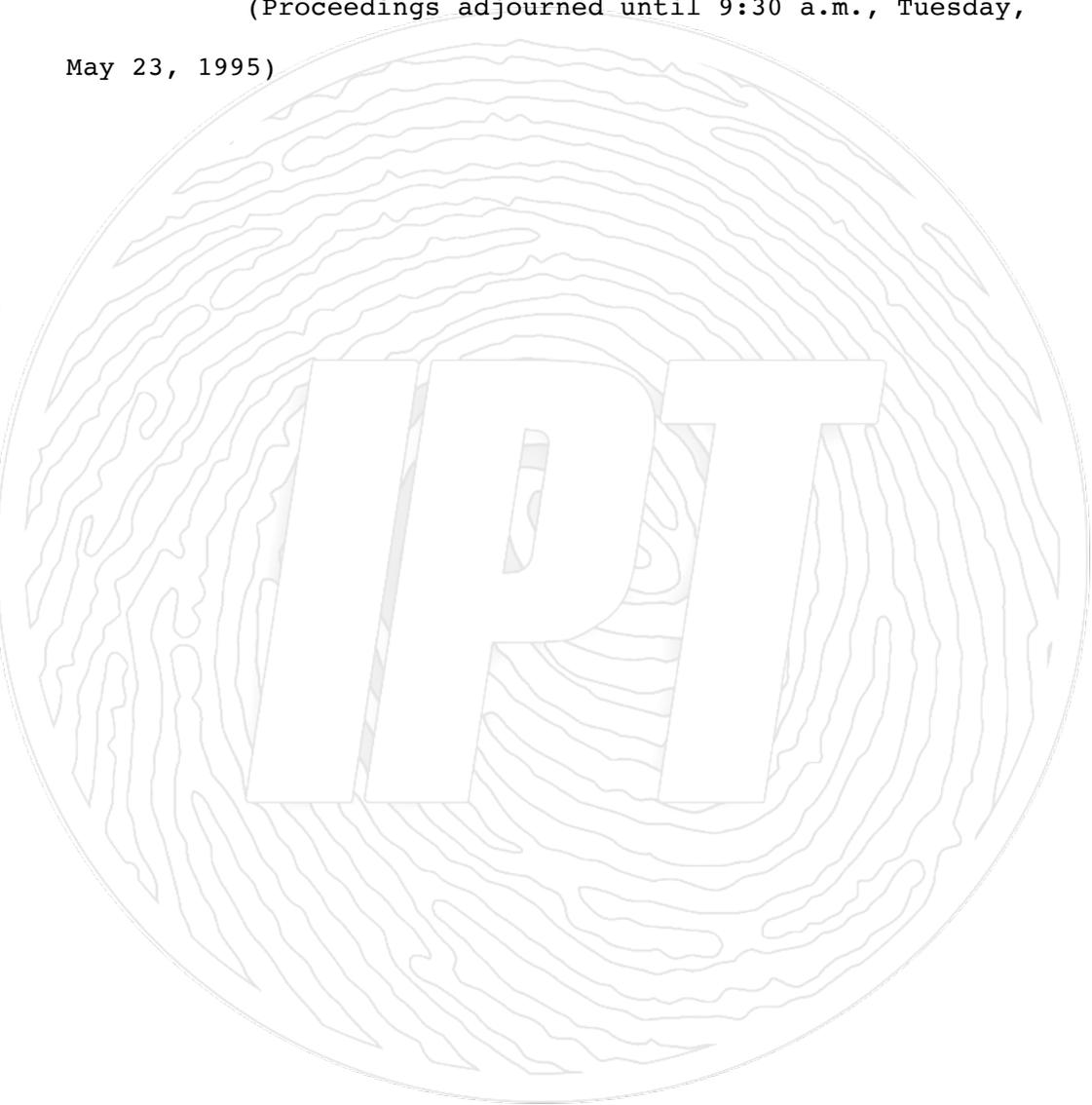
1 your Honor. If not, it will be either over the weekend or
2 Monday morning.

3 THE COURT: Fine.

4 (Pages 10983 through 10985 sealed)

5 (Proceedings adjourned until 9:30 a.m., Tuesday,
6 May 23, 1995)

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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,
10 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
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.

21 -----x

S5 93 Cr. 181 (MBM)

22 May 22, 1995
2:50 p.m.

23 Before:

24 HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

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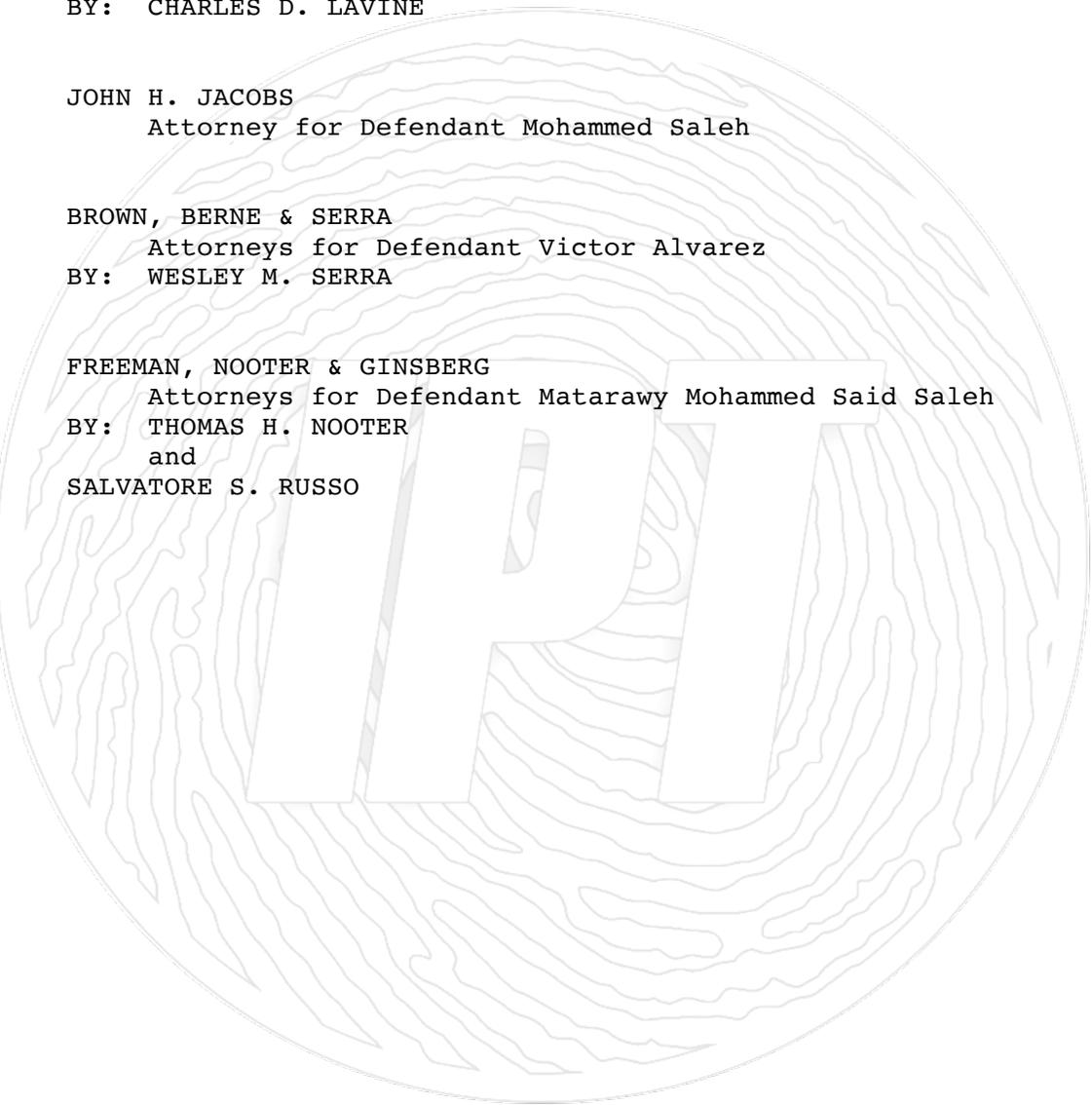
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

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

4 THE COURT: What can I do for you?

5 MR. WASSERMAN: Your Honor, I have a couple of
6 matters that I would like to take up with the court
7 concerning proposed testimony of Mr. Pinckney. As I
8 understand it from the government, the connection to this
9 case is that there will be testimony from Mr. Pinckney that
10 somebody named Asim Muhammad purchased a gun, or several
11 guns from Mr. Pinckney in 1990, and included in those
12 several guns was a .380 Davis, the serial number of which
13 can be traced to the gun that Emad Salem has testified to
14 receiving from Ali Shinawy in 1992, June of '92. Further,
15 the government intends to introduce several FISA
16 conversations between my client and Asim Muhammad from 1993.

17 So one question for the court is whether that is
18 sufficient connection to put before the jury.

19 THE COURT: Let me first make sure I understand
20 what you are telling me.

21 MR. WASSERMAN: Yes, Judge.

22 THE COURT: The government says that Pinckney
23 testifies to buying a gun from --

24 MR. WASSERMAN: From a gun store in Philadelphia,
25 your Honor.

1 THE COURT: Which he then sells to --

2 MR. WASSERMAN: Asim Muhammad.

3 THE COURT: Right. The same weapon later shows
4 up in the hands of Salem, who says that he got it from Ali
5 Shinawy, right?

6 MR. WASSERMAN: Yes, your Honor, two years later.

7 THE COURT: Do we have a connection between Asim
8 Muhammad and Ali Shinawy?

9 MR. WASSERMAN: No. I am not going to speak for
10 the government. My understanding is that the connection
11 that the government alleges is between Asim Muhammad and my
12 client Hampton-El, and to support that, I believe they have
13 FISA conversations between April and May '93 as well as some
14 phone calls on phone records from my client's phone to the
15 phone number of Azim Mohammed in Jersey City in '92.

16 THE COURT: Why don't I hear from the government
17 what their theory is.

18 MR. KHUZAMI: Your Honor, that is essentially
19 correct. I would note that the connection is a little
20 stronger. Mr. Salem testified that he had a face-to-face
21 meeting with Dr. Rashid in June '92 where they discussed the
22 ready-made bomb, and in addition Ali Shinawy advised
23 Mr. Salem that he ought to be carrying a weapon, and they
24 talked to Dr. Rashid, who said he would check it out, and a
25 few days later he gives Mr. Shinawy the .380 Davis gun.

1 Mr. Pinckney will testify that he bought the gun and sold it
2 to Asim Muhammad. FISA wiretaps in '93 show that Asim
3 Muhammad and Dr. Rashid are close associates. If I might
4 also add, Garrett Wilson, who testified that he sold
5 military equipment to Abu Ubaidah and Dr. Rashid, had a
6 meeting at 135 Belmont Avenue in Jersey City where Asim
7 Muhammad, the testimony will show, is a superintendent.

8 THE COURT: This is to corroborate Salem's
9 testimony that he got the gun from Shinawy, correct?

10 MR. KHUZAMI: And the government's allegation
11 that the source of the gun was Dr. Rashid, in light of the
12 conversation with Dr. Rashid a few days earlier saying that
13 he would check it out and see if he could get a pistol.

14 THE COURT: Plausible.

15 MR. WASSERMAN: I am sorry. I am sure I heard
16 "plausible."

17 THE COURT: Right.

18 MR. WASSERMAN: I think that the connection is
19 very tenuous because of both the timing and the purchase of
20 the gun in 1990, and the fact that the government labels
21 Azan Mohammed a close associate I don't think is borne out
22 by the conversations, by the FISA conversations or by taking
23 Garrett Wilson to 135 Belmont Avenue.

24 THE COURT: You can certainly argue that.

25 MR. WASSERMAN: Judge, I am not going to play the

1 fool, although sometimes I end up doing so. It is not
2 infinitely elastic. I raise it for the court's decision.

3 THE COURT: You are right, it is not infinitely
4 elastic, but when I said it is plausible that is short for,
5 it is not an unreasonable inference particularly in light of
6 the fact that your client has direct contact with Azan
7 Mohammed.

8 MR. WASSERMAN: The second question, your Honor,
9 is the relevance of the FISA phone conversations. They are
10 a series of calls in April and May, basically about the
11 matters that do not touch upon this case. So I question --

12 THE COURT: These are 304 and 306T?

13 MR. WASSERMAN: I have a series that begin with
14 778T and run through 789T.

15 THE COURT: I am sorry. I don't have those.

16 MR. KHUZAMI: That is correct.

17 THE COURT: I may have them here but I didn't
18 look at them.

19 THE COURT: I have them.

20 MR. WASSERMAN: I am sorry, your Honor. It goes
21 to 792.

22 THE COURT: It begins with 779, doesn't it?

23 MR. WASSERMAN: I have 778.

24 THE COURT: 778 is between -- I am sorry, you are
25 right.

1 Instead of taking the time of the group for me to
2 sit and speed-read these, and I am bound to miss something
3 while I do it, why don't I get from each of you what you
4 think is here, and can I tell you tomorrow?

5 MR. WASSERMAN: Sure. Your Honor, we could do
6 this at the end of the session. It will give me a chance to
7 go back over them and tell you what I think.

8 THE COURT: Fine.

9 MR. WASSERMAN: There are two other matters, one
10 of which I can't respond to at the moment. I have the
11 government's already, which was handed to me this afternoon,
12 concerning matters as to which the government is making a
13 motion in limine.

14 THE COURT: What are those?

15 MR. KHUZAMI: Your Honor, the government
16 distributed a letter to defense counsel concerning a motion
17 in limine regarding impeachment of Mr. Pinckney in some of
18 his prior conduct and crimes. To be honest with you, I
19 caught a typo in the letter and pulled your yours back, and
20 I am going to submit it to you at the end of the hearing.
21 But it lays out some of the items in Mr. Pinckney's rap
22 sheet and the government's position as to what is proper
23 cross-examination and what isn't. I think that can be taken
24 up tomorrow morning.

25 THE COURT: OK.

1 MR. WASSERMAN: Just one more thing, if I may,
2 Judge. Mr. Khuzami and I were just discussing one other
3 matter before court convened. I would have a request that
4 has two aspects to it, one concerning the wife of
5 Mr. Pinckney, because she was the actual purchaser of the
6 gun and she actually pled guilty to this purchase in federal
7 court and has done time and I believe is due to be released,
8 and further was the subject matter of cooperation agreement
9 discussions as well as predecessor cooperation agreements
10 prior to the May 19 agreement, which Mr. Khuzami correctly
11 advises me does not provide benefit to the wife as a result
12 of Mr. Pinckney's cooperation. I would like to be able to
13 get the allocution as well as the complaint or indictment
14 against her, to see whether the facts she is talking about
15 relate to the facts that he is going to testify about, since
16 they were acting together at the time of the purchase from
17 the gun store in Philadelphia. I believe that Mr. Khuzami
18 has indicated to me that he can provide some of the
19 material, possibly some 302's in connection, but that the
20 other matters, such as the allocution, would not be so
21 readily available.

22 The second aspect, Judge, concerns a matter of
23 timing. There are various matters concerning Mr. Pinckney's
24 lengthy criminal history which I would like the opportunity
25 to go into in terms of investigation and I can't, by virtue

1 of the time. I was advised Friday evening that Mr. Pinckney
2 was coming on. There was no prior notification as to the
3 name of this witness, and it was impossible to prepare
4 properly for the cross-examination, certainly the complete
5 cross-examination of him without a chance to investigate his
6 very complete criminal history, and therefore I think that
7 is another matter that I wanted to bring to the court's
8 attention in terms of time.

9 MR. KHUZAMI: Your Honor, I don't believe that
10 information including the allocution or the charging
11 instrument for the wife is relevant or something that the
12 government is obligated to produce. As Mr. Wasserman
13 correctly points out, while Mr. Pinckney did raise initially
14 that he wanted some benefit for his wife as part of his
15 cooperation, and that was contained in an earlier letter
16 given by an assistant U.S. attorney in the Eastern District
17 of Pennsylvania outlining the rough parameters of
18 cooperation, that letter was more characterized as, if you
19 cooperate these are some of the benefits you might have, but
20 in the agreement reached no benefit accruing to the wife,
21 and Mr. Pinckney is clear enough to testify about that on
22 the stand. So I don't think material as to the wife's
23 guilty plea is relevant for Mr. Pinckney's impeachment. I
24 may have a 302 which I will gladly submit to the court for
25 ex parte review if Mr. Wasserman would like. Beyond that, I

1 don't think it should hold up Mr. Pinckney's testimony.

2 MR. WASSERMAN: Your Honor, certainly if she has
3 said something at variance with what Mr. Pinckney testifies
4 to, that would fall under Brady and Giglio material.

5 THE COURT: You say "certainly." Why would it?

6 MR. WASSERMAN: For one thing, it would give me a
7 good-faith basis to question him.

8 THE COURT: Yes, if. I mean, there are endless
9 "if's" as to virtually any witness.

10 MR. WASSERMAN: Your Honor, I have to have a
11 basis for my question. For example, suppose she has in her
12 allocution said yes, we sold a gun to Abner Holliday and I
13 never heard the name Azan Mohammed. I think that is
14 relevant in questioning Mr. Pinckney.

15 THE COURT: If she did.

16 MR. WASSERMAN: If she did. But I don't know,
17 Mr. Khuzami doesn't know.

18 MR. KHUZAMI: I think the way to solve that is to
19 have Mr. Pinckney asked whatever relevant questions Mr.
20 Wasserman wants to pose to him, and if something comes up at
21 that point, the wife can be called --

22 THE COURT: He is the one who sold the gun.

23 MR. WASSERMAN: He didn't buy it.

24 THE COURT: So what? He sold it. That's the
25 important transaction, isn't it?

1 MR. WASSERMAN: It is kind of a seamless web
2 because he is --

3 THE COURT: No, it is not a seamless web.

4 MR. WASSERMAN: Judge, she is present throughout.
5 All I am saying is that I think the government needs to look
6 over the material, if there is Brady or Giglio, your Honor
7 would have to pass on whether there is or isn't.

8 THE COURT: I don't see that there has to be a
9 Dun & Bradstreet report on every witness who testifies, I
10 really don't. We will go with what we have got.

11 MR. PATEL: Your Honor, I would like to raise two
12 issues as to Mr. Pinckney's testimony. The first relates
13 specifically to tying the particular gun, and I guess I am
14 asking for an offer of proof from the government that this
15 is not a .380 Davis that kind of looks like this one --

16 THE COURT: I assume they have a bill of sale
17 from the gun shop that records the serial number of the gun.
18 Correct?

19 MR. KHUZAMI: We do, your Honor, and Mr. Patel
20 asked for that today and we will turn it over, although
21 quite honestly the testimony we are at this point
22 considering offering is the ATF agent who ran the serial
23 number that came back to the store that Mr. Pinckney will
24 testify he bought the gun from.

25 MR. PATEL: That is a big gap that doesn't put

1 the gun in Mr. Shinawy's hand through Mr. Pinckney.

2 MR. KHUZAMI: I think it is relevant and the
3 inference fair, if we choose to put on an employee who can
4 produce a business record showing that a gun with that
5 serial number was sold from that store, or if the ATF agent
6 can testify that a gun was sold at that store that
7 Mr. Pinckney will testify that he bought it from.

8 MR. WASSERMAN: If they are going to put on an
9 employee with the bill of sale, that bill of sale has never
10 been turned over.

11 MR. KHUZAMI: I was not planning to put that
12 person on, and if I did, he would get that material in due
13 time.

14 THE COURT: I will allow it. What else?

15 MR. PATEL: The other issue, Judge, as to
16 Mr. Pinckney is the scope of his testimony. One of the
17 pieces of 3500 material that we were provided is a redacted
18 version of his presentence report in Philadelphia in which
19 he talks about his getting involved with a mosque and his
20 learning through his involvement in the mosque that robbing
21 banks was an admissible part of jihad --

22 THE COURT: That, I assume, is not coming out.

23 MR. KHUZAMI: I didn't plan on soliciting it on
24 direct, your Honor.

25 THE COURT: And you also plan on telling him not

1 to throw it in as an answer to cross if someone asks him
2 what the weather is like, and he says it seemed like a nice
3 day for jihad and so we went out and robbed a bank.

4 MR. KHUZAMI: No, your Honor.

5 THE COURT: Nobody is going to elicit that.

6 MR. WASSERMAN: I just want to advise the court,
7 I might. I don't know my strategy --

8 THE COURT: You said you might?

9 MR. WASSERMAN: Judge --

10 THE COURT: Yes.

11 MR. PATEL: Judge, I stood up a little quickly.
12 I made one severance motion before which your Honor ruled
13 on, but this time, if he is going to do that, this one has
14 more substance.

15 THE COURT: Before you do that, would you check
16 with me.

17 MR. WASSERMAN: Yes.

18 MS. STEWART: And me.

19 THE COURT: I am dead serious.

20 MR. WASSERMAN: I understand you are, as Mr.
21 Patel and Miss Stewart.

22 THE COURT: You were being serious that you want
23 to bring that out --

24 MR. WASSERMAN: Absolutely, but I haven't made
25 any decision.

1 THE COURT: I am interested, though, in what the
2 reasoning would be that would require that you elicit that
3 testimony in aid of your client's case.

4 MR. WASSERMAN: I don't want to do it in open
5 court but I would do it ex parte with your Honor.

6 THE COURT: OK.

7 MR. WASSERMAN: Mr. Khuzami did indicate that the
8 302's for the wife would be readily accessible, and I would
9 ask the court, if that could be done, that we have some sort
10 of at least compromise on the issue concerning the
11 information concerning the wife's involvement in the sale.

12 THE COURT: I think the compromise was that he
13 was going to get them to me.

14 MR. KHUZAMI: That is correct.

15 MR. WASSERMAN: Fine, I have no problem.

16 THE COURT: First might be last, too.

17 MR. WASSERMAN: That is fine. At least they go
18 to the judge.

19 THE COURT: What else?

20 MR. McCARTHY: Your Honor, we are actually pretty
21 far along on the CM's. We have worked out agreement with
22 respect to almost everything. I haven't had a chance to
23 talk to Mr. Bernstein yet about what we agreed to and what
24 we disagreed to, to find out whether he is interested in
25 fighting about that. We will have a couple of issues with

1 Mr. Nooter, and I think I have agreed to everything else
2 that counsel wanted in.

3 MR. BERNSTEIN: Judge, I think a lot just went
4 under the bridge.

5 THE COURT: He said he has some things to talk to
6 you about.

7 MR. BERNSTEIN: Yes, but all I have submitted so
8 far -- I think we are taking it chronologically, is the best
9 way to deal with it -- is that the government started
10 submitting and following up with longer and longer lists of
11 CM's, with faxes every few hours, I think -- I think the
12 court has gotten copies, I am not sure -- indicating where
13 they are going to limit their offer on CM's, and some of us
14 are trying to respond to 106 and other issues on those, but
15 all of a sudden when we have gotten to Mr. Nooter, I think
16 we are up to the 40's. I think some of us will have some
17 issues as we go on.

18 MR. MCCARTHY: Your Honor, everybody is
19 proceeding in good faith. The government is not going to
20 argue that Mr. Bernstein has waived. I just wanted to see
21 what his position was before we take up the court's time.

22 MS. AMSTERDAM: For purposes of clarifying the
23 record, I met with Mr. McCarthy for several hours today and
24 he adopted many of the requests that I had under 106. There
25 are things that the government does not wish to read which

1 we would offer in our own case, but that is not under the
2 penumbra of a 106 argument. I think he and I are pretty
3 much in agreement as to the first set of transcripts.
4 However, of course, everyone should see the work product we
5 have done to see whether or not there are additional
6 suggestions that they want. But it has been going along
7 pretty smoothly up until this point.

8 THE COURT: What concerns me is that I don't want
9 to have to stop, say, in the middle of tomorrow and take up
10 a large chunk of time if we can avoid it now.

11 MR. McCARTHY: Even with respect to Mr. Bernstein
12 we are up through where we would get to at the end of this
13 week.

14 MR. BERNSTEIN: We haven't worked out our
15 differences but theoretically we are talking about a bulk of
16 stuff. I am not sure whether or not we are going to have
17 judicial resolutions necessary, because I know Mr.
18 McCarthy's desire was to be able to mass produce, and
19 theoretically you can't mass produce until there is a
20 resolution on the individual document, and today we were
21 hoping to get the court's rulings so that they can't start
22 moving on the physical production.

23 THE COURT: There are three issues that Mr. Patel
24 raised in a letter of May 16, one relating to the locker
25 search, another relating to a question Mr. Wasserman asked,

1 and a third relating to Mr. Haggag's testimony.

2 The middle one, I think, is easy. That was Mr.
3 Wasserman's question on cross where he said something about
4 any other members of the conspiracy, and there was no
5 objection. That will never be referred to again.

6 MR. PATEL: End of issue.

7 THE COURT: End of issue.

8 So far as Mr. Haggag's testimony, there was an
9 objection to a report of a conversation between Mr. Siddig
10 Ali and Mr. Ali Shinawy, where Shinawy says "there was
11 something between me and him," meaning Salem, "but we
12 stopped it," which testimony Mr. Patel wants stricken. I
13 took a look at that part of the transcript, and I think it
14 is apparent at that point that what they are talking about
15 is whether Salem can be trusted or not, and the statement
16 "we had something going but we stopped it" is along the
17 lines of showing that this person had dealings with Salem,
18 and although they stopped whatever they were doing, Salem is
19 a person who can be trusted, and "can be trusted" in the
20 context here doesn't mean as a surety on a performance bond.
21 It means for the enterprises that they were involved in. So
22 that request is denied.

23 MR. PATEL: Your Honor, there is also the
24 implication, which I think I cited to in my letter, that
25 they are talking about a specific involvement that was

1 supposedly inspired by Mr. Nosair, this building of 12
2 bombs, and when Mr. Haggag was asked if anyone said what
3 this conversation between Shinawy and Siddig, what they were
4 talking about, in other words, what the reference to what
5 "it" was that Mr. Salem was involved with, I believe his
6 answer was no. So it is a very hazy area, and since the
7 loop was not closed, that is why I asked that it be
8 stricken, because it is susceptible to a number of
9 interpretations.

10 THE COURT: I suppose he could always recall
11 Salem and ask if he had anything else going on with Shinawy.

12 (Laughter)

13 MR. PATEL: I think that is their obligation, not
14 mine.

15 THE COURT: My inclination is to leave it in
16 place.

17 As far as the locker search, this is the same
18 objection again that we had the first time, isn't it? You
19 are in essence renewing your objection to the locker search.

20 MR. PATEL: Exactly. Your Honor, I had not
21 raised this because Mr. Khuzami had indicated to me that
22 subsequent to my filing of the letter the government was
23 doing some rethinking on the issue. They have not gotten
24 back to me.

25 MR. KHUZAMI: Your Honor, I would like the

1 opportunity within the next day or two to put in a letter.
2 I think there is a good chance that the government is going
3 to agree with Mr. Patel, and per the court's order have the
4 testimony of Mr. Bermeister stricken regarding the smokeless
5 powder but we haven't made a final resolution on that.

6 THE COURT: But you are leaving-you --

7 MR. KHUZAMI: I think the chain of custody on the
8 smokeless powder was established. That leaves open Mr.
9 Patel's point whether or not it is a fair inference and
10 whether or not it is relevant. I believe the court may have
11 ruled on it once when it permitted the exhibit to go to the
12 jury. There isn't any chain of custody issue on the fuse
13 lighter.

14 THE COURT: Do you want to await the outcome of
15 their thoughts on it?

16 MR. PATEL: If they agree with me I am happy to
17 sit down.

18 THE COURT: At least as to the powder.

19 MR. FITZGERALD: Judge, I made a indication to
20 Mr. Jacobs that we would be calling Mr. Ginsberg as a
21 witness and requested production of CJA vouchers and his
22 notes. As of now we have received copies of various
23 letters, but I think that we are entitled to see how much he
24 was paid and to have his notes as an expert, and
25 particularly in the absence of a report we should get the

1 work sheets.

2 MR. JACOBS: Your Honor, as I understood the
3 initial court order appointing Mr. Ginsberg, Mr. Ginsberg
4 was appointed as an expert for the defense with the consent
5 of the government, upon the oral understanding that I had
6 with the government that I would tell the government the
7 results of his examination, which I kept them informed
8 orally about. The only reports, call them reports or
9 letters -- the conclusions of his examinations have been
10 turned over to counsel, what he did as far as the CM's, what
11 he did as far as the bootlegs. They are in writing. They
12 have been turned over to the government in their entirety --
13 perhaps not the last letter, which I will get to them
14 tonight. What his conclusions are in writing have been
15 turned over to the government. I have nothing else that he
16 has given to me with respect to his examinations other than
17 the letters, which were attached to the CJA vouchers which
18 your Honor has had.

19 As far as the money that he has received, the
20 problem I have with it, I think, is more logistical than the
21 actual figures, because he is appointed with the consent of
22 the government to do this examination, with your Honor's
23 approval. I wouldn't want the jury to somehow, because of
24 the numbers, draw some unfair inference against the
25 defendants because we have utilized him to the extent we

1 have.

2 THE COURT: I don't see why they would do that,
3 but in any event why can't they be instructed that the
4 defendants are entitled to appoint an expert when necessary,
5 that the defendants are entitled to the use of an expert
6 when necessary just as the government has experts, that this
7 expert was appointed and has been paid out of Criminal
8 Justice Act funds as is perfectly permissible? I don't
9 understand the harm.

10 MR. JACOBS: The problem I have, your Honor, is
11 that it is probably over \$100,000, for argument's sake. I
12 am not sure what the figure is. Whatever it may be. I
13 wouldn't want these jurors to feel -- he gets \$200 an hour,
14 which is something that the court has approved. I think to
15 some extent it might prejudice the jury that we have
16 utilized these services.

17 THE COURT: I don't see how. It would show the
18 thoroughness of his examination. Obviously how much time is
19 spent on the examination to some extent indicates how
20 thorough it was or how not thorough. If he spent an hour
21 and a half reviewing 500 tapes that is one thing. If he
22 spent a thousand hours reviewing those tapes that is
23 something different.

24 MR. JACOBS: If we have certain cautionary
25 instructions given to the jury, I have far less of a problem

1 with it. I just don't want them to think that we came along
2 on our own, did all this, spent a lot of money, without
3 obviously the consent of the government --

4 THE COURT: The consent of the government, as I
5 understand it, is that the man not do something to the
6 tapes.

7 MR. JACOBS: I think it was a bit more than that.
8 They had an option to approve or not approve certain experts
9 because of the security clearances and stuff, and your Honor
10 has approved up to this point his vouchers.

11 THE COURT: I have approved vouchers for people
12 who have been named as coconspirators in this case.

13 MR. JACOBS: That hasn't come out to the jury,
14 fortunately.

15 THE COURT: Not yet, although it may be part of
16 someone's strategy.

17 MR. JACOBS: I am interested with respect to the
18 witness that the government intends to call tomorrow that we
19 give --

20 THE COURT: I am happy to give them an
21 instruction that will tell them, so far as I can tell them,
22 that it is entirely regular and appropriate that an expert
23 of this kind be appointed, that they ought to keep their
24 eyebrows under control when they hear how much he has gotten
25 because I pass on whether it is permissible to pay him that

1 amount of money or not, I passed on it, and it was.

2 MR. JACOBS: That was my main concern.

3 MR. STAVIS: I object to the disclosure of the
4 information for one thing. I think there is no authority
5 for us disclosing this information to the government. The
6 government is choosing to call this person as a witness.
7 Were we calling him as a defense witness we they might be
8 entitled to this information under Rule 16.

9 Should they obtain the information, your Honor, I
10 would also have the objection under Rule 401. What is the
11 relevance of what their own witness is being paid if we go
12 on into it on cross-examination? They are now calling the
13 witness, your Honor. I believe that is what is happening,
14 and I believe that the defense is being prejudiced. I
15 believe it creates an unseemly picture, your Honor,
16 considering that we are going off on tangents that don't
17 relate to what the witness is saying. What the defense had
18 this person paid by the U.S. government is irrelevant, and I
19 would object to it on those grounds.

20 THE COURT: I assume you wouldn't argue it is
21 irrelevant what Mr. Salem was being paid.

22 MR. STAVIS: No, I wouldn't, but I know that the
23 government has not given us the pay stubs for all their
24 expert witnesses employed by the FBI.

25 THE COURT: On a per job basis, I understand.

1 MR. STAVIS: Mr. Fitzgerald said that he is
2 entitled, without citing what entitles him, to the work
3 notes of our expert. Once again, your Honor, the government
4 is choosing to call him. If we were calling him as an
5 expert under Rule 16 reciprocal discovery, they would
6 arguably be entitled to it.

7 MR. JACOBS: That I strongly object to. I have
8 not seen his work product, your Honor. He has not turned it
9 over to me or any of the defense counsel. I thought the
10 spirit of your Honor's initial order in the case and
11 basically my understanding with the government was that the
12 results of his examination would be made to the government,
13 and I orally did it last year, and then when he came a few
14 months ago I turned over the letters that your Honor has had
15 at the same time. So they have the same results that we do,
16 and his work product I would object to.

17 MR. FITZGERALD: The order says that Mr. Ginsberg
18 shall prepare a report. A report was never prepared. That
19 is in writing. We learned the other day that there is a
20 side bar that he cannot say that they were tampered with, he
21 cannot say that they weren't tampered with. His conclusion
22 is not apparent in the papers. I think at the very least
23 since he never prepared the report that the court ordered
24 him to do, we should have his notes.

25 MR. STAVIS: What is he entitled to.

1 THE COURT: There was an order in place for him
2 to produce a report. He never produced a report.

3 MR. STAVIS: We are not calling him as an expert
4 witness.

5 THE COURT: It says prepares a report. The order
6 doesn't say if he testifies.

7 MR. JACOBS: He has a report, he has done it
8 periodically. We have turned it over to the government and
9 to your Honor. He has very clearly what he has done. He
10 has specific findings on the individual tapes. They are in
11 writing. It is a report. What I did was, they were not
12 turned over as we went along to the government. I orally
13 informed him of those results. He has 20, 30 pages,
14 whatever they may be, of the reports that your Honor has
15 periodically when you sign the vouchers. It is a report,
16 period, comma, question. I made them available several
17 months ago to the government. I have given the government
18 them in writing. If there is any cross-examination to be
19 done of the witness or direct, they can ask Mr. Ginsberg.
20 He states in writing that he found no evidence of deliberate
21 tampering or splicing or physical -- they will ask him the
22 questions, Judge. It is in writing.

23 MR. FITZGERALD: The 17 pages I have in front of
24 me do nowhere indicate what his position is on whether or
25 not there is overrecording on the tapes. The first time we

1 heard that position was from Mr. Jacobs at the side bar on
2 Detective Napoli. He doesn't say no, there is no
3 overrecording, he doesn't say yes there is overrecording, he
4 doesn't say I don't know. It is not apparent from these
5 pages. If he has something that indicates that, we are
6 entitled to it.

7 MR. JACOBS: The answer is that he has nothing to
8 indicate a different result than the government.

9 THE COURT: Let's talk about it issue by issue.
10 Apparently you would have what would pass for a report as to
11 some things but not others. If the issue is overrecording
12 and there is nothing in any of the letters about that --

13 MR. FITZGERALD: That is my understanding, Judge,
14 yes.

15 THE COURT: -- then he is to submit that portion
16 of his notes, if any, that deal with overrecording only, and
17 if necessary I will take a look at it first, to determine
18 what part of it does and what part of it doesn't. But he is
19 to submit the part that deals with overrecording, if there
20 is such a part.

21 MR. JACOBS: He has overrecording with respect to
22 the bootlegs. They are in writing. With respect to the
23 CM's, I don't think there is anything written one way or the
24 other but I will discuss it with Mr. Ginsberg. If there is
25 anything in writing I will obviously submit it to your

1 Honor.

2 THE COURT: Talk to the government, talk to me.
3 What else?

4 MR. BERNSTEIN: Your Honor, I am not sure if we
5 have left the money aspects as to Mr. Ginsberg. My concern
6 is that lay people get ticklish about money and lawyers, and
7 I think that is the issue we are concerned about, and I
8 think if the court is going to look at this issue, the jury
9 can be instructed that he has been paid, he was our witness
10 or expert, they will know that, he can testify as to the
11 quality of his work in terms of who he has worked for on
12 both sides of the fence, the number of hours he has put in.
13 I don't see that dollars do anything to raise the level of
14 intelligence other than to give the jurors the belief that
15 exorbitant sums were expended at a time of maybe economic
16 difficulty for many people, and I don't think that is a fair
17 impression they should have when they go deliberate as to
18 our client.

19 THE COURT: The only thing it bears on is the
20 amount of time.

21 MR. STAVIS: We would agree to the relevance of
22 the hours but the objection I have, the specific objection
23 was the jury being informed as to the money that the United
24 States of America has paid to this witness, the money that
25 comes out of the pockets of these jurors, your Honor. The

1 hours, I would agree, are relevant.

2 MR. FITZGERALD: Your Honor, I am not conceding
3 that he is not biased. I think it goes to his motivations
4 and I think I am allowed to explore that.

5 MR. SERRA: Your Honor, I have another problem
6 with this. The agreement with Mr. Ginsberg was signed
7 before I was a lawyer on this case. I was not aware until
8 sitting here today that part of that agreement was that
9 there would be a written report, and I understand the
10 government's position, therefore, as to his notes about
11 overrecording and so forth. What I don't understand is what
12 Mr. Stavis previously said. Where does the government find
13 in 18 U.S.C. or rules or anywhere else the authority by
14 which they claim discoverable rights to anything other than
15 what is in the written agreement?

16 THE COURT: The fact is that his findings don't
17 go to the question of whether he gets paid or not. He
18 submits vouchers, they get passed on. Whether he finds that
19 tapes were overrecorded or not overrecorded or spliced or
20 not spliced doesn't control whether he gets paid or not.

21 MR. FITZGERALD: It does control what happens in
22 the next case, whether he is retained.

23 THE COURT: Fine, and you can bring that out.
24 But the dollar value that he got in this case has nothing
25 whatsoever to do with the dollar value that he may get in

1 any other case. The value of the next case may be zippo.

2 MR. FITZGERALD: Your Honor, we had Mr. Haggag
3 questioned on the amount of medical expenses he was
4 reimbursed for his family. If Mr. Ginsberg received
5 \$100,000 for his defense, it is apparent that he can be
6 retained in another case, and I think we will be able to
7 establish his bias.

8 MR. STAVIS: Then why are we calling him as a
9 witness?

10 THE COURT: They can call him for whatever reason
11 they want.

12 MR. STAVIS: Because he gave an unbiased view, I
13 assume is what they want to elicit.

14 THE COURT: The government may inquire into the
15 amount of time that he spent and I will instruct the jury
16 that he is paid under the Criminal Justice Act and that they
17 are permitted, the defense counsel, just as the government
18 is permitted, to use experts for their case, but that is as
19 far as it goes. I will not permit the dollar amount.

20 MR. WASSERMAN: Your Honor, there have been a
21 number of witnesses who testified to being in the Witness
22 Protection Program, last week being Garrett Wilson. I would
23 ask your Honor to instruct the jury that the fact that
24 somebody has requested or is in witness protection -- first
25 of all, I am not sure that in each instance that a witness

1 testifies it is appropriate that it be brought out by the
2 government, but if it is or it has been brought out
3 previously, I would request the court to instruct the jury
4 that because somebody is in the Witness Protection Program
5 is no indication that that person is in danger.

6 If I may, Judge, I would like to raise the
7 issue --

8 THE COURT: Let's deal with this now, because it
9 hasn't been raised before. There have been two or three or
10 four, I guess, who testified as to that.

11 MR. WASSERMAN: Judge, I don't mean to interrupt
12 and I apologize, but I haven't raised with my colleagues as
13 to the language of it and I would like to consult with them
14 and propose something to the court. If tomorrow's witness
15 is not going to be testifying to being in the Witness
16 Protection Program, we don't need to address it right at
17 this moment.

18 MR. MCCARTHY: We won't bring it out on direct.

19 MR. WASSERMAN: I won't bring that out on cross.

20 THE COURT: If people bring out in raw dollars
21 what is being spent, you virtually invite it. You have made
22 this plea that I not permit an expert to testify to the most
23 attenuated testimony on dollar figures and yet you feel
24 perfectly free to do it on your own behalf, and then when it
25 is brought out that the witness is in the Witness Protection

1 Program, you really can't have it both ways.

2 MR. WASSERMAN: I think from the point of view of
3 bringing it out, your Honor is correct. I think from the
4 point of view of instructing the jury, being in the Witness
5 Protection Program -- again, I would like to propose
6 specific language. I am just raising the issue, and I would
7 like to consult with my colleagues about it. If it is not
8 coming up tomorrow, we have a bit of time.

9 If I could raise one other point concerning the
10 letter of the government today concerning cross-examination
11 of Mr. Pinckney. There are two areas. One is that they
12 wish to exclude various thefts of Mr. Pinckney. I
13 understand the exclusion of assaults and murders as not
14 bearing on credibility. But the theft of cards and bank
15 checks are very relevant --

16 THE COURT: I haven't seen this letter, have I?
17 This is the one with the typo?

18 MR. KHUZAMI: That is correct, your Honor.

19 MR. WASSERMAN: I would simply raise the general
20 heading for your Honor, that stealing in general is very
21 appropriate on cross-examination as to credibility. Second,
22 there are two matters brought out by the government in the
23 first page of the letter. They have in their debriefing --

24 MR. STAVIS: Your Honor, I don't mean to
25 interrupt but perhaps you should see it if Mr. Wasserman is

1 referring to page 2 or page 3. It is not a very long
2 letter.

3 MR. WASSERMAN: In the first page of the
4 government's letter --

5 THE COURT: I am trying to figure out what the
6 letter is talking about and listen to you at the same time.
7 It is kind of hard to do that.

8 (Pause)

9 THE COURT: Are you talking about the stuff at
10 the bottom of page 2 and the top of page 3?

11 MR. WASSERMAN: That is one area, Judge.

12 (Continued on next page)

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1 THE COURT: Well, this is the friend whose bank
2 card he stole, and then followed that up by starting to
3 strangle him with a piece of clothing, thereby forcing him
4 to write a \$1500 check.

5 This is what he did to a friend. I am glad --

6 MR. WASSERMAN: Right.

7 THE COURT: I am glad I am neither a friend nor
8 an enemy.

9 MR. WASSERMAN: Also, your Honor, it continues
10 on.

11 THE COURT: Yes.

12 MR. WASSERMAN: The friend, the victim now,
13 places a stop order on the stolen check, but that doesn't
14 stop Mr. Pinckney because he had stolen two blank checks at
15 the same time, and he cashed one for a thousand. I think I
16 certainly should be able to get into the thefts. I think
17 "friend" is a little elastic as used here.

18 The other matter, if I may, Judge, is that at the
19 beginning of the letter there are two areas concerning Mr.
20 Pinckney's disclosures to the government, a scheme to
21 defraud Ford Motor Credit Company, which the government says
22 that is fine, I can go into that, but they don't tell me
23 anything about what that scheme was. I think to the extent
24 they know that is Giglio material, I should have access to
25 it.

1 The second thing is that they disclose that he
2 sold 30 to 50 firearms between 1989 and 19 -- it should be
3 '94. I think to the extent, again, that the government
4 knows information concerning those sales, that should be
5 provided to me as part of the government's Giglio
6 obligation.

7 MR. KHUZAMI: My understanding, your Honor, is
8 that our obligation is satisfied by soliciting that
9 information on direct examination.

10 THE COURT: Unless there is something more to it
11 than appears facially, I think that is right.

12 Let's get back to the friend. Using somebody
13 else's bank card and somebody else's checks involves false
14 pretenses, does it not?

15 MR. KHUZAMI: That's correct.

16 THE COURT: So why can't he go into it?

17 MR. KHUZAMI: Certainly writing out a false
18 signature endorsement and a false card involves making
19 misrepresentations that go to truthfulness. I wouldn't
20 argue that. I think the circumstances of how he obtained
21 them do not in fact go to truthfulness or untruthfulness in
22 terms of his altercations with his friend.

23 THE COURT: What about pretending to be his
24 friend?

25 MR. KHUZAMI: Your Honor, I think they were in

1 fact friends, although his definition may differ from yours
2 and mine.

3 THE COURT: There is a concept of friendship that
4 is sufficiently universal that you ought to be able to
5 inquire into those circumstances. I am serious.

6 Somebody who presumes I'm a friend, and then puts
7 something around his neck and says, "Sign this check or I'll
8 strangle you," I think that tells you something about his
9 credibility. I am going to allow it.

10 MR. KHUZAMI: Does that include the strangling,
11 your Honor?

12 THE COURT: Yes. Principally because it was a
13 friend. What else?

14 MR. JACOBS: My letters to your Honor and Judge
15 Duffy concerning Yousef. I think the government wanted a
16 few days to respond. I submitted two letters this morning.

17 THE COURT: I have not seen them yet.

18 MR. JACOBS: I requested that we appear before
19 Judge Duffy, your Honor. I have given it to the government
20 and they have asked me for a couple of days to respond.
21 Obviously I consent. Mr. Fitzgerald wants a few days. They
22 were coming from downstairs.

23 THE COURT: Have you heard from Judge Duffy yet?

24 MR. JACOBS: No, I haven't.

25 MS. AMSTERDAM: So your Honor knows what was the

1 reason behind these letters going out at this time, the
2 government moved before Judge Duffy for a protective order
3 on the nondisclosure of the Yousef statements that they
4 turned over to defense counsel and all material, all the
5 Duffy material turned over to Yousef's trial counsel.

6 MR. JACOBS: I am not sure if Judge Duffy signed
7 the order or not. I know it was submitted to him. We wrote
8 a letter to Judge Duffy requesting to appear before him
9 sending a copy --

10 THE COURT: You are asking me for time off from
11 the trial to appear before Judge Duffy? I will grant it.

12 MR. JACOBS: Or a joint appearance. In any
13 event, Mr. Fitzgerald asked for a couple of days to respond,
14 and we consent to that.

15 THE COURT: OK. Thank you very much.

16 MR. WASSERMAN: Your Honor, should I do the first
17 leg of the ex parte proffer to you so that if I decide to go
18 forward with it --

19 THE COURT: Fine, fine.

20 MR. NOOTER: Your Honor, I had one other matter
21 that I wanted to raise. Are we yet adjourned? This
22 concerns the CM transcript process that we are going through
23 now. Not so much the process, but I am looking for some
24 clarification now on what it is the government plans to
25 actually admit into evidence, because prior to our

1 cross-examination of Emad Salem, we had had sort of an
2 understanding about something which to me now is very
3 different from what I understand the government is intending
4 to do. I am not sure where the misunderstanding lies, but I
5 would like to at least now know where we stand.

6 At the time before Mr. Salem testified, the
7 government offered as a package the CM tapes that were made
8 by Mr. Salem subject to objections that we may all have
9 later with respect to matters in those tapes.

10 We could not at that point deal with transcripts
11 because the transcripts were still being negotiated in terms
12 of trying to come up with joint transcripts. If your Honor
13 remembers, we went through some frenzied process of agreeing
14 to joint transcripts so that we would have those transcripts
15 for use on cross-examination of Mr. Salem.

16 We didn't admit those transcripts into evidence
17 because I understood we weren't sure they were absolutely
18 final at that point, but that they were close to final, and
19 that is why we were allowed to go ahead and use them for
20 cross.

21 THE COURT: As I recall it, you were permitted to
22 use on cross even disputed transcripts so long as the jury
23 was advised that the underlinings noted a dispute.

24 MR. NOOTER: Right. My problem focuses not on
25 the transcript, but on the tape. Now I have the

1 understanding that Mr. McCarthy is essentially withdrawing
2 or limiting the offer of the tapes to certain redacted
3 portions which in fact are a much, much smaller percentage
4 of the universe of these conversations than the whole thing.

5 Maybe that's something that was understood by
6 some counsel, but it was not understood my we that the
7 limitation would go that far.

8 What I had understood is that essentially the
9 CM's were coming in, that pieces that might be totally
10 irrelevant because they didn't involve this case at all or
11 because Mr. Salem was talking to other agents not in the
12 presence of the defendants, things like that, were, of
13 course, to be cut out or redacted, but not that major parts
14 of conversations among co-conspirators about other
15 co-conspirators would be cut out.

16 Now, with respect to some of that, I guess I
17 don't mind, but some of the specific ones that I am now --
18 just to preserve the record and to let Mr. McCarthy know
19 that I am now indicating to him that I would want in,
20 whether or not they read it now on their direct case or it
21 comes in later is not so important, but -- this has gotten
22 to be a very complicated sentence. Let me start over again.

23 Part of the reason that I am letting him know now
24 that there are certain chunks that I would like in is that,
25 first of all, I've already used them in connection with the

1 cross-examination of the witness because I assumed they were
2 in essence in, even if the final transcript versions weren't
3 quite worked out.

4 So I guess my first question for now is, is the
5 government simply putting in what would in effect be little
6 chunks of the tape, or are they putting in the tape and
7 simply saying, "Well, we only want to read a certain portion
8 of it or put in transcripts of a certain portion of it, but
9 the underlying conversations are there in evidence for use
10 however we want to use them."

11 THE COURT: Do you understand the question?

12 MR. McCARTHY: No.

13 MR. NOOTER: My question has to do with what is
14 being put into evidence with respect to CM tapes, the
15 magnetic material.

16 MR. McCARTHY: My understanding from the
17 beginning, guided by both the discussions we had, by at
18 least the spirit of what I understand to be what the Court
19 of Appeals held in Giovanelli is that everybody ought to
20 know exactly what is in evidence and what is not in
21 evidence. We put in the foundation proof of the CM tapes.
22 The only portions of the tapes that are fully in evidence
23 for all purposes in front of the jury, as I understand it,
24 and as we all understand it, at least at this table, and I
25 thought up until today everybody had understood it, are the

1 parts that have actually been read to the jury during the
2 government's case.

3 We had a lot of conversation before Salem got on
4 the stand about what counsel could and could not do on
5 cross-examination. One of the things that your Honor ruled
6 I think before Salem got on the stand was that counsel
7 weren't going to be able to use Salem's appearance for
8 impeachment purposes on their cross-examination as an
9 opportunity to make him their witness for purposes of
10 offering a whole slew of stuff that they wanted to put in,
11 but that, if he had admissible testimony, he would be called
12 back in the defense case for that purpose.

13 He was then, with those sort of loose groundrules
14 stated at the start, he was then I think very liberally
15 cross-examined as counsel chose to cross-examine him, read
16 versions of the CM conversations, sometimes versions that
17 were in dispute, for purposes of getting him to agree or not
18 agree --

19 THE COURT: But those versions are not in
20 evidence.

21 MR. McCARTHY: Correct.

22 In our view the only thing that is in evidence at
23 this point are the ones that we have read in to the jury,
24 and my understanding of it from the beginning was that the
25 foundation of the CMs was laid and they were offered with

1 the understanding that whatever proper objections people had
2 down the road they would have down the road.

3 We didn't offer 66 conversations into evidence.
4 If that were the case, then we wouldn't be going through the
5 shenanigans of bringing an interpreter in every single time
6 we have to testify to something that is in dispute.

7 MR. NOOTER: What I am trying to point out is
8 that there is a difference between the underlying Arabic
9 conversation and the translation. I thought it was
10 understood that we would have to be doing something to
11 authenticate the translations that ultimately go into
12 evidence. But that is a different matter from the
13 underlying conversations.

14 THE COURT: Not in this case, because in this
15 case the Arabic tapes are not the evidence, with the sole
16 exception of one or two words on one of the CM as to which
17 the jury was asked to listen. That was the -- Mr. Jacobs is
18 raising his hand -- that was the hand-raising testimony
19 about the United Nations or whatever else was discussed.

20 MR. NOOTER: Part of the problem may just be a
21 practical problem which will simply be resolved by recalling
22 Mr. Salem. But it seems to me that to some degree that is
23 going to be a waste of time if the government maintains the
24 position that they seem to be maintaining.

25 THE COURT: Forget their maintaining. That has

1 been the understanding throughout this trial and I am not
2 changing it now.

3 MS. STEWART: I thought I did understand it.

4 MR. NOOTER: Now I really don't understand.

5 MR. JACOBS: Just so we are clarified, I am not
6 sure if it was everybody present, I think so. I
7 specifically did not conduct an examination of Salem on any
8 of the CMs reserving, the right call him back to publish at
9 that time CM's whether the government is going to do it or
10 not.

11 THE COURT: That is what Mr. McCarthy said.

12 MR. JACOBS: Exactly.

13 MR. McCARTHY: The whole reason or doing that
14 would be because they are not in evidence.

15 MR. JACOBS: I understood that.

16 MR. McCARTHY: My point with respect to the point
17 behind Mr. Nooter's point I think is that there is an awful,
18 awful lot of stuff on the tapes where there is a lot of
19 conversation about his client that the government does not
20 intend to offer into evidence. That I don't think is
21 admissible. I don't think he ought to be laboring under the
22 misunderstanding that it is in because --

23 MR. NOOTER: Then where are we now? It is part
24 of the trial record that these things have been read to the
25 jury, and they didn't object at that time.

1 THE COURT: They have been read to the jury when?

2 MR. NOOTER: During the cross-examination of
3 Salem.

4 THE COURT: That is not admitting them into
5 evidence.

6 MR. NOOTER: That is my point. If I had known
7 that this was the position Mr. McCarthy was taking, I would
8 have moved them into evidence. I thought we had an
9 understanding that these things essentially were in
10 evidence, subject to clarifying the transcripts.

11 THE COURT: No.

12 MR. McCARTHY: Judge, as a practical matter, if
13 he was allowed to use Salem as his witness and got him to
14 acknowledge that certain statements were made, that is in
15 evidence. I am not going to stop him from making --

16 THE COURT: Salem's testimony is in evidence.
17 Whatever Salem testified to is in evidence. But if Salem
18 said it doesn't say that, or it said whatever he may have
19 testified to about what is on the transcript, that doesn't
20 mean that the underlying transcript is in evidence.

21 MR. NOOTER: Because if he said that it did, it
22 is.

23 THE COURT: His testimony is in evidence. His
24 testimony, not the entire transcript as to which you may
25 have asked him about one or two exchanges.

1 MS. STEWART: What about where he said
2 "possibly"?

3 MR. BERNSTEIN: Let me just raise one more issue
4 in the context of this, which is I think that some of us
5 have operated maybe under a delusion that the government was
6 offering, or that in evidence would be the world, not of the
7 bootlegs, but the world of the CM's. The reason I say that
8 we operated on that, is that as of last July 14 we had this
9 debate in a different context before the court at the
10 beginning of the trial. The government was supposed to
11 winnow down its anticipated redactions --

12 THE COURT: We are not going to start this now.

13 MR. BERNSTEIN: I am not intending to, Judge. I
14 am talking about the framework that I think Mr. Nooter is
15 referring to, and I am and certain others may be, which is
16 that it is only in this last day or so when the government
17 is starting to, and I think it's a close reading of their
18 letter to us saying, "We're offering the following pages of
19 CM1, 3, 5, 7, 9," whatever it may be, that for the first
20 time Mr. Nooter is believing and I'm beginning to believe
21 that the government is saying, "No, no, no. I am not
22 offering all the CM's. I am only offering on a limited
23 basis certain portions of certain CM's." And I think --

24 THE COURT: The government never said that it was
25 offering all of the CM's.

1 MR. BERNSTEIN: You may be correct, and on the
2 record there is no position by the government that they
3 would. I am talking about some of the problems that some of
4 us fear that the implication in our discussions is there has
5 never been a limitation on the world of CM's, and certainly
6 the government never post July 14 and right up until today's
7 date and until we're seeing this change of their position --

8 THE COURT: The rule has been from day one and is
9 going to continue to be that they can offer what they want,
10 subject to normal evidentiary objections, and you can offer
11 what you want, subject to normal evidentiary objections.

12 That's the way it has been; that's the way it is
13 now.

14 MR. BERNSTEIN: Some of us fear that that is not
15 what the generalized understanding was about the ultimate
16 ability to use both in our case and in the summations in
17 this case, the CM's in this case.

18 THE COURT: If what somebody is suggesting is
19 that you can wait until summation and then take a CM that
20 has not been offered and argue from it, the answer is you
21 may not.

22 MR. NOOTER: That is not the suggestion.

23 MS. AMSTERDAM: May I say something. What
24 happens in a situation where you did a cross-examination,
25 you asked a series of questions. There may have been an

1 objection and the objection was overruled and Emad Salem
2 said, "Yes, I had that conversation with Siddig. Yes, that
3 is a correct statement of what he said"?

4 THE COURT: That is in evidence. You can argue
5 it from the trial transcript.

6 MS. AMSTERDAM: I understand that. Can I then
7 publish that part of the transcript in my case?

8 THE COURT: The trial transcript?

9 MS. AMSTERDAM: No. I say CM1, page 13, line 5.
10 I read it to him and he says, "Yes, that's correct."

11 Can I now on my case publish that portion?

12 THE COURT: It is already in evidence. It is in
13 evidence as his testimony on cross. You can argue it.

14 MS. AMSTERDAM: I think I would like to show, to
15 demonstrate to the jury that there is a corresponding piece
16 of paper. I think the right to give a corresponding piece
17 of paper doesn't just run to the government, that the
18 government had Emad Salem get up there and testify to
19 things, and now they will put in their pieces of paper that
20 backed him up so the jury can take those transcripts in and
21 look at them.

22 If I am in a situation where you only have to
23 argue from the transcript, they have to no papers to take
24 back in the jury room to weigh as against the government's
25 papers, that I feel is unfair.

1 MR. McCARTHY: I think, your Honor, as a question
2 of evidence, there is a big difference. They elicited from
3 Salem some impeachment, and they were permitted as it turned
4 out to elicit it from him.

5 THE COURT: Furthermore, without anything being
6 subject to a Rule 106 objection, for example, on cross.

7 MR. McCARTHY: But if a defense witness gets on
8 the stand, I take it that the usual rules obtain, which is
9 that, other than with respect to narrow areas defined by the
10 rules of evidence where we might be able to get in extrinsic
11 evidence of an inconsistent statement, and that law I think
12 is fairly well-defined, you're stuck with the witness's
13 answer. Or, if you got him to say that the thing that you
14 wanted him to say, you got him to say the thing you wanted
15 him to say, you don't put in extrinsic evidence.

16 THE COURT: And you are at the appropriate time.

17 MR. JACOBS: Maybe I am misunderstanding. In our
18 defense case, if there are CM's that are made by the
19 government that Salem and other defendants participated in,
20 or Salem and Siddig Ali participated in, and we want to
21 offer, a lawyer wants to offer a particular CM that Salem
22 and Siddig Ali participated in during the course of the
23 conspiracy as substantive evidence, subject to relevancy
24 and --

25 THE COURT: If it is not subject to any

1 evidentiary objection, it will be received.

2 MR. JACOBS: Other than normal evidentiary
3 objections.

4 THE COURT: Right. Salem has already testified
5 to the underlying foundation.

6 MR. McCARTHY: Let me just say one thing in
7 response to what Mr. Jacobs said. He mentioned "in the
8 course of the conspiracy." Absent a Rule 106 basis I think
9 that gets him nowhere. The defendant doesn't have a right
10 to get in conversations because they were made during the
11 course of the conspiracy. Under Rule 801 the statements
12 that come in are statements of a party opponent. They don't
13 get to get in anything that Siddig may have said to Salem
14 simply because it is on tape and it was a statement that was
15 made during the course of the conspiracy. If it doesn't
16 have an independent evidentiary basis, it doesn't come in.

17 MS. AMSTERDAM: I think that is a correct reading
18 of the law, but the corresponding section to that is that
19 you go to Rule 806, which says that if the government puts
20 in statements as co-conspirator statements, then the party
21 against whom it is put in is allowed to argue the
22 credibility of the declarants and attack in any way which
23 would be appropriate as if the declarant is on the stand.
24 So if the declarant in a statement says something
25 contradictory to the co-conspirator's statement, it would

1 seem to me that 806 would allow me to publish those
2 statements.

3 THE COURT: Mr. McCarthy I think agrees with you.
4 But you are going to have to point to the statement that it
5 contradicts and we will argue it at the time you offer it.
6 Simply the fact that it was a statement made by a
7 co-conspirator during the pendency of the conspiracy is not
8 sufficient in and of itself I think was his point, and that
9 is correct.

10 Have a pleasant evening.

11 (Pages 11037 to 11038 sealed)

12 (Proceedings adjourned to Tuesday, May 23, 1995
13 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,"

Defendants.

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S5 93 Cr. 181 (MBM)

May 23, 1995
10:00 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

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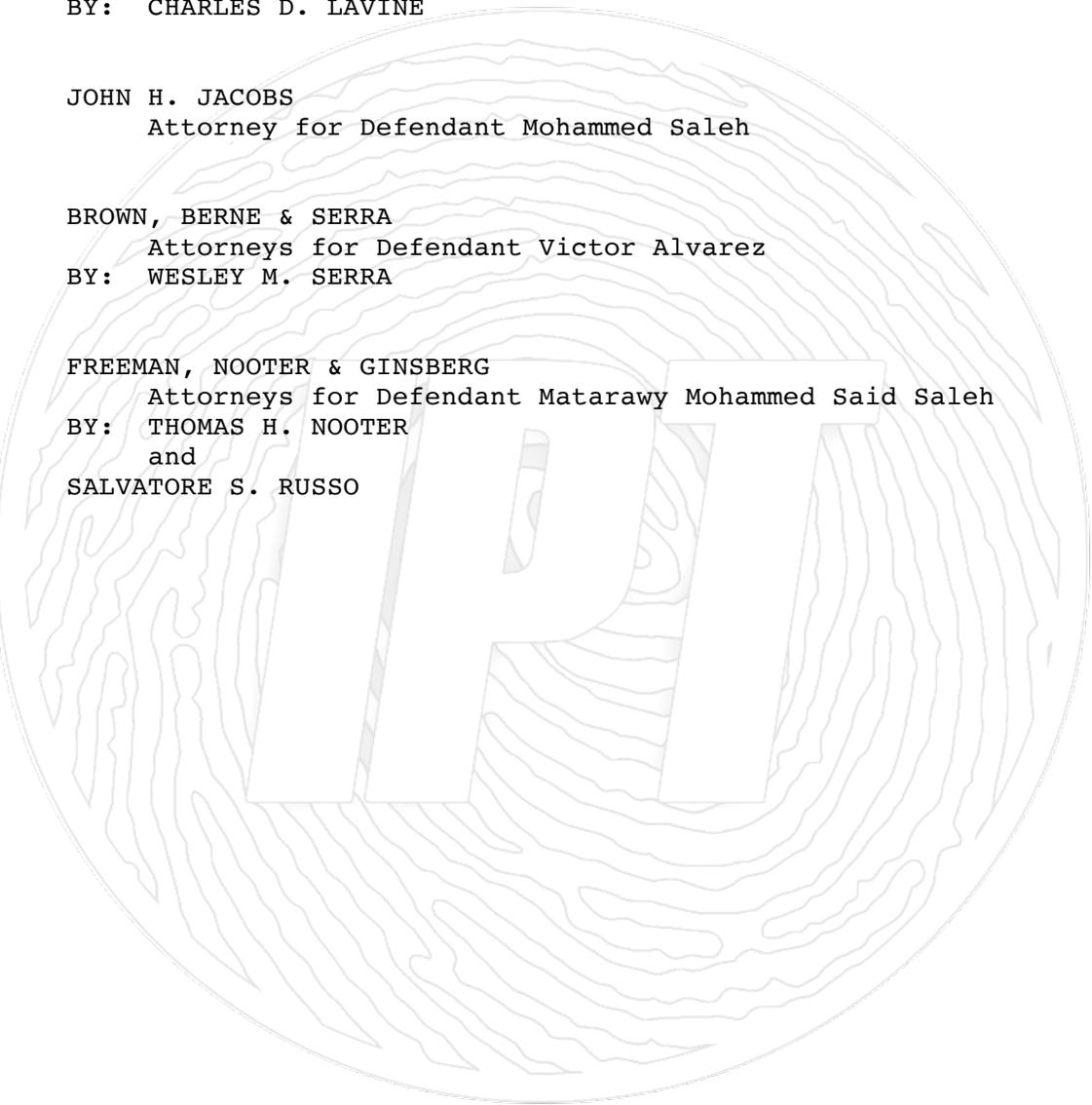
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (In open court; jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning, your Honor.

5 THE COURT: Mr. Khuzami.

6 MR. KHUZAMI: Your Honor, at this time the
7 government would request permission to display to the jury
8 some of the items placed in evidence that were seized from
9 251 Rogers Avenue.

10 THE COURT: Are there other exhibits that were
11 going to be displayed?

12 MR. KHUZAMI: Yes, this is a joint display with
13 Mr. Wasserman.

14 THE COURT: Ladies and gentlemen, you are now
15 going to see some of the exhibits that were introduced in
16 evidence last week that were seized from 251 Rogers Avenue,
17 the premises occupied by Mr. Hampton-El.

18 (Exhibits published to jury)

19 (Continued on next page)

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1 (At the side bar)

2 MR. WASSERMAN: Good morning, Judge.

3 THE COURT: Good morning.

4 MR. WASSERMAN: I just wanted to -- while they
5 are otherwise occupied, your Honor, could you tell me what
6 your decision is on the 302 disclosure that the government
7 provided in connection with Teresa Bush?

8 THE COURT: There is nothing in that 302 that
9 warrants disclosure.

10 MR. WASSERMAN: OK.

11 Second, your Honor, I made a request to have
12 included in the FISA's that the government intends to play a
13 FISA whose transcript I gave to your Honor yesterday evening
14 and provided a copy to the government.

15 THE COURT: I don't have that. I haven't seen
16 that.

17 MR. WASSERMAN: OK. It was a letter and a
18 transcript that I had hand-delivered to your Honor last
19 night. I don't think the FISA's are going to be played this
20 morning.

21 MR. KHUZAMI: No. We can get a copy. I don't
22 think it is going to be played until this afternoon.

23 MR. WASSERMAN: I can give you a copy of the
24 transcript and a copy of my letter.

25 THE COURT: Fine. Do you have it now?

1 MR. WASSERMAN: Yes, sir.

2 (Pause)

3 THE COURT: OK. I have read the covering letter.
4 I haven't, obviously, read the transcript.

5 But your request is that this be played at the
6 same time the government FISA's are being played?

7 MR. WASSERMAN: Yes, your Honor, under 106.

8 MR. KHUZAMI: Your Honor, the government's
9 position is that it is playing a select group of FISA's
10 between Mr. Rashid and Asim Muhammad for the purpose of
11 showing, A, the fact that they knew each other, and, B,
12 giving some flavor to the nature of their discussions so
13 that the jury can decide whether or not the inference to be
14 drawn is the two were involved in a gun transaction.

15 The transcript that Mr. Wasserman offers deals
16 with generally Bosnia and the rape of women there, a
17 statement by Mr. Hampton-El that there are certain liberties
18 that one enjoys in America that you don't have overseas. I
19 don't think that either of those topics are necessary to
20 clear up any confusion in the government FISA's, and, in
21 fact, I don't believe there is any confusion in the
22 government version.

23 In fact, to the extent to which the discussions
24 about Bosnia there are, and Dr. Rashid's defense here is
25 that he was involved in military training for Bosnia, the

1 fact that they are talking about Bosnia doesn't make it less
2 likely that he and Asim Muhammad might in fact have engaged
3 in gun transactions. It is just irrelevant.

4 MR. WASSERMAN: Your Honor, I have to concede to
5 the logic about Bosnia, but I have two things to say: One
6 is that there is -- the other part of the application is
7 that there are statements by my client against doing
8 violence here in the United States. I think to the extent
9 that the government's putting in virtually every other FISA
10 conversation between him and Asim Muhammad, to leave out
11 that conversation where they are trying to create an
12 inference that there was a gun transaction between the two
13 men is unfair. I think it goes directly to the inference.

14 THE COURT: I will read this transcript.

15 MR. WASSERMAN: OK. That is fine.

16 THE COURT: Rather than rely on the oral
17 summaries of it.

18 MR. WASSERMAN: Fine.

19 THE COURT: Offhand it doesn't sound like there
20 is any inconsistency between what you say is in here and
21 what is in the FISA's the government is offering. Again,
22 let me read the transcript.

23 MR. WASSERMAN: OK. The other thing, your Honor,
24 is that, I have discussed this with Mr. Khuzami, is, when
25 the FISA's are done with the jury, could you give them some

1 kind of instruction to the effect that terms they may hear
2 such as "training" or "sheik" are subject to, as with all
3 other evidence, subject to connection and clarification with
4 evidence they have received -- evidence they will receive.
5 There are references to "sheik" and it is not to Sheik
6 Rahman. But rather than go into that or to training, it's
7 not in connection with the Bosnia training, it is just to
8 remind mind them to keep --

9 THE COURT: I think the generality of that
10 instruction, that's just a question of logic and what the
11 people are talking about.

12 MR. WASSERMAN: Just to remind them not to draw
13 an inference at this point.

14 THE COURT: They should be drawing inferences at
15 this point.

16 MR. WASSERMAN: Then I would --

17 THE COURT: Tentative inferences, but --

18 MR. WASSERMAN: Then there should be some
19 clarification from the government. There's references to
20 training, there's references to sheik, and, respectively,
21 the training has nothing to do with the training that's been
22 discussed to date, and the sheik has nothing to do with any
23 sheik who's been mentioned to date. That is the reason for
24 the general --

25 MR. KHUZAMI: Maybe Mr. Wasserman is privy to

1 information that I am not. I don't know anything beyond the
2 four corners of the transcript of the tape what they are
3 talking about. It seems like they are not talking about
4 Sheik Rahman, but I don't know for sure.

5 THE COURT: The inferences about what they are
6 talking about or not talking about are for the jury to draw.
7 They have been drawing inferences on an ongoing basis. If
8 there is nothing to indicate that they are talking about
9 Sheik Abdel Rahman, then I don't think I have to tell them
10 that. I don't see the need for the instruction.

11 MR. WASSERMAN: OK.

12 (Continued on next page)

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1 (In open court)

2 MR. FITZGERALD: Your Honor, the government calls
3 John Lewoczko, L-E-W-O-C-Z-K-O.

4 JOHN LEWOCZKO,

5 called as a witness by the Government,
6 having been duly sworn, testified as follows:

7 Q. Mr. Lewoczko, if I could ask you to keep your
8 voice up, or, at the very least, to make an attempt to speak
9 toward the directional microphone.

10 You have testified before in this case?

11 A. Yes, I have.

12 Q. Can you briefly tell the jury what you do for a
13 living.

14 A. I am a special agent with the FBI.

15 Q. For how long have you been an FBI agent?

16 A. I have been with the FBI 20 years this month.

17 Q. You are with the FBI for 20 years. How many of
18 those years have you actually been a special agent?

19 A. It was 13 years.

20 Q. Can you briefly tell the jury your experience
21 with the FBI with background and training.

22 A. Prior to becoming a special agent, I was assigned
23 to the FBI laboratory in Washington, D.C., and I worked as a
24 physical science technician. In that capacity I worked with
25 a firearms examiner in his day-to-day routines in examining

1 evidence.

2 After becoming a special agent I was assigned to
3 the Mobile, Alabama office and the Newark, New Jersey
4 office, and then reassigned to the FBI laboratory again,
5 where I then, myself, after a year's training period,
6 conducted firearms examinations.

7 After being qualified to do those examinations, I
8 did them for approximately six years. Then, within the last
9 year and a half, I had been reassigned to the Memphis,
10 Tennessee office where I currently am now.

11 Q. During your time working in the laboratory, did
12 you have occasion to examine firearms that had their serial
13 numbers obliterated?

14 A. Yes.

15 Q. Let me approach you with what has been received
16 in evidence as Government Exhibit 391.

17 Is that a disabled firearm, Agent Lewoczko?

18 A. Yes, it is.

19 Q. Have you seen Government Exhibit 391 before
20 today?

21 A. Yes, I have.

22 Q. I take it you are examining the firearm. Do you
23 know if you have seen that particular firearm before?

24 A. I recognize the work that I did on it.

25 Q. Did you place your initials on that firearm?

1 A. Yes, I did.

2 Q. Can you visibly see the serial numbers on that
3 weapon?

4 A. No, I cannot.

5 Q. When you first saw the weapon, could you tell the
6 serial numbers on it?

7 A. No, I could not.

8 Q. What did the area where the serial numbers would
9 ordinarily be located look like?

10 A. It had been ground off. It had a rough surface
11 where it had been worn away.

12 Q. Can you tell the jury what you did once you saw
13 that the serial numbers had been ground off.

14 A. I then, utilizing a very fine piece of sandpaper
15 on a disk, used a technique which we refer to as polishing,
16 that is, you actually remove all the rough grinding surface
17 and polish the metal or area that had been obliterated to a
18 shiny or polished surface.

19 Q. And then what did you do at that point?

20 A. After doing that, I then applied a chemical
21 solution in an attempt to restore the obliterated numbers.

22 Q. When you applied this chemical solution to this
23 particular weapon, could you see the serial numbers?

24 A. I could.

25 Q. Did you take any photographs of the serial

1 numbers when they were visible?

2 A. I did.

3 Q. Do the serial numbers remain visible once they
4 are treated with the solution, or do they fade?

5 A. It depends on the weapon, the extent of the
6 obliteration, the depth of the original stamping, but many
7 times, no, they do not.

8 Q. Do the serial numbers remain visible on the gun
9 now?

10 A. I do not see them.

11 Q. Let me approach you with what's been premarked as
12 Government Exhibits 396 I, J and K.

13 Taking a look at 396 I, J and K, do you recognize
14 what they are?

15 A. I do.

16 Q. What are they?

17 A. These are the three photographs which I took, one
18 of which is the condition of the weapon when I received it
19 into the laboratory, that being the serial number in its
20 obliterated state.

21 The other two are photographs that I took as I
22 processed the firearm and restored the serial number.

23 Q. Can you tell us which photograph is a photograph
24 of how the weapon looked when you first received it?

25 A. Government's Exhibit 396I.

1 Q. Is that a picture of the weapon before you
2 polished the obliterated area?

3 A. That's correct.

4 Q. Is 396I a fair and accurate picture of what the
5 weapon looked like at that point in time?

6 A. It is.

7 Q. 396 J and K.

8 A. 396 J and K represent the serial number in its
9 stages of restoration as I worked on it.

10 Q. Are they fair and accurate pictures of what that
11 area of the gun looked like at that point in time?

12 A. Yes.

13 MR. FITZGERALD: Your Honor, I would offer
14 Government Exhibits 396 I, J and K.

15 MR. WASSERMAN: Brief voir dire, Judge.

16 THE COURT: Go ahead, Mr. Wasserman.

17 VOIR DIRE EXAMINATION

18 BY MR. WASSERMAN:

19 Q. Good morning.

20 A. Good morning.

21 Q. When did you do the pictures as well as the work
22 to retrieve the serial number?

23 A. I received the firearm into the laboratory during
24 June of 1992, returned it in August of '92. So it would
25 have been the time period in between that.

1 MR. WASSERMAN: Fine. Thank you.

2 No further questions. No objection, Judge.

3 THE COURT: All right. 396 I, J and K are
4 received without objection.

5 (Government's Exhibits 396 I, J, and K for
6 identification were received in evidence)

7 Q. Agent Lewoczko, looking at 396 J and K, can you
8 tell us what determination you made as to the serial number
9 of the weapon marked Government Exhibit 391?

10 A. Based on my examination, I determined that the
11 serial number was as follows: AP0737. The next digit I
12 could not fully restore, and I determined it to be most
13 likely a five or a three, with the last digit three.

14 Q. So there is one digit that you weren't sure
15 whether it was a five or a three?

16 A. That's correct.

17 Q. Can you show the jury where on Government Exhibit
18 391, the weapon, is the area where the serial number was
19 obliterated.

20 A. On the back strap, the back portion of the grip
21 right in this area right here.

22 Q. And that remains in a polished state now?

23 A. Yes.

24 MR. FITZGERALD: Your Honor, may I pass 391 and
25 396 I, J and K?

1 THE COURT: Yes.

2 (Exhibits published to the jury)

3 MR. FITZGERALD: I have no further questions,
4 Judge.

5 MR. WASSERMAN: Briefly.

6 THE COURT: Mr. Wasserman.

7 CROSS-EXAMINATION

8 BY MR. WASSERMAN:

9 Q. The gun in question, do you know offhand how deep
10 the serial numbers are stamped in it?

11 A. It actually varies from firearm to firearm and
12 from manufacturer to manufacturer. The reason why that is,
13 those numbers are produced by a method called gang stamping,
14 and sometimes the stamps as they get worn out are not
15 stamped evenly in each filing successively. I do not know
16 the original depth of that particular firearm.

17 Q. The firearm in question is a Davis 380, correct?

18 A. That's correct.

19 Q. That is a very inexpensive firearm?

20 A. That's correct.

21 Q. I believe it retails for about \$70.

22 A. That's probably accurate.

23 Q. As a matter of technique, if you are going to
24 take a serial number off, a professional would drill it out,
25 correct, rather than sand it down?

1 A. Numerous times I have seen that, yes. I've seen
2 it equally as many times as it was they just ground off, and
3 also I've seen it drilled out.

4 Q. And if it's drilled out, it is a much more
5 difficult for you to retrieve the serial number, correct?

6 A. That's correct.

7 MR. WASSERMAN: Thank you.

8 No further questions, your Honor.

9 THE COURT: Any other cross?

10 Any redirect?

11 MR. FITZGERALD: No, Judge.

12 THE COURT: Thank you. You are excused.

13 THE WITNESS: Thank you, your Honor.

14 (Witness excused)

15 MR. FITZGERALD: At this time the government
16 would offer a photo identified last week, Government Exhibit
17 292.

18 THE COURT: Absent objection that is received.

19 MR. WASSERMAN: Your Honor, could we have a very
20 brief side bar on it. I don't think I have any objections.

21 THE COURT: Come on up.

22 (Continued on next page)

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1 (At the side bar)

2 MR. WASSERMAN: I believe we were going to
3 stipulate that that is a copy of a passport photo so there
4 is no question in the jury's mind.

5 THE COURT: That it is a copy of a passport
6 photo?

7 MR. WASSERMAN: Correct.

8 THE COURT: OK. So nobody thinks it is a mug
9 shot?

10 MR. WASSERMAN: Correct. This is going to be
11 used with Denny, who is testifying later, am I correct?

12 MR. FITZGERALD: Yes.

13 MR. WASSERMAN: OK. No objection, Judge.

14 THE COURT: Why don't we do the stipulation at
15 the time the exhibit is used rather than now.

16 MR. WASSERMAN: That is fine.

17 THE COURT: Otherwise, I mean it is not going to
18 be shown to the jury now because it doesn't have any meaning
19 now, does it?

20 MR. WASSERMAN: The only thing it might do is
21 make it clearer as to what I came to side bar for. Forgive
22 me -- I don't mean to give you a stomach ache.

23 MR. FITZGERALD: I just want to show it to the
24 jury so they know what it is and then stipulate that it was
25 referred to in the testimony of Garrett Wilson last week.

1 They will know it is the same photograph. I will just hold
2 it up to them at this point.

3 THE COURT: All right. Then I will tell them
4 now.

5 MR. FITZGERALD: Right.

6 MR. WASSERMAN: I am sorry. Or Mr. Fitzgerald
7 can simply say that there is a stipulation that that is a
8 copy of a passport photo.

9 THE COURT: Fine. That was referred to in the
10 testimony of Garrett Wilson.

11 MR. WASSERMAN: That's fine.

12 MR. FITZGERALD: Great. Thank you.

13 (Continued on next page)

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1 (In the open court)

2 THE COURT: Go ahead.

3 MR. FITZGERALD: Your Honor, there is a
4 stipulation that Government Exhibit 292 is the photograph
5 referred to in Garrett Wilson's testimony, and that is a
6 copy of a passport photograph of the person depicted.

7 MR. WASSERMAN: No objection.

8 MR. FITZGERALD: I would just like to show it to
9 the jury for two seconds, Judge.

10 (Exhibit displayed to the jury)

11 MR. FITZGERALD: Thank you, Judge.

12 MR. KHUZAMI: Your Honor, the government calls
13 Anthony Annunziato A-N-N-U-N-Z-I-A-T-O, as its next witness.
14 ANTHONY ANNUNZIATO,

15 called as a witness by the Government,
16 having been duly sworn, testified as follows:

17 THE COURT: Go ahead.

18 MR. KHUZAMI: Thank you, your Honor.

19 Q. Mr. Annunziato, how are you employed?

20 A. As a special agent with the Bureau of Alcohol,
21 Tobacco & Firearms.

22 Q. What is your position with the Bureau of Alcohol,
23 Tobacco & Firearms?

24 A. I am currently assigned to the New York City
25 Joint Firearms Task Force.

1 Q. How long have you been a special agent?

2 A. Approximately seven and a half years.

3 Q. Does the Bureau of Alcohol Tobacco & Firearms, or
4 ATF, maintain records for the sale or purchase of firearms?

5 A. Yes, we do.

6 Q. Do you know where that information comes from?

7 A. It comes from gun dealers, wholesalers, and
8 individual purchasers.

9 Q. Does ATF have the capacity to trace some of that
10 information to find out when a particular gun was purchased
11 or sold?

12 A. Yes, we do.

13 Q. Were you recently requested to conduct such a
14 trace?

15 A. Yes.

16 Q. When was that?

17 A. Around April 10, 1995.

18 Q. Do you recall what type of gun you were asked to
19 trace?

20 A. Yes.

21 Q. What type of gun was that?

22 A. A chrome Davis 380.

23 Q. Were you given the serial number that pertained
24 to that trace as well?

25 A. Yes, I was.

1 Q. What serial number was that?

2 A. AP073753.

3 Q. Was such a trace conducted?

4 A. Yes, it was.

5 Q. What information was gathered from that trace
6 concerning the purchase or sale of that firearm?

7 A. The gun traveled from Davis Industries to R & R
8 Wholesalers in Rochester, New York. From there it traveled
9 to Lou's Loan, Inc., Chester, Pennsylvania, and finally it
10 traveled to -- it was finally purchased by Teresa Bush.

11 Q. Do you recall the date of the purchase by Teresa
12 Bush?

13 A. Yes, 11/29/90.

14 Q. Do you recall from that trace where Teresa Bush
15 had purchased that weapon?

16 A. I believe in Pennsylvania.

17 Q. Do you recall the name of the retailer or
18 business that she purchased it from?

19 A. Not offhand. I believe it is on a trace form.

20 MR. KHUZAMI: Your Honor, may I approach.

21 THE COURT: Yes.

22 Q. Let me show you what's been marked as Government
23 Exhibit 391D for identification.

24 MR. PATEL: Objection, your Honor. Oates.

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

1 (At the side bar)

2 MR. KHUZAMI: So it is clear, I am attempting to
3 refresh the witness's recollection, not to introduce the
4 document into evidence, as to the name of the retailer.

5 THE COURT: You have to establish that at one
6 point he had a recollection I suppose.

7 MR. PATEL: This witness, to my understanding,
8 never really had any personal knowledge of this. He just
9 did -- this is just a trace report. It is really a report
10 that is coming in through this witness. Unless
11 Mr. Wasserman --

12 THE COURT: How was the trace done?

13 MR. KHUZAMI: The trace was conducted through the
14 Bureau of Alcohol, Tobacco & Firearms. If I might have one
15 moment with Mr. Wasserman and Mr. Patel.

16 THE COURT: Fine.

17 (Counsel conferred)

18 MR. WASSERMAN: Your Honor, we have resolved it.
19 Mr. Patel withdrew his objection. You are going to refresh
20 his recollection, and that is fine by me.

21 THE COURT: Fine.

22 MR. WASSERMAN: Thank you, Judge.

23 (Continued on next page)

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1 (In open court)

2 MR. PATEL: Objection withdrawn.

3 Q. Special Agent Annunziato, based on the results of
4 your trace, were you at one time familiar with the name of
5 the retailer where Teresa Bush had purchased the weapon?

6 A. Yes, I was.

7 Q. Let me show you what's been marked as Government
8 Exhibit 391D and ask you to take a look at that and see if
9 that refreshes your recollection as to the name of the
10 retailer.

11 A. Yes, it does.

12 Q. What is the name of the retailer?

13 A. Lou's Loan, Inc.

14 MR. KHUZAMI: No further questions.

15 THE COURT: Cross, Mr. Wasserman?

16 MR. WASSERMAN: Yes, Judge.

17 THE COURT: Representing Mr. Hampton-El.

18 CROSS-EXAMINATION

19 BY MR. WASSERMAN:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. You may have responded in April of this year to a
23 request for a trace, but do you recall when the trace was
24 originally done?

25 A. I initiated it in April. This trace was

1 initiated by myself in April.

2 Q. Wasn't there a request made in July, July 2, '92?

3 A. There may have been, but I wasn't aware of it.

4 MR. WASSERMAN: Your Honor, may I just have a
5 moment with counsel.

6 (Counsel conferred)

7 MR. WASSERMAN: Your Honor, at this time, the
8 government will stipulate with me to the admission of the
9 trace which contained the data requested.

10 THE COURT: That's 391D?

11 MR. WASSERMAN: Yes, your Honor.

12 MR. KHUZAMI: Stipulated.

13 MR. WASSERMAN: Thank you. No further questions.

14 THE COURT: 391D is received.

15 MR. PATEL: May I, your Honor?

16 THE COURT: Mr. Patel.

17 (Government's Exhibit 391D for identification was
18 received in evidence)

19 CROSS-EXAMINATION

20 BY MR. PATEL:

21 Q. Agent -- is it Annunziato? Am I pronouncing that
22 correctly?

23 A. Yes.

24 Q. You initiated this trace in April of 1995, is
25 that correct?

1 A. Correct.

2 Q. There is an ATF form that you used to initiate
3 this trace, is that correct?

4 A. Yes.

5 MR. PATEL: May I approach, your Honor.

6 THE COURT: Yes.

7 Q. Showing you what's been marked Government Exhibit
8 391E, I ask you to take a look at that.

9 A. Yes.

10 Q. Is that the document that you filled out to
11 initiate this trace?

12 A. Yes, I was present when this was filled out.

13 (Continued on next page)

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1 Q. Is any of this in your handwriting?

2 A. No, it's not.

3 Q. Who filled this out?

4 A. We have an intelligence specialist named Johnson.

5 He is in charge of the tracing.

6 Q. This was filled out in your presence?

7 A. Yes.

8 THE COURT: You are not using the microphone.

9 MR. PATEL: I'm sorry, your Honor.

10 Q. This was filled out in your presence?

11 A. Yes.

12 MR. PATEL: Your Honor, I would offer 391E.

13 MR. KHUZAMI: Objection.

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

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1 (At the side bar)

2 MR. PATEL: Your Honor, I believe a proper
3 foundation has been laid --

4 THE COURT: What is the relevance of it?

5 MR. PATEL: It is an admission by the government
6 that Salem was a suspect in the World Trade Center bombing
7 in April of 1995.

8 MR. KHUZAMI: Your Honor, it is hearsay. The
9 foundation is not that this person wrote it --

10 THE COURT: Somebody else wrote it. The
11 objection is sustained. Thank you. Nice try.

12 (In open court)

13 THE COURT: The objection is sustained. Let's
14 go.

15 (Continued on next page)

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1 BY MR. PATEL:

2 Q. Agent, this document 391E, is that a record that
3 is kept in the regular course of business by members of your
4 Bureau of Alcohol Tobacco and Firearms?

5 A. What form?

6 Q. The one I just showed you.

7 Q. Is it kept as a record?

8 Q. Yes.

9 A. It is just to initiate the trace. We don't have
10 a filing procedure that we keep as a record.

11 Q. Is this a business form that you use as an agent,
12 or agents of the ATF use in the regular course of their
13 duties?

14 A. Yes.

15 Q. This particular form was filled out in your
16 presence in the course of your duties as an ATF agent,
17 correct?

18 A. Correct.

19 Q. And the information contained in this form was
20 accurate, to the best of your knowledge?

21 A. Yes.

22 MR. PATEL: Your Honor, I offer this as a
23 business record.

24 MR. KHUZAMI: Objection.

25 THE COURT: Sustained.

1 MR. PATEL: At this time, your Honor, I have no
2 further questions.

3 THE COURT: Anything else?

4 MR. KHUZAMI: Nothing from the government, your
5 Honor.

6 THE COURT: You are excused.

7 THE WITNESS: Thank you.

8 (Witness excused)

9 MR. KHUZAMI: Your Honor, the government calls
10 Cedric Pinckney, P-I-N-C-K-N-E-Y, as its next witness.

11 CEDRIC NORVELL PINCKNEY,
12 called as a witness by the government,
13 having duly affirmed, testified as follows:

14 THE COURT: If you could talk into the
15 microphone, either the one that is right alongside you or
16 the one ahead of you.

17 THE WITNESS: P-I-N-C-K-N-E-Y.

18 THE COURT: Go ahead.

19 DIRECT EXAMINATION

20 BY MR. KHUZAMI:

21 Q. What is your name, sir?

22 A. Cedric Norvell Pinckney.

23 Q. Mr. Pinckney, there is a second microphone right
24 in front of you if that is a little easier to speak into.

25 Mr. Pinckney, do you go by any other names other

1 than Cedric Norvell Pinckney?

2 A. Yes.

3 Q. What names are those?

4 A. Saad Abdul Salaam, Saad Abdul Salaam, Salaam,
5 Butchie.

6 Q. How old are you?

7 A. Thirty-six years old.

8 Q. Where were you born?

9 A. Philadelphia.

10 Q. How far did you go in school?

11 A. Pennsylvania -- excuse me. Twelfth grade. I
12 graduated.

13 Q. Did you graduate from high school?

14 A. Yes.

15 Q. Are you currently married?

16 A. Yes, I am.

17 Q. What is your wife's name?

18 A. Teresa Bush.

19 Q. Are you currently in jail?

20 A. Yes, I am.

21 Q. For what crime are you in jail?

22 A. Armed bank robbery.

23 Q. Mr. Pinckney, did you ever serve in the military?

24 A. Yes, I did.

25 Q. Were you drafted or did you enlist?

1 A. I was enlisted. I enlisted.

2 Q. When did you enlist?

3 A. 1980.

4 Q. Which branch of the armed forces did you enlist
5 in?

6 A. The army.

7 Q. Did you have any specialty while you were working
8 in the army?

9 A. Yes, I did.

10 Q. What was that?

11 A. Telecommunication operator specialist.

12 Q. Did there come a time when you were sent by the
13 army to serve in Korea?

14 A. Yes.

15 Q. When was that?

16 A. The end of '81.

17 Q. The end of 1981?

18 A. I believe so.

19 Q. While you were in Korea, did you use illegal
20 drugs?

21 A. Why yes, I did.

22 Q. What kind of drugs did you use?

23 A. Uppers, downers, marijuana, alcohol.

24 Q. Did you get in any trouble while you were in
25 Korea serving with the military?

1 A. Yes, I did.

2 Q. What was that?

3 A. I was charged with selling American products to
4 foreign -- to the Koreans.

5 Q. Where did you get the American products that you
6 were selling to the Koreans?

7 A. From the post exchange in the commissary.

8 Q. Why was it illegal for you to be selling these
9 items to the Koreans?

10 A. Because we had rations, and I had exceeded my
11 ration.

12 Q. What types of items were you selling to the
13 Koreans?

14 A. Coffee, alcohol, cigarettes, petroleum jelly,
15 Tylenols, over-the-counter drugs.

16 Q. What was the total value of goods that you sold
17 in this manner?

18 A. I believe about \$5,000.

19 Q. Did you get caught doing this?

20 A. Yes, I did.

21 Q. What happened as a result of that?

22 A. As a result of that I was discharged under other
23 than honorable conditions.

24 Q. During that time, did you threaten anyone in your
25 platoon?

1 A. Yes, I did.

2 Q. What did you threaten them with?

3 A. I threatened with a M16, A1 rifle.

4 Q. Was that rifle loaded at the time you did that?

5 A. No, it wasn't.

6 Q. Were you hospitalized as a result of that threat?

7 A. Yes, I was.

8 Q. For how long?

9 A. Two days.

10 Q. What happened after that?

11 A. I was discharged and returned to -- told to
12 return to my unit.

13 Q. Why did you threaten the other members of your
14 platoon?

15 A. I felt that if I act a little crazy or ill rash,
16 that they might have a little mercy on my sentencing.

17 Q. What rank did you achieve in the army?

18 A. PFC.

19 Q. Were you bumped down in rank as a result of your
20 discharge under less than honorable conditions?

21 A. Yes, I was.

22 Q. What was the rank that you were discharged with?

23 A. E1.

24 Q. Is E1 still --

25 A. Private, yes.

1 Q. What did you do after you were discharged from
2 the United States Army?

3 A. Came back to Philadelphia.

4 Q. Do you recall when that was?

5 A. I believe it was in July 7, 1982.

6 Q. Did you use illegal drugs when you returned to
7 the United States in 1982?

8 A. Yes, I did.

9 Q. For how long a period did you continue to use
10 drugs?

11 A. Between '82 and 1994.

12 Q. What happened in 1994 to cause you to stop using
13 illegal drugs?

14 A. I got arrested.

15 Q. Was that for the bank robbery?

16 A. Yes.

17 Q. What kind of drugs did you use during this
18 period?

19 A. I used marijuana, alcohol, cocaine, heroin.

20 Q. During the period of 1982 to 1994, were you
21 employed?

22 A. Yes, I was.

23 Q. What kind of jobs did you have?

24 A. A room service waiter at a hotel, a cabdriver,
25 and counseling in the mental health field.

1 Q. What type of persons were you counseling?

2 A. Dual diagnosed people on psychotropic drugs,
3 children that was dependent -- neglected children who was
4 incorrigible, and substance abuse.

5 Q. During the period of 1982 to 1994 when you
6 indicated you were using drugs, were you using them during
7 the entire period of that time or were you using them off
8 and on?

9 A. Off and on.

10 Q. Can you estimate how much time during that period
11 you were using drugs and how much time you were not?

12 A. Yes, about half of that time. Half, I would say
13 like between '82 and '94, half of that.

14 Q. Half you were using drugs and half you were not?

15 A. Yes.

16 Q. Did you commit any robberies during that time
17 period, 1982 to 1994?

18 A. Yes, I did.

19 Q. Did you rob other cabdrivers while you were
20 working as a cabdriver?

21 A. Yes, I did.

22 Q. How is it that you robbed them?

23 A. Sometimes when they would be sleeping in their
24 cab I would go by and pickpocket them. One occasion I
25 pulled out a gun.

1 Q. Pulled a gun on who?

2 A. On some passengers.

3 Q. Do you recall what time period these robberies
4 occurred?

5 A. I believe between '81 and '87.

6 Q. How much money did you get total from these
7 robberies?

8 A. About \$500.

9 Q. Did there come a time where you assaulted a
10 person to attempt to get them to write you a check?

11 A. Yes, sir.

12 Q. Who was the person that you assaulted?

13 A. A person by the name of Joel Fletchman.

14 Q. How did you know Mr. Fletchman?

15 A. I used to pick him up at the post office every
16 day and I would take him over to his condominium.

17 Q. Was this when you were driving a cab?

18 A. Yes, sir.

19 Q. Do you recall when it was, roughly the time
20 period it was that you assaulted him?

21 A. Yes, sir.

22 Q. When was that?

23 A. I believe between '83 and '85.

24 Q. How is it that you assaulted him?

25 A. I tried to strangle him with his underwears.

- 1 Q. Did you succeed?
- 2 A. No, I didn't.
- 3 Q. What caused you to stop?
- 4 A. He started writing the check.
- 5 Q. How much was the check for?
- 6 A. \$1,500.
- 7 Q. Did you cash the check?
- 8 A. No, I didn't.
- 9 Q. Why not?
- 10 A. He put a stop on it.
- 11 Q. At the same time that he wrote the check, did you
12 take any other checks from him?
- 13 A. Yes, I did.
- 14 Q. How many?
- 15 A. I took about two checks.
- 16 Q. Were these blank checks or were they written out?
- 17 A. They were blank checks.
- 18 Q. Did you ever after that try and cash one of those
19 checks that were blank?
- 20 A. Yes, I did.
- 21 Q. Were you able to cash it?
- 22 A. Yes, I was.
- 23 Q. How much did you get?
- 24 A. A thousand dollars.
- 25 Q. Did you steal anything else from Mr. Fletchman?

1 A. Yes, I did.

2 Q. What is that?

3 A. A money assets card that you could put in a
4 machine and withdraw money from it.

5 Q. How much money did you withdraw from
6 Mr. Fletchman's bank card or cash machine card?

7 A. Over a period of several days, \$2,100.

8 Q. During this time period -- withdrawn. Did you
9 ever engage in a phony any document scheme with Ford Motor
10 Credit Company?

11 A. Yes, I did.

12 Q. When was that?

13 A. 1992.

14 Q. What was involved in this scheme?

15 A. A friend of mine had a computer that we could tap
16 into the Bureau of Credits to find out who had good credit,
17 and we would take the person that got good credit and make
18 up phony documentation, license, and find someone to act
19 like that person and go into the car dealership and purchase
20 a car.

21 Q. Did you ever purchase a car yourself under this
22 phony document scheme?

23 A. Yes, I did.

24 Q. What happened to the car?

25 A. What happened to the car? It got repossessed.

1 Q. Did you ever make any money from getting others
2 to -- withdrawn. Did anybody else ever purchase a car with
3 these phony documents?

4 A. Yes.

5 Q. About how many times?

6 A. About I would say three to five times.

7 Q. How much money did you make off of those schemes?

8 A. About \$1,100.

9 Q. During this time period did you also engage in
10 any robberies of drug dealers or people playing craps or
11 other gambling games on the streets?

12 A. Yes, I did.

13 Q. What period of time did you do that?

14 A. Between '82 and '94.

15 Q. About how many times did you rob these people?

16 A. About maybe 15, 20 times.

17 Q. What did you rob them of?

18 A. I robbed them of drugs, money, beepers, glasses,
19 communicators.

20 Q. Did you carry weapons during these robberies?

21 A. Yes, I did.

22 Q. Did you ever use them?

23 A. Yes, I did.

24 Q. How often did you use them?

25 A. I used -- could you repeat that question.

1 Q. How often did you use them?

2 A. During the robbery? Every time I robbed somebody
3 I used a weapon, but I never fired it.

4 Q. Can you estimate how much in money or drugs that
5 you got during these robberies?

6 A. 5 to \$10,000.

7 Q. Do you recall when it is that you committed the
8 bank robbery that you are currently in jail for?

9 A. Yes.

10 Q. When was that?

11 A. September 1991.

12 Q. Where was the bank?

13 A. The state of Delaware.

14 Q. Did you do it by yourself or with others?

15 A. With two others.

16 Q. What was your role in the robbery?

17 A. Stand by the door, if anybody come in make them
18 lay down on the floor.

19 Q. What was the role of the other two?

20 A. Jump over the counter, and the other one stand in
21 the middle of the floor make sure nobody moved.

22 Q. If you could pull the microphone just a little
23 closer to you, Mr. Pinckney, so everyone can hear you.

24 Thank you.

25 Did you use a car that day in the robbery?

- 1 A. Yes, I did.
- 2 Q. What did you use the car for?
- 3 A. Get-away.
- 4 Q. Were you armed that day?
- 5 A. Yes, I was.
- 6 Q. What kind of weapon did you have?
- 7 A. I had a Mossberg .12-gauge shotgun, I had a .38
8 caliber and I had a 9 millimeter.
- 9 Q. Where was the shotgun?
- 10 A. The shotgun was in the back of my car.
- 11 Q. Where was the .38 caliber?
- 12 A. On my person.
- 13 Q. How about the 9 millimeter?
- 14 A. On my codefendant's person.
- 15 Q. Was anybody shot in that robbery?
- 16 A. No.
- 17 Q. How much money was taken?
- 18 A. \$5,500.
- 19 Q. What happened to the money after the robbery?
- 20 A. Dye-pack blew up. It was like a boobytrap. Dye
21 exploded, the money exploded.
- 22 Q. Where did the money explode?
- 23 A. Where the car that was in front of me.
- 24 Q. Who was in that car?
- 25 A. My two codefendants.

1 Q. What happened after the money exploded?

2 A. They threw the money bag across the -- they threw
3 the money bag out the window and they abandoned the car.

4 Q. Did you get questioned by the police later that
5 day after the bank robbery?

6 A. Yes, I did.

7 Q. Did they ask you whether or not you had committed
8 it?

9 A. Yes, they did.

10 Q. What did you say?

11 A. No, I didn't.

12 Q. Were you later subpoenaed to testify before the
13 grand jury?

14 A. Yes, I was.

15 Q. Did you in fact testify before the grand jury?

16 A. Yes, I did.

17 Q. Were you placed under oath to tell the truth when
18 you appeared before the grand jury?

19 A. Yes.

20 Q. Were you asked whether or not you committed the
21 bank robbery?

22 A. Yes.

23 Q. What did you tell them?

24 A. I told them I had no parts of it.

25 Q. Did you later plead guilty to the bank robbery?

1 A. Yes.

2 Q. Do you remember what charges you pled guilty to?

3 A. Yes.

4 Q. What are those?

5 A. Armed bank robbery, conspiracy to commit a bank
6 robbery and carrying a firearm -- carrying a firearm.

7 Q. Do you recall when you pled guilty?

8 A. Yes, I do.

9 Q. When was that?

10 A. 1994.

11 Q. Do you recall when you were arrested for the bank
12 robbery?

13 A. Yes, I do.

14 Q. When was that?

15 A. May 9, 1994.

16 Q. At the time you pled guilty, did you enter into
17 any cooperation agreement with the government?

18 A. No, I didn't.

19 Q. Did there come a time when you got sentenced?

20 A. Yes.

21 Q. Do you remember when that was?

22 A. No, I don't.

23 Q. Do you remember how long after your guilty plea
24 it was?

25 A. Before I got sentenced? It might be a month or

1 so afterwards.

2 Q. What was your sentence?

3 A. A hundred months incarceration, five years
4 supervised release for the gun, and I think two years, three
5 years for the bank robbery.

6 Q. What is your current expected release date from
7 prison?

8 A. August 11, 2001.

9 Q. Did there come a time when you began talking to
10 the government about cooperation?

11 A. Yes.

12 Q. When was that?

13 A. I believe that was around March, they came and
14 saw me.

15 Q. March of what year?

16 A. 1994.

17 Q. 1994 or 1995?

18 A. 1995.

19 Q. Did you in fact enter into an agreement with the
20 government?

21 A. Yes, I did.

22 Q. Is that agreement oral or is it in writing?

23 A. That agreement is in writing.

24 MR. KHUZAMI: Your Honor, may I approach?

25 THE COURT: Yes.

1 Q. Mr. Pinckney, let me show you what has been
2 marked as Government's Exhibit 35123-L for identification
3 and ask you if you recognize that as your agreement with the
4 government?

5 A. Yes.

6 Q. Do you recognize the xerox copy of your signature
7 and your attorney's signature on the second to last page?

8 A. Yes.

9 Q. Mr. Pinckney, what is your understanding of what
10 you have agreed to do under the terms of your cooperation
11 agreement with the government?

12 A. My understanding is I would receive immunity for
13 all the crimes -- wait. Could you repeat that, please.

14 Q. Yes. What is your understanding of what you have
15 agreed to do under the terms of your cooperation agreement?

16 A. I agreed to tell the truth.

17 Q. Do you know what it is that the government agreed
18 to do under that cooperation agreement?

19 A. Yes.

20 Q. What is that?

21 A. They agreed to give me immunity for my past
22 crimes from '90 to '94 and that they would send a letter to
23 my sentencing judge saying that I cooperated with the
24 government.

25 Q. Since you began cooperating with the government,

1 did you receive any money from the government?

2 A. Yes, I have.

3 Q. How much?

4 A. About \$300.

5 Q. Where did that money go?

6 A. For commissary.

7 Q. What do you mean by commissary?

8 A. Different little foods because of my
9 inconvenience of being brought from another institution
10 down, I had no food or anything.

11 Q. Aside from \$300, did you get any material goods
12 from the government?

13 A. Yes, I did.

14 Q. What did you get?

15 A. I got a prayer rug, I got a khufi.

16 Q. I am sorry, what is a khufi?

17 A. A hat.

18 Q. Is it the hat you are currently wearing?

19 A. Yes. I got a watch, a Walkman radio, some
20 glasses.

21 Q. Eyeglasses?

22 A. Eyeglasses.

23 Q. Mr. Pinckney, did you ever sell firearms?

24 A. Yes, I did.

25 Q. During what time period were you selling

1 firearms?

2 A. Between 1990 and 1994.

3 Q. Can you estimate how many firearms you sold?

4 A. Approximately about 30 to 50.

5 Q. Where did you get the guns that you sold?

6 A. I got them from a gun store in Pennsylvania named
7 Colosimo's and another gun store, Lou's Loans, and from some
8 people that was from Atlanta.

9 Q. Who did you sell these guns to?

10 A. I sold these guns to everybody, drug dealers,
11 Muslims.

12 Q. Was your wife involved in any of the gun
13 purchases?

14 A. Yes, my wife was.

15 Q. What was her role in some or all of these gun
16 purchases?

17 A. Her role was to get me some guns.

18 Q. How did she go about getting guns?

19 A. She went and had to fill out applications.

20 Q. Did she fill out applications at either of the
21 stores that you testified to that you bought guns from?

22 A. Yes.

23 Q. Which of the two stores?

24 A. Lou's Loans.

25 Q. Did there come a time that you met a man named

1 Asim?

2 A. Yes.

3 Q. Do you remember when that was?

4 A. I believe it was like in late part of 1990 or
5 middle part. I am not sure.

6 Q. Where did you meet him?

7 A. At New York.

8 Q. Where in New York?

9 A. At a masjid, a musellum by the name of Farook
10 Masjid.

11 Q. Is another name for masjid mosque?

12 A. Yes.

13 Q. Do you know where the Farook mosque is located?

14 A. Somewhere on Atlantic Avenue in Brooklyn, I
15 believe.

16 Q. Where did you live at that time that you met this
17 person named Asim?

18 A. I lived in Philadelphia.

19 Q. What were you doing in Brooklyn?

20 A. Trying to sell some guns.

21 Q. Did you enter the mosque on that day?

22 A. Yes, I did.

23 Q. What did you do when you entered the mosque?

24 A. I inquired about did anyone know a person by the
25 name of Shaheed.

1 Q. Why were you asking about a person named Shaheed?

2 A. Because he would buy some guns off of me.

3 Q. Do you recall who it was that you spoke to about
4 locating this person named Shaheed?

5 A. Yes, I did do.

6 Q. Who is that?

7 A. Asim.

8 Q. Did you know him as Asim at the time or did you
9 later learn his name?

10 A. I learned his name later.

11 Q. Did you have a conversation with Asim at that
12 time?

13 A. Yes, I did.

14 Q. What did you say to him and what did he say to
15 you?

16 A. I asked him did he know Shaheed. He told me yes.
17 I asked him was he around. He said he had left earlier.
18 And I asked him did he know how I could get in touch with
19 him 'cause I had something for him, and he asked me --

20 Q. I am sorry, who is the "he" that asked you?

21 A. Asim asked me could he ask me what did he have
22 for him and I told him I had a pair of shoes for him.

23 Q. What did you mean by a pair of shoes?

24 A. I had a couple of guns.

25 Q. What did Asim say to you when you indicated you

- 1 had a pair of shoes?
- 2 A. He would like to take a look at the weapon.
- 3 Q. Did he in fact look at the weapon?
- 4 A. Yes, he did.
- 5 Q. Where did that take place?
- 6 A. In the back of my car.
- 7 Q. What weapons did you have at that time?
- 8 A. I had a .380 and a .25 automatic.
- 9 Q. What did Asim say to you when you showed him the
10 two weapons in your car?
- 11 A. He was interested in the .380.
- 12 Q. Did you make any arrangements at that time for
13 him to purchase the guns or look at them further?
- 14 A. Yes, I did.
- 15 Q. What was that?
- 16 A. He inquired about how much did I want for it and
17 I told him yes, I wanted \$300 for it, and he told me, Asim
18 told me that he would like for me to come back through after
19 I finish coming from where he directed me to where Shaheed
20 was presently living.
- 21 Q. Did you in fact return to see Asim later?
- 22 A. Yes, I did.
- 23 Q. How long after you showed him the guns did you do
24 that?
- 25 A. After I showed him the guns the first time, I

1 came back like in about two or three hours.

2 Q. Did you have a conversation with him at that
3 time?

4 A. Yes, I did.

5 Q. What did you say to him and what did he say to
6 you?

7 A. I asked him did he get in touch with his people
8 to get the money for to purchase the weapon. He said he
9 couldn't find nobody at this time, for me to give him my
10 phone number and that he would get back with me.

11 Q. Did you in fact give him your phone number?

12 A. Yes, I did.

13 Q. Did you hear back from him?

14 A. Yes, I did.

15 Q. About how long after you met him at the Farook
16 mosque did you hear back from him?

17 A. About, I believe, I am not sure, about a week
18 later.

19 Q. How did he contact you?

20 A. By phone.

21 Q. Did he identify himself by name during the phone
22 conversation?

23 A. Yes, he did.

24 Q. What name did he use?

25 A. Asim.

1 Q. What conversation did you have with him at that
2 time?

3 A. He asked me did I still have any shoes, which was
4 weapons. I told him I could get him some, I told him, but I
5 was going to have to go through another way of getting what
6 he wanted, and he agreed upon it and we ended the
7 conversation.

8 Q. Did there come a time that you met Asim again?

9 A. Yes.

10 Q. Where was that?

11 A. That was at 30th Street train station in
12 Philadelphia.

13 Q. What happened when you met him at the 30th Street
14 train station in Philadelphia?

15 A. I picked him up and we started talking about how
16 I was going to go about getting him the guns.

17 Q. Tell us about that conversation.

18 A. I told him that I was going to have my wife
19 purchase some guns and he would have to pick out the guns he
20 want. After he pick out the guns he wants, then I would get
21 him those particular guns, in about three to seven days when
22 they clear, and that I was going to report them stolen.

23 Q. When you say when they cleared, what do you mean?

24 A. I mean it takes a grace period or time before you
25 can't just go and purchase a gun over the counter, you have

1 to have some type of background investigation, I believe.

2 Q. Did you in fact go to a store on that occasion
3 and look at guns?

4 A. Yes, I did.

5 Q. Was there anyone else with you besides you and
6 Asim?

7 A. Yes.

8 Q. Who was that?

9 A. My wife.

10 Q. What store did you go to?

11 A. Lou's Loans.

12 Q. What happened in the store?

13 A. We walked in the store, start taking a look at
14 some weapons, had the guy put up a few weapons on the
15 counter, he pointed out a few weapons that he was interested
16 in --

17 Q. He being Asim?

18 A. Yes, Asim. And when Asim picked the weapons,
19 then we laid down a deposit, he gave me some money, laid
20 down a deposit, and we left the store.

21 Q. Did you have to fill out any paperwork at that
22 time?

23 A. Yes, we did.

24 Q. Who filled that out?

25 A. My wife.

1 Q. Do you recall what types of guns Asim picked out
2 on that occasion?

3 A. The 9-millimeter Fitali and two Davis .380's.

4 Q. What happened after you left the store?

5 A. After we left the store I took him back down to
6 the train station.

7 Q. Did you ever hear from him again?

8 A. Yes, I did.

9 Q. When was that?

10 A. About a week afterwards.

11 Q. Was that by telephone or in person?

12 A. It was at telephone from the beginning. He was
13 informing me that he was coming down.

14 Q. Did he in fact come down?

15 A. Yes.

16 Q. Did you return to Lou's Loans?

17 A. Yes.

18 Q. What happened when you got there?

19 A. I picked up the weapons and came back out and
20 hand them to him.

21 Q. Do you remember approximately when it was that
22 you picked up the weapons from Lou's Loans?

23 A. Approximately, I believe, between August or
24 middle of November. I am not sure.

25 Q. Between August and November of what year?

1 A. I believe 1990.

2 Q. Do you recall what guns it was that you purchased
3 that day from Lou's Loans?

4 A. Yes.

5 Q. What guns are those?

6 A. Fitali 9-millimeter, Davis Industry two .380.

7 Q. That is two Davis Industry .380's?

8 A. Yes.

9 Q. Where did you go after you left the store?

10 A. To my car.

11 Q. Where did you go after that?

12 A. To my house.

13 Q. Did you have discussions with Asim at your house
14 about the weapons?

15 A. Yes, I did.

16 Q. Tell us about that discussion.

17 Q. I had a couple more weapons in my house and I
18 pulled them out, and we sat down and I asked him what was he
19 interested in, was he interested in anything else, and at
20 that point he looked at -- I had a revolver and a Beretta,
21 and he looked at the revolver and said, he said my people
22 not interested in the revolver, he said, but I'll take the
23 .380.

24 Q. How much money did he give you altogether that
25 day for the weapons?

1 A. I believe, I believe it was like about \$1,100 to
2 \$1,300.

3 Q. How many guns in total did he purchase?

4 A. Four.

5 Q. Did you ever hear from Asim again after that day?

6 A. Yes, I did.

7 Q. How long after the purchase of the guns did you
8 hear from him?

9 A. It might have been about a month or so. I'm not
10 sure.

11 Q. Did you hear from Asim again before or after you
12 committed the bank robbery?

13 A. Before I committed the bank robbery.

14 Q. Tell us about your conversation at that time.

15 A. Excuse me. Could you rephrase the -- I think I
16 misinterpreted what you were saying here. Could you
17 rephrase what you said?

18 THE COURT: As to which question? Which question
19 do you think you misunderstood?

20 THE WITNESS: I misunderstood did I talk to Asim
21 before I committed the bank robbery or after I committed the
22 bank robbery.

23 Q. Did you talk to him before or after you committed
24 the bank robbery?

25 A. I believe I talked to him after I committed the

1 bank robbery.

2 Q. What did you say to him and what did he say to
3 you at that time?

4 A. He called me on the phone and he asked me was
5 anything going on, could he get anything, any guns, and I
6 told him that the feds was on me, we can't talk over the
7 phone, and that was it.

8 Q. Did you ever hear from him again after that?

9 A. Never.

10 MR. KHUZAMI: Your Honor, may I approach?

11 THE COURT: Yes.

12 Q. Mr. Pinckney, let me show you what has been
13 introduced into evidence as Government's Exhibit 292 and ask
14 you if you recognize the person depicted in that photo?

15 A. Yes, I do.

16 Q. Who is that?

17 A. It's Asim.

18 Q. Let me show you next what has been introduced
19 into evidence as Government's Exhibit 391 and ask you if
20 that weapon appears to be familiar to you?

21 A. Yes.

22 Q. Have you had an opportunity to look at this
23 weapon before your testimony here today?

24 A. Yes.

25 Q. What do you recognize this weapon to be?

1 A. I recognize it to be a Davis .380.

2 Q. Do you recognize it as a weapon that you ever had
3 in the past?

4 A. Yes.

5 Q. When did you have it?

6 A. It looks like the weapon that I had in the past.
7 I'm not going to say it is the weapon I had in the past.

8 Q. What is it about this weapon that makes you think
9 it is the one that you had in the past?

10 A. The handle and the chrome cover.

11 Q. Does this appear to be similar to the weapon that
12 you sold to Asim?

13 A. Yes.

14 (Continued on next page)

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1 MR. KHUZAMI: No further questions.

2 MR. RICCO: Your Honor, before there is cross I
3 wanted to take a brief moment to talk to my cocounsel.

4 THE COURT: Can I see you briefly at the side.

5 (At the side bar)

6 THE COURT: I just wondered how brief a moments
7 it would be or whether we could break for lunch now?

8 MR. RICCO: It would take five or ten minutes. I
9 think we can substantially reduce the number of lawyers
10 doing cross-examination.

11 THE COURT: With that inducement, why don't we
12 take an early lunch.

13 MR. RICCO: Thank you very much.

14 (In open court)

15 THE COURT: Ladies and gentlemen, in view of the
16 fact that we are going to take a break this morning, we will
17 break for lunch. Please leave your notes and other
18 materials behind. Please don't discuss the case, and have a
19 pleasant lunch. We will see you at 2:00 this afternoon.

20 (Jury excused)

21 (Witness excused)

22 THE COURT: Maybe, Mr. Wasserman, you could put
23 on the record the exhibits or the exhibit numbers that you
24 marked. Are those available?

25 MR. WASSERMAN: Your Honor, I do know for a fact

1 they have been marked in conjunction with the government
2 last Thursday. I don't have them offhand. I know that the
3 last number was K.

4 MR. KHUZAMI: I think we have the numbers, your
5 Honor.

6 THE COURT: With the corresponding videos.

7 MR. KHUZAMI: Yes.

8 THE COURT: Do you have a list?

9 MR. KHUZAMI: Sure.

10 THE COURT: Could you just read it into the
11 record.

12 MR. KHUZAMI: OK. The exhibits marked by Mr.
13 Wasserman are Hampton-El Exhibits G, H, which are two
14 photos; Exhibits L1 through L4, which are books and manuals;
15 Exhibit Hampton-El J, which is an airline ticket; and
16 Exhibits K1 through 29, which are videos.

17 THE COURT: Fine. Each of them is physically
18 marked?

19 MR. KHUZAMI: That is correct.

20 THE COURT: Then I don't think we have to
21 necessarily put on the record which marking corresponds to
22 which exhibit, correct? Or do we?

23 MR. WASSERMAN: No. I know and the government
24 knows.

25 THE COURT: Beyond knowing, are they physically

1 attached in such a way that they are not likely to come
2 undone?

3 MR. WASSERMAN: Yes.

4 THE COURT: In that event, then those exhibits
5 are received.

6 (Defendant Hampton-El Exhibits G, H, L1 through
7 L4, J, and K1 through K29 were received in evidence.)

8 Mr. Jacobs, I reviewed your letter. This is the
9 same material that I reviewed earlier.

10 MR. JACOBS: Absolutely, Judge.

11 THE COURT: I don't see any reason to change the
12 ruling and I don't think Judge Duffy does either.

13 MS. AMSTERDAM: Your Honor, you reviewed that
14 material previously?

15 THE COURT: Yes.

16 MS. AMSTERDAM: Your Honor, and I apologize for
17 not having heard it, did your Honor state on the record why
18 it was that we were not getting it?

19 MR. JACOBS: No.

20 MS. AMSTERDAM: I think your Honor just said I
21 reviewed it, have a nice day, without a statement -- which
22 is possible --

23 THE COURT: I was asked to review it for -- there
24 being no general right of discovery, I believe I was asked
25 to review it for either Brady or Giglio material. That is

1 what I reviewed it for, and I found nothing in there that
2 was at all the nature of either Brady or Giglio material.

3 MS. AMSTERDAM: Moving ahead to the defense case,
4 the defense would want to revisit this on the issue of
5 whether or not the court was finding it was not relevant,
6 which is a different standard. We are subpoenaing it for
7 the defense case, which I presume the only standard there is
8 a relevance standard.

9 THE COURT: Right.

10 MR. JACOBS: Also, your Honor, everything breaks
11 down.

12 THE COURT: This material, in order to be
13 subpoenaed, would have to be evidentiary.

14 MR. JACOBS: Correct.

15 MS. AMSTERDAM: That is correct.

16 THE COURT: I saw no evidentiary material.

17 MR. JACOBS: Your Honor, I am not sure if your
18 Honor wants to do it in detail now, but let me give you a
19 few examples. It is our position that the diskette referred
20 to in the Yousef indictment, that is public, containing a
21 Fifth Liberation Battalion document, would be relevant in
22 this case. I don't know if your Honor has reviewed that
23 material or not, but what Miss Amsterdam is suggesting is
24 that we are not certain and the record is unclear, and
25 certainly I would like to make a very detailed record for

1 the Court of Appeals as to what your Honor's ruling is as to
2 documents such as that, which is quite specific that we are
3 making a demand for, and obviously Judge Duffy, in the
4 letter. To the extent that your Honor has reviewed the
5 material for Brady and Giglio is one thing and your Honor
6 has made the rulings, so be it. But with respect to our 401
7 application and our application for what we consider to be
8 Rule 16 material --

9 THE COURT: Rule 16 material for who?

10 MS. AMSTERDAM: Rule 16(c) for documents and
11 tangible objects in the possession of the government which
12 are material to the preparation of the defense and the
13 defense case.

14 (Continued on next page)

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1 THE COURT: "Materiality" defined as?

2 MR. JACOBS: As relevant issues in this case.

3 MR. McCARTHY: Which significantly alter the
4 quantum of proof.

5 THE COURT: That I thought was the definition of
6 "material."

7 MR. JACOBS: Our position is quite simple, and
8 the most dramatic obviously is the Fifth Liberation Army
9 document. We have had two of them in this case that have
10 been admitted.

11 THE COURT: I am sorry?

12 MR. JACOBS: We have had two of the documents
13 admitted in this case over my objection on the World Trade
14 Center aspects of the case. I find it very difficult to
15 understand how we don't get to see Yousef's same document
16 that is in the government's possession and at least make
17 appropriate attempts to argue that they should be admissible
18 in this case.

19 If Ayyad's document was seized from his computer
20 after his arrest, all we have ever wanted was to see a
21 similar type of document seized from Yousef. It is quite
22 clear that the government is turning over that document to
23 Mr. Kulcsar in the Yousef indictment because it's public and
24 it's contained in an overt act. So that document is going
25 to be given to defense counsel in that case. We understand

1 that the government is sensitive to a lot of Yousef
2 material.

3 THE COURT: It is not a question of the
4 sensitivity here.

5 MR. JACOBS: We have been informed that that is
6 part of the reasons that we are not getting this material.
7 Otherwise, Mr. Childers before Judge Duffy wouldn't take the
8 unusual step of asking for a protective order. Normally,
9 where he gets the Third Battalion document or Fifth
10 Battalion document, there we would obviously get access to
11 it at the same time. The same thing might apply. I think
12 it is a totally different area concerning Yousef's
13 statements to the FBI.

14 Your Honor and I disagree what's considered
15 Brady, or exculpatory, but the fact that apparently Yousef
16 makes references to at least one defendant in this case, I
17 understand to be the sheik, and at least some of the
18 co-conspirators that have been the subject of testimony in
19 this case, would give grounds at least for us to be able to
20 argue, maybe unsuccessfully, that these are declarations
21 against penal interest.

22 I am not saying what the court would eventually
23 find on this point. As I say, I will take it under some
24 redacted form if some of the statements he made are totally
25 unrelated to this case. But as they relate to World Trade

1 Center co-conspirators -- I understand he made a statement
2 about Mohammed Salameh to the FBI. We want access to what
3 we consider to be possibly relevant and admissible evidence.

4 We want to be in a position to make appropriate
5 arguments that they might be admissible as declarations
6 against penal interest. We would also like to see the
7 diskette. If he has co-conspirators on that diskette, just
8 as Ayyad had in his diskette, we want access to that
9 material.

10 Your Honor has taken a different position, and
11 disagrees with our multiple conspiracy argument on the World
12 Trade Center, and that is your Honor's prerogative. All we
13 want to be able to do is put our defense before the jury.

14 I just can't understand how especially the Fifth
15 Battalion document we are not getting access to. It would
16 seem to me the government is taking just a totally
17 inconsistent position with that. I understand there may be
18 a lot of things seized there. That is our position, Judge.

19 MR. McCARTHY: I just want to respond briefly to
20 a couple of things. We don't turn over things in cases
21 because they are public and they are overt acts. We turn
22 them over because we are required to turn them over under
23 Rule 16. That was the reason that, as I understand it,
24 counsel for Mr. Yousef in the case before Judge Duffy got
25 the discovery he got. It's also fairly plain that there is

1 no -- there is nothing unusual at all about a nondisclosure
2 order. Repeatedly in the case before Judge Duffy, in this
3 case, things that were turned over by the government ended
4 up in places where they shouldn't have been, with a great
5 prejudice to the proceedings involved. There isn't anything
6 more to that than that fact.

7 I had a conversation yesterday with Ms. Amsterdam
8 about this. I think Mr. Fitzgerald said to your Honor
9 yesterday that we'd like to have a couple of days to submit
10 a letter edified by what she's told me. I don't think it is
11 going to change our position. We would at least like to
12 come up for air a little bit.

13 MR. JACOBS: I have no problem with that.

14 THE COURT: I will wait for the letter.

15 MR. MCCARTHY: Thank you.

16 MS. STEWART: Judge, I assume this is on behalf
17 of all defendants, not limited to Mr. Khallafalla and
18 Mr. Saleh.

19 THE COURT: If there is anybody that does not
20 associate themselves with the application, they can speak
21 now.

22 Hearing no one, it is on behalf of all
23 defendants. That doesn't necessarily establish that all
24 defendants have standing to raise it. That is a whole
25 different story.

1 MR. McCARTHY: I don't want to bog us down in a
2 long argument that will only get made in a letter again. I
3 just want to make it clear to your Honor that I hear what
4 they are saying and we are going to look at it. I don't
5 agree that if a defense lawyer can articulate some theory of
6 relevance to a particular item that that makes it
7 discoverable. I think that would basically undo the law of
8 Brady, at least as we understand it. There has to be more
9 to it than just the fact that it is merely relevant.

10 THE COURT: He is not talking about Brady at this
11 point. He's claiming that he has a subpoena for material
12 that is evidentiary.

13 MR. JACOBS: Correct.

14 THE COURT: And, therefore, 401.

15 MR. McCARTHY: I don't think that is completely
16 correct. I would like to have a chance to look at it.

17 THE COURT: OK.

18 MR. NOOTER: Your Honor, I have a brief
19 application. My client is feeling some discomfort related
20 to his shoulder and would like to be excused for the
21 afternoon's proceedings, and he waives his presence for the
22 rest of today's proceedings.

23 THE COURT: Is that correct, Mr. Saleh?

24 DEFENDANT WAHID SALEH: Yes.

25 THE COURT: Thank you very much. I hope you feel

1 better.

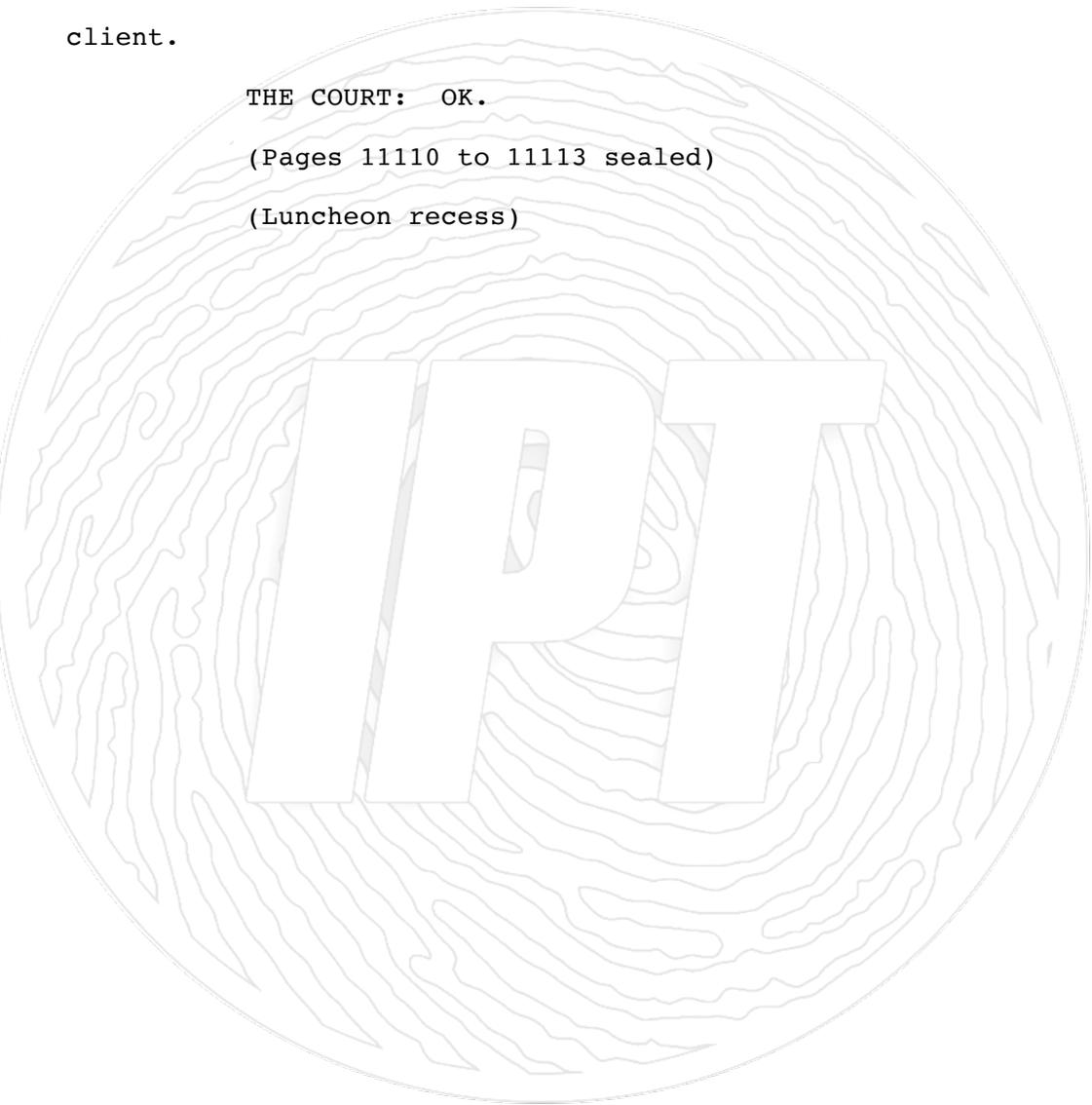
2 MR. NOOTER: Secondly, I just wondered if I might
3 have a couple of minutes with you in the robing room
4 actually in connection with the medical situation of my
5 client.

6 THE COURT: OK.

7 (Pages 11110 to 11113 sealed)

8 (Luncheon recess)

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AFTERNOON SESSION

2:05 p.m.

(In open court; jury present)

CEDRIC NORVELL PINCKNEY, resumed.

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon, your Honor.

THE COURT: Mr. Pinckney.

Mr. Wasserman.

MR. WASSERMAN: No questions, your Honor.

THE COURT: Anyone else?

Thank you very much. You are excused.

(Witness excused)

MR. KHUZAMI: Your Honor, the government calls
Stephen Denny as its next witness.

THE COURT: May I see counsel at the side.

(At the side bar)

THE COURT: Whether you know it or not, you are
all camouflage.

MR. LAVINE: Is that good?

THE COURT: No. Your client has been making
gestures in the direction of the jury repeatedly. He did it
this morning, pointing to his watch, I think at the point
where the witness testified that he had gotten a watch. He
just at one point put his index finger next to his ear and
turned it round and round in the universal gesture of

1 insanity. Whether it indicated the witness or not, I have
2 no idea, but I wish he would stop.

3 MR. SERRA: Your Honor, I will certainly tell
4 him.

5 THE COURT: I am not expecting you to be the
6 guarantor. I just don't know who else to tell it to.

7 MR. WASSERMAN: Your Honor, while we are here,
8 you were going to rule on the FISA request that I had.

9 THE COURT: Yes. I don't see anything in that
10 FISA tape that is inconsistent with the conversations that
11 the government is putting in or that is necessary to explain
12 them under 106. The application is denied.

13 MR. WASSERMAN: My understanding is that there
14 will be no problem putting it in on my case.

15 THE COURT: That is a whole different story.

16 MR. WASSERMAN: Thank you, Judge.

17 (In open court)

18 STEPHEN C. DENNY,

19 called as a witness by the government,

20 having been duly sworn, testified as follows:

21 THE COURT: If you could please talk into the
22 microphone, the one alongside of you or the one in front of
23 you or both, otherwise no one can hear you.

24 THE WITNESS: My name is Steven, S-T-E-P-H-E-N,
25 C, D-E-N-N-Y.

1 DIRECT EXAMINATION

2 BY MR. KHUZAMI:

3 Q. Mr. Denny, how are you employed?

4 A. I am employed by the Federal Bureau of
5 Investigation in Newark, New Jersey.

6 Q. What is your position with the FBI?

7 A. Special agent.

8 Q. How long have you been a special agent?

9 A. Three years.

10 Q. Directing your attention to January 4 of 1993,
11 did you have an opportunity to visit a building at 135
12 Belmont Avenue in Jersey City, New Jersey, on that day?

13 A. Yes, I did.

14 Q. What time of the day did you make that visit?

15 A. It was in the morning between 9 and 11.

16 Q. Can you describe the building located at that
17 address?

18 A. It is an apartment building, dark brick building
19 about three to four stories, 20 to 40 units.

20 Q. Did you go to that building that day in an
21 undercover capacity?

22 A. Yes, I did.

23 Q. Who was it that you were pretending to be?

24 A. I was pretending to be a Steve Dalton, looking
25 for an apartment for his father.

1 Q. Did you get inside the building that day?

2 A. Yes, I did.

3 Q. What route did you take inside?

4 A. I took a side entrance door into a basement level
5 corridor.

6 Q. Did you meet anybody while you were in the
7 basement?

8 A. Yes, I did.

9 Q. Who was that?

10 A. The superintendent, a man who identified himself
11 as the superintendent of 135 Belmont. He identified himself
12 as Muhammad.

13 Q. Did you have a conversation with him at that
14 point?

15 A. Yes, I did.

16 Q. What did you say to him and what did he say to
17 you?

18 A. I explained to him that I was looking for an
19 apartment for my father, and asked him if he had any
20 vacancies, and at that time he said he had nothing available
21 that he could show me right now but he thought he would
22 later on in the week. So at that point we went inside his
23 apartment, where he said he lived.

24 Q. Where in the building was his apartment located?

25 A. It was on a basement level below the first floor.

1 The apartment number was B3.

2 Q. Why did you go inside his apartment?

3 A. So that he could write down a phone number for me
4 to reach him in case I wanted to reach him when there was an
5 apartment available.

6 Q. Did he in fact give you his phone number that
7 day?

8 A. Yes, he did.

9 Q. Do you recall what that number was?

10 A. Yes, it was a 201 number. 432-8677.

11 Q. Did you see anything in the apartment while you
12 were inside?

13 A. Yes, I did. On a table I saw some mail and on
14 the mail was a name Asim, A-S-I-M, Muhammad.

15 Q. Did the person that introduced himself as
16 Muhammad, did he indicate that B3 was his apartment in that
17 building?

18 A. Yes, he did. He said that he lived there with
19 his family.

20 Q. Did you have any further discussion with him
21 inside apartment B3?

22 A. No. He just -- I asked him about the security of
23 the apartment. I told him that I was worried about for my
24 father's safety and what he said was that he is a Muslim and
25 him and the Muslim brothers run security at 135 Belmont.

1 Q. After that visit, did you ever have an
2 opportunity to speak to him again?

3 A. Yes, I did, later on in that week, I believe.

4 Q. Did you ever in fact rent an apartment?

5 A. No, I didn't.

6 MR. KHUZAMI: Your Honor, may I approach?

7 THE COURT: Yes.

8 Q. Special Agent Denny, let me show you what has
9 been marked in evidence as Government's Exhibit 292, and I
10 ask if you recognize the person depicted in that photo?

11 A. Yes, I do. That's the individual who identified
12 himself as the superintendent at 135 Belmont.

13 MR. KHUZAMI: No further questions.

14 MR. WASSERMAN: No questions, your Honor.

15 THE COURT: You are excused. Thank you.

16 (Witness excused)

17 MR. KHUZAMI: Your Honor, the government calls
18 Detective Thomas Corrigan as its next witness.

19 MR. WASSERMAN: Your Honor, may I have a moment
20 with counsel?

21 THE COURT: Yes.

22 THOMAS F. CORRIGAN,

23 called as a witness by the government,

24 having been duly sworn, testified as follows:

25 THE COURT: Go ahead.

1 MR. KHUZAMI: Your Honor, may I approach?

2 THE COURT: Go ahead.

3 DIRECT EXAMINATION

4 BY MR. KHUZAMI:

5 Q. Detective Corrigan, I have placed before you what
6 has been marked as Government's Exhibits 778 through 792 for
7 identification and ask you if you have had an opportunity to
8 listen to those cassette tapes prior to your testimony
9 today?

10 A. Yes, sir, I did.

11 Q. What is on those tapes?

12 A. Telephone conversations between Abdul Rashid and
13 Asim Muhammad.

14 Q. Were those calls intercepted from the wiretap on
15 Dr. Rashid's telephone?

16 A. That is correct, sir.

17 MR. KHUZAMI: Your Honor, I would move
18 Government's Exhibits 778 through 792 in evidence.

19 MR. WASSERMAN: No objection, your Honor, subject
20 to the stipulation with counsel.

21 THE COURT: 778 through 792 are received.

22 (Government's Exhibits 778 through 792 were
23 received in evidence)

24 MR. KHUZAMI: Your Honor, at this time the
25 government will stipulate with defendant Clement Hampton-El

1 that these are not the entirety of conversations between
2 Dr. Rashid and Asim Muhammad that were intercepted through
3 the wiretap.

4 MR. WASSERMAN: That is fine, your Honor. Thank
5 you.

6 Q. Detective Corrigan, if you might pick up the
7 transcripts marked 778T through 792T, and I ask you if you
8 are familiar with those transcripts?

9 A. Yes, sir, I am.

10 Q. How are you familiar with them?

11 A. I did the transcripts, sir.

12 Q. Are they transcripts of the corresponding
13 cassette tapes that have the same number?

14 A. That is correct, sir.

15 Q. Did you recognize any of the voices when you
16 listened to those tapes?

17 A. Yes, sir, I did.

18 Q. Who did you recognize them to be?

19 A. Abdul Rashid, also known as Clement Hampton-El,
20 and Asim Muhammad.

21 Q. Are you familiar with Dr. Rashid's voice?

22 A. Yes, sir, I am.

23 Q. On any of those conversations, did the person you
24 have identified as Asim Muhammad refer to him by name on
25 some or all of these conversations?

1 A. On some of the calls, sir, yes.

2 Q. Did you compare the voices on the conversations
3 where Asim Muhammad referred to himself as Asim with those
4 where he didn't?

5 A. Yes, sir, I did.

6 Q. What was the result of that comparison?

7 A. The same individual.

8 Q. During the course of the wiretap, were you able
9 to learn the telephone number that is called by someone
10 making a call from a phone that is wiretapped?

11 A. Yes, sir, we are.

12 Q. Do you know what telephone number Dr. Rashid
13 called when he was calling the individual you have
14 identified as Asim Muhammad?

15 A. Yes, sir, there was two numbers. The first
16 number came back subscribed to a Kbsesha McCants, the Muslim
17 wife of Asim Muhammad. Another number was for TRC
18 Management Corporation at 135 Belmont. I should say both of
19 those telephone numbers come back to 135 Belmont, Jersey
20 City, New Jersey. TRC Management Corporation ran the
21 building and Mr. Muhammad was a superintendent for TRC
22 management, for 135 Belmont Avenue.

23 MR. KHUZAMI: No further questions.

24 MR. WASSERMAN: No questions, your Honor.

25 THE COURT: Thank you very much. You are

1 excused.

2 (Witness excused)

3 MR. KHUZAMI: Your Honor, at this time the
4 government would request permission to play the tape
5 recorded conversations just introduced into evidence and to
6 have the jury follow along with the English transcripts as
7 an aid.

8 THE COURT: All right. With these transcripts,
9 unlike the transcripts of foreign language conversations, it
10 is the tape that is the evidence, not the transcript. So
11 the transcript is made available to you only as an aid, to
12 help you in listening to the tape. But if you see something
13 in the transcript that you don't hear on the tape or you
14 hear something on the tape that you don't see in the
15 transcript, it is the tape that governs, not the transcript.
16 The transcripts are in the 700 series notebook that you
17 have.

18 THE COURT: Before the tape is played, may I see
19 counsel briefly, just with Mr. Wasserman.

20 (At the side bar)

21 THE COURT: I frankly have forgotten how it is we
22 did it with other English language tapes, whether the
23 transcripts are in evidence for the limited purpose of being
24 used as an aid or not technically in evidence. You didn't
25 offer them.

1 MR. KHUZAMI: I think they are not technically in
2 evidence.

3 THE COURT: Good.

4 MR. WASSERMAN: Thank you, Judge.

5 (In open court)

6 THE COURT: You may put your earphones on.

7 (Tape played)

8 THE COURT: Stop the tape for one minute.

9 MR. KHUZAMI: Just for the record, your Honor, we
10 just finished playing Government's Exhibit 778 and will now
11 play Government's Exhibit 779.

12 (Tape played)

13 MR. KHUZAMI: The next tape is Government's
14 Exhibit 780.

15 (Tape played)

16 MR. KHUZAMI: The next call is Government's
17 Exhibit 781.

18 (Tape played)

19 MR. KHUZAMI: The next call is Government's
20 Exhibit 782.

21 (Tape played)

22 (Continued on next page)

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1 MR. KHUZAMI: The next tape is Government Exhibit
2 783.

3 (Tape played)

4 MR. KHUZAMI: The next tape is Government Exhibit
5 784.

6 (Tape played)

7 MR. KHUZAMI: The next tape is Government Exhibit
8 785.

9 (Tape played)

10 MR. KHUZAMI: The next tape is Exhibit 786.

11 (Tape played)

12 MR. KHUZAMI: The next exhibit is Government
13 Exhibit 787.

14 (Tape played)

15 MR. KHUZAMI: The next tape is Government Exhibit
16 788.

17 (Tape played)

18 MR. KHUZAMI: The next tape is Government Exhibit
19 789.

20 (Tape played)

21 MR. KHUZAMI: Next is Government Exhibit 790.

22 (Tape played)

23 MR. KHUZAMI: Next is Government Exhibit 791.

24 (Tape played)

25 MR. KHUZAMI: The last tape is Government Exhibit

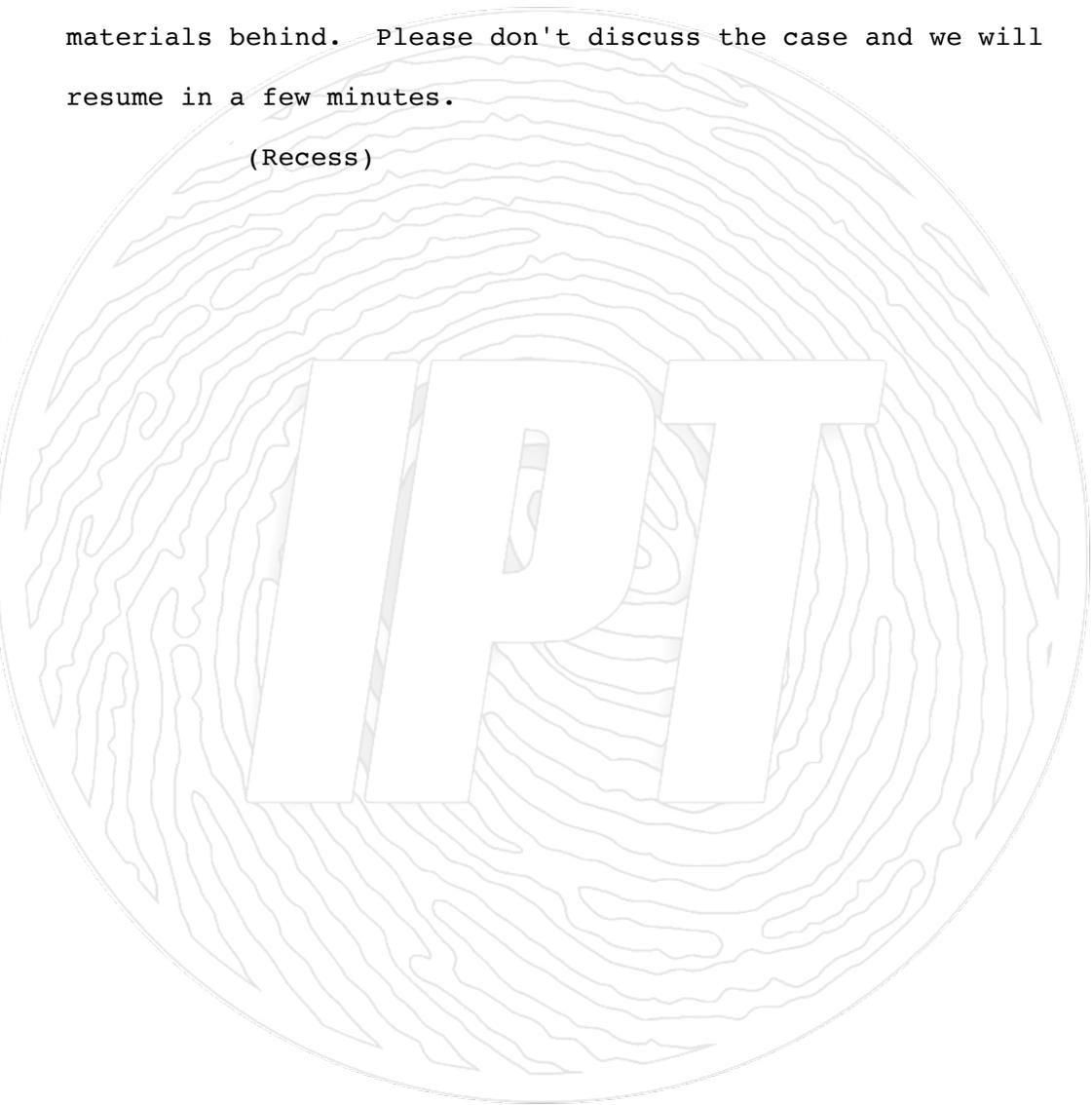
1 792.

2 (Tape played)

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

7 (Recess)

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1 (Jury present)

2 MR. FITZGERALD: May I proceed, Judge?

3 THE COURT: Mr. Fitzgerald.

4 MR. FITZGERALD: Yes. The government calls Paul
5 Ginsberg, G-I-N-S-B-E-R-G.

6 PAUL GINSBERG,

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. Good afternoon, Mr. Ginsberg.

12 A. Good afternoon.

13 Q. To clear up the confusion, you have not testified
14 before in this proceeding, is that correct?

15 A. That is correct.

16 Q. But you have been here before?

17 A. Yes, sir.

18 Q. And you are a tape expert?

19 A. Yes, I am.

20 Q. You are working on behalf of the defense in this
21 case, is that correct?

22 A. Specifically for defense but with the knowledge
23 and consent of the government.

24 Q. But you were retained by the defense to --

25 MR. SERRA: Your Honor, I am sorry to interrupt

1 Mr. Fitzgerald but we have a problem with the Spanish
2 interpretation.

3 THE INTERPRETER: We took care of it, your Honor.

4 THE COURT: Let's go. Proceed.

5 Q. Were you retained to examine some tapes in this
6 case?

7 A. Yes, sir.

8 MR. STAVIS: Objection to the word "retained."

9 THE COURT: Overruled.

10 Q. You were retained to examine some tapes in this
11 case, is that correct?

12 A. Yes, sir.

13 Q. As part of your job training, you examine tapes
14 to determine whether they are authentic or not, is that
15 correct?

16 A. That is correct.

17 Q. You also engage in what is called the enhancement
18 of tapes, is that correct?

19 A. Yes, sir, for the last 20 years.

20 Q. Can you tell the jury briefly what enhancement
21 is.

22 A. Enhancement is really a misnomer. Nothing is
23 enhanced when we enhance a tape, but rather what we try to
24 do is strip away or minimize any background noise or
25 interference which would tend to mask a conversation that

1 was recorded, so that in the end we have undisturbed the
2 conversation as it occurred, and hopefully much less of the
3 noise that had tended to make it uncomfortable to hear.

4 Q. Let me give you an example and see if I have it
5 right. If two people were being recorded talking and a
6 train rumbled by, if you tried to enhance, you would try to
7 drop out the train noise and leave the voices?

8 A. Yes, sir, exactly.

9 Q. You also, in addition to enhancing and testing
10 for authenticity, you also engage in the business of
11 transcribing tapes, is that correct?

12 A. Yes, from time to time.

13 Q. And you make transcripts of tapes and present
14 them in court, is that correct?

15 A. Yes, I have.

16 Q. Is it fair to say that in this case you tested
17 tapes to see whether or not they were authentic?

18 A. Yes.

19 Q. And you enhanced some tapes as well?

20 A. I did, I produced some enhanced copies, yes, sir.

21 Q. You have testified for the prosecution in the
22 past, is that correct?

23 A. Yes, sir.

24 Q. And you testify for the defense as well?

25 A. Yes, I have, within 24 federal districts on

1 approximately 150 occasions over the past 20 years.

2 Q. Can you give us an approximate number of the
3 different cases you have worked on?

4 A. Approximately 1,450.

5 Q. In this case you worked with defense counsel,
6 specifically Mr. Jacobs, to help him prepare certain
7 witnesses, is that correct?

8 A. That is correct.

9 Q. In fact you were sitting here during part of the
10 examination of Detective Napoli, is that correct?

11 A. Yes, sir.

12 Q. And you sat here during part of the examination
13 of Mr. Emad Salem, is that correct?

14 A. Yes, I did.

15 Q. In the past, have you ever been called by the
16 government as a defense expert before?

17 A. I can't recall ever having been in that position,
18 although in this case it was my understanding that --

19 Q. Excuse me. In the 1,450 cases you have testified
20 in -- strike that. Just try to respond to the question.

21 A. Yes, sir.

22 Q. Is it fair to say that in some cases you have
23 testified that in your opinion tapes have been tampered
24 with, is that correct?

25 A. Yes, sir.

1 Q. Some cases you have testified that in your
2 opinion tapes had not been tampered with?

3 A. Yes, sir. Call it like I see it.

4 Q. You call it like you see it?

5 A. Absolutely.

6 Q. Do you let the identity of your client affect the
7 conclusions you draw in any way?

8 A. No, sir.

9 Q. Do you have any bias for either side?

10 A. Absolutely not. I am testifying for the
11 prosecution on Thursday in another district.

12 Q. Just --

13 A. Absolutely.

14 Q. Just answer the questions, sir.

15 THE COURT: Mr. Ginsberg, just answer the
16 questions, don't volunteer or offer testimonials.

17 THE WITNESS: Yes, sir.

18 Q. How do you decide whom to testify for first?

19 A. Whoever calls me first or hands me a subpoena.

20 Q. Just so we are clear, you have absolutely no bias
21 against the defendants or the U.S. Attorney's Office or the
22 FBI in this case?

23 A. That is correct, sir.

24 Q. In this case, the raw materials you examined were
25 original tapes, is that correct?

1 A. Yes, sir.

2 Q. You were given access to the original so-called
3 CM tapes, the tapes made by Emad Salem?

4 A. Yes, sir.

5 Q. You were also given some original tapes that
6 Mr. Salem made without authorization, is that correct?

7 A. Yes, sir.

8 Q. And you were given access to a particular
9 classified device, an optical disk machine, is that correct?
10 Let me rephrase that. You were given access to a particular
11 device used on a few occasions, correct?

12 A. I was given cassettes that were downloaded from
13 the device.

14 Q. Is it fair to say that you need the originals of
15 a reel to make a proper determination as to whether or not
16 it is authentic or been tampered with?

17 A. Yes, sir.

18 Q. If you had examined the copies, you wouldn't be
19 able to make a valid determination whether or not they were
20 authentic?

21 A. That is correct.

22 Q. Let me talk for a moment about the limits of
23 expertise in the tape area in general. A tape expert uses
24 science to determine how machines produce particular tapes,
25 is that correct?

1 A. Yes.

2 Q. So you can determine whether or not a tape was
3 made by a mono recorder or a stereo recorder, is that
4 correct?

5 A. Yes.

6 Q. You can tell what brand of machine was used to
7 make a tape, is that correct?

8 A. Within limits, yes.

9 Q. You can often tell whether or not the machine was
10 powered by batteries or by electric, is that correct?

11 A. Yes.

12 Q. Sometimes you can tell whether the tape was made
13 by a particular unit of a machine, is that correct?

14 A. On occasion.

15 Q. But you cannot use the science to determine what
16 was in the mind of the person operating the machine.

17 A. No, sir.

18 MR. STAVIS: Objection, your Honor.

19 THE COURT: Overruled.

20 A. No, sir.

21 Q. There is no scientific basis for that?

22 A. Beyond my area.

23 Q. If you know, when did tape experts first begin
24 testifying in court?

25 A. I assume just after the first tapes were made.

1 Q. Do you know who was the first person to testify
2 as a tape expert?

3 A. No, sir.

4 Q. In your opinion, do you know who is the best
5 today as a tape expert?

6 A. There aren't too many of us around. I leave that
7 to the people who retain the tape experts.

8 THE COURT: He asked for an opinion. Do you have
9 one, other than yourself?

10 Q. You can include --

11 THE COURT: You can include yourself.

12 Q. Who do you think is the best tape expert, honest
13 answer?

14 A. I like to think that I am among the top few,
15 having been most trusted and having a reputation for calling
16 it like I see it over the past 20 years.

17 Q. Is it fair to say -- you have mentioned twice now
18 that you call it like you see it, is that correct?

19 A. Yes, sir.

20 Q. Is it fair to say that you mention that most
21 times you testify? Is that correct?

22 A. No, just -- not necessarily.

23 Q. Without naming names, have you taken the position
24 in the past that there are some experts in the field who are
25 "testimony for money" types?

1 A. Yes.

2 Q. You call them --

3 A. Exactly.

4 MS. AMSTERDAM: I am sorry. I didn't hear the
5 question, your Honor.

6 THE COURT: Has he taken the position in the past
7 that some expert are "testimony for money."

8 MS. AMSTERDAM: Thank you, sir.

9 Q. Do you also refer to some people as flying saucer
10 people?

11 A. I don't think I have used the phrase "flying
12 saucer people" before. I have used "testimony for money
13 expert."

14 Q. How can you tell a "testimony for money" expert?

15 A. Based upon examination of a tape, once I make
16 observations, if another so-called expert comes in with
17 observations, let alone conclusions but just mere scientific
18 observations which I believe are false based upon my
19 training and my experience, then I know that he is skewing
20 the observations toward his side who had retained him. I
21 make it very clear to people who retain me that, let the
22 chips fall as they may, I am going to give it to you just as
23 it is.

24 Q. So, for example, if two experts checked out a
25 tape who came to different conclusions and one of them came

1 out to be wrong, that would factor into whether or not they
2 were "testimony for money" type?

3 A. Yes.

4 Q. Or if someone tried to opine on something as to
5 which he had no expertise, that is something you would
6 factor in?

7 A. Yes.

8 Q. For example, if someone tried to testify as to
9 what someone was thinking rather than the machine, that
10 would be one indicator, correct?

11 A. Depending on the circumstances. If I might
12 explain.

13 Q. Let me rephrase.

14 A. Yes, certainly.

15 Q. You mentioned earlier that you have no expertise
16 as to what a person is thinking when he operates a machine,
17 correct?

18 A. That is correct.

19 Q. So you wouldn't testify to that, correct? Not in
20 an expert opinion?

21 A. Not under ordinary circumstances, no, sir.

22 Q. In fact, sir, didn't you try to offer testimony
23 in a case as to what a person was thinking in another case?
24 Yes or no.

25 A. Not to my knowledge.

1 Q. Do you recall appearing --

2 THE COURT: May I see counsel briefly at the
3 side.

4 (At the side bar)

5 MR. STAVIS: I object to this line, your Honor.

6 THE COURT: The objection is overruled, but I
7 want you to stop glancing at the jury, please.

8 MR. FITZGERALD: I am sorry. I apologize.

9 MR. BERNSTEIN: Was that a Stavis objection,
10 colloquially, not to look at the jury?

11 MR. JACOBS: I haven't gotten up yet.

12 THE COURT: Let the record reflect that I did not
13 respond.

14 MR. JACOBS: Can we get a proffer, where the
15 government is going at this point, since they have called
16 the witness?

17 MR. FITZGERALD: Your Honor, I think under U.S.
18 v. Eisen I am allowed to establish a witness' bias and what
19 conclusions he has drawn and argue to the jury that he
20 shades his conclusions.

21 MR. JACOBS: While they are entitled to impeach
22 the witness under 609, we haven't established that we are
23 even calling him.

24 THE COURT: Mr. Jacobs, they are calling a
25 witness who is associated with a side in the case and it is

1 not theirs, so they can cross.

2 MR. JACOBS: That is not the issue. The issue is
3 under what basis they are crossing on. He hasn't stated
4 conclusions previously.

5 THE COURT: He doesn't have to state conclusions
6 previously. If that's the objection it is overruled. Let's
7 go.

8 (Continued on next page)

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1 (In open court)

2 BY MR. FITZGERALD:

3 Q. Sir, do you recall being retained in a case
4 called Church of Scientology versus Behar, B-E-H-A-R? Yes
5 or no.

6 A. Yes.

7 Q. That was a case where the issue was libel,
8 whether or not a person who wrote an article about the
9 church had said something false about someone, correct?

10 A. Yes. That was a civil case.

11 Q. Yes. And in that case, the author had to produce
12 tapes of the sources that provided him with leads for his
13 article, correct?

14 A. Yes.

15 Q. And he had to go back to an original set of
16 tapes, pick out those conversations which had to do with the
17 article, select those conversations, and put them on another
18 set of tapes, correct?

19 A. The law firm did that.

20 Q. Yes, and they also had to redact out names and
21 other identifiers so people wouldn't know who the reporter's
22 sources were, correct?

23 A. I believe so.

24 Q. And then they generated a tape to the other side
25 in the lawsuit.

1 A. Yes -- well, a number of tapes.

2 Q. A number of tapes?

3 A. There were a number of attempts to do that and
4 there were a number of different versions that were turned
5 over, many, many tapes.

6 Q. A number of tapes, and the side that got the
7 tapes called and said we realize that there are some things
8 missing from our set of tapes that we should have received.
9 Fair enough?

10 A. And there were some gaps and irregularities, yes,
11 sir.

12 Q. And then the other side gave them new tapes but
13 you were called in to examine the first set of tapes,
14 correct? Yes or no.

15 A. I examined tapes. I don't know which set I was
16 examining, based upon your question.

17 Q. And you were retained by the Church of
18 Scientology?

19 A. In that case, yes, sir.

20 Q. And you opined, you gave an expert opinion that
21 the person, the paralegal in the law firm who made the
22 copies of the tapes, did it with a deliberate intent to
23 conceal when the tapes were not copied properly, correct?
24 Yes or no.

25 A. I believe I did in that case, because there

1 was --

2 Q. Sir, yes or no.

3 A. Yes.

4 THE COURT: He didn't ask you why, he asked
5 whether you did.

6 A. Yes.

7 Q. Is that the first time in the 1,450 cases you
8 appeared that you gave an opinion as to someone's state of
9 mind in operating a machine?

10 MR. BERNSTEIN: Object to the 1,450 appearances.

11 THE COURT: He said 1,450 cases.

12 MR. BERNSTEIN: That he worked on.

13 MR. FITZGERALD: I will make it clear.

14 Q. You testified about 140, 150 times?

15 A. Yes.

16 Q. And you have worked on roughly 1,450 cases?

17 A. Yes, sir.

18 Q. In either the 140 or 150 times you have testified
19 or the 1,450 cases you have worked on, had you ever before
20 given an opinion as to what someone was thinking when they
21 were operating a machine? Yes or no.

22 A. No, sir.

23 Q. And that had nothing to do with the identity of
24 your client in that case, correct?

25 A. No, it was observation.

1 Q. Sir, you testified earlier that you can't
2 determine whether or not an original tape is authentic by
3 examining a copy, correct?

4 A. That is right.

5 Q. Did you try to do that in a case under oath in
6 state court? Yes or no.

7 A. I don't recall. If an original is not available,
8 obviously I do work from the best copy with the
9 understanding that the results are limited, that is,
10 observations and conclusions are limited by that factor.

11 (Continued on next page)

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1 Q. Were you retained in the Woody Allen/Mia Farrow
2 dispute? Yes or no.

3 MR. STAVIS: Objection, relevance, Rule 401.

4 MR. JACOBS: And 407 without proffer.

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

6 (At the side bar)

7 THE COURT: The record should reflect that Mr.
8 Jacobs came alive at the mention of Woody and Mia.

9 MR. JACOBS: Thank you, Judge.

10 THE COURT: Where is this going?

11 MR. FITZGERALD: Your Honor, what I intend to
12 establish is that he gave an unqualified opinion as compared
13 with his last answer, based on the examination of a copy,
14 that an original did not exist. He then examined the
15 original, determined in fact that an original did exist,
16 they were not composites and he was flat out wrong, and
17 later issued a press release where he trumpeted his false
18 testimony as something that he accomplished. It goes to
19 credibility.

20 MR. JACOBS: Judge, I object to the government
21 calling this witness and impeaching the witness when the
22 witness hasn't even given an opinion on anything that the
23 government has attempted to elicit, with the following
24 provisos. Certainly if we proffered the expert and
25 attempted to undermine the tapes in the case and we had

1 called him, the government would be certainly entitled to do
2 a normal cross-examination of the witness. But barring the
3 witness not having given an opinion yet, this impeachment
4 testimony is totally improper.

5 THE COURT: Mr. Jacobs, it is not improper. The
6 rules permit the calling of an adverse witness --

7 MR. JACOBS: He is not on a witness list --

8 THE COURT: Anybody identified with an opposing
9 party is an adverse witness whether they have testified or
10 not.

11 MR. JACOBS: You but he hasn't given an opinion
12 to be impeached on.

13 MR. STAVIS: It appears the only reason to call
14 him is to be impeached.

15 THE COURT: There has been a proffer that he will
16 be asked after he has been dirtied up a bit to express an
17 opinion with regard to the tapes, to certain aspects of the
18 tapes in this case, and the essence will be to the jury that
19 this guy does, notwithstanding his repeated attempt to do
20 otherwise does not call them as he sees them but nonetheless
21 came to the conclusion he came to.

22 MS. AMSTERDAM: I would like to say that what I
23 object to is that the government is going to use his
24 conclusions, but the attempt to dirty him up is done for one
25 reason alone, and that is to have someone associated with

1 the defense team appear to be dirty. It has nothing to do
2 with the merits of the tapes. He is dirtying him to take
3 him out of the tapes, because he sat with Mr. Jacobs, he is
4 associated with the defense team, and that is why they are
5 slurring him.

6 MR. FITZGERALD: I could barely get his name out
7 before he is telling the world that he tells it like it is.

8 MR. JACOBS: All I can say is that if the U.S.
9 Attorney's Office takes this position with this witness I
10 will make sure every case he testified, the fact that he is
11 testifying this week in the Giampa case, that he is
12 testifying for this office in the GOA case -- I wasn't going
13 to do names of the cases, but now we mention the names, we
14 will go into every case he testified for the Department of
15 Justice in the last few years, by this office, in the last
16 few months he was called by this --

17 THE COURT: That is the third time you have
18 disobeyed an order. The next time I will hold you in
19 contempt. This is obviously contumacious behavior on your
20 part. Don't try that nonsense. You know how to control
21 your voice. Don't try that nonsense on me. The objection
22 is overruled.

23 (In open court)

24 THE COURT: Go ahead.

25

1 BY MR. FITZGERALD:

2 Q. Mr. Ginsberg, were you retained as an expert in a
3 case involving Woody Allen and Mia Farrow? Yes or no.

4 A. Yes, sir.

5 Q. In that case, you were aware that Mia Farrow had
6 offered a videotape, correct?

7 A. Yes.

8 Q. You were retained by Woody Allen to examine the
9 videotape, correct?

10 A. Yes.

11 Q. And you were provided a copy of the videotape,
12 correct?

13 A. That is correct.

14 Q. You would have preferred the original, correct?

15 A. I was told initially it was not available.

16 Q. After examining the copy of the tape, you
17 testified under oath in New York State Supreme Court that
18 based upon your analysis of the copy there was not a single
19 authentic original from which that copy could be made. Yes
20 or no.

21 A. Yes.

22 Q. You testified in effect that the original must
23 have been a composite, in other words, a videotape made by
24 putting two other tapes together, correct?

25 A. Yes, initially.

1 Q. Initially. And when you gave that opinion, you
2 gave it unqualified, isn't that correct?

3 A. I know it was clear that it was a copy that I was
4 examining.

5 Q. But your conclusion was that, quote, without
6 doubt, close quote, there could not be a single authentic
7 original. Correct?

8 A. I don't recall exact words except that I know
9 that it was clear that what I was examining was a copy and
10 that any results, observations and conclusions based upon
11 examining a copy are subject to noise and different signals
12 that can creep in as a result of the fact that in fact it is
13 a generation removed from the original.

14 Q. Did you say any of that in that court proceeding?
15 Yes or no.

16 A. I know that I asked for the original repeatedly.

17 THE COURT: The question was, did you say any of
18 that in the court proceeding.

19 A. I don't recall.

20 Q. Do you recall whether or not you gave your
21 testimony at that court proceeding using the words "without
22 a doubt," close quote?

23 A. No, sir. I do know that the judge ordered the
24 original to be turned over to me originally.

25 THE COURT: That wasn't the question. The

1 question was, did you give the testimony using the words
2 "without a doubt"?

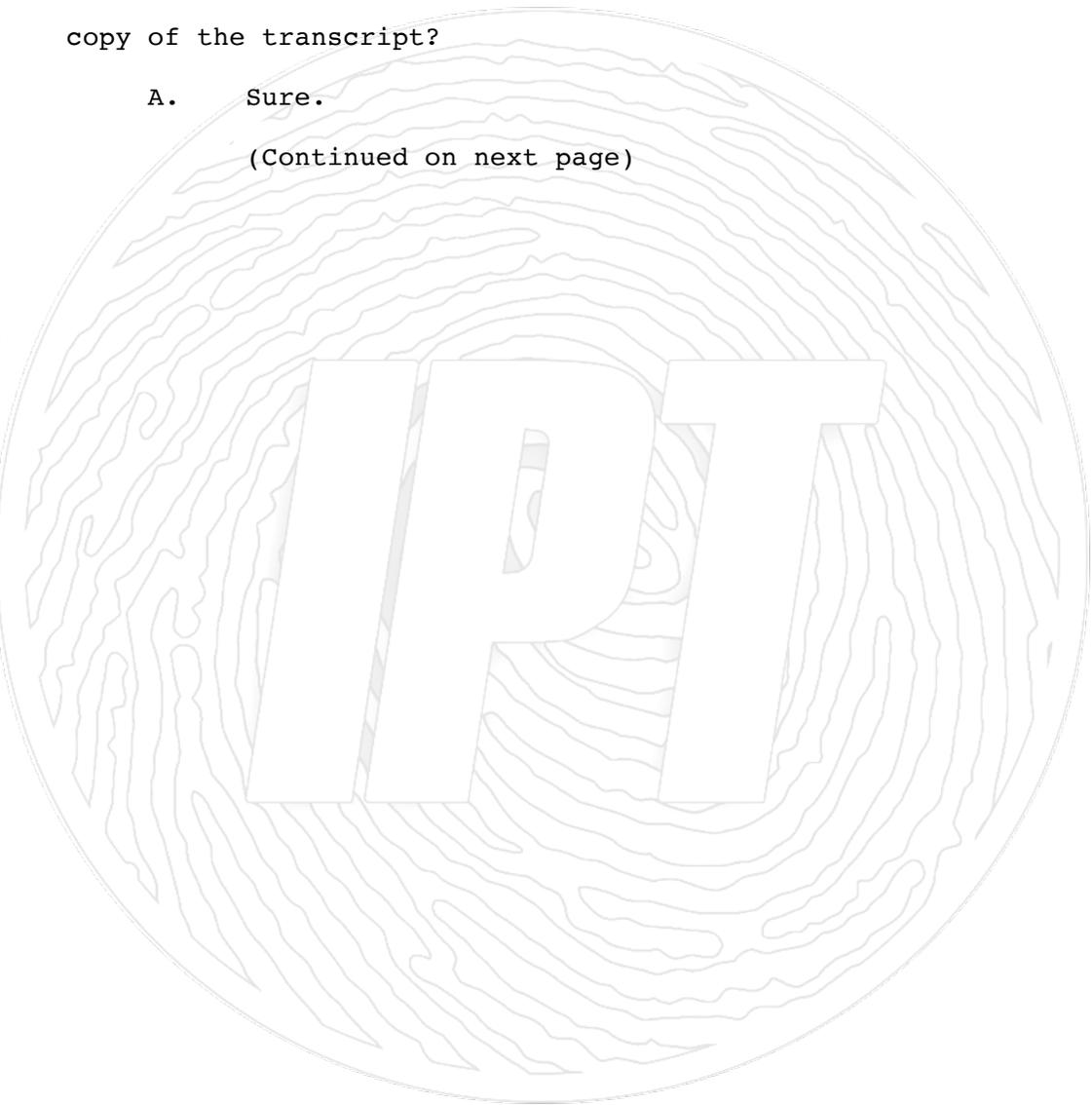
3 THE WITNESS: I don't recall, sir.

4 Q. Would it refresh your recollection to look at a
5 copy of the transcript?

6 A. Sure.

7 (Continued on next page)

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1 MR. FITZGERALD: If I may have one moment, your
2 Honor.

3 Q. Let me show you what will be marked as the next
4 3500 number, 35124-A, and direct your attention to page
5 2214. Actually, let me just ask you a question. Do you
6 recall giving the following testimony under oath?

7 MR. JACOBS: Objection. I would like to see the
8 document if it is going to be read.

9 MR. FITZGERALD: I will provide a copy.

10 MR. JACOBS: And I would like to be heard at side
11 bar. I haven't seen this before, your Honor. I would like
12 an opportunity to read it and discuss it with counsel.

13 THE COURT: May I see Mr. Jacobs and the
14 government at side bar.

15 (At the side bar)

16 THE COURT: Mr. Jacobs, do you remember my saying
17 at the beginning of this trial that I don't take speaking
18 objections?

19 MR. JACOBS: I understand, Judge.

20 THE COURT: Do you know me to change that rule?

21 MR. JACOBS: No, sir, I haven't. I tried to --

22 THE COURT: You didn't succeed.

23 MR. JACOBS: Your Honor, this document looks like
24 it is about a hundred pages.

25 THE COURT: There is a proper objection and the

1 objection is that he is being confronted with a statement
2 that there is no inconsistency because he hasn't denied it.
3 If he wants to show him the transcript to refresh his
4 recollection, I am going to let him do that whether you have
5 seen it or not.

6 MR. JACOBS: That is different and that is not
7 what the government was attempting to do.

8 THE COURT: The simple word is "Objection," not
9 "Objection, I haven't seen the transcript, I want to review
10 it with counsel."

11 MR. JACOBS: I am sorry for saying it, your
12 Honor. I am sorry, I apologize.

13 MR. BERNSTEIN: Judge, I am concerned because I
14 don't know what is coming beyond this. The Church of
15 Scientology is a negative buzz word in most concerns. Woody
16 Allen is a negative buzz word. My concern is that I don't
17 know how much more is coming, but if there are other matters
18 in which the parties' names themselves can be avoided to be
19 used because they only set up a negative dynamic because of
20 who he was retained by, I would like that clarified in
21 advance.

22 THE COURT: What other paragon has he worked
23 for?

24 MR. FITZGERALD: The government, and I will bring
25 it out -- he has testified for the government in a number of

1 proceedings. I think the other proceedings that I may ask
2 about compensating on involve the government.

3 MS. AMSTERDAM: For the record when I said
4 "slur," I meant "smear."

5 THE COURT: And while we are cleaning up the
6 record, when I said dirty him up, what I am referring to is
7 simply showing instances in which notwithstanding his
8 repeatedly professed and occasionally unresponsive claims
9 that he calls them as he sees them, that he does something
10 other than that and that he occasionally operates on the
11 basis of principles that are not entirely consistent with
12 good science, and they can do that.

13 MR. JACOBS: Your Honor is correct, they
14 certainly can. It is a question of which comes first, the
15 cart or the horse. The question is are we entitled to hear
16 his opinions first before your Honor --

17 THE COURT: No, as long as we get both of them in
18 you can arrange the cart and the horse as you like in your
19 summation, as well as the dog and the pony.

20 MR. JACOBS: If this is going to be read to him,
21 we would like an opportunity to look at it first.

22 THE COURT: It will not be read to him. It will
23 be shown to him and asked if it refreshes his recollection.
24 It is a fleeting moment, that is all it is.

25 (In open court)

1 MR. FITZGERALD: If I may approach the witness
2 with what will be marked as 35124-A.

3 THE COURT: And indicate the page you are showing
4 him, please.

5 MR. FITZGERALD: Yes, showing him page 2214,
6 lines 11 through 22.

7 Q. I would ask you to read 2214 lines 11 through 22
8 yourself. It is the page on your right hand, I think. You
9 don't need to read anything else at this point.

10 MS. AMSTERDAM: I object to that comment, your
11 Honor.

12 THE COURT: Overruled.

13 (Pause)

14 A. Yes, sir.

15 Q. Having read that, does that refresh your
16 recollection as the testimony that you gave in the Woody
17 Allen proceeding? Yes or no.

18 A. Initially, yes, sir.

19 Q. Were you asked when you gave your initial
20 testimony as to whether or not you could make the
21 conclusions without an original and did you reply that you
22 had no doubt as to your conclusions? Yes or no.

23 A. Yes, sir.

24 Q. And then you were given an opportunity to review
25 the original tape, correct?

1 A. Yes, and camera.

2 Q. And after reviewing the original tape, you then
3 made a determination that in fact it was not a composite,
4 there was a single authentic original, correct?

5 A. It was a single original made of 12, I believe it
6 was 12, separate recordings that were contiguous on the
7 tape, made at different times.

8 Q. But there was a single original tape on which all
9 those items were first recorded, correct?

10 A. Yes.

11 Q. It was not a conglomerate of two different
12 originals put onto a third tape?

13 A. That is correct.

14 Q. In essence, after viewing the original, you
15 realized that your first testimony was incorrect, fair
16 statement?

17 A. Yes, based upon the copy, yes, sir.

18 Q. Initially when you looked at the copy, you
19 testified to your expert opinion that by examining the copy,
20 Ms. Farrow was giving a conglomerate tape, a tape made of
21 more than one tape put together, correct?

22 A. Initially, yes, sir.

23 Q. And then you realized you were wrong, correct?

24 A. Upon examination of the original equipment and
25 the tape, yes, sir.

1 Q. In your business, do you issue press releases?
2 Yes or no.

3 A. Not usually. I have a short biography made up.

4 Q. Do you send that out to various lawyers and
5 prosecutors and government agencies to let them know of your
6 services? Yes or no.

7 A. I generally send out a letter and a curriculum
8 vitae or a resume, and then there is additional material
9 that I could send out if they desire it.

10 Q. Following your testimony in the Woody Allen
11 trial, after learning that in fact Ms. Farrow's videotape
12 was not a conglomerate, did you issue a press release
13 broadcasting to potential customers that you had determined
14 at the Woody Allen trial --

15 MR. STAVIS: Objection to form, your Honor.

16 THE COURT: Do you want to strike out the
17 "potential customers" part of the question?

18 MR. FITZGERALD: Yes, Judge.

19 Q. Following the Woody Allen trial, did you issue a
20 release trumpeting the fact that you were determined --

21 MS. AMSTERDAM: Objection to "trumpeting," your
22 Honor.

23 THE COURT: Announcing?

24 Q. Did you issue a press release trumpeting the
25 fact --

1 THE COURT: Announcing.

2 MR. FITZGERALD: I am sorry, announcing. I
3 misunderstood, Judge. I am sorry.

4 Q. Did you announce the fact, did you announce that
5 you had determined Mia Farrow's videotape to be a
6 conglomerate? Yes or no.

7 A. By a conglomerate, I don't think I ever used that
8 word but I am sure my conclusion was that the tape had --

9 THE COURT: He didn't ask you what your
10 conclusion was.

11 A. I never used the word conglomerate, Judge.

12 Q. You never used the word conglomerate?

13 A. Not to my knowledge.

14 Q. In court or in written releases?

15 A. I don't believe so.

16 Q. If you could look at the document in front of
17 you -- let me show you what we will mark as 35124-B.

18 And I stand corrected, sir. Did you use the word
19 composite?

20 A. Possibly.

21 Q. Did you issue a press release announcing that you
22 had determined that Mia Farrow's videotape was a composite
23 after your testimony? Yes or no.

24 A. I am not sure whether -- I don't know what you
25 mean by "issue a press release."

1 Q. Let me approach you with what has been premarked
2 as Government Exhibit 35124-B, and I ask you to take a look
3 at that document and tell me simply whether or not you
4 recognize it?

5 A. Yes.

6 Q. What is it?

7 A. This is a summary of my background, that is, my
8 number of cases I have worked on, mentioning a number of the
9 important cases I have worked on or noteworthy cases,
10 including the Woody Allen versus Mia Farrow case.

11 Q. That is the case where your testimony had been
12 incorrect? Yes or no.

13 A. Initially, based upon the fact that I only had
14 available to me a copy, yes, sir.

15 Q. You have testified before that you tell it like
16 it is, is that correct?

17 A. Yes.

18 Q. And you issued this document for immediate
19 release, correct?

20 A. Yes. It's true.

21 Q. And then you told the world, or you announced
22 that you had determined the videotape to be actually a
23 composite tape composed of a number of segments. You didn't
24 point out that your testimony --

25 MS. AMSTERDAM: Objection as to form, your Honor.

1 Q. Did your release announce that you had been in
2 error in your testimony? Yes or no.

3 A. No, sir, I did not. The conclusion is correct,
4 though.

5 Q. Let me ask you this, sir. Have you written a
6 book called "The Prosecutor's Guide to the Use of Audiotape
7 Evidence"?

8 A. Yes, sir, one for prosecutors and one for agents.

9 Q. You have written one for prosecutors and one for
10 agents, is that correct?

11 A. Yes, sir.

12 Q. Have you written any others?

13 A. I had a draft of one for defense attorneys but
14 never released it.

15 Q. Why is that?

16 A. It was easier to compile a mailing list of the
17 prosecutors' offices and I had initially been doing a lot
18 more work for prosecutors.

19 Q. Was there anything in the defense attorneys'
20 guide that you didn't want anyone to see?

21 A. No, sir. There is some material in the agents'
22 guide that is restricted. That is only for law enforcement.

23 Q. Have you ever released the defense attorneys'
24 guide?

25 A. No, sir.

1 Q. You still have a copy of it?

2 A. Somewhere.

3 Q. At your home?

4 A. I would have to search for it. Many years ago.

5 Q. Many years ago?

6 A. Yes.

7 Q. Do you recall testifying on behalf of the
8 government in a case in Waco, Texas?

9 A. Yes.

10 Q. The Branch Davidian case, correct?

11 A. Yes.

12 Q. You testified there to authenticate some tapes,
13 correct?

14 A. Yes, sir.

15 Q. The defense attorney asked you in that case
16 whether or not you had prepared the defense attorneys' guide
17 to authenticate tape evidence, did he not?

18 A. I don't recall.

19 (Continued on next page)

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1 Q. Did you tell him that you had a copy at home?

2 A. Possibly, it's true.

3 Q. You do have a copy at home?

4 A. I believe somewhere I do. Where exactly it is, I
5 would be hard pressed to tell you.

6 Q. Could you bring it tomorrow?

7 A. Oh, my goodness.

8 I can look for it.

9 Q. I would appreciate that.

10 A. I believe it was just typewritten. I don't even
11 know that it was done on a computer.

12 Q. Now, sir, without telling us how much you are
13 paid per hour, can you tell us how many hours you billed to
14 this particular case?

15 MS. STEWART: Objection, Judge, to the form of
16 the question.

17 THE COURT: Overruled.

18 A. This case took most of my attention for the last
19 14 months.

20 Q. Do you have --

21 A. I don't have an hourly -- I will tell you that
22 this was, this was the major area of my concern for over the
23 past year.

24 Q. Can you tell us approximately how many hours you
25 spent on the case?

1 A. I would need to review my bills. It was a major
2 part of last year. It was, I believe 38 or 39 weeks of
3 total billing spread out over the past 14 months, if I am
4 not mistaken.

5 Q. How many hours per week?

6 A. 40-hour weeks. Again, I would like to be
7 accurate. Without the material here, I can't be exactly
8 accurate.

9 Q. Could you review that for tomorrow and just tell
10 us the total hours?

11 A. Yes, sir.

12 Q. The methodology you used when you examined the
13 tapes, you used what's called physical inspection, is that
14 correct?

15 A. That's one area of inspection, yes, sir.

16 Q. You also do what's called critical inspection or
17 critical listening?

18 A. Yes, sir.

19 Q. And you also do electronic inspection?

20 A. Yes.

21 Q. Which is actually a number of different types of
22 electronic examinations, is that correct?

23 A. That's correct, using specialized instruments,
24 techniques.

25 Q. When you spent the time on this case, sir, for

1 each of the CM tapes that Emad Salem taped, you did a
2 physical inspection of each and every CM reel, is that
3 correct?

4 A. Yes, the originals.

5 Q. And you did a critical listening analysis of each
6 and every original reel, is that correct?

7 A. Yes, I did.

8 Q. And the physical inspection, during that you
9 actually looked at the item to see if you could see any
10 visible signs of tampering, correct?

11 A. Yes, sir, a number of items I look for when I do
12 a physical examination.

13 Q. Why don't you tell us what they are.

14 A. OK. First I look for any areas of concern; that
15 is, physical splices, that is, cuts in the tape, if it's a
16 cassette I look to see whether the cassette housing has been
17 opened, whether there is any evidence of any scratches near
18 the screw holes that hold the two shells together. I look
19 to see whether the glossiness, the thickness of the tape are
20 consistent with the type of tape that's supplied by the
21 manufacturer.

22 I look at the manufacturer's time/date stamp code
23 that is on the edge of the shell to see whether the tape
24 was, the recording date of the tape is consistent with the
25 date of that time code, that is, that the recording was not

1 made supposedly before I see the cassette was manufactured.

2 I do a timing test on a speed/time aligned
3 machine to determine whether the proper amount of tape is in
4 fact in the cassette housing as supplied by the manufacturer
5 such that I can assure myself that the tape is as
6 manufactured in fact.

7 I also look to see, using something called a
8 magnetic tape developing solution, whether the tape was
9 recorded on a mono or a stereo machine to see whether there
10 is a single channel or two channels in each direction. This
11 is something that does not harm the tape, but yet gives me
12 this information. This is all part of the physical
13 inspection, and this was done on each and every tape.

14 Q. The results, after doing the various processes
15 you described as to each and every original tape you
16 examined for Emad Salem, was to determine that there was no
17 evidence of physical tampering, is that correct?

18 A. That's correct. There was no evidence of any
19 physical splices or additions or deletions.

20 Q. No evidence of any physical tampering period, is
21 that correct?

22 A. Yes.

23 Q. Then you proceeded to the critical listening
24 phase, is that correct?

25 A. Yes.

1 Q. And the critical listening phase is the most
2 time-consuming phase of the analysis, is that correct?

3 A. Yes. That along with the electronic part, yes.

4 Q. During the critical listening you actually line
5 up each and every reel and listen to every inch of the tape,
6 is that correct?

7 A. Yes, sometimes repeatedly.

8 Q. And the critical listening allows you to
9 determine where there are discontinuities, breaks in the
10 nature of what is recorded, is that correct?

11 A. Yes. In the critical listening phase, the tape
12 is played on a machine on which I've disabled all of the
13 record and erase electronics so as to prevent any accidental
14 erasure or overrecording on my part. So it is a play-back
15 only machine.

16 The tape is played, repeatedly usually, on both
17 sides of course, and I make notes as to any areas of
18 concern, that is, differences in levels, differences from
19 one channel to another channel in the case of a stereo tape,
20 discontinuities, areas that I from my experience recognize
21 to be erasure or stops and starts, discontinuities of any
22 kind, areas that I feel I need to examine more fully and
23 areas that are counter to a tape just simply having been
24 recorded from beginning to end nonstop.

25 That is basically what I do, and I use special

1 load distortion play-back equipment and headphones and a
2 stopwatch.

3 Q. Using that machinery and that process that allows
4 you to detect overrecordings and erasures, is that correct?

5 A. That allows me to detect areas which I then in
6 the third part of the examination, the electronic part, go
7 back to and confirm the existence of or see that in fact it
8 was nothing other than the normal machine glitch or hum or
9 ambient noise.

10 Q. During the third part of the examination, and we
11 don't need to describe how each process works, but there are
12 a number of different types of electronic examinations you
13 can perform, correct?

14 A. Yes. Basically, simply, there are pieces of
15 equipment that allow me to visually look at very small areas
16 of time on the tape and freeze them on the screen and
17 compare them with known wave forms of various different
18 machine functions, like a stop or a pause or that type of
19 thing. I can very quickly determine, once I match them up,
20 whether in fact a machine has been stopped, started,
21 overrecorded, and so on. And I have numerous pieces of
22 equipment that allow me to do that.

23 Q. As part of that, as part of the critical
24 listening, going back one stage, you can spend several hours
25 on a single tape, isn't that correct?

1 A. Yes. The Nagras typically were running time over
2 three hours, just running it from beginning to end, let
3 alone going back and forth, stopping or doing anything else
4 other than just simply listening.

5 Q. Can you tell us approximately how long a Nagra
6 reel is, one reel of tape, three-hour tape?

7 A. How many inches?

8 Q. Yes.

9 A. Feet?

10 Well, it's 15, 16 inches per second. I have to
11 do some math.

12 Q. We will take care of that later.

13 But you go over every inch of the reel, is that
14 correct?

15 A. Yes.

16 Q. And the same with the electronic examination --
17 I'm sorry.

18 With the electronic examination you focus on
19 particular areas, but you can spend an awful lot of time on
20 each particular tape?

21 A. Yes, yes.

22 Q. And you did the critical listening and the
23 electronics examination on each and every CM tape made by
24 Emad Salem by a Nagra and on the original reel itself, is
25 that correct?

1 A. Yes. As well as microcassettes and so on.

2 Q. And the results of your examination of each and
3 every Nagra reel and the microcassettes is that, as you sit
4 here today, you cannot point to any of the CM tapes by Emad
5 Salem and identify any area where there is an erasure or an
6 overrecording, is that correct?

7 A. Tape CM64 has been erased subsequent to the
8 recording.

9 Q. Let me rephrase it. Let's put CM64 to the side.
10 Good point. Let's put that to the side.

11 Other than CM64, which we will talk about at
12 another time, there are no areas that you have identified on
13 any other of the CM's where there are erasures or
14 overrecordings, is that correct?

15 A. There are -- I want to answer your question as
16 fully and completely as I can.

17 There are tapes in which the existing state of
18 the tape starts in the midst of a conversation, and the
19 state of that tape is consistent with either a tape that had
20 simply been turned on at that point and recorded for the
21 balance of the conversation, or until the tape ran out, or,
22 alternately, a tape that had been recorded originally and
23 then backed up and restarted at the middle of the
24 conversation from that beginning point.

25 What I am trying to say is there is no way to

1 determine from the observed state of the tape whether some
2 of the CM's had been overrecorded or not, if the subsequent,
3 the most recent recording was longer at the beginning and
4 end than another previous recording on the same machine.

5 In other words, what I am saying -- I apologize
6 for being so wordy -- is that if you make a short recording,
7 and then you back up the tape and make a longer recording
8 over it, there is no way to tell scientifically whether or
9 not there was ever a previous recording.

10 All of this is to answer your question as to
11 whether or not as I sit here I can tell you whether there
12 are no tapes or there are any tapes with any instances of
13 overrecordings.

14 Q. OK. My question to you, sir, first, is whether
15 or not you can point to any tape and identify and say that
16 that type was overrecorded on it or not putting aside CM64?

17 A. Without a doubt? No. There is no way that I can
18 do that.

19 Q. I'm saying point and say there is overrecording.
20 Can you identify any tape, as you sit here today,
21 other than CM64, where you can point to an area and say
22 there is overrecording? Yes or no.

23 A. There are tapes which are consistent with the
24 possibility of that having occurred. As to whether or not I
25 could point to a tape and say beyond a shadow of a doubt,

1 unequivocally it happened, I say no. But there exists the
2 possibility that it could have. That is the best answer I
3 can give you.

4 Q. So you're saying there exists the possibility?

5 A. Yes.

6 Q. Let me ask you this: If we brought in a tape
7 that's never been used, which is referred to as a virgin
8 tape, correct?

9 A. Yes.

10 Q. If someone walked into this courtroom right now
11 with a virgin tape, and you were satisfied that it was a
12 virgin tape, never used, correct?

13 A. Yes.

14 Q. And we asked you to leave for just a moment and
15 you stepped outside, correct?

16 A. Yes.

17 Q. Assume that we had Mr. Jacobs come up, and Mr.
18 Jacobs and Mr. McCarthy jointly made a tape recording in
19 this room, beginning to end, never altered it, never backed
20 up and erased it, never overrecorded it, put that tape on
21 your chair and then invited you back in -- do you understand
22 the example?

23 A. Yes.

24 Q. Would you come up with the same conclusion as to
25 that tape if you analyzed it, that you cannot determine

1 whether or not there's been overrecording?

2 A. No, sir. In that case I would say that there had
3 not been overrecording because I would know that the time
4 elapsed to make the recording was the same time that I had
5 been out of the room, and you wouldn't have had time to have
6 made a previous recording.

7 Q. OK. What if we did that and we invited you back
8 tomorrow, then would your answer be the exact same?

9 A. Yes, as the previous answer.

10 Q. Yes. That you couldn't tell?

11 A. Yes.

12 Q. Now, when you first came on to this case, you
13 wrote some letters describing your services, is that
14 correct?

15 A. I don't recall, but it's possible.

16 Q. In those letters you describe that you use the
17 physical inspection, the critical listening?

18 A. Yes.

19 Q. And the electronic examination?

20 A. Yes.

21 Q. To determine whether tapes are authentic or not?

22 A. Yes, sir.

23 Q. And you used those processes to determine whether
24 or not tapes have been overrecorded or erased, is that
25 correct?

1 A. Yes.

2 Q. You did not anywhere indicate that your services
3 may in the end require you to give an answer that you just
4 don't know, did you?

5 A. That's true in any area. Not everything is black
6 and white. And I am going --

7 Q. Sir, if you could just answer the question yes or
8 no.

9 MR. STAVIS: The witness has not completed his
10 answer, your Honor.

11 THE COURT: The objection is sustained. Let him
12 finish.

13 A. I'm very conservative in what I testify to. I
14 will not in effect go out on a limb. I testify only to
15 observations that I am 100 percent convinced are there, and
16 also conclusions that, as far as I'm concerned, 100 percent
17 unequivocally follow from the observations that I make.

18 In certain areas, if there is a circumstance
19 where I cannot give such a black-and-white, 100 percent,
20 beyond-a-shadow-of-a-doubt conclusion that something has
21 occurred, I will say there exists a possibility, as in this
22 case.

23 Q. Did you say in the Woody Allen case that there is
24 exist a possibility -- yes or no -- that you were wrong?

25 A. I believe ultimately I testified that --

1 Q. Before you examined the original.

2 MR. STAVIS: Objection, your Honor. The witness
3 has not completed his answer.

4 THE COURT: No, that's overruled.

5 Q. Before you examined the original tape, did you
6 indicate in any way, shape or form that there is a
7 possibility that you were wrong in your testimony in the
8 Woody Allen proceeding? Yes or no.

9 A. I believe I tried to. And, most respectfully,
10 the court interrupted my answer when I was going to start to
11 talk about that.

12 Q. So you never got to say it?

13 A. That's correct.

14 Q. You say you give conservative testimony.
15 You are testifying here today based on your
16 extensive examination of a number of original reels,
17 correct?

18 A. Yes, sir.

19 Q. Did you testify in a proceeding on behalf of the
20 government in New Jersey, U.S. v. Vastola, V-A-S-T-O-L-A,
21 that based upon your analysis of copies of Nagra tapes that
22 you believed the original tapes were authentic and reliable?

23 Yes or no.

24 A. That was a long time ago. I don't recall. It's
25 possible.

1 Q. As you sit here today, is it possible based on
2 what you have told us about overrecording that you could
3 determine from an examination of copies of tapes that
4 original tapes are authentic and reliable and have not been
5 overrecorded? Yes or no.

6 A. Under certain conditions, depending upon the
7 quality of the recording and having made supervised copies
8 of the originals, it's possible to use a copy that I know to
9 be accurate made directly from the originals.

10 Q. Didn't you testify earlier today at the very
11 beginning that you needed to work from the originals to make
12 a proper authentication? Yes or no.

13 A. Yes, sir.

14 Q. In New Jersey could you determine from analysis
15 of copies of tapes that the original tapes were not
16 overrecorded? Yes or no.

17 A. I believe I could.

18 Q. So you could determine that there was no --

19 A. From the copies in that case.

20 Q. You could determine that there was no
21 overrecording of a Nagra by looking at a copy of the Nagra
22 in that case, but you can't tell in this case by looking at
23 original?

24 MR. STAVIS: Objection, argumentative, your
25 Honor.

1 THE COURT: Overruled.

2 A. If I'm not mistaken, I believe the copies that
3 were made in that case were made on a digital audio
4 recorder, not a standard cassette recorder, but a recorder
5 which is in effect a perfect reproduction of what input is
6 fed into it.

7 It's not -- it does not degrade the signal and on
8 certain circumstances -- and I don't want to get too
9 involved --

10 Q. Let me interrupt you there.

11 MS. AMSTERDAM: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. Go ahead.

14 A. If an original is not available for whatever
15 reason, there are times when I will travel to a location, a
16 remote location, and make what I call a supervised copy,
17 knowing that it in fact is the original, and I will be able
18 to preserve all of the signals that are present on the
19 original.

20 THE COURT: Could you come to a convenient break
21 point in five minutes.

22 MR. FITZGERALD: Yes, Judge.

23 Q. You said you could do that if it was digitized
24 audio copy, correct?

25 A. That is generally what I use.

1 Q. What if it were a reel-to-reel copy, could you
2 make that determination?

3 A. Under certain circumstances, depending upon the
4 quality of the copy.

5 Q. So my question to you, sir, is if you can
6 determine from a reel to reel copy, from an analysis of that
7 copy, that the original from which the copy was made was not
8 overrecorded, how come you can't determine in this case from
9 looking at the original itself?

10 A. It depends on the type of overrecording that we
11 are talking about. If there is an overrecording that is
12 more extensive than an initial recording, and extends both
13 before and after an initial recording, then there is really
14 no way that anyone can tell that that occurred. It's as
15 simple as that.

16 Q. That would be true for the tapes that you looked
17 at in New Jersey as well, correct?

18 A. Yes, it would.

19 MR. FITZGERALD: Your Honor, this would be a
20 convenient place to break.

21 THE COURT: Ladies and gentlemen, we are going to
22 break for the day. Please leave your notes and other
23 materials behind. Please don't discuss the case and we will
24 resume tomorrow. Good night.

25 (The jury was excused)

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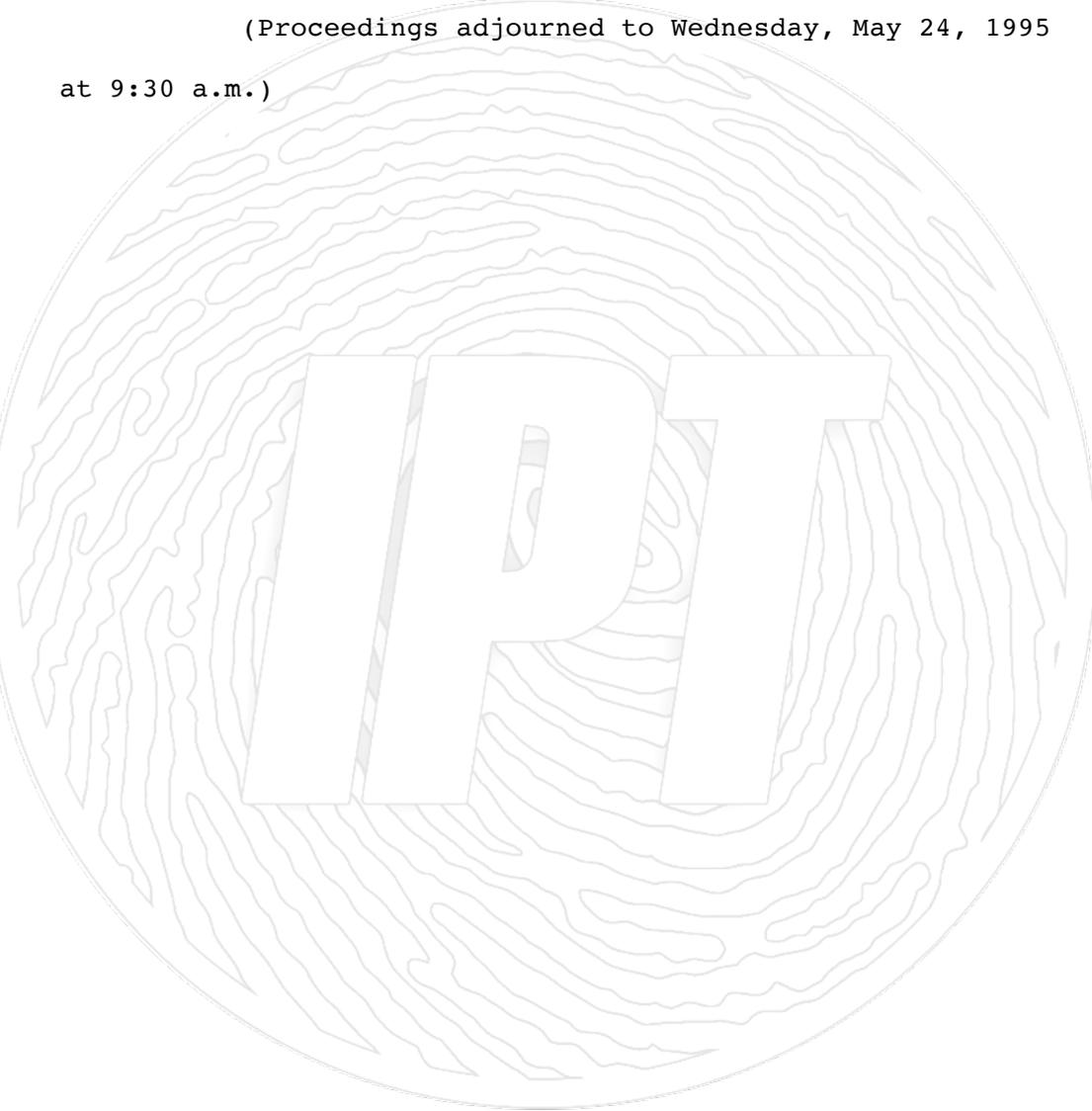
THE COURT: You can step down.

(Witness excused)

(Pages 11176 to 11178 sealed)

(Proceedings adjourned to Wednesday, May 24, 1995

at 9:30 a.m.)



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,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

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

15 IBRAHIM A. EL-GABROWNY,

16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

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

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

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

-----x

20 May 24, 1995
21 9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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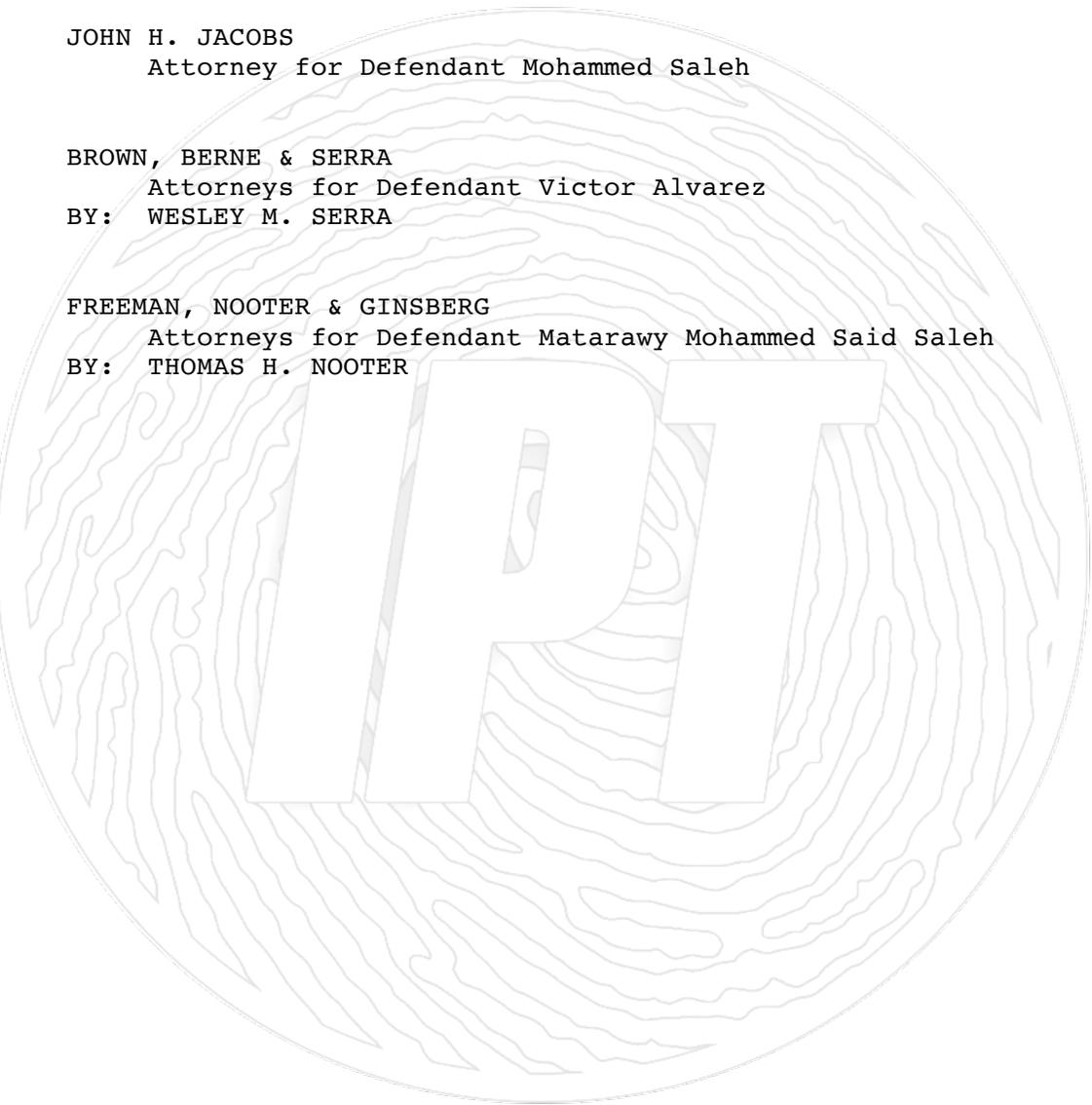
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



11183

1 (Trial resumed)

2 (In open court; jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning, your Honor.

5 MR. FITZGERALD: May I proceed, Judge?

6 THE COURT: Mr. Ginsberg?

7 PAUL GINSBERG, resumed.

8 THE COURT: Good morning. You are still under
9 oath.

10 THE WITNESS: Yes, sir.

11 THE COURT: Go ahead.

12 MR. FITZGERALD: Thank you, Judge.

13 DIRECT EXAMINATION

14 BY MR. FITZGERALD:

15 Q Good morning, Mr. Ginsberg.

16 A Good morning.

17 Q When we broke yesterday you testified that you
18 only make conclusions if you are a hundred percent
19 unequivocal, is that correct?

20 A As far as tampering or that type of thing, yes,
21 sir.

22 Q You testified that, "If there is a circumstance
23 where I cannot give such a black-and-white, a hundred
24 percent beyond a shadow of a doubt conclusion, that
25 something has occurred, I will say there exists a

11184

1 possibility," do you recall that testimony?

2 A Yes, sir.

3 Q You were asked whether or not you indicated in
4 the Woody Allen case that there was a possibility -- let me
5 rephrase that.

6 You were asked whether or not, in the Woody Allen
7 testimony that you gave, prior to examining the original
8 tape, whether you indicated that there was a possibility
9 that you were wrong, do you recall that question?

10 A I believe so, yes, sir.

11 Q You indicated that during the testimony in the
12 Woody Allen proceeding before you examined the original
13 tape, you wished to indicate that there was a possibility
14 that you were wrong, but respectfully, the judge cut you off
15 in that proceeding?

16 A Yes, sir.

17 Q When you gave that answer, you were looking at a
18 transcript of the testimony of that proceeding, is that
19 correct?

20 A Yes.

21 Q If I could approach you with what's been marked
22 as 35124A, and I will direct your attention to page 2214 and
23 ask you if that is the page of testimony you were looking
24 at.

25 A Yes, it is.

11185

1 Q Is it fair to say that during that examination
2 the opposing counsel asked you a question about whether you
3 needed to look at the original, and as you started to answer
4 the judge interrupted to make clear whether or not he was
5 referring to the original camera or the original tape, is
6 that fair to say?

7 A I believe so.

8 Q And what you started to say was simply the word
9 "not," and then you were interrupted, whatever it was that
10 you were going to say, correct?

11 A Yes.

12 Q So counsel asked you, "And isn't it a fact that
13 the ability to examine the original is absolutely essential
14 coming up with a definite definitive opinion"?

15 MR. STAVIS: Objection, your Honor.

16 THE COURT: May I hear it read back.

17 (Record read)

18 THE COURT: Overruled.

19 Q And you started to say "not," and the court said,
20 "The original camera?" and opposing counsel said, "The
21 original camera used and the original tape."

22 Is that correct, sir?

23 A Yes.

24 Q What you are saying is had the judge not
25 interrupted you, you would have made clear that there was a

11186

1 possibility that you were wrong, correct?

2 A Yes.

3 Q And then you gave this answer, sir: "That would
4 certainly be useful although I have no -- there is no doubt
5 in my mind as to my conclusions based upon this tape."

6 Was that your testimony, sir?

7 A Yes, based upon the copy tape?

8 Q Yes, sir.

9 A Yes.

10 Q But you said there was no doubt in your mind,
11 isn't that correct?

12 A Yes, sir, I did.

13 Q Then the lawyer continued with, "We'll continue
14 with it," and you said, "I have no doubt."

15 Is that correct, sir? The very next question and
16 answer?

17 A Yes.

18 Q Now, sir, did you have an opportunity to look for
19 your defense attorneys' guide or draft defense attorneys'
20 guide last night?

21 A Yes, sir, I did.

22 Q And did you locate it?

23 A Yes.

24 Q Do you have it with you?

25 A Yes.

11187

1 Q Do you mind if I look at it.

2 A Here's a copy.

3 Q Now, sir, when you began to examine the various
4 CM reels, the originals that you looked at in this case,
5 after you examined the first few reels, did you come to the
6 conclusion as to those reels that you could not determine
7 one way or the other whether or not they had been
8 overrecorded?

9 MR. LAVINE: Objection to the form.

10 THE COURT: May I hear it again?

11 (Record read)

12 THE COURT: Overruled.

13 MS. AMSTERDAM: Objection as to "the first few
14 reels."

15 THE COURT: Do you want focus on what you mean by
16 "a few"?

17 MR. FITZGERALD: The first five.

18 Q Yes or no, sir.

19 A Yes.

20 Q As you went through and examined reel after reel
21 after reel, there would come a time when you would write
22 letters to Mr. Jacobs keeping him up to date as to what
23 things you had found so far, is that correct?

24 A Yes.

25 Q Did you write in any of those letters after the

11188

1 first five reels or after the first ten reels that you were
2 noticing that you couldn't come to any conclusion as to
3 whether or not the tapes had been overrecorded? Yes or no.

4 A No, sir.

5 Q And you continued to work on each reel after that
6 without ever writing to anyone letting them know that your
7 ultimate determination was you couldn't tell, is that
8 correct?

9 A As to this issue, yes.

10 Q The total number of hours that you billed, are
11 you aware of that as you sit here today?

12 A Yes.

13 Q How many hours was that?

14 A 1200, approximately.

15 Q Now, sir, you testified yesterday that you cannot
16 tell whether or not a conversation has been overrecorded on
17 a tape where that conversation is longer than the underlying
18 material that might have been there, is that correct?

19 A Yes, sir.

20 Q So if you have a conversation with no material in
21 front of it on the tape and no material after it on the
22 tape, you simply can't tell whether it was recorded on a
23 virgin tape or whether it was overrecorded on material that
24 is shorter?

25 A Exactly. That goes for -- under any

11189

1 circumstance.

2 Q So that if there is material at the beginning of
3 a tape, or there's material at the end of a tape, or both,
4 you can then in that circumstance determine whether or not
5 it's overrecorded, is that correct?

6 A Yes.

7 Q Now, sir, you have had occasion to examine CM32
8 in this case, GX333, the tape of Emad Salem speaking to
9 Mohammed Saleh?

10 A Yes.

11 Q Is it fair to say that there is material on the
12 tape before the conversation with Mohammed Saleh, is that
13 correct?

14 A Yes. I believe there are a number of off and on
15 pulses, followed by the beginning of recording which takes
16 place within a conversation.

17 Q All right. The material you hear before the
18 conversation, between the ons and offs, you hear someone
19 clearing their throat and you hear some traffic noise, is
20 that correct?

21 A Very brief intervals, yes.

22 Q So in light of your testimony that where there is
23 material before a recorded conversation, you can tell
24 whether or not it's overdubbed, you can make a determination
25 as to CM32, GX333, is that correct?

11190

1 A No, sir.

2 Q Didn't you just tell us that there is material
3 before a conversation that allows you to determine whether
4 or not the conversation in question was overrecorded?

5 A Not in all cases, because there could have been a
6 subsequent -- a previous recording underneath the portion or
7 the segment that now exists from that point through end of
8 the tape, or anything shorter.

9 Q Didn't you just tell us three minutes ago that
10 where there is material before --

11 MR. STAVIS: Objection as to form, your Honor.

12 Q Didn't you just tell us this morning that where
13 there's material before a conversation and after a
14 conversation or after a conversation, you can determine
15 whether or not there is overrecording?

16 MR. STAVIS: Objection, your Honor.

17 THE COURT: Overruled.

18 A I thought you meant material existing from a
19 previous conversation still remaining either before or after
20 a subsequent conversation had been recorded.

21 Q The material that's before the conversation in
22 CM32, the traffic noises, those sounds still remain, is that
23 not true?

24 A Yes, yes. But not from -- but those are before,
25 or preceding the segment which now exists on the tape, that

11191

1 is, the conversation. I cannot tell, nor can anyone tell,
2 what was or in fact if there was anything before recorded on
3 the tape under the remaining segment which goes from that
4 point through to the end of the tape. That's completely
5 independent of the initial on-off testing stages.

6 Q So what you're telling us now, sir, is that you
7 can't determine whether or not there's overrecording,
8 whether or not there's material before or after the
9 conversation or not, is that your testimony?

10 A I'm sorry. I don't understand the question.

11 Q If you have a tape and you're looking at a
12 conversation on that tape without regard to whether or not
13 there is material appearing on that tape before that
14 conversation you cannot tell whether or not there is
15 overrecording, correct?

16 A Positively. That's correct. That's right.

17 Q In your letters indicating what you were working
18 on before the -- how many hours did you say you worked?

19 I am sorry.

20 A It was approximately 1200 hours.

21 Q Describing the processes you were using during
22 the 1200 hours, did you indicate that there is a piece of
23 equipment referred to as an a CVTVM, is that correct, sir?

24 A Yes.

25 Q Did you indicate that using this piece of

11192

1 equipment an investigator can discriminate between virgin
2 tape and overrecorded or erased tape, was that what you
3 indicated in your writings?

4 A Yes, by "overrecorded" there, I mean tape that
5 was passed over an erase and record head on a recorder,
6 recorded, and then subsequently erased, as opposed to never
7 having been recorded.

8 Q Did you explain that in your letter or did you
9 just use the word "overrecorded"?

10 A I don't know. I probably just used the word
11 "overrecorded."

12 Q At any time before you were retained, while you
13 were spending the 1200 hours, did you ever indicate to
14 anyone --

15 MS. AMSTERDAM: Objection as to form, your Honor.

16 THE COURT: Sustained.

17 I think you said "before you were retained." Do
18 you mean after you were retained?

19 MR. FITZGERALD: In the process of seeking to be
20 retained or --

21 THE COURT: All right.

22 Q When you were first contacted about possibly
23 working on this case, do you recall when that was?

24 A I believe it was the early part of 1994. Yes.

25 Q From that time through the end of the 1200 hours

11193

1 you spent on the case, did you ever notify anyone of your
2 position that, regardless of whether there is material
3 before or after a conversation on a tape, you simply cannot
4 positively tell whether or not a conversation has been
5 overrecorded on the tape?

6 MR. STAVIS: I object to the notification of
7 anyone.

8 MR. BERNSTEIN: Can I ask for a clarification?
9 The "word" before is being used, and I am confused as to
10 whether we are talking about meaning physically from point A
11 to point B on a tape, or "before" meaning prior in time, and
12 it's becoming extremely unclear as to what the question
13 means.

14 THE COURT: If the witness can understand it, he
15 can answer it.

16 A There are circumstances under which I can tell
17 whether a tape has been recorded and then subsequently
18 overrecorded. Those are cases where some of the previously
19 recorded material is not overrecorded; that is, the two
20 recordings overlap and the subsequent recording does not
21 fully cover the original recording. Under those
22 circumstances, we can determine that there has been an
23 overrecording.

24 Under the circumstance where the subsequent
25 recording, the second recording completely covers the

11194

1 original recording, nobody can tell that, because recording
2 on a tape is not like applying successive layers of wax on a
3 kitchen floor, but rather it's rearranging the same
4 particles on the tape in the new configuration so that the
5 original recording does not exist anymore once the tape has
6 been rerecorded.

7 So, as far as notifying people, I have said that
8 I can under certain circumstances detect it and confirm it
9 and under other circumstances nobody can.

10 Q Did you write in your letters describing what you
11 were doing that you could only detect it under certain
12 circumstances? Yes or no.

13 A No, sir.

14 Q Now, sir, you said that if the conversation
15 didn't completely overrecord something, you could detect it?

16 A Yes.

17 Q On CM32, if CM32 is a result of an overrecording,
18 if the machine was backed up to rerecord, it certainly
19 didn't overrecord those traffic noises, isn't that correct?

20 A Yes. That's correct.

21 Q So that's a case where if -- let's focus on the
22 point of time between the traffic noises and when the
23 conversation of people in a building starts.

24 A Yes, exactly.

25 Q That conversation is after the traffic noises,

11195

1 correct?

2 A Yes.

3 Q And if that conversation is overrecorded, that
4 certainly didn't back up and overrecord the traffic noise?

5 A That's right.

6 Q So that is a conversation where it doesn't
7 completely overlap the underlying material on the tape,
8 correct?

9 A I don't know whether there was any other
10 recording made initially after the brief testing period that
11 had been subsequently overrecorded by the conversation that
12 is on the tape now. In other words, the possibility exists
13 that instead of four or five on and off pulses there were
14 originally six or seven following which there was a
15 conversation, which then was -- subsequently the recorder
16 had been turned off, backed up to the point where there were
17 just four or five on-off pulses, and from that point
18 recorded again. That's what I am saying. I don't -- nobody
19 can tell that.

20 Q But you spent 1400 hours looking at these tapes?

21 A 1200.

22 Q 1200, sorry.

23 Let me ask you this, sir. An on-off pulse, there
24 is a stop and there's a start, is that correct?

25 A That is correct.

11196

1 Q The stops and starts are distinct, is that
2 correct?

3 A Yes.

4 Q In fact, the stop is easier to detect than a
5 start?

6 A Exactly.

7 Q And if a person starts a tape, then they stop it,
8 and if they start it again and they stop it, you'll see an
9 alternating sequence, start, stop; start, stop; start, stop;
10 start, stop, correct?

11 A Exactly.

12 Q If a person then has done that and they begin to
13 make a recording and decide to back it up, and if they
14 rewind it, they may rewind it and start again, you may see a
15 red flag, wouldn't you?

16 A Yes, although it is difficult because you would
17 then have just a start pulse at the beginning of the second
18 recording and, as you agree, a start pulse is very difficult
19 to detect as compared to a stop pulse because it gets, the
20 tape gets erased and recorded over, that is, that start
21 pulse gets recorded over.

22 Q Let's talk about CM32.

23 It is not hard to figure out where that
24 conversation with the people started, putting aside the
25 start or stop pulse, you hear voices talking, correct?

11197

1 A Yes.

2 Q And is it fair to say that if someone backs up a
3 recording and starts in the middle of something, you can see
4 start, stop; start, stop; start, start, correct? Because
5 they've overrecorded over the stop pulse, isn't that
6 correct?

7 A Yes. Except sometimes there is a period of time
8 where there had been no recording on occasions. So that in
9 between some of these starts and stops --

10 Q Sir, every time there is a start, there is a stop
11 unless the tape runs to the end?

12 A Yes, definitely.

13 Q If the person went to a stop and backed up, they
14 could erase the stop pulse, correct?

15 A Yes.

16 Q So you could well see a start and a second start,
17 correct?

18 A Yes.

19 Q That would be a red flag --

20 A If that second start was apparent. As I say,
21 it's sometimes, in fact, many times indistinct so that you
22 would wind up seeing the underlying start and then the
23 continuation of recording blending into it.

24 Q And you will agree with me that where there's
25 traffic noise and suddenly you hear people talking it's

11198

1 pretty easy to pick up where the start is, correct?

2 A Yes, on several of those.

3 Q And you determined, you found no occasions where
4 you had consecutive start pulses on CM32, is that correct?

5 A Not distinct ones.

6 Q Now, sir, you can determine from the various
7 processes you use, such as physical examination, critical
8 listening, and electronic examination, as to whether or not
9 a person overrecorded on a tape using a second machine,
10 isn't that correct?

11 A Under some circumstances.

12 Q If you use a Nagra to make a tape, and then you
13 take the Nagra reel and bring it to a different machine in a
14 different location and rerecord over that tape, aren't there
15 telltale signs left on the reel that two different machines
16 have been used to make the tape?

17 A Nagras are manufactured in Switzerland under very
18 high standards of quality control, and the signatures of
19 Nagras are very much identical. There's not much variation
20 except for that as a result of aging of the parts, heat
21 buildup, and slight, slight changes in the circuits over a
22 period of time. Otherwise, the signatures are pretty,
23 pretty close. The machines are seven or eight thousand
24 dollars and they stay -- they're very stable.

25 So in answer to your question, it's very

11199

1 difficult to tell one Nagra from another. It would be very
2 difficult.

3 Q If someone recorded on a Nagra and then used a
4 different brand machine to overrecord on it, that would be
5 obvious, would it not?

6 A To my knowledge, Nagra reels only -- a Nagra
7 machine is the only machine that can accommodate a Nagra
8 reel.

9 Q So if a person wanted to record on a Nagra, they
10 could only use a Nagra machine, correct?

11 A You would have to wind the tape -- in order to do
12 anything else, you would have to wind the tape into a
13 cassette, it's the same width and thickness of tape as a
14 cassette tape, and you would have to put it on a cassette
15 recorder, rerecord, and then put it back onto the Nagra
16 reel.

17 Q Now, sir, did you testify for the government in a
18 case in Waco, Texas?

19 A Yes, I did.

20 Q And as part of your testimony or -- strike that.
21 Was your role in that case to put in some
22 transcripts of some conversations recorded on some bugging
23 devices?

24 A Yes.

25 Q Those bugging devices had a lot of extraneous

11200

1 noise when you first got the tapes, is that fair to say?

2 A Yes, sir. More than any other case.

3 Q Were those perhaps the worst tapes you have ever
4 seen in terms of noise?

5 A Yes, sir.

6 Q Did you enhance those tapes to try and filter out
7 some of the noise?

8 A I did.

9 Q Then, despite those tapes being the worst you
10 have ever seen, you worked to enhance the tapes and you
11 worked to prepare transcripts, is that correct?

12 A Yes, I did.

13 Q And you've enhanced tapes and prepared
14 transcripts in other cases, is that correct?

15 A Yes.

16 Q And you are familiar with the process of
17 preparing transcripts?

18 A Yes, certainly.

19 Q Is it fair to say that if a person spends a lot
20 of time listening, even on the worst conversations you ever
21 heard on tape, you can still pick up voices at times, is
22 that correct?

23 A At times, sure.

24 Q And the more times a person doing the transcript
25 listens to a tape, they can hear more, is that correct?

11201

1 A Yes.

2 Q In fact, as you prepare a transcript, sometimes
3 when you listen to check the transcript you hear a new word
4 you didn't catch before, is that correct?

5 A Often.

6 Q In fact, during the proceeding in Texas when you
7 heard the tapes in the courtroom, you heard some things on
8 the tapes that weren't even on the transcript yet, is that
9 correct?

10 A Yes, that frequently happens.

11 Q And it frequently happens, as someone who's
12 prepared transcripts, that sometimes you hear things and
13 don't even put them on the transcript because you feel that
14 you are not sure that other people will hear it, is that
15 correct?

16 A That's true.

17 Q Sometimes you will leave a word off even though
18 you hear it on the tape and not put it in the transcript?

19 A Yes.

20 MR. FITZGERALD: Thank you.

21 Q Now, yesterday we just touched upon a particular
22 reel known as CM64, do you recall that?

23 A Yes.

24 Q And CM64 was a reel that you determined had been
25 exposed to some magnetic field after the recording was made?

11202

1 A That is correct, a Nagra reel.

2 Q A Nagra reel.

3 And what happens generally when any tape is
4 exposed to a magnetic field it does some damage or at times
5 erases partially or completely the tape?

6 A It realigns the particles on the tape in the same
7 way the record head does in accordance with recording
8 material.

9 Q In fact, if you had a tape, a tape that was not
10 being used for anything, and you wanted to erase it so you
11 could reuse it, what you would do would be to take a magnet
12 and pass it over the tape and that would erase the tape?

13 A Exactly.

14 Q You would have a clean tape, not a virgin tape,
15 but a clean tape?

16 A Yes.

17 Q And that's a relatively simple process, to take a
18 magnet and pass it over a Nagra and you can completely erase
19 it?

20 A Yes.

21 Q Or erase it beyond recognition?

22 A Yes, certainly.

23 Q Now, with CM64, what you feel in your expert
24 opinion caused the damage to the tape was some sort of
25 magnetic exposure, correct?

11203

1 A Yes, sir.

2 Q But the magnetic exposure did not cause a
3 complete erasure of the tape?

4 A No, it did not.

5 Q Only a partial erasure?

6 A It was like the wedge of a pie being sliced out.
7 In other words, at each rotation or revolution there was a
8 part of the tape which was erased for a certain small period
9 of time.

10 Q So that so we are clear, if you were playing the
11 tape, as you listen to the tape, you will hear whatever
12 sounds were picked up, conversation noise and things, and as
13 the tape comes around to that slice of the pie, that
14 conversation will drop out and then pick back up again?

15 A Yes, exactly.

16 (Continued on next page)

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11204

1 Q And as you go farther into the tape, the slice
2 gets a little smaller.

3 A Precisely.

4 Q And you also determined that whatever exposure
5 there was to the magnetic field occurred before the tape was
6 rewound.

7 A Yes.

8 Q So that whatever happened, that cassette was
9 exposed, if it was exposed to a magnetic field it was before
10 the person rewound it.

11 A That is correct.

12 Q Is it fair to say that you can still hear whole
13 sentences and whole paragraphs of the tape?

14 A I don't know about -- I would say fractions of
15 sentences. It would be difficult to understand or follow an
16 entire conversation because the tape moves so slowly that
17 each slice of the pie can be about a second, and that can
18 make a difference if the people are speaking very quickly.

19 Q But if you were to take the tape and to play it,
20 you are saying that someone would have a hard time
21 understanding it because the slice would come up so
22 frequently?

23 A I believe so, and when I say I believe so, that
24 is because the tape was not in English, so it is difficult
25 for me to make that determination.

11205

1 Q You don't speak Arabic?

2 A No, sir.

3 Q Based on your examination of the tape -- you
4 listened to the entire tape?

5 A Yes.

6 Q If this were a tape in English, it is your
7 understanding that if you were to listen to it in English,
8 you would have sentences chopped up so that you couldn't
9 make sense of the conversation?

10 A Yes, sir.

11 MR. FITZGERALD: Your Honor, I would like to
12 offer the first portion of CM 64, just so we can hear how
13 much of the conversation can be heard, 64E.

14 THE WITNESS: The first part?

15 Q Yes.

16 A That is the part where there is the least bit of
17 this.

18 Q The worst part would be the end, in terms of
19 damage?

20 A I believe so.

21 MR. FITZGERALD: Why don't we listen to the worst
22 part first and then we will listen to the first part.

23 Your Honor, this would be Government's Exhibit
24 367E. I would just like to play the end of part 5 and the
25 beginning of part 1.

11206

1 I am sorry. I just wanted to make clear what we
2 would be listening to.

3 Q You described sort of like a pizza slice?

4 A Yes.

5 Q And because the tape is rewound, we will hear the
6 outside of the pizza slice first if we listen to the end of
7 the conversation, correct?

8 A Yes, that should be.

9 Q That will be where the breaks, because of this
10 interference, will be the greatest?

11 A It should be, yes, sir.

12 Q And the second time, so we can save some time,
13 will be the parts where the interference will be the
14 smallest.

15 A Yes, sir.

16 (Tape played)

17 Q A quick question. You heard some car sounds in
18 the tape or some motion sounds?

19 A I heard some background noise.

20 Q The slice of the pie was coming in when you would
21 hear some sort of noise that would drop out for a second or
22 two and pick back up?

23 A If this is the same tape. This is a copy of the
24 tape. I know I heard it on the original, and I did hear a
25 certain amount of periodic dropout here, too.

11207

1 MR. FITZGERALD: Now I am going to play the
2 beginning of the tape.

3 (Tape played)

4 Q Sir, without getting into the substance of what
5 Mr. Salem was saying, did you hear a complete sentence,
6 albeit with some dropoffs at some points?

7 A Yes. That was from the extreme beginning.

8 Q And that was in English, correct?

9 A That was, the preamble.

10 Q Now, sir, is it fair to say that if someone
11 wanted to erase it, if someone used a partial exposure to
12 magnetic field to erase a tape before it was rewound, you
13 would have no idea which parts were damaged, correct?

14 A Yes.

15 Q You have written, besides the defense guide which
16 you shared with us this morning, you have written a
17 prosecutors' guide and agents' guide to audiotaped evidence,
18 is that correct?

19 A Yes.

20 Q And you have copyrighted the prosecutors' guide
21 and the agents' guide, is that correct?

22 A I believe that is correct, sir.

23 Q You are familiar with what are called Nagra
24 recorders, correct?

25 A Yes.

11208

1 Q You are familiar with Kel transmitters, correct?

2 A Yes.

3 Q You have worked with them for quite a number of
4 years, correct?

5 A Twenty years.

6 Q You were sitting here during the examination of
7 Detective Napoli and Mr. Emad Salem, correct?

8 A For part of Mr. Salem's testimony and I think
9 most of Mr. Napoli's testimony.

10 Q Concerning taping?

11 A Yes, yes.

12 Q You worked with defense counsel Mr. Jacobs to
13 help prepare for the examination of Mr. Salem and Detective
14 Napoli concerning tape issues, correct?

15 A Yes.

16 Q And do you recall questions about the difference
17 between a Nagra recorder and a Kel transmitter, correct?

18 A Possibly.

19 Q Do you recall questions about, reading from 4295,
20 in other words, in at least one --

21 MS. AMSTERDAM: Objection, your Honor.

22 MR. STAVIS: I join in that objection.

23 THE COURT: Why don't you show it to him.

24 Q If you could just read to yourself transcript
25 page 4295, line 3 to the end.

11209

1 A Yes, sir.

2 Q Obviously I am not showing the entire
3 examination, just a portion of it, correct?

4 A Yes.

5 Q But do you recall questions about the fact that a
6 Nagra recorder has a limited capacity, it can only record
7 for three hours?

8 A I believe that on this --

9 Q Not on that page, just generally on that
10 question, the fact that Nagra transmitters only have a
11 capacity for three hours.

12 A Nagra recorders.

13 Q Thank you.

14 A Yes.

15 Q And you recall Detective Napoli being questioned
16 as to why a person wouldn't use a Kel transmitter which
17 would send the signal to a different person who could then
18 monitor the conversation live and record it on a separate
19 machine, correct?

20 A Yes.

21 Q Sir, in your book the prosecutors' guide and in
22 your book the defense guide, is it fair to say that you
23 indicate that Nagras make the best recordings?

24 A Yes.

25 Q And you also indicate that the worst recordings

11210

1 come from Kel transmitters, is that correct?

2 A Yes.

3 Q When you were sitting here helping Mr. Jacobs
4 examine, did you pass him a note to say you ought to know
5 that Nagras are the best and Kels are the worst?

6 MR. JACOBS: Objection.

7 THE COURT: Sustained.

8 Q Is it also fair to say that you would have a
9 problem with the squelch on a Kel transmitter?

10 A A what?

11 Q Can you explain to the jury what a squelch is.

12 A Squelch is a control on a radio receiver which
13 sets a threshold for the receiver so that in the time when
14 no signal is being received, the receiver shuts off so you
15 don't just hear noise. If you turn up the squelch it will
16 squelch or quiet the noise and that way any signal over that
17 threshold will be received and anything under it will be
18 ignored and the receiver will remain shut off without
19 receiving anything.

20 Q If you use a Kel transmitter with a squelch, is
21 it fair to say that the whispering during a conversation can
22 be cut out and leave a gap?

23 A It has nothing to do really with the loudness of
24 the speaking, it has to do with the received signal strength
25 of the received radio wave. You could be whispering with a

11211

1 very loud signal strength and be heard and you could be
2 shouting but out of range so that the received signal
3 strength is weak and still not hear it. It has to do with
4 the received signal strength.

5 Q Let me ask you this: If you were wearing a Kel
6 transmitter right now, could someone pick up the signal
7 outside on Centre Street, outside the building?

8 MS. AMSTERDAM: I object to relevance, your
9 Honor.

10 THE COURT: Overruled.

11 A I would say yes.

12 Q How about across the street from that?

13 A I would say the signal would probably taper off
14 somewhere in that range. There are different strength Kel
15 transmitters and different sensitivity Kel receivers, and
16 also multiple bands or bands of frequencies that are used so
17 as to overcome some of the obstacles.

18 Q When you write in your book, in your agents'
19 guide to the use of tapes, do you indicate that Nagras are
20 superior to Kels for the reason that Kels can have gaps in
21 them due to the signal strength? Yes or no, sir.

22 A I believe I did. It's true.

23 Q You were present for a fair amount of questioning
24 of Detective Napoli and Emad Salem about the little white
25 envelopes that the Nagra reels come in?

11212

1 A Yes.

2 Q You recall that, sir?

3 A Yes.

4 Q Is it fair to say that the little white envelopes
5 are made by the manufacturers, Daniels, correct?

6 A Yes, Daniel Technology.

7 Q And the FBI evidence envelope is a larger brown
8 envelope, is that correct?

9 A Yes, sir.

10 Q And you in fact prepared a chart as to whether or
11 not the little white envelopes were in the brown FBI
12 evidence envelopes, correct?

13 A I believe the chart was with respect to which
14 reels were paired up with which of the white envelopes and
15 which were not matched.

16 Q Correct, sir.

17 A For each of the dates.

18 Q Is it your testimony that it is important that
19 the little white envelope from the manufacturer be kept when
20 an agent makes a Nagra reel recording?

21 A It is my testimony that with normal law
22 enforcement evidence handling procedures, notations be made
23 as to tapes that are on the street, envelopes, matching
24 envelopes that are on the street, and the times and the
25 people through whose hands these items pass and when they

11213

1 are returned for safekeeping within the issuing agency. I
2 hope that answers the question.

3 Q My next question to you, sir, is, when you wrote
4 your agents' guide to the use of audiotape evidence -- that
5 was 20 pages long, correct?

6 A Yes, booklet.

7 Q Is it fair to say that nowhere in your audiotape
8 evidence guide, nowhere do you indicate that they should
9 retain the white envelopes or retain the serial numbers?

10 A I believe that -- I don't know whether I
11 mentioned it specifically. I know I lecture on it.

12 Q Didn't come up in a 20-page guide for agents?

13 A I know I went through chain of custody --

14 Q Yes or no.

15 THE COURT: The question is, is it in there?

16 A I don't think specifically that is, no.

17 Q Sir, you were present for cross-examination
18 concerning whether or not Emad Salem had access to the
19 on/off control switch on the recorder. Do you recall that?

20 A Yes. You are talking about the automobile and
21 the attache case?

22 Q Yes.

23 A Yes, sir.

24 Q There was questioning as to whether or not he
25 could turn the machine on and off himself, correct?

11214

1 A Yes.

2 Q As someone who writes to agents on how to use
3 audiotaped evidence, is it fair to say there is a tradeoff
4 in having someone able to control the machine on and off and
5 also letting the tape run and perhaps letting the tape run
6 out before the conversation is over?

7 MR. STAVIS: Objection as to that question.

8 THE COURT: Sustained.

9 Q Sir, if there is a machine with no on/off
10 switch -- assume that for a moment -- once it is started it
11 runs until the tape runs out, correct?

12 A Yes, that is available.

13 Q It is available?

14 A Daniel Technology makes such a device.

15 Q My question is, when you give advice to agents
16 about things to think about when they make tapes, isn't one
17 very important concern that the tape not run out before the
18 relevant conversation is over?

19 A Yes.

20 Q In fact, sir, did you write in your agents guide
21 that you don't want to risk exhausting the tape supply while
22 discussing nonpertinent subjects only to learn later that
23 the pertinent conversation was not recorded because the tape
24 ran out, "a likely story" would be the defense's reaction,
25 and your credibility will be challenged?

11215

1 A Possibly.

2 Q If there is a concern about someone having access
3 to an on/off switch, you mention that there is a machine
4 made by Daniels that doesn't have an on/off switch, correct?

5 A It is an accessory that one can use in
6 conjunction with a cassette recorder or, I believe, a Nagra,
7 which allows the machine to be started but not stopped by a
8 wearer.

9 Q There is another way to do it, isn't there, sir?
10 Let me rephrase that. Aren't you aware that there is a
11 machine, an optical disk device when the person -- let me
12 back up a second. Let's talk about overrecording for a
13 second. If you are concerned about someone overrecording on
14 a machine, backing it up and rerecording over it, there is a
15 way to prevent that, isn't there?

16 A If the machine is sealed shut and with some sort
17 of sealing tape initialed by an agent such that he retrieves
18 it and sees that it is in the same condition, I suppose that
19 would preclude that from happening.

20 Q What if a device were placed in someone's pants,
21 that they couldn't control the record switch on? Would that
22 work, sir?

23 A If you have no way to control it, certainly that
24 would do it.

25 Q If a person has a device in his pants that he has

11216

1 no ability to rewind, whatever it is that he hears he is
2 stuck with, correct?

3 A Yes, if the tape is picked up directly following
4 that time, yes.

5 Q Unless he takes his pants off, gets rid of them
6 and goes around in his underwear, whatever is on the pants
7 stays there, correct?

8 MS. AMSTERDAM: Objection, your Honor.

9 A Or goes home and does it in the privacy of his
10 home.

11 THE COURT: Objection overruled.

12 Q If he knows how to operate the pants device,
13 correct?

14 A Yes.

15 Q But if his pants are picked up promptly and he is
16 given a new pants, he is stuck with whatever is recorded on
17 that tape, correct?

18 A Yes.

19 Q Similarly, if you send someone in to a location,
20 a building, where there are tape recorders out of his
21 control, turned on by someone else, turned off at the end,
22 for which he has no ability to back up or operate the record
23 device, he is stuck with whatever they said, right?

24 A Yes, if he does not have that ability.

25 Q Sir, do you recall speaking with a government

11217

1 prosecutor at or about the time of Detective Napoli's
2 testimony in this case, by telephone?

3 A I know each time one of the prosecution has
4 called me I have returned the call and we have spoken.

5 (Continued on next page)

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1 MS. STEWART: Judge, objection. May we have a
2 side bar?

3 THE COURT: Yes.

4 (At the side bar)

5 THE COURT: Is this a conversation with you?

6 MR. FITZGERALD: No, he told Mr. McCarthy.

7 THE COURT: In any event, I would like you to
8 leave the identity out of it insofar as you can.

9 MR. FITZGERALD: Yes.

10 THE COURT: And you even leave out its being a
11 member of the teamworking on this case.

12 MR. FITZGERALD: That is fine, your Honor.

13 MR. STAVIS: Your Honor, I don't know what Miss
14 Stewart's objection is.

15 THE COURT: I assume her objection is that it
16 makes a witness out of the questioner or one of the people
17 sitting at the front table.

18 MR. STAVIS: I have an additional objection. Mr.
19 Fitzgerald has gone into letters written by this witness to
20 defense lawyers. There was an objection sustained to that.
21 He is going into notes passed from this witness to defense
22 lawyers in areas of cross-examination, and I believe all
23 that is privileged. I don't think that we have placed any
24 of these issues -- the substantive issues perhaps, but the
25 issues of what the defense attorneys did with this witness,

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1 I believe, should be off limits, your Honor.

2 MR. FITZGERALD: Moving forward and then
3 backward, I am trying to avoid identifying who the
4 prosecutor is. I am just going to ask him did he make a
5 comment about the tapes, what his findings are.

6 Going backward, he said let the chips fall where
7 they may. He did everything with the knowledge and consent
8 of the government. This is not a privileged communication
9 from a defendant to his lawyer, this is advice an expert
10 rendered. It is no different asking did you tell the
11 government this, did you tell the government that. I am
12 asking did he share his expertise when he was being frank,
13 candid, letting the chips fall where they may, did he share
14 the same information with agents and prosecutors.

15 MR. STAVIS: It is different what somebody tells
16 an agent because there is a certain amendment to the
17 Constitution, and I am dealing with the work product
18 privilege between defense attorneys preparing a case for
19 trial. This man was not necessarily a witness for the
20 defense but it was in preparation and I don't believe the
21 government should be allowed to go into those areas.

22 MR. JACOBS: Judge, to clarify the issue, the
23 fact that he might have had a couple of seconds conversation
24 with the assistants during the trial does not lend itself to
25 the question did you then reveal to the government some

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1 other factors. I don't think that is a fair question under
2 the circumstances. It is one thing if he was --

3 THE COURT: First of all, any conversation that
4 he had with a prosecutor I can't see relates to any
5 privilege whatsoever. As far as the letters are concerned,
6 it was agreed initially they would be shared and they were
7 shared. So that horse is long out of the barn.

8 MR. STAVIS: How about notes that are handed by
9 this witness to Mr. Jacobs during the course of a
10 cross-examination to prepare him for cross?

11 THE COURT: There was only one question as to
12 that and the objection was sustained.

13 (Continued on next page)

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1 (In open court)

2 BY MR. FITZGERALD:

3 Q Sir, directing your attention to the time, at or
4 about the time in February of '95 when Detective Napoli was
5 testifying, did you tell a representative of the government
6 that you found no evidence of intentional tampering in any
7 of the original reels? Yes or no.

8 MR. JACOBS: Objection, and now I wish a side bar
9 with respect to that.

10 THE COURT: That is overruled. Did you say it?

11 A I believe I may have said that I found no
12 subsequent erasures or no evidence, no splices, physical
13 discontinuities, and no evidence of any intentional
14 alteration after the fact on the CM's.

15 Q And, sir --

16 A But I did in the same conversation say that I
17 know that I had found that CM 64 had been subsequently
18 partially erased and that CM 15 and CM 17, after initial
19 testing, were found to be blank, and that some of the tapes
20 at that time from the digital device were in question.

21 Q And the blank tapes, after the initial noises on
22 the tape, were virgin tapes, correct?

23 A Yes.

24 Q So they were not recorded tapes that were later
25 erased?

11222

1 A That is correct, yes.

2 Q And those results were after 1,200 hours of work,
3 over a thousand hours of work at that point?

4 A At that point, yes, approximately.

5 Q And you consider yourself one of the best,
6 correct?

7 A Yes, sir.

8 MR. FITZGERALD: Thank you. Nothing further.

9 THE COURT: Cross, Mr. Jacobs?

10 CROSS-EXAMINATION

11 BY MR. JACOBS:

12 Q Good morning, Mr. Ginsberg.

13 Q Good morning.

14 Q Welcome to the trial.

15 Mr. Ginsberg, we just left off with Mr.
16 Fitzgerald asking you some questions about whether you told
17 the assistant --

18 THE COURT: Talk into the microphone.

19 Q We just left off with Mr. Fitzgerald asking you
20 some questions about whether you personally disclosed to the
21 Assistant United States Attorneys on trial information
22 concerning your findings about this overrecording. Do you
23 just recall being asked that?

24 A Yes.

25 Q Did you and I have conversations about that

11223

1 during Mr. Salem's testimony and Mr. Napoli's testimony?

2 A I believe so.

3 Q Do you know whether I told the government that?

4 THE COURT: Mr. Jacobs, can you talk into the
5 microphone --

6 Q Do you know whether as a result of your
7 conversations with me I informed the Assistant United States
8 Attorneys and Judge Mukasey on the record at the side bar
9 relative to those statements? Do you know if that was done,
10 sir?

11 MR. FITZGERALD: Objection, your Honor.

12 THE COURT: Sustained.

13 Q Do you know if it was done, sir -- I am sorry.

14 You were asked conversations by Mr. Fitzgerald
15 about whether you spoke to the prosecutors. Have you ever
16 spoken to Assistant United States Attorney Khuzami in
17 connection with this case?

18 A Yes, sir.

19 Q How many times, sir?

20 A I would say four or five times.

21 Q Did he ask you questions about some of work you
22 were doing, sir?

23 A Yes.

24 Q Did you answer his questions?

25 A Yes, certainly.

11224

1 Q Did you speak to Mr. McCarthy about your
2 examinations in the case?

3 A I believe so.

4 Q Did you answer all his questions?

5 A Yes, certainly.

6 Q Was I present during any of these conversations?

7 A No.

8 Q Were these in person or on the phone?

9 A On the phone.

10 Q How about Mr. Fitzgerald? Before you testified
11 here, did you speak to Mr. Fitzgerald about your testimony?

12 A I don't believe we have ever spoken.

13 Q Did you know whether he ever called you on the
14 phone or attempted to reach you?

15 A To my knowledge, I have returned all the calls.

16 Q Have you ever declined to discuss your findings
17 with any Assistant United States Attorney or any FBI agent
18 in this case?

19 A No, sir.

20 Q Concerning your background, am I correct that you
21 are an electrical engineer?

22 A Yes.

23 Q The name of your company is called what?

24 A Professional Audio Laboratories Incorporated.

25 Q You are located up in Spring Valley, New York, is

11225

1 that correct?

2 A Yes.

3 Q You have been in this business about 20 years, is
4 that correct?

5 A Almost 21, yes, sir.

6 Q Would you tell the jury your educational
7 background, please.

8 A I have a bachelor's and master's degree in
9 electrical engineering granted by CCNY, that is, the College
10 of the City of New York, and I have participated in seminars
11 and lectured at seminars in signal processing techniques
12 sponsored by MIT Lincoln Laboratories in Cambridge,
13 Massachusetts, as well as Bell Telephone Laboratories in
14 Whippany, New Jersey, and I have lectured at various
15 gatherings of law enforcement agents and prosecutors all
16 across the country, Texas, California, Florida, here in New
17 Jersey, so on.

18 Q When you lecture to prosecutors and to agents,
19 what agencies of the Department of Justice have you lectured
20 before?

21 A Just about all of them, FBI, DEA, Customs, Secret
22 Service, IRS, ATF, INS, SEC. Just about all investigative
23 agencies where tapes are used in conducting investigations.

24 Q Are you a member of any professional societies or
25 organizations?

11226

1 A Yes. I am a member of the Audio Engineering
2 Society, the Society of Broadcast Engineers, the Institute
3 of Electrical and Electronics Engineers, and the Board of
4 Forensic Investigators.

5 Q About how many articles have you ever written or
6 published in connection with this field of expertise?

7 A I have written approximately 25 technical
8 memoranda on signal processing techniques in connection with
9 a Department of Defense contract, through Bell Telephone
10 Laboratories, and I have authored the booklets for
11 Prosecutors' Guide to the Use of Audiotaped Evidentiary
12 Material, a similar one for agents, and this one that I have
13 had in my files for defense attorneys as well. And I have
14 authored an article for the National Law Journal, to be
15 published shortly.

16 Q The agents' guide, is that restricted just to law
17 enforcement agents?

18 A Yes, sir, it is.

19 Q And it would be fair to say that you would not
20 give the defense lawyers in this case a copy of that, is
21 that correct?

22 A That is correct.

23 Q What type of security clearance do you have, if
24 any, in connection with your work with respect to tape
25 recordings from the United States government?

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1 A I currently have top secret clearance.

2 Q In connection specifically with this case, were
3 you required to undergo further security with respect to the
4 handling of the tapes in this case?

5 A Yes, sir.

6 Q Who was that done by?

7 A The FBI. They came and inspected the premises
8 and made sure that I had an evidence safe apart from my
9 normal evidence safe, strictly for the tapes in this case.

10 Q In connection with your work in this case, am I
11 correct that you were not retained by defense counsel but
12 you were appointed by the Criminal Justice Act with respect
13 to your work in this case for the defense counsel?

14 A Yes, sir.

15 Q Was that with the consent of the United States
16 Attorney's Office for the Southern District of New York?

17 A That is my --

18 MR. FITZGERALD: Objection, your Honor.

19 THE COURT: That objection is overruled.

20 Q Is that correct?

21 A That is my understanding, sir.

22 Q And your appointment was by Judge Mukasey after
23 an application by defense counsel, is that correct?

24 A Yes, sir.

25 Q With respect to the work that you have done on

11228

1 cases over the years, I think you said you were involved in
2 some 1,400 cases, is that correct?

3 A Yes, sir.

4 Q You have been qualified as an expert and actually
5 testified in court on about 140 occasions, correct?

6 A Yes.

7 Q In about 24 federal districts, correct?

8 A Yes.

9 Q That work involves examination of, enhancing of
10 tapes, correct?

11 A Yes.

12 Q You have given your expert opinion hundreds of
13 times, correct?

14 A I have.

15 Q With respect to your work, for example, over the
16 last three years, let me direct your attention back to the
17 year 1993. Would I be correct that the United States
18 Department of Justice employed you in some 42 cases to
19 examine various tape recorded evidence, is that correct?

20 A Approximately, yes, sir.

21 Q Am I correct that that involved at least three or
22 four United States Attorney's Offices from around the
23 country, is that correct?

24 A Yes.

25 Q You did work on at least, as I said, some 42

11229

1 cases but among those cases in January 1993 a case called
2 U.S. against Gallo, with Assistant U.S. Attorney Kevin
3 McCarthy in Newark, New Jersey, is that correct?

4 A Yes, sir.

5 Q You worked for the antitrust division in a case
6 here in the Southern District, that is, in this building,
7 United States against Oster Petroleum, is that correct?

8 A Yes.

9 Q In '93, were you retained by the United States
10 government in the case of United States against former Chief
11 Judge Sol Wachtler, a federal prosecution, criminal
12 prosecution in New Jersey, to examine tapes in that case?

13 A Yes, sir.

14 Q Was Assistant U.S. Attorney Mike Gregano the
15 prosecutor who retained you against Judge Wachtler in that
16 case?

17 A Yes, sir.

18 Q And you did work for the FBI in that case, sir?

19 A Yes, sir.

20 Q How about in 1993? Did you work for the United
21 States Attorney's Office in the Eastern District of New York
22 in the prosecution of United States against Persico, an
23 organized crime case involving several murders? Did you
24 work in that case for the Department of Justice?

25 A Yes, I did.

11230

1 Q Did that involve examining various Title 3 tapes
2 made by the FBI?

3 A Yes, and preparation of transcripts, I believe,
4 also.

5 Q And you examined those for the FBI and the
6 Department of Justice in that case?

7 A It was an FBI case, yes, sir.

8 Q So in the 42 cases that you did in '93, those
9 criminal cases, those were all for the government, correct?

10 A Yes.

11 Q Some of the ones I just mentioned, correct?

12 A Yes.

13 Q In 1994, did you do approximately 28 cases for
14 the Department of Justice and the FBI, examining tapes
15 and/or testifying in criminal prosecutions, is that correct?

16 A Yes, I did.

17 Q Did you actually testify down there in the Branch
18 Davidian case in Waco, Texas?

19 A Yes, sir.

20 Q You were retained by the United States Department
21 of Justice and the FBI to do the work in that case?

22 A Yes, I was.

23 Q Cross-examined by defense lawyers in that case?

24 A Definitely.

25 Q And you worked at some 28 cases for the

11231

1 government that year, correct, 1994?

2 A Yes.

3 Q In connection with your work in criminal cases
4 for the government, have you ever been actually retained by
5 the United States Attorney's Office for the Southern
6 District of New York, this prosecutor's office, in 1994, to
7 do any work?

8 A Yes.

9 Q Do you recall a prosecution against, I think the
10 company was indicted itself, Con Edison and several of its
11 vice presidents for asbestos violations?

12 A Yes, sir.

13 Q Was that an FBI case, do you know?

14 A Yes, in connection with an explosion.

15 Q Over here in Manhattan?

16 A 21st Street, yes, sir.

17 Q And you worked with assistant United States
18 Attorney Andrea Likwornik, a member of the office that Mr.
19 Khuzami and Mr. McCarthy work for, is that correct?

20 A Yes.

21 Q Am I correct that in 1995 you are continuing to
22 work for the Department of Justice? Is that correct?

23 A Yes, several jurisdictions.

24 Q Pardon me.

25 A Yes, in a number of jurisdictions.

11232

1 Q Am I correct that you are scheduled to testify in
2 a case this week in Newark, New Jersey, a federal organized
3 crime case brought by the FBI and the Department of Justice,
4 is that correct?

5 A Tomorrow.

6 Q Tomorrow. What is the name of that case?

7 A United States versus Giampa, et al.

8 Q Am I correct that over the last three years there
9 are at least 10 separate United States Attorney's Offices
10 who have employed your services, is that correct?

11 A Yes.

12 Q In connection with your work on this case, am I
13 correct, before you were in the process of being appointed,
14 you had never met any defense counsel in this case before,
15 is that correct?

16 A I had never met anyone from either side here in
17 the courtroom.

18 Q You had never been employed by me in any case or
19 any other defense lawyer in this case, correct?

20 A No, sir.

21 Q You know most of the defense lawyers, you have
22 chatted with them, correct?

23 A Yes. I had no knowledge or acquaintance with
24 them previous.

25 Q No prior contact with any of us, correct, sir?

11233

1 A No, sir.

2 Q You got a call from me to see if you would be
3 interested in working, correct?

4 A Yes, sir.

5 Q You had no contact with me or anybody else
6 before?

7 A I think previous Mr. Wasserman may have called
8 with one tape but that was either before or after, but other
9 than that, yes.

10 Q But you didn't know Mr. Wasserman, correct?

11 A No, sir.

12 Q You had never worked with anybody before?

13 A That is correct.

14 Q On the defense side?

15 A On either side.

16 Q Would I be correct in saying almost all your work
17 is done for the Department of Justice over the last three
18 years?

19 A The vast majority of it, apart from civil
20 litigation and some Wall Street firms who have retained me.

21 Q In connection with your work for the Federal
22 Bureau of Investigation, did you work in 1994 in connection
23 and assist the FBI involving a foreign government and a
24 foreign police agency where the FBI called upon your
25 expertise to help them here in the Southern District of New

11234

1 York?

2 A Actually, I think it was this year, if I am not
3 mistaken. '95.

4 Q '95, while you were working for the defense in
5 this case?

6 A Yes.

7 Q In connection with that work, did you provide
8 services for the FBI here in the New York area while you
9 were working on this case, correct?

10 A Yes, certainly.

11 Q Do you know who Mr. Don K. Clark is?

12 A I believe he is the special agent in charge of
13 the criminal division of the FBI in the entire New York
14 area.

15 Q Mr. Clark would have the supervision, to your
16 knowledge, of the Joint Terrorist Task Force, correct, sir?

17 A I believe so.

18 Q Did you receive a letter from Mr. Clark
19 commending you for your work concerning the tape work that
20 you did for this foreign government as a request from the
21 FBI recently, sir?

22 A I did.

23 Q Did you get that letter from Mr. Clark, the agent
24 in charge of the New York office, while working for this
25 case, actually while this jury is sitting?

11235

1 A Yes, directly.

2 Q Let me show you this letter, which I deem marked
3 Defendant's Exhibit S, I believe. Have you seen that
4 document?

5 A Yes, sir.

6 Q Is that the letter that you received from
7 Mr. Clark concerning your work?

8 A Yes, it is.

9 Q In January and February 1995?

10 A Yes, sir.

11 MR. JACOBS: I would offer that into evidence as
12 Defendant's Exhibit S.

13 MR. FITZGERALD: Brief voir dire, Judge?

14 VOIR-DIRE EXAMINATION

15 BY MR. FITZGERALD:

16 Q Mr. Ginsberg, the work detailed in that letter,
17 was that an examination of tapes to determine whether or not
18 they had been tampered with or overrecorded?

19 A No, sir. This was to isolate and enhance, bring
20 out a conversation that was inaudible -- actually, it was
21 unlocatable as well.

22 Q Did you help to find the tape and enhance it?

23 A To make -- yes, locate and enhance and make
24 usable the tape.

25 Q But you were not called upon to render an opinion

11236

1 as to whether or not it had been tampered with, the original
2 tape?

3 A No, sir, not in this case, not yet.

4 MR. FITZGERALD: No objection.

5 THE COURT: S is received without objection.

6 (Defendant Mohammed Saleh Exhibit S received in
7 evidence)

8 MR. JACOBS: Your Honor, may I just publish the
9 letter at this point?

10 THE COURT: No. You mean pass it on?

11 MR. JACOBS: No, I was going to read it, one
12 paragraph.

13 THE COURT: Fine.

14 MR. JACOBS: Thank you. That is what I asked.

15 It is on the stationery United States Department
16 of Justice, Federal Bureau of Investigation, 26 Federal
17 Plaza, New York, New York, February 2, 1995, to Mr. Paul
18 Ginsberg:

19 "Dear Mr. Ginsberg: The New York office of the
20 Federal Bureau of Investigation would like to express our
21 appreciation for your valuable and timely assistance in a
22 recent investigative matter. This case involved a response
23 to a request from a foreign police agency for helping a
24 long-term investigation that is nearing completion. The
25 material on the tape in question that your firm isolated in

11237

1 detail will undoubtedly advance the efforts of the
2 investigators and increase the probability of a successful
3 prosecutive effort. Your kindness will be brought to their
4 attention. Once again thank you. Sincerely Donald K.
5 Clark, Special Agent in Charge, Criminal Division."

6 BY MR. JACOBS:

7 Q Mr. Ginsberg, are you familiar with the various
8 handling techniques with the various investigative agencies
9 have for the maintaining and securing of tape recorded
10 evidence?

11 A Yes, I am.

12 Q Do you have an opinion which agency has the most
13 detailed system for the handling of this type of evidence?

14 MR. FITZGERALD: Objection.

15 THE COURT: Overruled.

16 A I believe the FBI really sets the standards by
17 which the other agencies set up their guidelines.

18 Q Are you actually familiar with the FBI system of
19 handling tape recorded evidence?

20 A Yes, sir, I am.

21 Q How are you familiar with this?

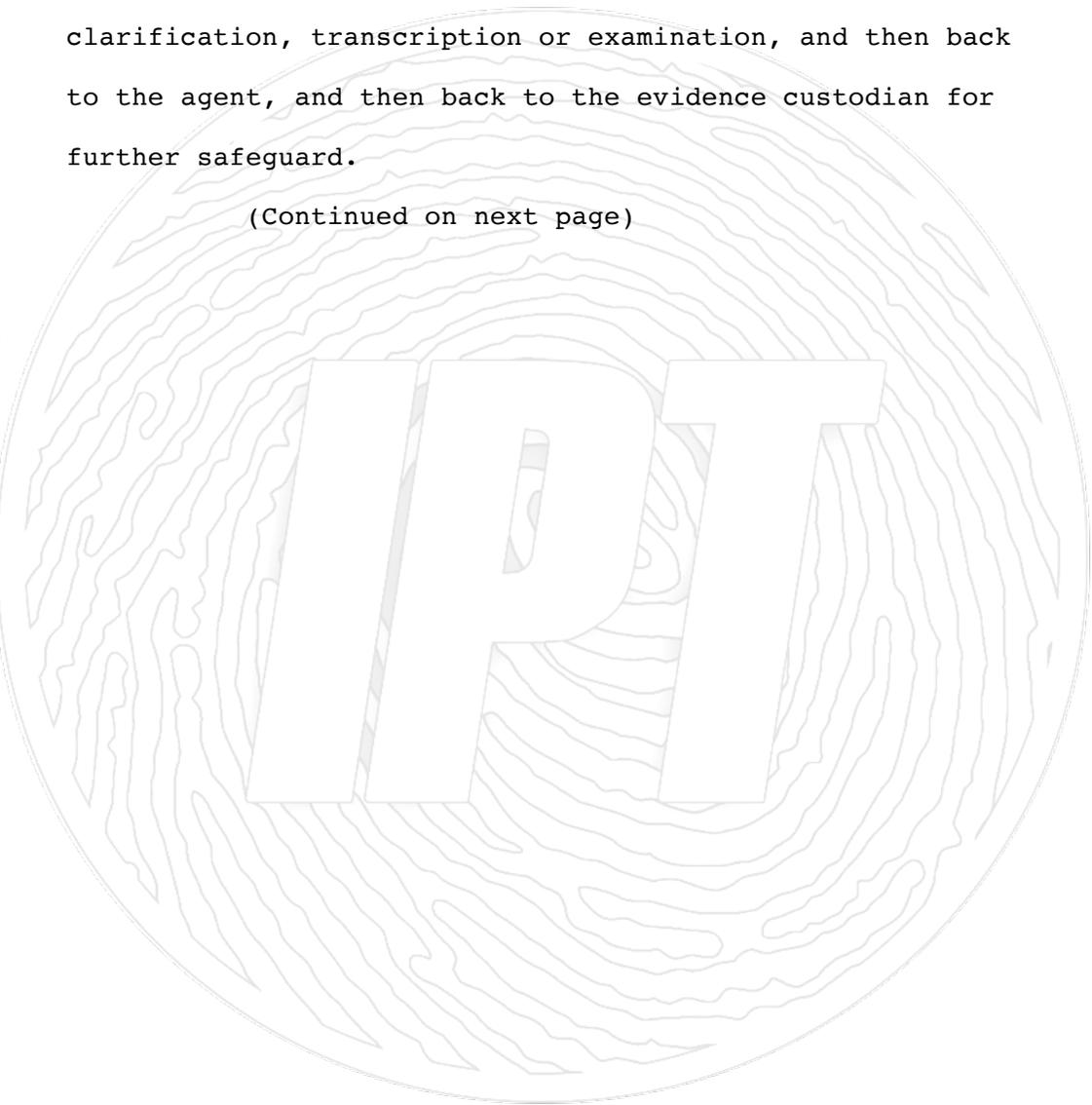
22 A I routinely receive original tape recorded
23 evidence in the course of investigations as well as
24 prosecutions. That is, I become one of the people who sign
25 for and accept custody of various tape recordings, and I

11238

1 become part of the chain of custody, so to speak. That is,
2 the tape recording will go from an agent who has been
3 safeguarding it in the agency's safe, and then to the case
4 agent, from the case agent to me for my enhancement or
5 clarification, transcription or examination, and then back
6 to the agent, and then back to the evidence custodian for
7 further safeguard.

8 (Continued on next page)

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IPTT

11239

1 Q In how many cases would you say you have reviewed
2 or examined tape-recorded evidence that the FBI has handled
3 over the past several years?

4 A Hundreds.

5 Q Pardon me?

6 A Hundreds.

7 Q Have you actually lectured to FBI agents about
8 the handling and securing of tape-recorded evidence?

9 A Yes, sir.

10 Q And Assistant United States Attorneys?

11 A Yes, certainly.

12 Q Is there what you call a system for handling and
13 maintaining integrity of tape-recorded evidence?

14 A Yes.

15 Q What is it? Why don't you just describe it.

16 A Mr. Daniel really made it easier by giving people
17 who use Nagras the tools of the serial numbers. Previously
18 Nagra reels were simply plastic colored reels, color-coded.
19 Blue reels were three hours, the green reels were two and a
20 half hours, and the red ones were an hour and 45 minutes.
21 But they didn't have any serial numbers, and people would
22 initial the reel and initial the Nagra tape itself with
23 their initials and the date.

24 Tom Daniel made it a little easier because he
25 supplied -- well, he supplied tapes and envelopes with

11240

1 serial numbers on the envelopes and serial numbers on the
2 reel, and in this way it was a much easier and much more
3 visible means for keeping track of the reels. Basically
4 what's done is a log is kept at the investigative agency,
5 the FBI or whichever other agency is making recordings of
6 number of reels, number of cassettes, and when one is signed
7 out to an agent, that number is put on file, the agent --
8 and, in fact, is given -- another number, an FBI number is
9 usually assigned to that physical reel.

10 In Newark, it's called an NKCM, which stands for
11 "Newark Consensual Monitoring." An NKCM number is assigned
12 to it.

13 The agent then takes the reel and either goes
14 undercover and records it or gives it to an informant, and
15 one way or another the tape is then recorded, initialed,
16 brought back to the Bureau, where it's duplicated and then
17 resealed and put back into custody for safekeeping until
18 trial.

19 And at each point it's noted through whose hands
20 the original reel or tape has passed, and everything is very
21 neat. There's no break in the chain of custody. It is a
22 lot of bookkeeping, it is a lot of note-taking, but it shows
23 every minute of where that reel has been and under whose
24 supervision.

25 Q You mentioned somebody by the name of Tom Daniel.

11241

1 Who is Tom Daniel?

2 A Tom Daniel used to be one of the chief engineers
3 at Nagra. Then he split off a number of years ago to form
4 his own company, manufacturing, I believe, superior quality
5 Nagra reels and accessories and other types of equipment as
6 well, primarily for law enforcement.

7 Q You mentioned these, you mentioned these little
8 white envelopes.

9 MR. JACOBS: Mr. McCarthy, may I see 32.

10 MR. FITZGERALD: It's tagged.

11 MR. JACOBS: Thank you.

12 Q Let me show you what we have called CM32.

13 This is Government Exhibit 333, which is in
14 evidence.

15 A Yes, sir.

16 MR. JACOBS: I think a copy of the white envelope
17 is in the jurors' books. May the jurors open their books
18 with your Honor's permission?

19 THE COURT: Yes.

20 THE DEPUTY CLERK: Mohammed Saleh's exhibit
21 binder. It is a blue tab.

22 THE COURT: Mr. Jacobs, is it a Saleh exhibit?

23 MR. JACOBS: Yes, your Honor. This is Defense
24 Exhibit E in the jurors' little tiny book, the black book.
25 It should be E. It says CM32.

11242

1 THE COURT: It's the thin binder marked M. Saleh
2 exhibits.

3 A Yes, sir.

4 Q Mr. Ginsberg, these white envelopes which contain
5 the serial number on top S/N, and in this particular one the
6 Serial No. 38862, is that correct?

7 A Yes, sir.

8 Q And these white envelopes were used in this case,
9 is that correct, in the CM's?

10 A Yes, they were.

11 Q And you have examined them all, correct?

12 A Yes, I have.

13 Q Have you found these used in other criminal
14 investigations by the FBI, sir?

15 A Oh, yes. They are in wide use, certainly.

16 Q And am I correct that the purpose of using these,
17 to your knowledge -- have you lectured to the FBI about the
18 use of these envelopes?

19 A I believe I have.

20 Q Am I correct the purpose of it is so that the FBI
21 can keep track of the number of reels assigned to an
22 informant, keep track of the number of tapes given to them?

23 A What they get back, and which ones they are, yes,
24 sir.

25 Q Am I correct that the corresponding reel that was

11243

1 in the envelope that's in front of you doesn't match, is
2 that correct?

3 A Yes.

4 Q Am I correct, as well, that at my request you
5 prepared the chart of all the CM's in the case that is
6 Defense Saleh B, which should be the next page --

7 MR. JACOBS: With your Honor's permission, if the
8 jurors would turn to it.

9 Q Which is the CM tape chart, is that correct?

10 A Yes.

11 Q Do you have a copy of the chart in front of you?

12 THE COURT: Which Exhibit is that? B?

13 MR. JACOBS: That's B, your Honor.

14 THE COURT: As in boy.

15 A OK. I believe I have it, yes, sir. Yes, sir.

16 Q Do you have it?

17 Now, Mr. Ginsberg, would I be correct that this
18 document, which is in evidence at the present time before
19 the jury, consists of four pages, is that correct?

20 A Yes, sir.

21 Q It basically is a document that you prepared,
22 correct?

23 A Yes, it is.

24 Q You prepared it from the examination of the white
25 envelopes of the CM's in this case, taking the data, such as

11244

1 the date that the document or the tape was allegedly
2 recorded, you took from the yellow envelope, which is --

3 A FBI, it's called an FD-504B. It's a standard
4 evidence envelope.

5 Q You took certain information from the outside
6 envelope, the FBI chain-of-custody envelope, correct?

7 A Yes.

8 Q And you notated on this chart the envelope number
9 and the reel number, correct?

10 A Exactly.

11 Q Where you could, correct?

12 A Yes.

13 Q And at the conclusion of this, at page 5, you
14 prepared certain conclusions concerning the number of serial
15 number reels, which envelopes are missing or do not match.

16 I think you said 52 do not match, correct?

17 A I believe so.

18 Q And then you also found, I believe, at least five
19 envelopes for which there are no tapes, correct?

20 A Yes.

21 Q And you found a certain number of tapes for which
22 there are no envelopes, correct?

23 A Yes, eleven, I believe.

24 Q And I think you found only two that matched up,
25 correct?

11245

1 A That's right.

2 Q In connection with your review, did you ever see
3 an FBI log of the number of Nagras given to Emad Salem?

4 A No, sir.

5 Q Do you know if the FBI has such a document?

6 A No.

7 Q From the things that you have seen in connection
8 with this case, do you know whether the FBI has any record
9 of the number of Nagra tapes, blank Nagra tapes given to
10 Emad Salem? Do you know that?

11 MR. FITZGERALD: Objection.

12 A I have no knowledge.

13 THE COURT: That is overruled.

14 Q And you have never seen such a document, correct?

15 A No, sir.

16 THE COURT: Mr. Jacobs, could you come to a
17 convenient break point in the next --

18 MR. JACOBS: This is all right.

19 THE COURT: This is all right, fine.

20 Ladies and gentlemen, we are going to take a
21 short break. Please leave your notes and other materials
22 behind. Please don't discuss the case. We are going to
23 resume in a few minutes.

24 (Recess)

25 THE COURT: Mr. Jacobs, go ahead.

11246

1 Q Mr. Ginsberg, with respect to the chart that you
2 prepared that we have just looked at --

3 A Yes, sir.

4 Q -- and the serial numbers on the Nagra reels
5 which are in evidence, the white envelopes, you said that
6 you have seen these used by the FBI on numerous occasions,
7 is that correct?

8 A Yes, I have.

9 Q And in the other cases and investigations that
10 you have seen them used, did you ever run across a case
11 where there were reels that didn't match the white
12 envelopes?

13 A No, sir.

14 Q Did you ever run across a case where there were
15 missing envelopes, but reels with numbers on them?

16 A Not that I can recall, no, sir.

17 Q How about a situation where there were envelopes
18 and no corresponding reels that matched?

19 A No, sir.

20 Q So in your several years of working with the
21 Federal Bureau of Investigation and examining Nagras over
22 the years, this is the only time you have seen a case where
23 this type of discrepancy has occurred?

24 A Yes, indeed.

25 Q Would you have any explanation as to how the

11247

1 Nagra reels and envelopes could be mixed up the way they
2 are?

3 A The only way that that could have occurred is if
4 there had been a number of envelopes and reels open at the
5 same time, and then the reels with wrong numbers were put
6 back into envelopes that didn't match. As to missing reels
7 or envelopes, I have no explanation for that.

8 Q With respect to the Nagras, you were asked a
9 number of questions by Mr. Fitzgerald in his examination
10 yesterday and this morning, is that correct?

11 A Yes.

12 Q Am I correct that the -- well, 64 isn't right
13 because there's some optical disks, correct?

14 A Yes.

15 Q Of the 60 some odd CM's, am I correct that they
16 are original Nagra tapes, to your knowledge?

17 A Yes, they are. Most of them. I'm sorry.

18 Q OK. And you examined those 60 some odd tapes --
19 forgetting the optical disks, as I understand it, that is a
20 different situation -- but on the 60 some odd Nagras that
21 you examined, you could not find any physical evidence of
22 splicing, additions, or deletions, correct?

23 A That's correct.

24 Q If I use the expression that those 60 were
25 "clean," would that be fair to say?

11248

1 A With respect to that type of manipulation, yes,
2 sir.

3 Q You were also asked questions by Mr. Fitzgerald
4 concerning the possibility of overrecording, correct?

5 A Yes.

6 Q In connection with that testimony that you gave,
7 am I correct that you are not giving an opinion as to any
8 reasonable degree of expertise that that occurred, are you?

9 A That's correct.

10 Q You're saying that the possibility exists that on
11 some of the CM's that may have happened, correct?

12 A That's correct.

13 Q And you base that on the fact that on most of the
14 CM's, there are on and off signatures at the beginning,
15 correct?

16 A Yes. As well as the fact that virtually all of
17 the recordings made by Mr. Salem on his own have been
18 rewound and overrecorded.

19 Q Now, when you say that -- I will get to that in a
20 minute -- you mean, I'll call them the bootleg tapes.

21 A Yes.

22 Q Now, with respect to the CM's, am I correct that
23 you were able to hear something called a preamble on many of
24 them, correct?

25 A Yes. On some of them, yes.

11249

1 Q I think Mr. Fitzgerald actually played the
2 beginning of CM64 to you, your pizza slice one, where we can
3 hear in the background a preamble, correct?

4 A Yes.

5 Q Where Salem says, "This is Emad Salem, it's June
6 4, 1993. I'm about to go out and meet somebody," and he
7 puts the time on, correct?

8 A Yes, sir.

9 Q Now, in law enforcement terminology, is that the
10 expression that agents and prosecutors use, a preamble?

11 A Yes.

12 Q Now, is that something that pretty much is
13 standard on a consensual recording that should be done by
14 agents and law enforcement?

15 A Absolutely, to establish the time, the date, and
16 also generally if it's somebody who's non-law enforcement
17 making the tape, that person giving his or her consent to be
18 recorded and also establishing that person's voice identity.

19 Q Now, it is a fact that on several of the CM's
20 Salem either attempts -- strike that.

21 He in fact does that on some, correct?

22 A Yes.

23 Q Did you ever hear on any of the 60, 64 CM's an
24 agent voice at the beginning of a tape saying, "This is
25 Special Agent John Anticev. Today's date is such and such.

11250

1 I'm now putting a body recorder on Emad Salem. He's going
2 out to record a conversation with Mohammed Saleh Ali," and
3 the time? Did you ever hear that on any tape?

4 A I don't recall hearing that.

5 Q Is that something that is routinely done in
6 cases --

7 A Yes.

8 Q -- that you have seen where agents put that
9 preamble on?

10 A Yes, absolutely. And then a postscript at the
11 end of the recording establishing when the recording was
12 discontinued or taken off.

13 Q Am I correct that on some of the tapes Emad Salem
14 puts a conclusion on some of them in English, correct?

15 A Yes.

16 Q And some he doesn't, correct?

17 A That's right.

18 Q Would you agree with me, Mr. Ginsberg, that a
19 factor that you would consider in whether there may be
20 overrecording is the fact that on some of the CM's there is
21 no preamble?

22 Would that be something you would take into
23 consideration?

24 A Sometimes, yes, sir.

25 Q In fact, on CM32 the conversation with my client,

11251

1 there is no preamble, correct, sir?

2 A Yes.

3 Q Now, am I correct that on at least two of the
4 CM's, there were basically on-off impulses, and then the
5 rest of the tape was blank?

6 A Yes, sir, unrecorded.

7 Q That was CM15 and some other tape?

8 A And CM17.

9 Q I think you discussed the, what you called the
10 erasure or partial erasure or distortion on 64, correct?

11 A Yes, that's correct.

12 Q The CM's, which, we have used the words
13 "consensual monitored" here, all of them are Nagra's with the
14 exception of, I believe, of two which are this computer
15 optical disk program, correct?

16 A I think there are one or two cassettes.

17 Q There is one microcassette?

18 A A microcassette, or would one or two cassettes.

19 Q I'm sorry. I may be wrong.

20 In any event, am I correct that two of the CM's
21 in the case are optical disks, correct?

22 A Actually CM41, 45, 66 and 67.

23 Q That's how many?

24 A Four.

25 Q Four. I apologize.

11252

1 A Four CM numbers.

2 Q OK. Were you familiar with that mechanism before
3 you got to see them in this case?

4 A No, sir.

5 Q Did you have some difficulty in examining that,
6 those disks?

7 A Yes, sir.

8 Q It took a number of calls working with the FBI
9 for you to obtain the proper equipment to download these
10 optical disks for you to make the examination, correct?

11 A Yes, we finally worked out a system.

12 Q Pardon me?

13 A We finally worked out a system to do that.

14 Q And the FBI was cooperative with you, I assume?

15 A Absolutely, yes, sir.

16 Q But, in any event, you eventually were able to do
17 an examination for authenticity for the defense in this case
18 on those disks as well?

19 A Well, it's in progress now.

20 Q It's still in progress?

21 A There are a number of problems in initial
22 downloading because the device was so new. Finally it's
23 been resolved, and I have a set of cassettes that are, I
24 believe, properly downloaded at this point.

25 Q In any event, I assume you have no independent

11253

1 information as to why the FBI happened to use them on
2 particular dates and why they didn't, correct?

3 A No, sir.

4 Q With respect to your work for the defense in this
5 case, at our request did you also conduct an examination of
6 what we've termed the personal tapes of Salem or the bootleg
7 tapes?

8 A Yes, I did.

9 Q Was that basically done to some extent
10 simultaneously with your examination of the CM's?

11 A Yes, I pretty much started those when I concluded
12 the CM's.

13 Q Would I be correct in stating that pursuant to
14 the request of myself and other defense counsel and
15 defendants, you also conducted an authenticity examination
16 and the same type of examination you did for the CM's, is
17 that correct?

18 A That's right.

19 Q Am I correct that you examined about 60 some odd
20 bootlegs, is that correct?

21 A Yes.

22 Q Did you prepare a chart of these ES tapes, or
23 Emad Salem, a tape chart?

24 A Yes, I did.

25

11254

1 MR. JACOBS: Your Honor, I think I've shown this
2 to Mr. Fitzgerald before, but it's Defendants' R.

3 Do you have any objection?

4 MR. FITZGERALD: I have an objection.

5 MR. JACOBS: I think we need to approach, then,
6 your Honor, with the government.

7 (At the side bar)

8 THE COURT: What is it?

9 MR. JACOBS: The government has some objection.

10 MR. FITZGERALD: My objection is under
11 401(4)(iii) for the following reason: Before Mr. Ginsberg
12 was ever hired, Mr. McCarthy sent a letter saying the
13 bootlegs have been overrecorded. It's never been in
14 dispute. Salem testified they were overrecorded.

15 This is a chart of a number of tapes, the bulk of
16 which are not in evidence, and it doesn't have to do with
17 overrecording. Why are we going to be charting --

18 MR. JACOBS: A lot of reasons.

19 MR. FITZGERALD: -- documents and exhibits not in
20 evidence. I just don't see the relevance.

21 THE COURT: I think I do.

22 But in any event, what does the chart show?

23 MR. JACOBS: The chart, I mean obviously speaks
24 for itself what it shows, your Honor.

25 THE COURT: No, it doesn't. If it spoke for

11255

1 itself I would know what it showed.

2 MR. JACOBS: The most important item -- I'm
3 sorry, your Honor. The most important thing is the date
4 retrieved and the various types, and the different types of
5 tapes that he used.

6 THE COURT: Fine.

7 MR. JACOBS: And what we --

8 THE COURT: OK.

9 MR. JACOBS: They "retrieved" is the key, Judge.

10 THE COURT: They retrieved. You don't challenge
11 that they retrieved?

12 MR. FITZGERALD: No.

13 THE COURT: And they used various kinds of tapes.
14 Fine, it's in.

15 (Continued on next page)

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1 (In open court)

2 MR. JACOBS: Your Honor, with the court's
3 permission, may the jurors turn in their books, which are
4 different colors, to Defendants' R, which is the ES tape
5 chart, consisting of five pages.

6 It is the last exhibit in your tabs.

7 THE COURT: "ES" being Emad Salem?

8 MR. JACOBS: Emad Salem, standing for Emad Salem.
9 May I proceed, your Honor?

10 THE COURT: Yes, you may.

11 Q Mr. Ginsberg, am I correct that in this chart,
12 the ES tape chart, you basically, in numerical order
13 corresponding to the government's numbering system, numbered
14 the various Emad Salem personal tapes, is that correct?

15 A Yes.

16 Q And the chart just has the ES number with the
17 date retrieved, the type of tape it is, the first one would
18 be a GE C90, meaning a 90-minute cassette, and put an
19 envelope description if there was one, correct?

20 A Yes, sir.

21 Q Now, if we follow your chart, we would see, am I
22 correct, that through tape No. 49, the first three pages,
23 according to the records of the FBI, these were tapes that
24 were retrieved on or about June 29, 1993, correct?

25 A Yes, sir.

11257

1 MR. JACOBS: Ladies and gentlemen, if you look at
2 page 4. Mr. Fitzgerald, page 4.

3 MR. FITZGERALD: Thank you.

4 Q If we look at page 4, we see at the top that
5 there were three Nagras and -- with the serial Nos.
6 retrieved and noted by the FBI as June 29, 1993, is that
7 correct?

8 A Yes, sir.

9 Q Do you know if those were blank or there were any
10 recordings on them?

11 A They were all blank.

12 Q And you, of course, noted that.

13 Now, these dates that are retrieved, you get that
14 information from the yellow FBI evidence envelope --

15 A Yes, exactly.

16 Q -- correct?

17 And then you note, am I correct, that, beginning
18 on tape No. 50, those are tapes that were retrieved
19 according to the evidence envelope, on July 15, correct?

20 A Yes, sir.

21 Q And some of the tapes were, I assume, a telephone
22 answering machine, incoming telephone answering machine, an
23 outgoing telephone answering machine?

24 A That's right.

25 Q Message tape?

11258

1 A Yes, sir.

2 Q 60 and 61.

3 Am I correct if you turn to the last page of the
4 document in evidence, page 5, the marking system,
5 identifying system switched from numerical, 66, which was
6 retrieved on or about July 15, and you, of course, used the
7 numbering system that the FBI used?

8 A Yes, certainly.

9 Q So you examined the tape AID (72), which was
10 retrieved, according to the Bureau, October 1, and you made
11 appropriate notations for this chart, correct?

12 A Exactly.

13 Q And you followed that up by two tapes received,
14 according to the Bureau records, April 21, '94, and then
15 other tapes received November 1, '94, correct?

16 A That's right.

17 Q OK. Now, would you tell the jury what kind of
18 examination you conducted on these Emad Salem tapes?

19 A Basically the same procedure was used as in the
20 examination of the CM tapes.

21 I did a physical examination to see whether the
22 tapes were intact and looking for all of the types of
23 physical discrepancies and inconsistencies or
24 discontinuities that I searched for in the case of the CM's.
25 I did a critical listening, wherein I noted any stops,

11259

1 starts, overrecordings, abrupt changes in the recording, and
2 then I did an electronic investigation of each of them,
3 exactly as I did in the case of the CM's.

4 Q Now, let me ask you first before I ask you about
5 the actual examination of these Emad Salem tapes, what type
6 of envelopes, perhaps if I --

7 MR. JACOBS: Mr. Fitzgerald, if you could just
8 help me out and pull out a few.

9 MR. FITZGERALD: These here?

10 MR. JACOBS: Yes, thank you.

11 MR. FITZGERALD: Sure.

12 Q Am I correct that the standard FBI evidence
13 envelope was used to put these tapes in, or is it not?

14 A Yes and no.

15 These are different envelopes. These are white
16 envelopes, and none of them were sealed using evidence tape.
17 In other words, each one came to me just as this one did,
18 open.

19 Q When you say "this one," why don't you just
20 identify it for the record.

21 A Government Exhibit 605A.

22 MR. JACOBS: I think that's only for
23 identification, your Honor. I don't think 605 is in
24 evidence. But for purposes of the examination I think we
25 should, with the court's permission, identify it anyway.

11260

1 THE COURT: It is.

2 A As opposed to the CM tapes, which were in
3 standard FD-504B manila envelopes, each one sealed with
4 evidence tape, received by me sealed and returned to the
5 Bureau sealed at the time.

6 Q Why don't you hold them up if you can, with the
7 court's permission, just in your hand and show the jurors
8 what you mean.

9 A Yes.

10 Q Pull your microphone over, too.

11 A The ES tapes or the bootleg tapes were never
12 sealed. They were just inserted into the envelopes. In
13 fact, on one or two occasions, an envelope said or described
14 the certain type of cassette for a bootleg tape and another
15 type of cassette was in the envelope.

16 For instance, on ES20 -- on page 2, ES23, the
17 envelope said Maxell C90, whereas it was actually a Sony
18 120. And ES25, the envelope said Maxell C90, and it was
19 also a Sony 120, in envelope 25.

20 Q Can you --

21 A As I said, these were not sealed.

22 Q Yes. Can you account for that discrepancy?

23 A No, sir.

24 Q So you have on at least two of these bootlegs an
25 envelope that describes one tape and another type of tape

11261

1 inside?

2 A That's correct.

3 Q Can you give the dates, who retrieved those, what
4 agents retrieved those two that you just described?

5 A Those -- I need those envelopes.

6 Q I'm sorry. You don't have them in front of you.

7 I will withdraw it. Let me take them back.

8 Now, inside the envelopes, am I correct that none
9 of them had a second envelope with any writings on it, is
10 that correct?

11 A That's correct.

12 Q They were just loose in the FBI envelope?

13 A Yes, sir.

14 Q And am I correct that these tapes, these bootlegs
15 did not have dates, times or participants on them?

16 A That's right.

17 Q Now, concerning your review of these tapes, did
18 you form certain conclusions as to how these tapes were
19 recorded and any evidence of physical splicing or
20 overrecording, did you find any in making your conclusions?

21 A Yes, I did.

22 Q What were your conclusions?

23 A These tapes are tapes which contain multiple
24 recordings, actually fragments, bits and pieces of
25 conversations, some entire conversations, some beginnings of

11262

1 conversations, some ends of conversations, and some portions
2 of conversations.

3 Sometimes there are outgoing dialing, following
4 which another whole call, another set of outgoing dialing
5 starts. Sometimes there are conversations that are cut off
6 mid-conversation, following which there are incoming calls,
7 calls to answering machines, incoming calls to Mr. Salem's
8 answering machine, fragments of conversations with other
9 parties other than Mr. Salem.

10 My conclusion is that the tape, the tapes were
11 recorded and continuously rewound and restarted from certain
12 points on each of the tapes, each and every one of the
13 tapes, resulting in what we have here.

14 Q So, in other words, there are conversations that
15 have been overrecorded and are missing forever, correct?

16 A Yes, for certain.

17 Q And that's contained on most of the ES tapes, is
18 that correct, sir?

19 A Yes, sir.

20 Q Now, you talked about some incoming ones and some
21 outgoing ones. Did you form any opinion about how many
22 machines were used in the making of these ES tapes?

23 A Yes. There were at least two machines, two
24 separate machines used in the production of these tapes. I
25 know that because some of the tapes were recorded in mono or

11263

1 single channel, and some were recorded in stereo, two
2 separate tracks in each direction.

3 This is evident from doing what we call a
4 magnetic tape developing solution test, wherein certain
5 portions of the tape are immersed in a solution which
6 consists of minute iron particles, and when the tape is then
7 laid out and the solution evaporates, you can actually see
8 little tracks like train tracks on the tape. In the case of
9 a stereo tape, two in each direction, and in the case of a
10 mono tape, a single one in each direction, which is much
11 wider. It's black and white. It's very easy to tell a mono
12 tape from a stereo tape.

13 Q Well, did you form an opinion of which one may
14 have been his answering machine, telephone answering machine
15 that he stated was at home and which one wasn't, which was
16 mono and which was stereo, if you know?

17 A Yes, telephone answering machines are mono. They
18 are single-channel devices. To my knowledge, there is no
19 answering machine which is stereo.

20 I also know that a number of tapes were recorded
21 in stereo and a number of them have recordings of Mr. Salem
22 calling in and retrieving messages from his answering
23 machine, so that the tape that I have of that activity must
24 have been recorded on a separate machine apart from the
25 answering machine.

11264

1 Q So he went someplace, had a tape recorder, called
2 in his answering machine and got messages off his answering
3 machine?

4 A All the while recording on this external machine
5 as well.

6 Q All right. So you've got simultaneous calls on
7 two separate machines at the same time?

8 A Yes, on occasion.

9 Q Did you ever find any tape where both mono and
10 stereo were on the same tape?

11 A Yes, I believe I did.

12 Q Can you note those tapes for the record, if you
13 can recall?

14 A I don't. I have my notes on those.

15 Q Let me show you.

16 MR. JACOBS: May I approach, your Honor.

17 I'm just going to show him this page. It is part
18 of the exhibits. I don't know what the date it is.

19 MR. FITZGERALD: OK.

20 A Yes.

21 Q Have you looked at that document?

22 A Yes, I have.

23 THE COURT: What is the number or letter
24 designation on that? Are you going to make it T, T for
25 identification?

11265

1 MR. JACOBS: I don't think we have it identified
2 on the record. Perhaps we should mark it.

3 THE COURT: You are going to have to mark it as
4 something.

5 MR. JACOBS: It's not the chart. It's --

6 THE COURT: T?

7 MR. JACOBS: T. Thank you.

8 T for identification, that piece of paper that I
9 just showed you.

10 THE COURT: All right.

11 MR. JACOBS: Thank you.

12 Q Having looked at T for identification, does that
13 refresh your recollection which tapes had both mono and
14 stereo on them?

15 A Yes, it does.

16 Q Which tapes?

17 A Tapes, what I call ES tapes 4, 6, and 24.

18 Q And what does that mean when you say that those
19 three tapes are both mono and stereo?

20 A When I did my examination with the magnetic tape
21 developing solution, I did it at certain portions all
22 throughout the length of each of the tapes. In these three
23 cases, I was -- it was evident that the tape had been
24 recorded partly on one machine and partly on another
25 machine, two different types of machines.

11266

1 Q Did you also find any tapes that were actually
2 duplicates of each other indicating that Salem had
3 rerecorded the whole tape or copied the tape?

4 A Yes.

5 Q And can you tell us, tell the jury which tapes
6 you found that on?

7 A I believe ES23 and ES25, if I'm not mistaken,
8 were -- I know 53.

9 Q Let me show you T.

10 A I'm trying to remember.

11 Q That's part of T?

12 A Yes. ES53 and ES55 were identical.

13 Q Now, when you say that ES53 and ES55 were
14 identical, what does that mean?

15 A That means from beginning to end they matched.
16 They were -- one was a copy of the other or they were both
17 copies of still another tape. They were recorded with
18 identical material on them.

19 Q So is it possible that Salem had some equipment
20 to rerecord conversations?

21 A Yes, certainly.

22 (Continued on next page)

23

24

25

11267

1 MR. JACOBS: May I just have a moment, your
2 Honor?

3 Nothing further.

4 THE COURT: Anyone else? Mr. Ricco,,
5 representing Mr. El-Gabrownny. Go ahead.

6 CROSS-EXAMINATION

7 BY MR. RICCO:

8 Q Good afternoon, Mr. Ginsberg.

9 A Yes, sir, good afternoon.

10 Q Mr. Jacobs just asked you about two tapes that
11 were identical.

12 A Yes, sir.

13 Q You made findings with respect to the Emad Salem
14 personal tapes, correct?

15 A Yes, I did.

16 Q They were numbered ES1 through 64, correct?

17 A Yes, 66, I believe.

18 Q And then there were some that were numbered
19 separately.

20 A With letters.

21 Q When you reviewed those tapes, you found that
22 those tapes were not straight-run recordings.

23 A Absolutely.

24 Q By straight-run recordings, I mean that the
25 material that existed on these tapes were not in a form

11268

1 where a tape machine would have been turned on and
2 everything that would have been said was recorded, and then
3 the tape machine was turned off and then the tape was thrown
4 in a box never to be touched again, isn't that correct?

5 A Yes, sir, that is absolutely correct.

6 Q And your scientific findings were that the
7 material that existed on all of these tapes was inconsistent
8 with those tapes just being recorded and put aside and never
9 touched again, isn't that right?

10 A That is correct. Had that been the case, we
11 would have complete telephone calls, we would have all the
12 outgoing dialing, we would have the incoming rings, we would
13 have the beginning, the middle and the end of each
14 conversation.

15 Q The fragmentation of the recordings is evidence
16 that the tapes were manipulated, isn't that correct?

17 A Yes, sir.

18 Q In addition, the fact that two of the tapes were
19 duplicates of each other demonstrates that the tapes were
20 not just thrown to the side and never touched again, isn't
21 that correct?

22 A Yes, exactly.

23 Q In other words, somebody had to duplicate these
24 tapes.

25 A That is correct.

11269

1 Q Mr. Fitzgerald was asking you some questions
2 about Woody Allen and Waco, Texas. Do you recall yesterday
3 and today?

4 A Yes, sir.

5 Q And he was asking you some questions about
6 answers that you gave in those trials.

7 A Yes, sir.

8 Q Mr. Ginsberg, do you know what perjury is?

9 A Yes, sir.

10 Q Have you ever raised your hand to tell the truth
11 in front of a jury and deliberately lied to that jury?

12 A Absolutely not.

13 Q Have you ever lied to a jury about your
14 qualifications and your credentials?

15 A No, sir.

16 Q From the bootleg tapes -- withdrawn. Some tapes
17 are called ES1, correct?

18 A Yes, sir.

19 Q And ES2, correct?

20 A That is right.

21 Q These tapes were 120 minutes in length?

22 A Those particular ones were 90 minutes, but a
23 number of them were up to 120 minutes.

24 Q And this varied. Some were 90, some were 60 and
25 some were 120.

11270

1 A Yes, sir.

2 Q The tapes were all filled with conversations,
3 isn't that correct?

4 A For the most part, yes, sir.

5 Q We are talking about thousands of conversations?

6 A Yes, sir.

7 Q And thousands of bits of conversations.

8 A That is correct.

9 Q One tape, you said, had mono and stereo
10 recordings on it, and that would have been ES4.

11 A Yes.

12 Q From the ES4 tape, the ES4 tape had several
13 conversations on it, is that correct?

14 A A number of conversations.

15 Q And what you found was that that tape itself was
16 manipulated.

17 A Well, it was recorded on a number of machines and
18 there were parts of conversations, not full conversations.

19 Q So that the calls that you would get off the ES4
20 tape, there is no necessary sequence to those calls, isn't
21 that correct?

22 A That is correct, yes.

23 Q What you are able to tell us is that some of the
24 calls that exist on ES4, some have been recorded over,
25 right?

11271

1 A Yes.

2 Q And some have been retained, isn't that right?

3 A That's right. Consecutively, that's right.

4 Q To your knowledge, these tapes were in the
5 control of Mr. Emad Salem, to your knowledge?

6 A As far as I know, yes, sir.

7 MR. RICCO: I have no further questions. Thank
8 you.

9 THE COURT: Any other cross? Ms. Amsterdam,
10 representing Mr. Khallafalla.

11 CROSS-EXAMINATION

12 BY MS. AMSTERDAM:

13 Q Good afternoon, Mr. Ginsberg.

14 A Good afternoon.

15 Q Mr. Fitzgerald asked you this morning if you had
16 ever participated in the preparation of transcripts and you
17 indicated that you had, correct?

18 A Yes, indeed.

19 Q He asked you whether or not it was your
20 experience that when you tend to listen to a tape over and
21 over and over again, that eventually you may hear words that
22 you didn't at first hear.

23 A Yes, that is correct.

24 Q Something to the effect of practice makes
25 perfect, right?

11272

1 A Yes. You start with what I call a skeleton
2 transcript and then you add the meat back on until you get
3 to as good a transcript as you are going to get.

4 Q Have you ever had the occasion to work with a
5 tape and listen to it over and over again, and eventually
6 realize that what you had in your skeleton transcript was
7 incorrect?

8 A Yes, on occasion that happens, certainly.

9 Q And have you ever had the occasion where two
10 people had listened to the same tape, both honest, both
11 giving their best effort, and heard different things on that
12 tape?

13 A On occasion, yes. In fact, I don't like to have
14 more than four people listen to any one tape because there
15 is usually a fight before too long, a disagreement.

16 Q So that is a common occurrence, right?

17 A Yes, certainly, on noisy tapes.

18 Q Additionally, Mr. Fitzgerald asked you a number
19 of questions about a Kel transmitter. Do you recall?

20 A Yes.

21 Q Before I get to that, let me ask you a question.
22 You were here, were you not, when Mr. Salem testified
23 regarding the recording of the first bootleg tape, correct?

24 A I believe so.

25 Q And do you recall him stating that he had gone

11273

1 around the room with a microphone, attempting to pretend as
2 if he was looking for bugs, correct?

3 A Yes.

4 Q Do you recall him saying as a result of doing
5 that, he couldn't record the beginning of the conversation?

6 A Yes.

7 Q Is there anything from your expertise that would
8 prevent the person from recording when they are actually
9 physically moving the microphone?

10 A No, ma'am.

11 Q Microphones do not have to be stationary in order
12 to record?

13 A Not at all.

14 Q Mr. Fitzgerald, you stated on your direct
15 testimony that a Nagra is the best quality sound, correct?

16 A Yes, it is.

17 Q And he asked you some questions about Kel
18 transmitters.

19 A That is correct.

20 Q From your experience working with law enforcement
21 and lecturing to law enforcement, can you tell the jury the
22 advantages of working with a Kel transmitter?

23 A A Kel transmitter does not require any tape on
24 the person whose conversation is to be preserved. It is a
25 miniature transmitter and it can be made in a number of

11274

1 different housings so as to conceal it.

2 Q So in other words, the informant or the agent,
3 the person consenting to the recording is actually only
4 wearing a transmitter?

5 A Yes. It can be made much smaller than a physical
6 Nagra recorder can be produced because it has no tape, and
7 also there is no tape to run out. It is all up to the party
8 who is recording the received signal on the other end to
9 insure that there is an ample supply of tape.

10 Q When you work with a Kel transmitter, that
11 requires another person, presumably law enforcement, in a
12 location where they are actually getting the conversation,
13 correct?

14 A Yes.

15 Q And law enforcement does the recording then,
16 correct?

17 A Presumably, yes.

18 Q Would I be fair in stating that one of the
19 advantages in working with a Kel transmitter is that there
20 is no possibility of tampering with the tapes on the part of
21 the informant?

22 A That is correct.

23 Q That they remain solely in the custody of the
24 agents.

25 A Yes, exactly.

11275

1 Q Would I also be correct in stating that one of
2 the advantages of a Kel recorder is that it is smaller and
3 less likely to be detected?

4 A Yes, exactly.

5 Q And that the person wearing the recorder
6 therefore is less in danger of being discovered by the
7 person with whom he is having the conversations.

8 A That is correct.

9 Q Would I also be fair in stating that if the
10 agents are monitoring the conversation, if there is any
11 danger to the informant they would be able to take methods
12 to step in and prevent danger?

13 A Yes, they hear the conversation as it is taking
14 place.

15 Q As it is going on.

16 A That is right.

17 Q Were any of the consensually monitored
18 conversations in this case made on a Kel recorder?

19 A I believe that there was, if I am not mistaken,
20 one cassette which was recorded, if I am not mistaken --

21 Q Is that the one in the car?

22 A Yes.

23 Q That didn't work because it went outside -- let
24 me start over. There was one attempt to use a Kel, would I
25 be correct in stating?

11276

1 A Or some device, some transmitting device.

2 Q And that device was utilized in a car where
3 presumably a car or van was following that car and recording
4 the conversation.

5 A I believe so.

6 Q And that was found, given the fact that --
7 withdrawn. In your experience does that have certain
8 problems in terms of recording?

9 A Yes, yes.

10 Q Presumably because the car is moving?

11 A Yes, and also that the car acts as a shield to
12 radio waves going out of it from within the car.

13 Q Is there any disadvantage to using a Kel
14 transmitter for a conversation recorded in a house where the
15 agent's van is parked outside doing surveillance?

16 A Just battery life, and batteries, nowadays the
17 Kel devices are designed so as to draw minimally from the
18 battery supplies, so as to give longer life to the
19 transmitter. Other than that, it could go for many, many
20 hours.

21 Q So in a stationary situation, there is no problem
22 with length of tape?

23 A No. That is controlled in the surveillance van.

24 Q And if you are parked in the surveillance van in
25 direct proximity to where the conversation is going on,

11277

1 there is no problem in terms of range. Would I be correct
2 in stating that?

3 A That is correct.

4 Q So if there were a van parked outside a garage in
5 Queens you would expect, for example, to be able to record
6 that conversation, correct?

7 A Yes, certainly.

8 Q In your experience in working with law
9 enforcement, would I be correct in saying that most
10 informants use Kel transmitters?

11 A Yes.

12 Q And would I be correct in saying that a Nagra
13 machine has the ability -- you stated that you can purchase
14 a Nagra machine that does not have an on/off switch,
15 correct?

16 A You can purchase an accessory that works with the
17 Nagra machine.

18 Q That would prevent it from being controlled by
19 the person wearing it?

20 A Yes, that is correct.

21 Q Has it been your experience that informants as
22 opposed to FBI agents routinely are not given control of the
23 device that they are wearing?

24 A That's right. Either that accessory is used or
25 they are sent out with the button or the plunger engaged

11278

1 with tape over it so that when the informant comes back the
2 agent knows that he has not tampered with it and it has been
3 running continuously.

4 Q Does the company Daniels sell those reels to
5 people other than law enforcement?

6 A Yes, I believe so.

7 Q At my request, on the list of the CM sheets that
8 included the serial numbers, there was one serial number
9 which seemed much older than all the others. Would I be
10 correct in stating that?

11 A Yes.

12 Q And that corresponded, I believe, to CM 43, and
13 that serial number was 21961. At my request did you call
14 Daniels, the corporation, and ask when that Nagra reel was
15 sold?

16 A Yes. In fact, I spoke with Tom and he said that
17 that was sold, I believe about four and a half, five years
18 ago, if I am not mistaken.

19 Q From your experience, does Daniels ever sell the
20 serialized reel without an envelope?

21 A No. They are matching envelope and reel.

22 Q You were here, were you not, when Detective
23 Napoli stated that a partial explanation for why the reels
24 and the envelopes did not match was that the tape was
25 rewound later on by FBI agents onto a different reel? Do

11279

1 you recall that?

2 A Yes.

3 Q In all of the FBI cases that you have ever worked
4 on, have you ever seen that happen?

5 A No, ma'am. No, ma'am.

6 Q At any time that you have worked in examining
7 tapes, have you ever rewound a tape onto a different reel
8 and discarded the original reel?

9 A No, ma'am. The reel is part of the evidence.
10 The reel and the tape come as a package to me with any
11 notations that are on the reel, sometimes signed by the
12 informant, signed by the agent, dated, initialed, and so it
13 must stay together with the tape.

14 Q You stated, sir, you talked about chain of
15 custody. Could you tell the jury why chain of custody is
16 important?

17 A Chain of custody is a complete record of
18 everybody who has had custody and control of any piece of
19 evidence. This is Government's Exhibit 316A. This is an
20 envelope for one of the ES tapes. There are a number of
21 people who have signed as having accepted custody and then
22 released custody to the next person, and each of the times
23 and dates should match. That is, the person releasing
24 custody to the next person releases it, and the next person
25 accepting it accepts it on the same date and time and

11280

1 records that information on the envelope, so that one can
2 tell by looking at an evidence envelope exactly who has had
3 it and for what period of time.

4 Q The FBI agents, once they took custody of the
5 various CM's in fact followed that system, did they not?

6 A Yes.

7 Q And those brown envelopes contain numerous
8 indications of who had reels at what time, correct?

9 A Exactly.

10 Q That was done to preserve the integrity of the
11 taping process, correct?

12 A Yes, and the envelopes were sealed.

13 Q Have you ever worked on a case where an informant
14 was allowed to maintain custody of the tapes for up to three
15 days before turning them over?

16 A I cannot recall a case such as that.

17 Q On any of those brown envelopes is there any
18 indication as to what Mr. Salem did with those tapes before
19 he turned them over to the FBI?

20 A No, ma'am.

21 Q So you would have no knowledge of that, correct?

22 A That is right.

23 Q You indicated, did you not, that in this case you
24 needed an extra super-duper security clearance, right?

25 A Top secret clearance, yes, ma'am.

11281

1 Q You had top secret clearance and they came to you
2 and required you to do additional precautions in this case.

3 A I was requested to apply for top secret clearance
4 and undergo the six-month examination, after which I was
5 granted the clearance.

6 Q So once the FBI took custody of the tapes, all
7 efforts were made to preserve the integrity of the tapes,
8 correct?

9 A So it seems, yes. And some of these envelopes
10 are marked secret.

11 Q At my request, did you bring a sample Nagra to
12 court today?

13 A Yes, I did.

14 Q I would like you to step down and explain to the
15 jury how a Nagra works -- with the court's permission.

16 THE COURT: Go ahead.

17 Q Let me ask you one question first. How much does
18 this unit cost?

19 A About \$7,500.

20 Q What is the outside of this unit made out of?

21 THE COURT: They can't hear the answers.

22 A It is made out of an alloy metal. It is my
23 understanding that it starts as one complete solid metal
24 block from which they hollow it out, and they manufacture
25 even the tiniest screws and all. It's made in Switzerland.

11282

1 It is really a piece of jewelry. It is precise and it makes
2 the best recordings. These rarely go out of alignment, so
3 on and so forth. What happens is, the heads finally wear
4 down and need to be replaced or what they call relapped with
5 a certain procedure. This machine has just been overhauled
6 for \$1,300.

7 Q You indicated that there is a mechanism for
8 preventing the wearer of the device to have control over
9 stopping and starting it, correct?

10 A Yes, indeed.

11 Q One of those systems is that you can use an
12 adaptor?

13 A Yes, that is correct.

14 Q And one of the systems, you indicated, is that
15 you can do something with the tape to prevent that from
16 happening?

17 A Yes. There is just a single control, which is
18 the plunger, and if that plunger is engaged so that the tape
19 starts rolling, when the unit is closed you can put some
20 sort of tape over it, an evidence tape or scotch tape with
21 initials, keeping it engaged until the unit comes back into
22 the custody of the agent, and if he sees that the tape is
23 still in place and the unit is still going, he can pretty
24 well assume that the tape had been rolling continuously.

25 Q Were you here, sir, when Detective Napoli

11283

1 testified that one of the reasons that they left Mr. Salem
2 in custody of this machine was that it attracted too much
3 attention to be standing on the street winding the Nagra?

4 A Yes, indeed.

5 Q And I believe that Detective Napoli said that was
6 a very long process, it would take in excess of five
7 minutes, is that correct?

8 A Yes, he did.

9 Q Was he correct in that testimony?

10 A No, ma'am.

11 Q Can you explain to the jury why that is not
12 correct?

13 A Mr. Napoli attempted to rewind the Nagra with the
14 little crank --

15 Q Could you just walk along the jury without
16 speaking because of the microphone, and show them where that
17 crank is.

18 A This crank is something that it retracts so that
19 the cover can close when you are using the machine and it
20 pops up when you need it to rewind the machine. In order to
21 make the machine as small as possible there is no rewind
22 motor in it, just a drive motor that goes in the direction
23 you are recording. So it is up to the operator to wind it
24 manually. I call it one horsepower.

25 Q Were you here when Detective Napoli attempted to

11284

1 demonstrate how difficult it was to wind the Nagra?

2 A Yes, I was.

3 Q What was he doing that made that process more
4 difficult?

5 MR. FITZGERALD: Objection to form.

6 THE COURT: Was he doing anything that made --

7 Q Was he doing anything that made that process more
8 difficult?

9 A Yes. He did not release the brakes and put the
10 machine into the rewind mode, and that is done by pulling
11 the lever or the plunger out, and there is a sign on here
12 that says "Rewind," with an arrow going out. As soon as
13 that is done, the reels are free to rewind.

14 Q Would I be correct in saying that once the brakes
15 have been removed, it takes approximately one minute to
16 rewind the tape?

17 A A minute to a minute and a half, depending how
18 careful you are, but no more than a minute and a half to
19 rewind a full tape, long one.

20 Q Is there anything that would allow someone to
21 know, if they hadn't been taught, that you had to remove the
22 brakes?

23 A Yes. There is a sign right near the plunger that
24 says rewind and load. You have to take off the brakes. And
25 there is an arrow. Also on the inside cover, in case you

11285

1 miss it there, there are instructions on how to rewind and
2 load and different steps to take to pick up the reel, and
3 also to disengage the brakes.

4 Q While you are here, and we will talk about this a
5 little bit more in a few minutes, does this machine contain
6 any safety devices to prevent it from being pushed or
7 smushed, I think was Mr. Salem's expression?

8 A Yes. It is a very sturdy cover that is made,
9 again, from a single piece of metal, and also at one point,
10 which is coincident with the top of the capstan roller, they
11 even hollow it out further, just to insure that it is not
12 going to compress upon the capstan roller and stop it when
13 it is engaged, so that when it is rolling you can press on
14 it, because generally it is concealed if worn on the person
15 within some sort of concealment device, something like a
16 surgical bandage with a pouch or a pocket for it, and then
17 microphone extended over the shoulders, or concealed in an
18 automobile or attache case, as you have seen.

19 MS. AMSTERDAM: Thank you. Your Honor, this is a
20 good place to break. I don't have much more but it is a
21 completely discrete section.

22 THE COURT: Ladies and gentlemen, we are going to
23 break for lunch. Please leave your notes and other
24 materials behind. Please don't discuss the case, and we
25 will resume at 2:00.

11286

1 (Jury excused)

2 (Witness excused)

3 THE COURT: Just for your information, we are
4 going to break at about quarter to 5 or 10 to five today.

5 MR. WASSERMAN: Your Honor, I wish to come back a
6 little late this afternoon. I will be covered with Sheik
7 Rahman's counsel, with the court's permission.

8 THE COURT: Is that all right?

9 DEFENDANT HAMPTON-EL: Yes.

10 THE COURT: Thank you very much.

11 (Luncheon recess)

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A F T E R N O O N S E S S I O N

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Time noted, 2:10

3

PAUL GINSBERG, resumed.

4

(Jury present)

5

THE COURT: Good afternoon, ladies and gentlemen.

6

JURORS: Good afternoon.

7

THE COURT: Ms. Amsterdam?

8

MS. AMSTERDAM: Thank you, your Honor.

9

THE COURT: Go ahead.

10

CROSS-EXAMINATION (Continued)

11

BY MS. AMSTERDAM:

12

Q Good afternoon, Mr. Ginsberg.

13

A Good afternoon.

14

Q You were present, were you not, sir, in the

15

courtroom when Detective Napoli testified regarding the

16

tapes, were you not?

17

A Yes.

18

Q Do you recall Detective Napoli saying that there

19

was no way that the informant Emad Salem could have rewound

20

the Nagra tapes and listened to them?

21

A That's correct.

22

Q Do you have an opinion as to whether or not that

23

testimony was correct?

24

A Yes.

25

MR. FITZGERALD: Objection, 613(b).

11288

1 THE COURT: Overruled.

2 MS. AMSTERDAM: Thank you, your Honor.

3 Q Is it possible to rewind a Nagra and listen to
4 it?

5 A Yes, it is.

6 Q I guess it might be easier if you demonstrated
7 how you do that to the jury. Perhaps you should come down
8 so it is easier for them to see.

9 (The witness stepped down from the stand)

10 A The Nagra is rewound using the method we showed
11 before, taking the plunger out, rewinding the tape, and then
12 it is a simple matter to listen to the Nagra tape with a
13 little adapter available from Radio Shack for about \$1.50,
14 and one of the headphones that plugs right into it, by
15 putting it into the output jack, plugging the headphone in,
16 and playing the tape. This can be done either during a test
17 recording or after rewinding the tape and playing it back.
18 That is the way I listen to my Nagra to make sure that I am
19 at the proper spot.

20 Q Do all Nagras or standard Nagras come with that
21 the plug that would allow you to adapt it in such a manner?

22 A Yes. In fact, there is writing on here that says
23 "phones." The jack is labeled "phones."

24 THE COURT: You can't be heard.

25 A The jack on the unit is labeled "phones," meaning

11289

1 headphones. So it's built to give you this capability.

2 Q It actually says the word "phones" on it?

3 A Yes, it does.

4 Q Thank you.

5 (The witness resumed the stand)

6 Q Mr. Ginsberg, I've placed before you five
7 envelopes. They correspond to Government Exhibits 316A
8 through 320A, which the government will agree corresponds to
9 CM's 15 through 19.

10 A Yes.

11 Q Do you see those envelopes?

12 A I do.

13 Q All right. Now, on the front of the brown
14 envelope, the brown envelope is the FBI custody envelope,
15 correct?

16 A Yes, it is.

17 Q On all five of those envelopes, would I be
18 correct in saying that those, that the -- withdrawn.

19 In each of those envelopes there is a separate
20 Nagra reel, correct?

21 A Yes, ma'am.

22 Q And within each of those five envelopes, would I
23 be correct in stating that those Nagra reels were recovered
24 by a police officer or an agent whose last name is Ernst,
25 E-R-N-S-T?

11290

1 A Yes, in all cases.

2 Q All five of them, correct?

3 A Yes.

4 Q Would I be correct in saying that for CM15 and
5 CM16, would you tell us the dates in which those Nagras were
6 recorded according to the FBI envelope and the day that they
7 were retrieved from Agent Ernst, by Agent Ernst?

8 A Both were recorded on 5/26/93 and removed from
9 the equipment, retrieved on 5/27/93, one at 3:20 p.m. and
10 the other at 3:25 p.m.

11 Q The Nagra reel that corresponds to CM15 you
12 analyzed, correct?

13 A Yes.

14 Q And that was found to be blank, correct?

15 A Yes, it was.

16 Q No recording whatsoever?

17 A I believe there were a few little on-offs and
18 nothing following.

19 Q Now, the last three envelopes that correspond to
20 CM17, CM18, and CM19, would you tell the jury on what day
21 those CM's were recorded and on what day they were retrieved
22 by Agent Ernst?

23 A All three were recorded on 5/27/93, and all three
24 were retrieved 5/28/93, one at 11:04 a.m., one at 11:15 a.m.
25 and the third at 11:25 a.m.

11291

1 Q Now, I would ask you to take the Nagra reels out
2 of the envelopes, including, sir, the envelopes for CM15 and
3 CM16.

4 A Yes, ma'am.

5 MS. AMSTERDAM: I believe, your Honor, that the
6 jury and the court can follow along based on Mr. Jacobs's
7 chart in Saleh whatever regarding the CM's, not the one this
8 morning but the first one that they had.

9 THE COURT: That is Exhibit B.

10 MS. AMSTERDAM: Thank you, sir.

11 A The CM chart?

12 Q The CM chart.

13 I believe, Mr. Ginsberg, that you have a copy of
14 the chart, part of the chart in front of you.

15 A Yes, I do.

16 Q Correct?

17 A Yes, ma'am.

18 Q Tell the jury what the serial number is that
19 corresponds to the Nagra reel in the envelope for CM15?

20 A 38681.

21 Q Would you tell them what the serial number is for
22 the envelope that corresponds to CM16.

23 A 38682.

24 Q Could you tell us what it is for CM17.

25 A 38683.

11292

1 Q And could you tell us what it is for CM18.

2 A 38685.

3 Q All right. Sir, in your reviewing of all of the
4 CM's in this case, did you ever examine or were you ever
5 given to examine a Nagra reel of Serial No. 38684?

6 A No, ma'am.

7 Q Meaning within the sequence you have 81, 82, 83
8 and 85, but you never were given to examine a Nagra for 84?

9 A That's correct.

10 Q Do you have any personal knowledge of whatever
11 happened to that Nagra?

12 A No, that was never supplied to me.

13 Q OK. Thank you.

14 Now, CM19, let's start with CM19. You examined
15 CM19, did you not?

16 A Yes, I did.

17 Q And the envelope for CM19 indicates that it was
18 recorded on May 27?

19 A That's correct.

20 Q And retrieved on May 28?

21 A Yes.

22 Q And you were here, were you not, when Mr. Salem
23 testified that that was the first meeting with my client in
24 the safe house in Queens?

25 A Yes.

11293

1 Q Could you tell the jury what you found in regard
2 to your examination of CM19.

3 A CM19 is a Nagra which was recorded first with a
4 number of on-off pulses, that is, starting the machine and
5 stopping it, followed by a conversation, long conversation
6 in which the recording started mid-conversation.

7 Q All right. Now, in the conversation itself, you
8 found no abnormalities in that conversation, is that
9 correct?

10 A Correct.

11 Q It had not starts and stops?

12 A Correct.

13 Q But the conversation started mid-conversation?

14 A Yes, that's correct.

15 Q And it had no preamble?

16 A No.

17 Q And it had no traffic sound or no clearing of
18 voices, nothing before the conversation?

19 A No, that's correct.

20 Q So it would be consistent with your analysis that
21 that could be a -- as you testified, a reel that was rewound
22 and recorded over?

23 A The possibility exists --

24 MR. FITZGERALD: Objection to form.

25 THE COURT: Sustained.

11294

1 Q Is there anything about your analysis that
2 precludes the possibility that this conversation, that there
3 was a conversation that was rewound and recorded over?

4 A No.

5 Q Turning next, sir, to CM18.

6 You were in court, were you not, when Mr. Salem
7 testified that this was the recording of the conversation on
8 the way back from the first meeting at the safe house,
9 correct?

10 A Yes, ma'am.

11 Q And just so we're clear, CM18 and CM19 are
12 separate distinct Nagra reels, correct?

13 A Yes, yes.

14 Q Now, in the conversation on the way back, could
15 you tell the jury what examination that you made of that and
16 what your findings were.

17 A Yes. This Nagra turned out to be a reel which
18 started immediately, without any preamble or testing, but
19 went right into a conversation apparently in an automobile,
20 ran for about a half hour, at which point people exited the
21 vehicle and Mr. Salem then made a statement like a preamble
22 at that point and then there were, some 18 minutes later, a
23 car door opening and closing.

24 Q A couple questions, sir.

25 There was no preamble -- by "preamble," there was

11295

1 nothing said before the conversation began?

2 A That is correct.

3 Q It was turned on once and the conversation
4 started?

5 A I believe so.

6 Q And it was mid-conversation when it started,
7 correct?

8 A I believe it was.

9 Q There were no -- withdrawn.

10 How long did the tape run before you actually
11 heard people exiting the car?

12 A There was -- I think there was about a half hour,
13 and then Mr. Salem was apparently by himself, able to speak
14 into the machine and record notes of the fact that he had
15 had a meeting and talked about certain topics with certain
16 people.

17 Q But you could actually hear on that tape the
18 exiting of some people out of the car?

19 A Yes.

20 Q And the car door closing?

21 A Yes, certainly.

22 Q In that tape were there any abnormalities in the
23 course of the conversation?

24 A No, that was continuous.

25 Q Were there any slurred words in the course of

11296

1 that conversation?

2 A Not that I detected.

3 Q Were there any speed variations --

4 A No, ma'am.

5 Q -- in the course of that conversation?

6 A No.

7 Q Were there multiple stops or starts or pauses in
8 that conversation?

9 A No, the machine was operating.

10 Q All right. Turning last, sir, to CM17, you were
11 in court, were you not, when Mr. Salem testified that CM17
12 corresponded to the ride out, correct?

13 A Yes.

14 Q And you also were in court -- withdrawn.

15 Do you recall, sir, that Mr. Salem testified that
16 that tape of the conversation of him first having met
17 Mr. Khallafalla did not record because the Nagra must have
18 been squashed?

19 A Yes.

20 Q After examining CM17, could you tell us what you
21 found and whether or not his testimony is consistent with
22 your findings?

23 A My findings with respect to CM17 were that the
24 tape was originally recorded with a number of stops and
25 starts. That is consistent with turning the machine on to

11297

1 see whether in fact it was threaded, just like when you put
2 a new roll of film in your camera and you advance it to make
3 sure that it goes to number 1 and you're ready to take
4 pictures. In the same way, people will thread a Nagra and
5 make sure that both reels are running, just to make sure
6 that the tape has wound around the take-up reel tightly
7 enough so that when it is started later on it's going to
8 catch.

9 Q Just let me interrupt you. You may actually
10 start, stop, start, stop?

11 A Yes.

12 Q In the same way that you push the button on your
13 camera to advance the film?

14 A To make sure that it goes to number one and is
15 ready to operate.

16 Q In your opinion was that tape activated?

17 A Yes, but following that there was no recording on
18 the tape. The balance of the tape was virgin, never
19 recorded for the entire balance of the tape. There was no
20 evidence of any recording, be it with speed variation or
21 possible recording with starting and stopping of the reel
22 for any reason. There simply was no further recording.

23 Q You mean the machine was stopped and then there
24 was no additional conversation?

25 A There was --

11298

1 Q It was never started again?

2 A There was no additional recording on that reel of
3 tape.

4 Q OK. Now have you worked in other FBI cases that
5 involved the use of Nagras in a car?

6 A Yes, certainly.

7 Q Have you ever worked in any operation for the FBI
8 in which a Nagra was actually placed under the back seat of
9 a car?

10 A Not to my knowledge. Generally they are placed
11 in the trunk, and there is a 25-foot microphone cable that
12 is available from Nagra which allows the microphone wire to
13 be strung all through the roof and into the passenger
14 compartment so that the machine can be in the trunk and just
15 the microphone in the passenger compartment.

16 Q Now, what types of things would you look for,
17 what types of things would you expect to find on the tape if
18 in fact somebody had actually squashed the Nagra?

19 A I would expect to find a tape which is regarded
20 at least in part with some sort of variation or wow or
21 flutter, like a tape that had a weak battery or a dirty
22 roller, that is, a tape which was recording but recording
23 slow and fast, slow and fast, depending upon whether -- if
24 the machine had been under a person sitting on a seat, if
25 the car went over a bump, or it turned or started and

11299

1 stopped, or if the person shifted his weight. I would
2 expect to find some evidence of recording on the tape, and
3 there is none.

4 Q When you say some "evidence," you mean some
5 conversation, correct?

6 A Yes, some recording, yes.

7 Q So if the person had shifted their weight, you
8 would expect to find some conversation?

9 A Yes.

10 Q If the person had gone over -- the car had gone
11 over a bump, you would expect to find some conversation?

12 A Yes.

13 Q If the person started to get up out of his seat
14 to exit the car, you would expect to find some conversation?

15 A That's correct.

16 Q Did you find any indication of that on CM17?

17 A No, I did not, not on 17. In fact, there's a
18 note that was found in here that said, "This Nagra sounds
19 like it was disconnected."

20 Q Was that your note, sir?

21 A No.

22 Q That was in the FBI envelope?

23 A Yes.

24 Q There was a note that indicated that this Nagra
25 sounds like it was disconnected?

11300

1 A Yes.

2 MS. AMSTERDAM: I have no further questions.

3 THE COURT: Mr. Stavis?

4 CROSS-EXAMINATION

5 BY MR. STAVIS:

6 Q Good afternoon, Mr. Ginsberg.

7 A Good afternoon, sir.

8 Q During your work for the Department of Justice,
9 did you ever have occasion --

10 THE COURT: You can't be heard.

11 MR. STAVIS: I'm sorry.

12 THE COURT: Thank you.

13 Q Mr. Ginsberg, during your work that you've done
14 for the Department of Justice, have you ever had occasion to
15 examine tapes that were made in prisons?

16 A Yes, I have.

17 Q Have you had occasion to examine tapes made in
18 both federal and state prisons?

19 A Yes.

20 Q And the tapes that you examined while you were
21 working for the Justice Department, were those Nagra tapes?

22 A Yes.

23 Q Did you also examine while you were working for
24 the Justice Department Kel tape recordings?

25 A Yes, I have.

11301

1 Q Made from the transmitters, correct?

2 A Yes, certainly.

3 Q And the tapes that you have examined that were
4 made in prisons, were those tapes made on body recorders?

5 A The Nagra is a body recorder, and the Kel would
6 be, again, a transmitter transmitting to a remote location.

7 Q If you could tell us, Mr. Ginsberg, how were the
8 tapes, the prison tapes that you have examined, how were
9 they made?

10 A They're made in the same manner that ordinary
11 tapes are, other consensual tapes are made, either with the
12 individual being wired up with either the Nagra or the Kel
13 or the device being hidden in a visiting room typically
14 where there would be people having a conversation.

15 Q When you examined these tape recordings that were
16 made in prisons, were you able to hear the conversations on
17 them?

18 A Yes, generally with a certain amount of echo
19 because there are usually flat stone walls or a lot of metal
20 work in the area, but the conversations were certainly
21 audible.

22 Q You have examined the CM tapes in this case, is
23 that correct?

24 A Yes, I have.

25 Q All of them, is that correct?

11302

1 A Yes.

2 Q The original tape recordings?

3 A Yes, I did.

4 Q Were any of those tape recordings made in Attica
5 State Prison?

6 A Not to my knowledge.

7 MR. STAVIS: I have no further questions, your
8 Honor.

9 THE COURT: Mr. Lavine, representing Fadil
10 Abdelgani.

11 MR. LAVINE: Thank you, Judge.

12 CROSS-EXAMINATION

13 BY MR. LAVINE:

14 Q Good afternoon, sir.

15 A Good afternoon.

16 Q Mr. Ginsberg, Mr. Fitzgerald questioned you about
17 a letter that you had presented to Mr. Jacobs that contained
18 your conclusion with respect to certain overrecordings, do
19 you recall that?

20 A Yes, yes.

21 Q All right. It turned out that your letter didn't
22 make any reference to that, is that correct?

23 A That's right.

24 Q During the converse of your work on this case,
25 did you speak to Mr. Jacobs and other defense attorneys?

11303

1 A Yes, certainly.

2 Q Did you give that information with respect to
3 your conclusion concerning the overrecording to Mr. Jacobs
4 and to the other defense attorneys as well?

5 A Yes.

6 Q That was no secret, was it?

7 A No, not at all.

8 Q Now, Mr. Ginsberg, have you ever been qualified
9 as an expert outside the mainland United States?

10 A Yes.

11 Q And in which other jurisdictions?

12 A Well, in Canada, I have testified as an expert,
13 as well as in St. Thomas, Virgin Islands.

14 Q Now, when you testified in St. Thomas in the
15 Virgin Islands, did you testify as an expert for the
16 prosecution or for the defense?

17 A For the prosecution.

18 Q Who was the prosecution in that case in the
19 Virgin Islands, Mr. Ginsberg?

20 A Well, they have a local law enforcement
21 jurisdiction in St. Thomas and the Virgin Islands, which is
22 overseen by the U.S. Department of Justice.

23 Q Thank you, sir.

24 In connection with your work in St. Thomas, were
25 you testifying on behalf of the United States Department of

11304

1 Justice?

2 A Yes, I was.

3 Q In response to a question that Ms. Amsterdam
4 posed you, or gave to you with respect to whether you had
5 spoken to anyone at the Daniels company about the history of
6 a certain Nagra tape or Nagra envelope, you mentioned that
7 you had spoken with Tom, correct?

8 A Yes.

9 Q Who is this Tom?

10 A Tom is Tom Daniel.

11 Q And Tom Daniels is the principal of that company?

12 A Yes, he is.

13 Q He is the one who manufactures these things?

14 A Yes.

15 Q And you know him and know him personally?

16 A Yes, I do, for many years.

17 Q Now, Mr. Ginsberg, during the course of your
18 examination of the tapes in this case -- where did that
19 examination occur?

20 A At my laboratory.

21 Q And where is your laboratory, sir?

22 A It's in my home.

23 Q And what part of the country is that?

24 A New York.

25 Q Did you have original evidence, sir?

11305

1 A Yes, I did.

2 Q So you had the actual recordings that were made
3 as people were speaking?

4 A Yes. Oh, yes.

5 Q Now, when you performed your work, was anyone
6 there watching you from the prosecution or the government or
7 the Department of Justice?

8 A No, sir.

9 Q So you did this unsupervised, is that correct?

10 A Yes.

11 Q Mr. Fitzgerald asked you who is the best in your
12 field, do you recall that?

13 A Yes.

14 Q I am not going to ask you who is the best in your
15 field, but how many in your field would you say there are in
16 the metropolitan region who are at your level?

17 A Two or three.

18 Q What about in the whole United States, Mr.
19 Ginsberg?

20 A Seven to ten.

21 Q All right. Mr. Ginsberg, to your knowledge, how
22 many of those experts have top-secret clearance and are
23 trusted with the unsupervised possession of original
24 evidence?

25 A I am not aware of anyone else who is.

11306

1 MR. LAVINE: Thank you, Mr. Ginsberg.

2 I have no further questions.

3 THE COURT: Any other cross?

4 Any redirect?

5 MR. FITZGERALD: Yes, Judge.

6 REDIRECT EXAMINATION

7 BY MR. FITZGERALD:

8 Q Mr. Ginsberg, with regard to the last set of
9 questions, was it your understanding that you are allowed
10 unsupervised access to the materials as long as all the
11 defense would agree that no one would raise an issue as to
12 what happened in your laboratory? Is that correct?

13 A What happened in my laboratory?

14 Q No one would make a claim that anything got
15 changed in your laboratory, both sides agree?

16 A Yes, certainly.

17 Q That was the condition under which you were
18 allowed to have unsupervised release, correct?

19 MR. LAVINE: It is very hard to hear. I am
20 sorry.

21 Q That was the condition under which you were given
22 the opportunity to review the reels unsupervised, correct?

23 A And that I had, and that nothing was to be
24 divulged from the content of any of the tapes, and that I
25 had adequate security clearance.

11307

1 Q In fact --

2 A I'm sorry. And that, obviously, the tapes were
3 safeguarded in an appropriate manner.

4 Q And did there in fact come a time when you
5 learned that some tapes that should not have been released
6 were released to some people that they shouldn't have been?

7 MR. JACOBS: Objection, your Honor. I would ask
8 for a side bar.

9 THE COURT: Come on up.

10 (Continued on next page)

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11308

1 (At the side bar)

2 THE COURT: Yes.

3 MR. JACOBS: Two matters: First of all, it is
4 outside the scope, and, secondly, it is going to get
5 involved.

6 THE COURT: It is not outside the scope at all,
7 depending on what it is that he is --

8 MR. JACOBS: In any event, it is going to involve
9 putting my credibility along with the prosecutor's as to
10 conversations. I am just telling you now what this is going
11 to involve. If we are going to get into a swearing contest
12 then so be it.

13 Just so we are clear, what we are doing here is
14 the original order did not allow the release. Then there
15 was a modification that allowed copies to be made.

16 Mr. Ginsberg was under the impression that that
17 included the bootlegs. He confirmed that in a conversation
18 with Mr. Khuzami, who then confirmed it to me. There was
19 probably apparently a misunderstanding as to that. However,
20 I just want to alert the court that we are going to get into
21 an area of a swearing contest, and I want to alert the
22 government if that's what it's going to be, and I thought I
23 would alert everybody ahead of time.

24 MR. STAVIS: I object on relevance grounds, your
25 Honor.

11309

1 THE COURT: This is supposed to show what?

2 MR. FITZGERALD: I had no intention of getting
3 into it. I have heard a dozen times that he was entrusted
4 with these tapes and he is entrusted by the government, and
5 he was entrusted with the tapes. I don't know if the
6 government would trust him the next time. The Egyptian
7 intelligence conversations ended up in the media.

8 MR. JACOBS: Your Honor, if some defense
9 counsel --

10 THE COURT: We're not --

11 MR. JACOBS: May I just continue?

12 THE COURT: No, you can't.

13 MR. JACOBS: I'm sorry.

14 THE COURT: This has gone as far as it's going to
15 go. Let's move on to something else.

16 (Continued on next page)

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11310

1 BY MR. FITZGERALD:

2 Q Now, sir, with regard to CM 17, I believe that is
3 the tape that you testified was not consistent with being
4 recorded on a squashed Nagra, right?

5 A Yes.

6 Q How many squashed Nagra tapes did you examine in
7 your career?

8 A I would say maybe five or six that had been
9 stopped or slowed as a result of interference of the cover
10 of the machine.

11 Q So it is possible that the interference with the
12 cover of the machine could stop or slow the tape, correct?

13 A If it was dented or in poor condition, but
14 certainly it would be momentary.

15 Q Let me ask you this, sir. You mentioned that
16 there is a 25-foot wire available to connect the Nagra to
17 the trunk, correct?

18 A A 25-foot microphone cord.

19 Q And you need the microphone to be connected in
20 order to record, fair enough?

21 A Yes, sir.

22 Q So that if the wire did become disconnected, you
23 would end up with a result similar to what you examined,
24 correct, a tape that stops recording and leaves virgin tape.

25 A Yes. If someone unscrewed the connector and

11311

1 unplugged it, then the machine would not run.

2 Q If it came loose it would not run?

3 A Yes. If this screw screw turned five times and
4 then the plug was -- and then the plug was lifted out from
5 the microphone, then the machine wouldn't run, and this is a
6 mono machine. That would have to be done on each of the two
7 microphones of the stereo machine.

8 Q Before you turn the screws you can connect the
9 plug, correct? It is connected but it can fall out,
10 correct?

11 A That is correct.

12 Q So if someone didn't secure the screws it could
13 fall out if someone sat on it, for example, correct?

14 A I can't see how sitting on the machine would
15 cause both of the microphone cables to come out.

16 Q What if they sat on the wires? Have you ever
17 seen someone unplug a machine by sitting on the wires?

18 A Not really, sir.

19 Q You have testified on 150 cases?

20 A Yes.

21 Q You have seen jurors listen to headsets?

22 A Yes.

23 Q Ever happen that sometimes the juror's headset
24 becomes disconnected if someone puts pressure on the wire?
25 If you have ever seen it.

11312

1 A It could happen. I don't know that I have. It
2 could happen.

3 Q You have never seen a juror's headsets become
4 disconnected in the 150 trials you have attended?

5 A I am saying it could happen. I don't recall it
6 happening but I am saying it certainly could happen.

7 Q Thank you. Let me ask you this. You were asked
8 questions about a Kel transmitter and you testified about
9 Kel transmitters and Nagras. Is it fair to say that in your
10 publication you indicate that "Nagra recordings" -- pardon
11 me. You say it better. Quote, "Nagra recordings are by far
12 the greatest recordings being produced today." Is that
13 something from your publication?

14 A I don't recall.

15 Q Let me show you what we will identify as a
16 Prosecutors' Guide to the Use of Audiotaped Evidentiary
17 Material.

18 THE COURT: Would you give it an exhibit number.

19 Q We will call it 35124-C.

20 A I've got one.

21 Q Why don't you turn to page -- I am sorry. Keep
22 that out but if you can pull out the Agents' Guide to the
23 Use of Audiotaped Evidentiary Material.

24 A I don't have that one here, sir.

25 Q Let me provide you with a copy and we will call

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1 it 35124-D.

2 A Yes.

3 Q If you could look at page 2, do you see it stated
4 there that "Nagra recordings are by far the clearest
5 recordings being produced today"?

6 A Yes.

7 Q In your prosecutors' guide, you state that "The
8 worst tapes that you will hear are Kels."

9 A Yes.

10 Q You were asked questions about a warehouse and
11 whether or not --

12 A I am sorry. Just to be clear, the best Nagra and
13 the worst Kels.

14 Q Yes.

15 A Yes.

16 Q In the warehouse example, you were asked whether
17 or not someone could put a van outside a warehouse and equip
18 the person inside with a Kel so that you could pick up the
19 transmissions using a Kel device, correct?

20 A Yes.

21 Q In fact, the Kel device would give you the worst
22 tapes, correct?

23 A It depends upon the conditions.

24 Q But let me ask you this, sir: If there was an
25 undercover operation in a warehouse that was rented, someone

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1 set up a van outside, put a Kel transmitter on the informant
2 and made a recording through the Kel transmission, would you
3 not, if you called it like you see it, testify that it would
4 make a lot more sense to wire the warehouse for audio and
5 video? Correct?

6 A I think both can be done, and if you want -- if
7 you want a clear, complete record of the conversation from
8 that particular individual as opposed to everything going on
9 in the warehouse, and I assume a warehouse would have all
10 sorts of noise and echoes, if you want the conversation
11 between that particular individual and others, I would want
12 the microphone on that individual in the form of a Nagra or
13 a Kel. If you are interested in just the general goings on
14 in the warehouse, then I would say I would go with the audio
15 and video surveillance fixed in the warehouse.

16 Q And on the person the Nagra would give you the
17 better recording?

18 A Yes, it would, certainly.

19 Q You have never handled an informant, is that
20 correct?

21 A Handled?

22 Q Have you ever been responsible for an informant's
23 safety? You have never touched an informant, is that
24 correct?

25 A No. No.

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1 Q Which means you have never actually strapped up
2 any sort of device to an informant, right?

3 A Actually, I have participated in review of tapes
4 after the fact with informants and participated in preparing
5 transcripts with informants.

6 Q My question to you, sir, was whether you ever
7 taped up an informant.

8 A No, sir.

9 Q You have never been responsible for the safety of
10 an informant, correct?

11 A No, sir.

12 Q And you have never been responsible for
13 determining whether or not certain procedures are better for
14 surveillance, to avoid in surveillance or not, correct?

15 A I know what I would do but I have never been in a
16 position to have to make that decision.

17 Q You testified concerning the bootleg tapes, your
18 analysis of, we will call them, the second set of tapes.
19 You have a chart of the CM tapes?

20 A Yes.

21 Q And you have a chart of the bootleg tapes.

22 A Yes, I call them the ES series.

23 Q You first became involved in the case sometime in
24 1994, is that correct?

25 A Yes, sir.

11316

1 Q When you became involved in the case were you
2 advised that there was a letter from the government in 1993,
3 stating that the bootleg tapes, if we call them that, had
4 been overrecorded?

5 MR. JACOBS: Objection.

6 THE COURT: May I see counsel briefly at the
7 side.

8 (At the side bar)

9 THE COURT: What is the objection?

10 MR. JACOBS: The objection, your Honor, is that I
11 don't see the relevance of the question.

12 THE COURT: The relevance of the question, I
13 assume, is the relevance of the inquiry about whether he
14 discovered America or he didn't discover America.

15 MR. JACOBS: The fact that the government may
16 have disclosed what they consider to be some problems with
17 the tapes to defense counsel and the fact that he may have
18 been told or not have been told I don't think have to do
19 with his conclusions as to what he found or didn't find.

20 THE COURT: I think if you put on a witness --

21 MR. JACOBS: I didn't put him on but that's OK.

22 THE COURT: But if a witness testifies that he
23 arrived at a new continent and decided to call it America,
24 that it makes a difference whether in fact as he came up on
25 the beach there was a sign that said welcome to America. So

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1 I am going to allow it. Let's go.

2 (In open court)

3 THE COURT: The objection is overruled.

4 (Continued on next page)

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1 A Was I aware of any letter? No, sir. I just knew
2 that there were two sets of tapes and I didn't know that
3 there was anything different about any of the tapes.

4 Q Had anyone indicated to you whether or not there
5 was a dispute as to whether or not the bootleg tapes had
6 been overrecorded?

7 MR. JACOBS: Objection.

8 THE COURT: Overruled.

9 A No, sir.

10 Q And you heard Emad Salem testify that he had
11 overrecorded on some of those tapes, did you not?

12 A I don't recall whether I heard him testify
13 specifically to that.

14 Q Sir, when you testified in the Waco trial, is it
15 fair to say that you testified as to transcripts? Correct?

16 A As to the method used to enhance the tapes and
17 preparation of the transcripts and as to the content of the
18 transcripts.

19 Q But you did not testify in that case, so we are
20 clear, about whether or not the tapes you enhanced were
21 originals or authentic and not tampered with?

22 A That is correct.

23 Q You mentioned that you were retained in a matter
24 involving Con Edison. Do you recall that?

25 A Yes.

11319

1 Q Is it fair to say that you have some special
2 machinery that allows you to locate various calls on sort of
3 multichannel tapes?

4 A Yes, I developed that technology last year.

5 Q So the jury understands, Con Ed, the police
6 department for 911 calls and certain other people have these
7 wide tapes.

8 A Yes, one-inch wide, 10-inch reels that record 24
9 hours of tape, up to 60 simultaneous channels, and I
10 developed a system to automatically, using interface with a
11 computer and software that I developed, to search for
12 certain conversations, telephone touchtones and so forth,
13 for the Justice Department on a case in another district
14 originally.

15 Q Is it fair to say that in the Con Ed case you
16 were retained to use this technology to help locate
17 particular calls, isolate them and make copies of them,
18 correct?

19 A Yes, for both sides.

20 Q For both sides, and is it fair to say first that
21 you weren't called upon to render an opinion as to whether
22 or not those tapes that you were helping to locate calls on
23 were authentic and not tampered with?

24 A No, sir, that was not an issue.

25 Q And you did not testify with respect to --

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1 A I didn't have to. The case settled.

2 Q But you were not expected to testify as to
3 authenticity in that proceeding?

4 A No, that is right.

5 Q When is the last time you testified as to
6 authenticity of a tape in a proceeding involving the United
7 States Attorney for the Southern District of New York?

8 A This district?

9 Q Yes.

10 A Not for awhile.

11 Q Approximately how long?

12 A Five years, six years.

13 Q What year would that be, if you recall?

14 A I don't know, probably the late 1980's.

15 Q Let me talk to you about the fellow you
16 mentioned, Tom Daniels. You mentioned that there was this
17 break-through when he put serial numbers on the Nagra reels
18 and created the white envelopes, correct?

19 A I don't know about being a break-through. I
20 think it was a useful tool that he saw the need for that he
21 made available.

22 Q When did this development occur?

23 A I believe he started his company -- I'm guessing.
24 It's my best guess six or seven years ago. I know that
25 there are some tapes that he made in 1991, so I know that it

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1 is at least four years that he is in business.

2 Q So the serial numbers and white envelopes have
3 been around since at least 1991?

4 A Yes.

5 Q You mentioned that you have lectured assistant
6 U.S. attorneys before about tapes, correct?

7 A Yes.

8 Q Did you ever lecture assistant U.S. attorneys in
9 the Southern District of New York?

10 A Informally, I may have.

11 Q Did you ever go into a room and give a lecture?
12 You know, someone says on Thursday at 5:00, Mr. Ginsberg
13 will give a lecture on tapes?

14 A To small groups perhaps, and it was a long time
15 ago. Formal lectures like that I have given with
16 notification to all of the agencies and AUSA's in other
17 districts.

18 Q Other districts?

19 A Yes.

20 Q You mentioned earlier that you may have referred
21 to the serial numbers and the little white envelopes in your
22 lectures to agents, correct?

23 A I believe so.

24 Q But you are not sure?

25 A Certainly it is something that I would, if I

11322

1 remembered to mention it I certainly would.

2 Q That would be true as well for the agents' guide
3 when you are telling agents what to do with various tapes,
4 correct?

5 A I am not sure whether I mentioned it here.

6 Q Would you like to look?

7 A Yes.

8 No, I don't think -- I just read the section on
9 Nagras and I don't think I mention that specifically.

10 Q Can you look to tell us whether or not you
11 copyrighted the agents' guide to tapes before or after 1991
12 when Mr. Daniels came into business?

13 A 1994.

14 Q So last year?

15 A Yes.

16 Q Mr. Jacobs asked you some questions about whether
17 or not you and I had spoken before you came to court. Do
18 you recall those questions?

19 A Yes.

20 Q We had never spoken other than introductory good
21 morning, before that, is that correct?

22 A Not to my recollection, sir.

23 Q Did you receive a request a couple of days ago
24 through Mr. Jacobs for a copy of your defense attorneys'
25 guide to tapes? Yes or no.

11323

1 A I received a fax, if that's what you are
2 referring to.

3 Q Prior to receiving the fax, did you get an oral
4 request relayed to you to produce a copy of the defense
5 attorney guide to taped evidence?

6 A I don't recall, sir.

7 Q Do you recall that you sent back an answer that
8 you didn't have one?

9 A It may be that I -- I know I never published it
10 or distributed it, so it may be that I took -- if I was
11 asked the question have you distributed it or have you ever
12 published, I would have said no. I knew that it existed.

13 THE COURT: He didn't ask you why you said no, he
14 asked you whether you said no.

15 THE WITNESS: I don't recall. I just don't
16 recall one way or the other.

17 Q This would have been a conversation that took
18 place on Monday, is that correct?

19 A I don't recall, I don't recall. You asked me
20 yesterday and I went home and found it. It's here.

21 Q You received a fax as well on Monday evening, is
22 that correct?

23 A Yes.

24 Q And the fax asked you to bring to court the
25 defense guide to audiotape evidence, is that correct?

11324

1 A I did not -- I knew that the fax was a copy to me
2 of a communication to Mr. Jacobs, so I spoke with Mr. Jacobs
3 as to what to bring to court.

4 Q But you knew that the government was asking you
5 to produce a copy of the defense attorneys' guide to taped
6 evidence, is that correct?

7 MR. JACOBS: Objection, your Honor.

8 THE COURT: Overruled.

9 A Quite frankly, I did not read carefully, line by
10 line, the fax. I spoke with Mr. Jacobs and he advised me
11 what to bring, what not to bring. I never received a direct
12 phone call from your office.

13 Q Do you recall that conversation with Mr. Jacobs,
14 correct?

15 A I believe so.

16 Q You don't recall any earlier conversations about
17 an oral request for the guide to tape evidence?

18 A No, sir.

19 Q Yesterday when you were asked from the stand, you
20 seemed surprised that you were asked for this defense
21 attorneys' guide.

22 MR. JACOBS: Objection.

23 THE COURT: Sustained to form.

24 Q Did you indicate yesterday that you didn't know
25 if you could find it?

11325

1 A Yes.

2 Q Had you looked for it before?

3 A No.

4 Q Sir, you were not concerned about anything
5 written in the defense attorneys' guide?

6 MR. JACOBS: I didn't hear the question.

7 Q You were not concerned --

8 A No, I haven't looked at that for 16 years, sir.

9 Q For 16 years. You wrote it 16 years ago?

10 A Yes. The original is yellowed. This is the
11 original.

12 Q You have testified that you call them as you see
13 them, correct?

14 A I didn't hear you, sir.

15 Q You have testified that you call them as you see
16 them, correct?

17 A Yes.

18 Q You let the chips fall where they may, correct?

19 A Yes, sir.

20 Q You don't let the identity of your client affect
21 the expert opinions that you give, correct?

22 A That is correct.

23 Q And you tell prosecutors the same thing you tell
24 a defense lawyer, is that correct?

25 A Yes.

11326

1 Q Is it fair to say, sir, that in your prosecutors'
2 guide you write that someone should refer to taped evidence
3 "After all, he said it, he's got to live with it." Correct?

4 A Yes.

5 Q Do you write in your defense attorneys' guide
6 that someone should try to keep the transcripts out because
7 they help people understand the tapes?

8 COUNSEL: Objection, your Honor.

9 THE COURT: Sustained.

10 MR. FITZGERALD: Your Honor, if that is not as to
11 form I will move on to another area.

12 THE COURT: It is not as to form.

13 Q Sir, you mentioned you received a letter from Don
14 Clark in the FBI, is that correct?

15 A Yes.

16 Q And he is a high-ranking person in the Federal
17 Bureau of Investigation in New York, or was, correct?

18 A Yes, sir.

19 Q Is it fair to say that the U.S. Attorney's
20 Office, as you understand it, is run by the United States
21 Attorney for the district, correct?

22 A Yes, sir.

23 Q There was actually a time when you worked full
24 time at the U.S. Attorney's Office for the Southern District
25 of New York, correct?

11327

1 A No, sir, I was always a consultant.

2 Q But you had an office within the building, is
3 that correct?

4 A No, sir.

5 Q Did you do a substantial amount of work prior to
6 1982 for the United States Attorney's Office for the
7 Southern District of New York?

8 A Yes.

9 Q The United States Attorney at that time was John
10 Martin, is that correct?

11 A John Martin, yes, and then Mr. Giuliani, yes.

12 Q Did there come a time when you met United States
13 Attorney John Martin while you were consulting for the U.S.
14 Attorney's Office for the Southern District of New York?

15 A Yes, I must have.

16 Q Did there come a time when you were summoned to
17 John Martin's office from a courtroom, if you recall?

18 MS. AMSTERDAM: Objection as to form.

19 MR. FITZGERALD: I will rephrase it.

20 Q Did there come a time when you were a consultant
21 for the U.S. Attorney's Office for the Southern District of
22 New York, when someone walked in while you were making a CM,
23 a consensually monitored tape of yourself discussing jury
24 deliberations with two jurors --

25 A Absolutely not.

11328

1 Q Did not happen?

2 A Absolutely not.

3 Q Did you make a consensual tape recording of
4 yourself discussing a case with two jurors after a verdict?

5 A Absolutely --

6 MR. JACOBS: Objection.

7 THE COURT: Overruled.

8 A No, sir.

9 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, let me approach with
2 what I will mark as Government's Exhibit 35124-E.

3 MR. STAVIS: I have an objection under Rule
4 613(b).

5 THE COURT: May I see counsel briefly at the
6 side.

7 (At the side bar)

8 THE COURT: I am not sure I understand the
9 objection.

10 MR. STAVIS: I thought that Mr. Fitzgerald might
11 be attempting to introduce extrinsic evidence on a
12 collateral matter.

13 THE COURT: 613(b) simply has to do with
14 procedures for prior inconsistent statements of a witness,
15 which I thought he was about to afford him the opportunity
16 to explain.

17 MR. FITZGERALD: I was about to let him listen to
18 the tape itself and tell us whether or not that changes his
19 answer.

20 MR. JACOBS: What is the relevancy of this
21 inquiry? Can we find out what the government -- I mean, on
22 redirect examination.

23 MR. FITZGERALD: I don't want to run into the
24 break for any reason but I tell you I think the door swung
25 wide open with the government, the Department of Justice,

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1 who hired him, who sent letters, and he testified to Mr.
2 Ricco that he doesn't lie. He flatly denies making this
3 tape when he was personally writing to Rudolph Giuliani
4 about in 1987. This is a significant event in his life and
5 he is lying about it.

6 THE COURT: I will let you ask him if it changes
7 his testimony. I will not allow any extrinsic evidence
8 about it.

9 MR. BERNSTEIN: Judge, I wasn't involved in the
10 hiring of the witness, but the problem seems to be that the
11 government is now trying to impeach somebody that they
12 agreed to, consented to, set up a procedure with, and
13 basically it seems what they have done effectively is sat
14 and waited, having agreed to have this expert come in as the
15 defense expert, making no objection to his situation, no
16 objection to his security clearance or anything, and
17 basically now are coming in with material that presumably
18 they had --

19 THE COURT: I believe the rule is that you can
20 impeach anybody including your own witness.

21 MR. BERNSTEIN: I am talking about the bad faith
22 of going forward with a witness becoming a defense examiner
23 who is required to do things on a consent basis, turn
24 over --

25 THE COURT: I am sorry, I don't see the bad

11331

1 faith.

2 MR. BERNSTEIN: To have security clearances done,
3 and basically say we are sitting waiting for him to
4 self-explode a year and a half later, and frankly if they
5 had any objection to his having handled these materials,
6 dealt with these materials, they should have stated that
7 then and not be dealing with an issue that is 13 years old.

8 THE COURT: The point is not whether he can keep
9 the stuff in his house without having it stolen or without
10 fiddling with it. The question is whether he is the eagle
11 scout that he has been portrayed as.

12 MS. STEWART: Judge, I have a problem with their
13 foundation question. The foundation that I believe the
14 witness was asked and which he emphatically answered was,
15 was he ever hauled on the carpet before John Martin in '82.
16 Now it seems that this tape is 1987 with Mr. Giuliani.

17 THE COURT: No, I don't think the date --

18 MS. STEWART: He said who was the U.S. Attorney
19 in 1982, he said John Martin and then he said Rudi Giuliani
20 for part of the time.

21 MR. FITZGERALD: The tape was made in '82. He
22 was still corresponding with Mr. Giuliani in '87 about why
23 we should still hire him back.

24 With regard to Mr. Bernstein, the protective
25 order I read last night said we were waiving no objections

11332

1 as to his qualifications and things like that. There was no
2 waiver made, and everyone signed it.

3 THE COURT: Again, you can ask him whether it
4 changes his testimony but that's as far as it goes.

5 (In open court)

6 (Continued on next page)

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1 BY MR. FITZGERALD:

2 Q Mr. Ginsberg, I am just going to ask you yourself
3 alone to listen to the headsets, 35124-E, and I will mark
4 35124-ET, and I would ask you to look at that as you listen.

5 A Sure.

6 (Tape played)

7 A Yes, sir.

8 Q When you were just asked whether or not you had
9 made a consensual monitoring tape of a juror, you said
10 absolutely not.

11 A I believe you had asked me if I had made a
12 consensually monitored tape of two jurors, and it was my
13 recollection that a juror, one juror had come to me
14 saying -- and this was after a verdict.

15 Q Sir, you are saying there was only one juror
16 taped. As you sit here now you say it is one juror taped?

17 A As I recall, I was speaking with a woman who said
18 she was writing an article, a juror, after the conclusion of
19 a case, after a verdict, I believe either in this very
20 courtroom or one above it, when I was taking down the
21 equipment after a verdict.

22 Q So that when you were asked -- strike that. You
23 have told us that you call it like it is, correct?

24 A Yes.

25 Q When you were asked whether or not you had made a

11334

1 consensual monitoring tape of two jurors discussing the case
2 after the verdict, you said absolutely not, because it was
3 your recollection that you only taped one juror, correct?

4 A Yes, at her request, and I made a copy for myself
5 to, you know, for whatever reason, if anyone wanted to hear
6 it.

7 Q And, sir, so you thought the answer to whether or
8 not you taped two jurors was absolutely not because your
9 memory said one juror.

10 A Absolutely.

11 MR. JACOBS: Objection.

12 THE COURT: Overruled.

13 A Yes.

14 Q As you sit here today, is your recollection still
15 only one juror?

16 A It is, yes.

17 Q Do you want to listen to any more of the tape?

18 MR. JACOBS: Objection.

19 A No.

20 THE COURT: The objection is overruled.

21 MR. FITZGERALD: Thank you. Nothing further.

22 THE COURT: Anything else? Anything else, Mr.

23 Fitzgerald?

24 MR. FITZGERALD: No, Judge.

25 MR. RICCO: Yes, your Honor.

11335

1 THE COURT: Mr. Ricco.

2 RE-CROSS-EXAMINATION

3 BY MR. RICCO:

4 Q Mr. Ginsberg, I want to bring your attention back
5 from 15 years ago but up from recent times.

6 A Yes.

7 Q Mr. Fitzgerald asked you some questions about how
8 many cases you testified in for the Southern District in the
9 last five years. Do you remember those questions?

10 A Yes.

11 Q Isn't it a fact that oftentimes the role of an
12 expert is to help the lawyers understand scientific
13 evidence?

14 A Yes, sir.

15 Q And isn't it a fact that in most instances the
16 expert himself will not testify unless one party calls him,
17 either the defense or the government?

18 A Yes, 90 percent of my cases there is no need to
19 testify.

20 Q In this case, the government called you as a
21 witness, isn't that correct?

22 A Yes.

23 Q In fact, you met with several of the defense
24 lawyers about the experiments and evaluations that you did
25 on the CM's and the bootlegs, isn't that right?

11336

1 A Yes.

2 Q Some of those meetings took place in Mr. Jacobs'
3 house, isn't that right?

4 A Yes.

5 Q Sitting around a table, isn't that right?

6 A Yes.

7 Q During those meetings, you attempted to explain
8 to us what your various tests meant.

9 A Yes, sir.

10 Q And what your conclusions were.

11 A Exactly.

12 Q With the bootleg tapes, the ES tapes, you told us
13 that there were various fragmented conversations on the
14 bootleg tapes themselves.

15 A That is correct.

16 Q Some of those conversations started in progress,
17 correct?

18 A Yes.

19 Q Some of those conversations ended in the middle
20 of conversations.

21 A Yes, cut off.

22 Q You don't have to be an expert to come to that
23 conclusion, isn't that right?

24 A That is correct.

25 Q All you have to do is to take one of those tapes,

11337

1 put them in a cassette recorder and play them, isn't that
2 right?

3 A Yes.

4 Q And what you will find from those bootlegs is
5 that they have been recorded, backed up, and recorded over.

6 A That is correct.

7 Q You don't need to have to have served in the
8 Woody Allen case to understand that, do you?

9 A No.

10 Q All you have to do is listen to them, isn't that
11 right?

12 A That's right.

13 Q When Emad Salem was listening to tapes here in
14 front of the jury, a tape was played and it was given a
15 government exhibit number, isn't that right?

16 A Yes. I don't know if I was present at the time.

17 Q The tapes that were played to the jury were taken
18 out of the larger cassettes, isn't that correct?

19 A I believe so.

20 Q Mr. Fitzgerald asked you about that you have some
21 statements in your prosecutors' guide, just a few minutes
22 ago.

23 A Yes.

24 Q The information that you put in the agents'
25 guide, is it not that that information is for the benefit of

11338

1 law enforcement agents?

2 A Yes, certainly.

3 Q And haven't you taken the position with this case
4 that you were not going to share that information with
5 defense lawyers?

6 A Yes, sir.

7 Q The prosecutors' guide is used for the benefit of
8 the prosecutors, isn't that correct?

9 A Exactly.

10 Q And the manual is written in such a way to help
11 the prosecutor do his or her job, isn't that right?

12 A Yes, for the maximum benefit from that point of
13 view.

14 Q The defense manual, that is written in such a way
15 to help the defense lawyer represent whatever rights a
16 defendant may or may not have, isn't that right?

17 A Yes, sir, exactly.

18 Q So if you read from one, you are not going to get
19 the same point of view that you get when you read from the
20 other, do you?

21 A No, sir.

22 Q Do you know what a trick question is?

23 A Yes.

24 Q A trick question is a question to get you to say
25 something, is it not, when the answer really means something

11339

1 else, isn't that right?

2 A Yes, sir.

3 Q If I were quoting, asking you a question about
4 what you said to Mr. Jacobs, and I was referring to your
5 agents' manual, that would be a trick question now, wouldn't
6 it?

7 MR. FITZGERALD: Objection, your Honor.

8 THE COURT: Sustained.

9 Q Mr. Fitzgerald asked you questions about did you
10 ever tape up an informant. Do you remember those questions?

11 A Yes.

12 Q In your career, you have talked to agents, have
13 you, about the proper use of this equipment, Nagras and the
14 Kel?

15 A Certainly, yes, I have.

16 Q In fact, during Detective Napoli's testimony,
17 Detective Napoli was getting ready to tell this jury
18 information about recording specifications that he was not
19 authorized to do so, isn't that correct?

20 MR. FITZGERALD: Objection.

21 THE COURT: Sustained.

22 Q People have to be trained to use the Kel, isn't
23 that correct?

24 A Yes.

25 Q People have to be trained to use the Nagra, isn't

11340

1 that correct?

2 A Yes, sir.

3 Q When they are not, they make mistakes.

4 A Yes.

5 Q You testified that there was one tape, I have
6 forgotten which one it was but there was a couple of beeps
7 at the beginning where it appears as though it was started,
8 then a conversation took place, right?

9 A Yes.

10 Q Is there anything in the world that prevents a
11 person from taping over a whole tape, starting it back at
12 the beginning, testing it 1, 2, 3, and then taping it all
13 over again?

14 A No, sir.

15 Q Mr. Ginsberg, is it true that the bottom line,
16 the conclusion that you reached with the defense and the
17 government was that there was no, what you call, overt
18 tampering of the tapes?

19 MR. FITZGERALD: Objection to form.

20 THE COURT: Sustained.

21 Q Did you conclude in a there was no overt
22 tampering of these tapes?

23 A Yes, sir.

24 Q And that is splicing and what not?

25 A Yes, exactly.

11341

1 Q You told that to the defense, isn't that right?

2 A Yes.

3 Q You told us that at John Jacobs' house, isn't
4 that right?

5 A Yes.

6 Q You told us that in the office that we have down
7 the hall, isn't that right?

8 A Yes.

9 Q And you told the same thing to the government,
10 isn't that right?

11 A Yes.

12 Q And you told us that no matter what you did in
13 the Waco case, isn't that right?

14 A Yes.

15 Q No matter what happened in the Woody Allen case,
16 isn't that right?

17 A Yes.

18 Q Your opinion is the same, isn't that right?

19 A Correct.

20 Q You know, don't you, that the role of an expert
21 is to help the jury understand scientific information, isn't
22 that correct?

23 A Yes, sir, exactly.

24 Q And the jury relies upon your expertise in a
25 particular field in which you have qualifications to offer

11342

1 testimony, isn't that right?

2 MR. FITZGERALD: Objection.

3 THE COURT: Sustained.

4 Q You, Mr. Ginsberg, have been qualified as an
5 expert many times, isn't that right?

6 A Yes, sir.

7 Q Relied upon by the United States of America in
8 many of this country's important cases, isn't that correct?

9 A Yes, sir.

10 MR. RICCO: I have no further questions.

11 THE COURT: Anything else?

12 MR. FITZGERALD: Two.

13 MS. AMSTERDAM: No.

14 THE COURT: I am sorry, Ms. Amsterdam.

15 RE-CROSS-EXAMINATION

16 BY MS. AMSTERDAM:

17 Q Mr. Ginsberg, you were asked on redirect to state
18 that the Nagra is the best quality tape recording, correct?

19 A Yes.

20 Q And you also indicated that the quality of the
21 tape recording of the Kel is the least preferable.

22 A On average.

23 Q On average. When you say the best and the worst,
24 you mean the actual quality of the listening of the tape,
25 correct?

11343

1 A Yes.

2 Q What is the best quality taping mechanism to use
3 to protect the informant or the agent wearing the tape?

4 A Kel.

5 MR. FITZGERALD: Objection.

6 THE COURT: Sustained and stricken.

7 Q You stated that the quality of the tape was the
8 best with the Nagra, correct?

9 A Yes.

10 Q What is the best procedure for maintaining the
11 integrity of the tapes?

12 A The Kel device, because the tapes are --

13 MR. FITZGERALD: Objection.

14 THE COURT: That is overruled. He can answer.

15 A Because the tapes remain in the possession of the
16 law enforcement agency.

17 Q What is the best taping system for maintaining
18 the integrity of the chain of custody?

19 A The Kel as well, same reason.

20 Q Is there anything that prevents both a Kel system
21 and a Nagra system being used at the same time?

22 A No, ma'am. That's often done.

23 Q Mr. Fitzgerald also asked you about a statement
24 that you made in either the agents or the prosecutors' guide
25 I think something to the effect of he said it, meaning a

11344

1 defendant, he has to live with it, correct?

2 A Yes.

3 Q And you indicated that you had written that in a
4 book, correct?

5 A Yes.

6 Q Would you have ever advised anyone whose
7 conversation was taken out of context to just live with it?
8 Do you understand the question?

9 A Not quite.

10 (Continued on next page)

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11345

1 Q In your manual for prosecutors or agents, you
2 indicated to Mr. Fitzgerald that a defendant should just
3 live with it, after all, they're his words?

4 A No, he has to accept it as the words that were
5 spoken is what I meant.

6 Q Right. Would you advise the same thing to a
7 defendant whose conversation was taken totally out of
8 context?

9 A No, absolutely not.

10 Q Would you advise that to a defendant who was
11 tricked into believing --

12 MR. FITZGERALD: Objection.

13 THE COURT: Sustained and stricken.

14 Q -- that he was discussing another matter?

15 THE COURT: Ms. Amsterdam, when I sustain an
16 objection you stop. Understood?

17 MS. AMSTERDAM: Yes, sir. Yes, sir.

18 Q Sir, returning to the car indication, CM17, in
19 this CM17, would you show the jury -- would you come down
20 and show the jury how difficult or how easy it is to get a
21 Nagra to stop if it is pressured.

22 (The witness stepped down from the stand)

23 Q Could you indicate for the record what we're
24 seeing. Is it stopping?

25 A It is not. There is -- I believe there is a spot

11346

1 that I can press on it, and I have sat on the unit, too, to
2 try to get it to stop momentarily. It's made -- it's really
3 made to withstand a great amount of pressure, because when
4 it's worn on the body there's a certain amount of tension on
5 the unit that holds it. I believe it is near the windows.

6 Q Excuse me. In other words, you can't just press
7 on any spot?

8 A No, no. It's made to keep going.

9 Q And what happens as soon as you're off of the
10 sweet spot?

11 A It resumes its motion. I can't even -- I'm
12 sorry. Near one of the windows I did get it to stop
13 momentarily.

14 Q At the time you shifted your weight off of that
15 window, what happened?

16 A It kept going.

17 Q Now, you heard Mr. Fitzgerald ask you whether or
18 not it was possible that the microphone may have become
19 disengaged, correct?

20 A Yes. There were two microphones.

21 Q If both microphones can become disengaged, if
22 both microphones had become disengaged, would the unit
23 itself still continue to record, still continue to turn?

24 A It is unclear as to how it was connected to the
25 switch in the car so it's hard to answer.

11347

1 Q CM18, which is the recording of the conversation
2 on the way back recorded, correct?

3 A Yes.

4 Q Do you know of any means by which both
5 microphones might have become disengaged and both
6 microphones might have become reengaged for the ride out?

7 A No, no.

8 Q So it would be your testimony that as to the ride
9 out the tape recording was deliberately disconnected?

10 THE COURT: Sustained.

11 MS. AMSTERDAM: No further questions.

12 THE COURT: Anything else?

13 MR. FITZGERALD: Yes, Judge, three.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. FITZGERALD:

16 Q Sir, you were here for the testimony that there
17 were two Nagras in the car, is that correct?

18 A I believe so, yes, sir.

19 Q One could be disconnected and one could not,
20 correct?

21 A I wouldn't know of that.

22 Q I said one could be and one could not, possibly?

23 MR. LAVINE: Objection to the form, your Honor.

24 Q You could think of no way that there couldn't be
25 a recording on the way back when there wasn't one on the way

11348

1 out? Is it possible that that one of the Nagras was
2 disconnected and one was not?

3 A Possible, but highly unlikely.

4 Q Highly unlikely?

5 A I would think that they would be connected and
6 secured in the same manner.

7 Q And you have never seen it in your experience in
8 140 trials that one juror's headset got disconnected and the
9 other did not?

10 MR. STAVIS: Objection, relevance, your Honor.

11 MR. JACOBS: Asked and answered.

12 (Laughter)

13 MR. FITZGERALD: With that, I'll move on.

14 Q Mr. Ricco asked you questions about CM17, and
15 that's one of the tapes where there are some stops and
16 starts at the beginning and then nothing happens, correct?

17 A Yes.

18 Q He said to you is that someone could go through a
19 tape, come back, stop and start, and then not record, and
20 you basically overrecord, correct?

21 A I don't believe he was speaking about CM17.

22 Q Let me just ask you this then: As to CM17, as
23 you sit here today, do you know to 100 percent scientific
24 certainty that that did not happen?

25 A As to CM17, I believe -- it's my understanding,

11349

1 based upon my analysis, that there were a number of initial
2 starts and stops, the machine was threaded properly, and
3 then no further recording was made on that reel. The
4 remainder of the reel with a --

5 THE COURT: In other words, there was never a
6 conversation on it that was recorded over, is that correct?

7 THE WITNESS: Yes, sir. Exactly.

8 Q So the answer to my question would be yes?

9 A If the question is, was there ever a recording on
10 the reel of a conversation, I would say that there was --
11 yes, there was never a recording of a conversation on --
12 recorded on CM17.

13 Q Finally, you were asked whether you had been
14 relied upon by the Department of Justice in a number of
15 different trials.

16 Is it fair to say that in 1987 you wrote and
17 complained to the U.S. Attorney in this district that you
18 had not been relied upon after what happened in 1982, is
19 that correct?

20 A I don't recall. I know I have been working
21 elsewhere, much easier to commute.

22 Q Your testimony is you were working elsewhere
23 because the commute was easier? Is that your testimony?

24 A Yes.

25 Q You live in the Southern District of New York?

11350

1 A On the other side of the Hudson River, yes. Most
2 of my work is in Newark.

3 Q Sir, do you know the name Rudolph Giuliani?

4 A Yes.

5 MR. JACOBS: Objection.

6 THE COURT: Sustained.

7 Q Have you ever written a personal letter to
8 Rudolph Giuliani?

9 MR. JACOBS: Objection.

10 THE COURT: Sustained.

11 MR. FITZGERALD: Nothing further.

12 THE COURT: Anything else?

13 MS. AMSTERDAM: One moment, your Honor.

14 (Pause)

15 MS. AMSTERDAM: No, your Honor.

16 THE COURT: You are excused. Thank you very
17 much.

18 Ladies and gentlemen, we are going to take a
19 break. Please leave your notes and other materials behind.
20 Please don't discuss the case and we will resume in a few
21 minutes.

22 Please wait until the jury leaves.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: I don't want too many people moving
25 at once.

11351

1 (The jury was excused)

2 THE COURT: You can step down.

3 THE WITNESS: Thank you, Judge.

4 (Witness excused)

5 MR. JACOBS: Your Honor, I have some other
6 matters to attend to. They are going to read the
7 transcripts this afternoon. My client will consent to my
8 absence.

9 THE COURT: Is that correct, Mr. Saleh?

10 DEFENDANT MOHAMMED SALEH: Yes.

11 THE COURT: Thank you very much.

12 Is somebody going to pick up?

13 MR. BERNSTEIN: I will do it.

14 THE COURT: Mr. Bernstein?

15 MR. JACOBS: Mr. Bernstein is going to take up
16 the slack.

17 THE COURT: Is that all right, Mr. Saleh?

18 MR. JACOBS: Yes.

19 DEFENDANT MOHAMMED SALEH: Yes.

20 THE COURT: Thank you very much.

21 (Recess)

22 (Jury present)

23 THE COURT: Mr. McCarthy.

24 MR. MCCARTHY: Thank you, your Honor. Your
25 Honor, at this point the government would ask to read from

11352

1 two exhibits in evidence which are in the jury's binders
2 marked the 400 series, I believe.

3 THE COURT: 400 series?

4 MR. McCARTHY: Yes, your Honor. It will be
5 Government's Exhibit 479, and Government's Exhibit 461 --
6 I'm sorry, I should have said 479T and 461R, but we will
7 start with 479T.

8 THE COURT: The 400 series, and the exhibit is
9 479T.

10 MR. McCARTHY: 479T.

11 Your Honor, these have been identified previously
12 as remarks by the defendant Abdel Rahman. Pursuant to a
13 prior order of the court, 479T will be read in its entirety.

14 THE COURT: OK.

15 (Government Exhibit 479T was read to the jury)

16 (Continued on next page)

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1 THE COURT: I think we are going to break at this
2 point. Ladies and gentlemen, please leave your notes and
3 other materials behind. Please don't discuss the case, and
4 we will see you tomorrow morning. Good night.

5 (Jury excused)

6 MR. SERRA: Your Honor, I have an application
7 about tomorrow. I have spoken to Mr. McCarthy and he told
8 me that after one more sermon of Dr. Abdel Rahman that the
9 government intends to begin the what will likely be the
10 lengthy process of reading the agreed-upon portions of CM's,
11 beginning chronologically and moving chronologically
12 beginning with CM 4. For about the last 10 days I have not
13 been well. I have gotten worse, and for time constraints I
14 have not been able to see a doctor, which I intend to do
15 tomorrow. Mr. Alvarez has consented, which I appreciate,
16 that Mr. Stavis will stand in for me tomorrow. I am told
17 the doctor will see me tomorrow. It is likely the way
18 things appear that I won't be here tomorrow, with the
19 court's permission. I have one more thing, your Honor. I
20 understand from Mr. McCarthy that nothing will happen
21 tomorrow other than reading early CM's. Mr. Alvarez does
22 not appear in CM's until 48, which is way down the road, and
23 we have gone over 106 objections with respect to the early
24 CM's.

25 THE COURT: Is that accurate with respect to

11354

1 tomorrow?

2 MR. McCARTHY: That is my prediction for
3 tomorrow. That is what we plan to do. I can't --

4 THE COURT: Is that satisfactory, Mr. Alvarez?

5 DEFENDANT ALVAREZ: Yes, your Honor.

6 THE COURT: Thank you very much. I hope you feel
7 better, Mr. Serra.

8 MR. SERRA: Thank you, your Honor.

9 MR. McCARTHY: Your Honor, in terms of time, I
10 believe I would like to take one more night to look it over,
11 but there are three disputes with respect to two of the
12 tapes, I think two with respect to CM 29 and one, I believe,
13 with respect to CM 20 and 21. I don't think it will take
14 the court more than 10 or 15 minutes to resolve it and I
15 don't think they are conversations that we actually get to
16 until next Tuesday or Wednesday. So at sometime
17 appropriate, we may need to take up your Honor's time.

18 THE COURT: Fine, but I think you will know
19 better than I what that point is, so if you will just give
20 me a little bit of advance warning and give me whatever I
21 need to look at, if it helps for me to look at something in
22 advance to save both your time and mine.

23 MR. McCARTHY: Thank you.

24 THE COURT: There were a couple of exhibits left
25 hanging that were --

11355

1 MR. McCARTHY: 163, your Honor. That is the El
2 Sayyid Nosair speech. I will hand a copy of it up to the
3 court.

4 THE COURT: Right. There has been some later
5 revision of it, there was to be?

6 MR. McCARTHY: Yes.

7 THE COURT: This is the one you are proffering?

8 MR. McCARTHY: Yes.

9 THE COURT: I take it Mr. Stavis still objects to
10 this version.

11 MR. McCARTHY: I should tell your Honor I have
12 not updated it since the last time we argued it, which was
13 last week.

14 THE COURT: This is the same version as last
15 week, and Mr. Stavis still objects to this version.

16 MR. STAVIS: Yes. If your Honor will recall, I
17 placed last week my objections to the new and improved 163R,
18 on the record.

19 THE COURT: Then I have to decide that. Thank
20 you.

21 MR. McCARTHY: I think, your Honor, when we
22 talked about this last, you wanted to look at Mr. Stavis'
23 opening.

24 THE COURT: I did look at it. I have notes on
25 that. I don't want to deal with it now. When would you

11356

1 plan to deal with this?

2 MR. McCARTHY: Sometime next week.

3 MR. STAVIS: I'll be here, your Honor.

4 THE COURT: Me, too.

5 (Proceedings adjourned until 9:30 a.m., Thursday,

6 May 25, 1995)

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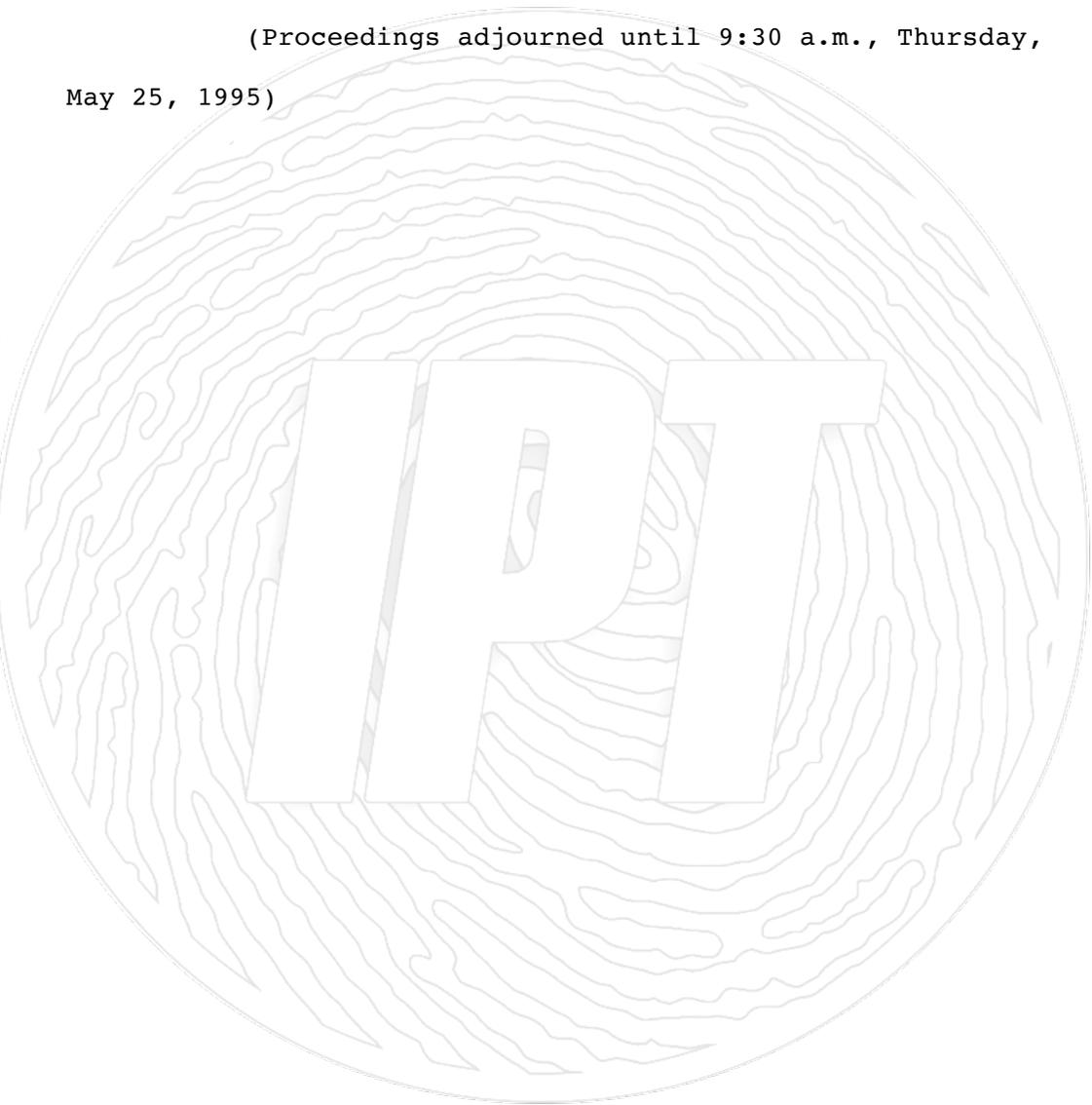
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

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,"

S5 93 Cr. 181 (MBM)

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

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

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

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

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

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

Defendants.

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May 25, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

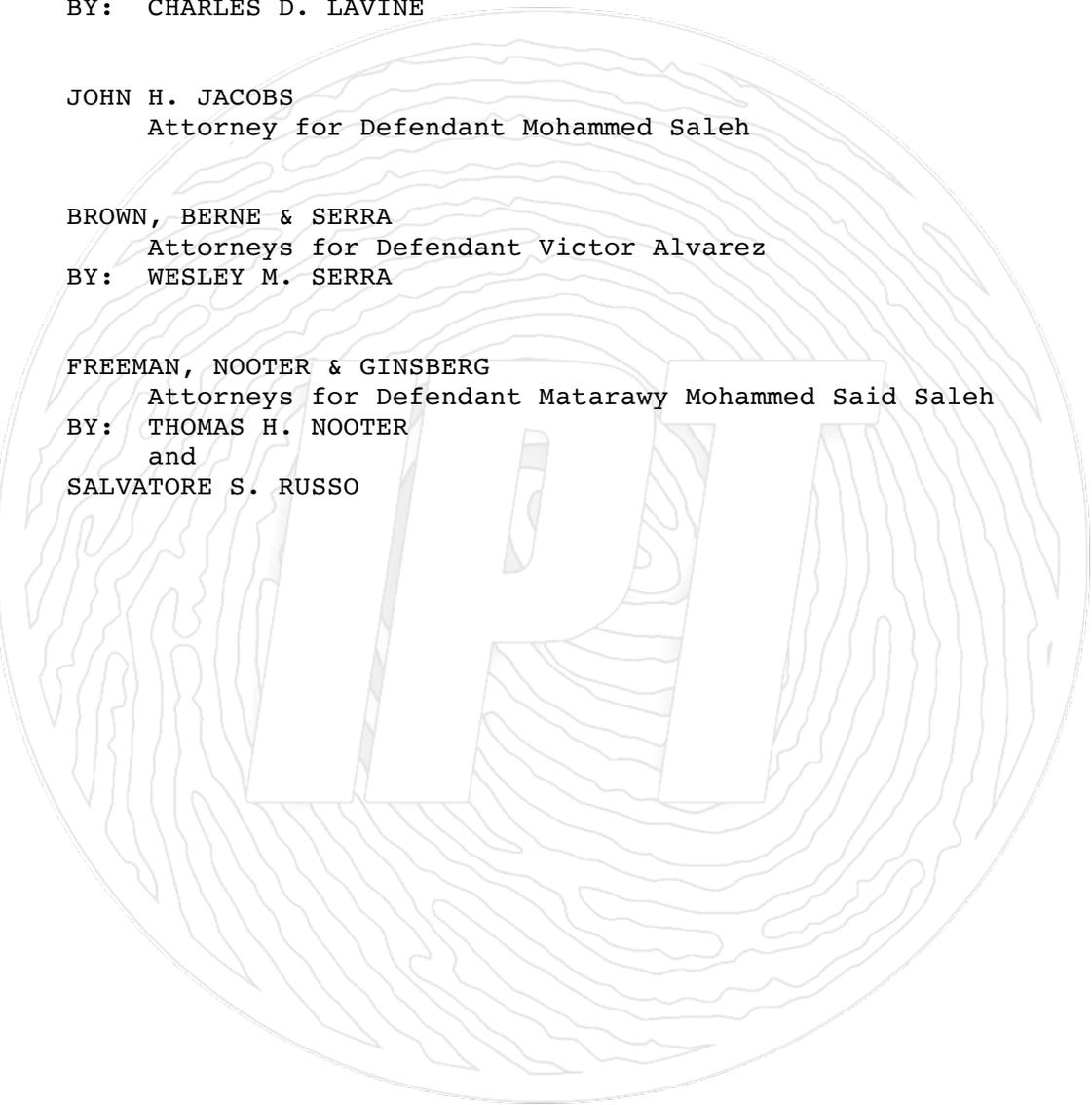
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Mr. Jacobs.

4 MR. JACOBS: Your Honor, I rise to ask for some
5 qualification from the government relative to all these
6 sheik's sermons and speeches, some published, some found in
7 his home, as to whether the government's position is that
8 this is all in furtherance of the conspiracy, are there any
9 that are admissions. Just some clarification and perhaps
10 some legal objections from counsel other than the sheik
11 relative to whether or not these are all in furtherance of
12 the conspiracy.

13 MS. AMSTERDAM: I join that, your Honor. I asked
14 Mr. McCarthy yesterday as to whether or not these were being
15 admitted as coconspirator statements or admissions, and I
16 believe specifically the ones that were retrieved from Sheik
17 Rahman's home where there is no showing that they have ever
18 been published can only come in as admissions and not as
19 coconspirator statements.

20 MR. McCARTHY: We disagree with that. I don't
21 think it is particularly relevant whether there is evidence
22 that they were actually broadcast or not. There is enough
23 evidence in this case from which a rational fact finder
24 could find that they were tape recorded regardless whether
25 the tapes themselves show evidence that they were actually

1 broadcast to other people, that they were made in the
2 intention of dissemination during the course and in
3 furtherance of the conspiracy. I don't think that anything
4 more is required to let them in as coconspirator statements
5 beyond a finding by your Honor that there is enough evidence
6 from which a jury could find that he was a coconspirator at
7 the time he made the statements.

8 MS. STEWART: Judge, I also, behind that
9 statement, would renew a motion made to your Honor very
10 early on which attacked this evidence on the grounds of free
11 speech. It would seem that it opens a real Pandora's box if
12 the government is allowed to take statements that are made
13 to the public at any time, whether it was made during the
14 course of the conspiracy or not during the course of an
15 alleged conspiracy, and say this is in furtherance, whether
16 they have proved that any of the alleged coconspirators,
17 indicted or otherwise, heard it or not. It just widens the
18 government's base, to be able to draw people in a net that
19 people have declared as far too wide-flung at this point, to
20 bring any public figure who makes a speech and may some way
21 influence any other person into a conspiracy.

22 MR. McCARTHY: Your Honor, we haven't brought any
23 public figure, we brought him, and there is plenty of
24 evidence that he is a coconspirator. It is not the net of
25 people who may have heard what he said, it is the proof

1 about the maker of the statement and the nature of the other
2 evidence about the conspiracy.

3 THE COURT: What is the consequence -- let me
4 understand, are you asking for an instruction?

5 MR. JACOBS: The answer is yes and no. I am not
6 sure of an instruction --

7 THE COURT: That is an answer that is too
8 inclusive by half.

9 MR. JACOBS: The answer is yes I would want an
10 instruction if it is an admission as opposed to a statement
11 in furtherance of the conspiracy.

12 THE COURT: I don't see it as an admission. I
13 can understand about a statement being a statement that
14 indicates what somebody's state of mind is. An admission is
15 something else, and in furtherance of the conspiracy is
16 something yet different.

17 MR. JACOBS: I think the problem, your Honor, is
18 in summations in this case, if the government urges the jury
19 to accept certain things the sheik says as binding on other
20 defendants in this case and whether any of the defendants in
21 this case were present, heard it, acknowledged it, and
22 things like that, it gets into a very unusual area. This is
23 not a bank robbery.

24 THE COURT: I understand that, but statements in
25 furtherance don't have to be made in the presence of all

1 conspirators, or indeed any.

2 MR. JACOBS: I never had a situation, your Honor,
3 where we were talking about a, quote, public statement at a
4 mosque, where nobody in this case who is present, maybe made
5 a year --

6 THE COURT: I don't want to hear argument on now,
7 not because I don't want to hear argument on it, period -- I
8 do, and I have some questions about how these statements
9 ought to be considered by the jury.

10 MR. JACOBS: That is my point.

11 THE COURT: In answer to the question that you
12 raised, Miss Stewart, which in essence raises something that
13 we dealt with earlier, I don't think it creates a problem to
14 admit a statement against a defendant in a situation where
15 he is charged with committing an act, conspiracy being an
16 act, which says even in a protected way, I believe that that
17 act should be committed. It is one thing to say that it is
18 protected speech, to get up and say I believe this act or
19 that act should be committed. You can say that even as to
20 criminal acts. However, if you are later charged with
21 participating in a criminal act, you can't bar receipt of
22 the statement by saying it was protected speech. The
23 protected speech can come in to show your state of mind and
24 whether in fact you were inclined to participate and did
25 participate in the act, assuming that there is other

1 evidence that you did. But I would like at some later time
2 to get from the government an explanation of -- if your
3 position is that this is in furtherance, then I want an
4 explanation of how, preferably accompanied by some
5 authority.

6 MR. McCARTHY: Yes, your Honor.

7 THE COURT: It makes me feel warm and fuzzy to
8 have authority.

9 I would like to get started. We are going to
10 have to break today at the lunch break because one of the
11 jurors isn't feeling terribly well and another has a family
12 medical problem that he has to deal with this afternoon. So
13 I am just going to call it a day after half a day. The
14 record should reflect that Ms. Amsterdam flung her hands in
15 the air in a gesture --

16 MS. AMSTERDAM: And said repeatedly, "Please
17 don't say so, Judge."

18 THE COURT: -- in a gesture of "School's out."
19 Let's go.

20 (Jury present)

21 THE COURT: Good morning, ladies and gentlemen.

22 JURORS: Good morning, your Honor.

23 THE COURT: Just for your own scheduling
24 purposes, we are going to break today at the lunch break, at
25 about 12:45. We will not sit this afternoon.

1 Mr. McCarthy.

2 MR. McCARTHY: Yes, thank you, your Honor. Your
3 Honor, at this point the government offers into evidence
4 Exhibit 304T, which is a transcript of portions of a tape
5 which is 304E. The court and jurors will notice that there
6 are page indications throughout the transcript. Counsel for
7 both sides have been working from a larger group of
8 transcripts and this is what is being read into evidence,
9 and those brackets with the pages are an indication
10 basically for us so that we know.

11 THE COURT: Where to read?

12 MR. McCARTHY: Yes, your Honor.

13 THE COURT: All right. 304E and T are received.
14 Go ahead.

15 (Government's Exhibits 304E and T received in
16 evidence)

17 MR. McCARTHY: Your Honor, just to be clear, we
18 are offering that part of the tape, 304E, which is reflected
19 in the transcript 304T.

20 THE COURT: The evidence is 304T, because it is a
21 foreign language.

22 MR. McCARTHY: Yes, your Honor.

23 THE COURT: Go ahead.

24 MR. McCARTHY: Your Honor, I believe the
25 transcripts we are going to read from this morning are in a

1 black binder that each of the jurors has. I don't think
2 there is a label on it.

3 THE COURT: Right. It is an unmarked black
4 binder.

5 MS. SCHWARTZ: The ones I left on your chairs
6 yesterday.

7 THE COURT: The first tab is marked 304T.

8 THE COURT: Go ahead.

9 MR. McCARTHY: Your Honor, Government's Exhibit
10 304T, which is otherwise known as CM 4, is a conversation
11 taking place between May 12 and May 14, 1993. Mr.
12 Fitzgerald will read the lines attributed to Siddig Ali and
13 Mr. Khuzami will read the lines attributed to Emad Salem.

14 (Government's Exhibit 304T read to the jury)

15 (Continued on next page)

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1 MR. McCARTHY: Your Honor, the next conversation
2 the government would offer is 306T, which is a transcript of
3 portions of a tape that is 306E.

4 THE COURT: All right.

5 That is received.

6 (Government's Exhibit 306T for identification was
7 received in evidence)

8 MR. McCARTHY: 306T is a conversation which is
9 CM6 dated May 18, 1993. Mr. Khuzami will read the lines
10 attributed to Emad Salem, Mr. Fitzgerald will read the lines
11 attributed to Siddig Ali, Ms. Chu will read the lines
12 attributed to the unidentified female, and I will read the
13 lines attributed to the unidentified male.

14 (Government Exhibit 306T was read to the jury)

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 (Jury not present)

20 MR. RICCO: Your Honor?

21 THE COURT: Yes.

22 MR. RICCO: I have a matter I have to take care
23 of for the next 45 minutes. Mr. Wasserman said he will
24 cover for me, and Michael Houston, who has been admitted,
25 will sit in my place.

1 THE COURT: Mr. El-Gabrowny, is that
2 satisfactory?

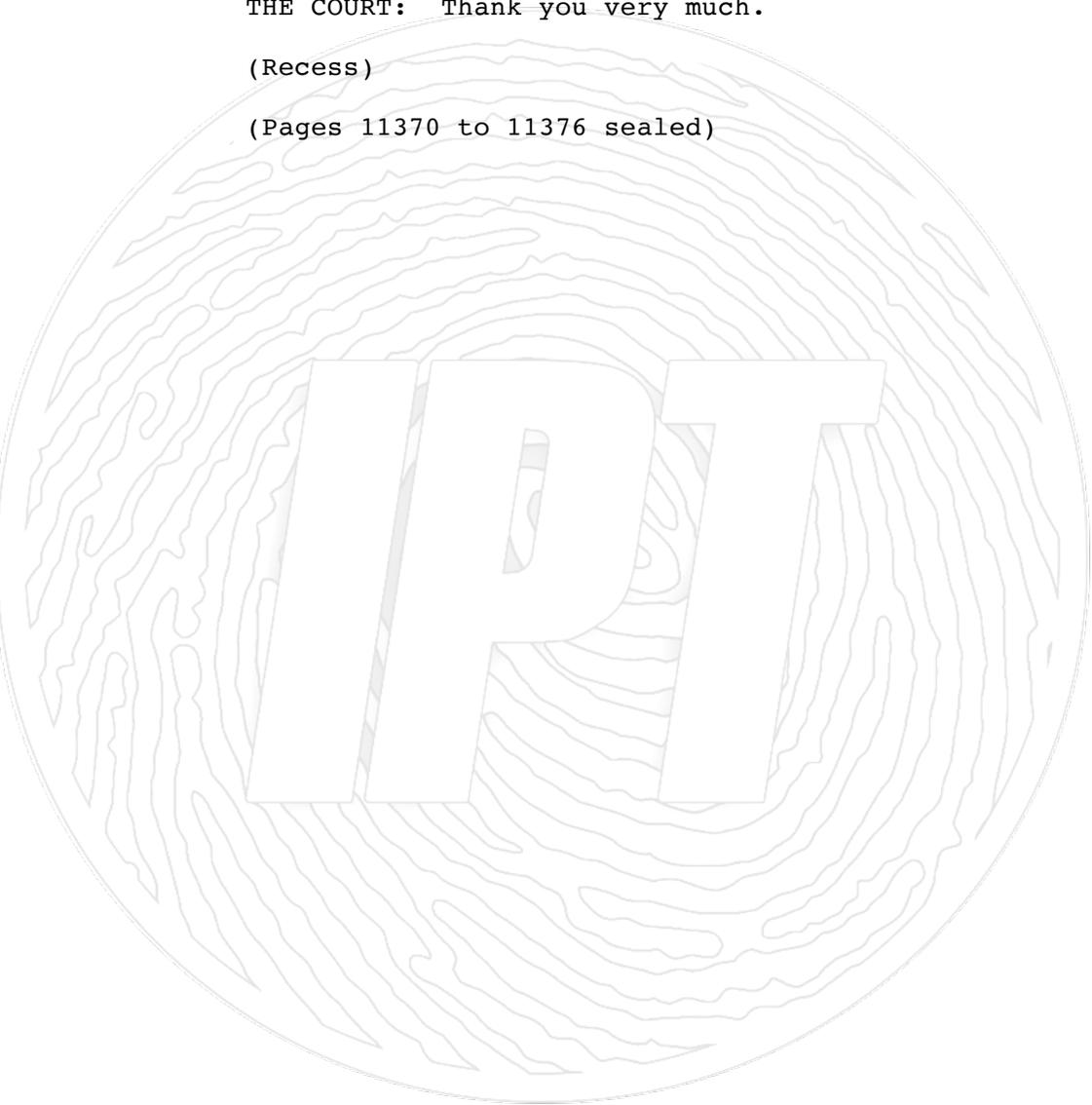
3 DEFENDANT IBRAHAM EL-GABROWNY: That's fine.

4 THE COURT: Thank you very much.

5 (Recess)

6 (Pages 11370 to 11376 sealed)

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1 (At the side bar)

2 MR. McCARTHY: I didn't want to blurt out if this
3 was an appropriate point to break. Should we be figuring on
4 12:30, quarter to 1?

5 THE COURT: 12:30, quarter to 1, within that 15
6 minutes.

7 (In open court; jury present)

8 THE COURT: Mr. McCarthy.

9 MR. McCARTHY: Thank you, your Honor. The next
10 transcript we would offer is 307T, which is a transcript of
11 portions of 307E, tape.

12 THE COURT: 307T.

13 MR. McCARTHY: This is a conversation that takes
14 place May 16, 1993, and again Mr. Khuzami will read the
15 lines attributed to Emad Salem and Mr. Fitzgerald will read
16 the lines attributed to Siddig Ali.

17 (Government's Exhibit 307T in evidence was read
18 to the jury.)

19 MS. STEWART: Judge, objection.

20 MR. McCARTHY: May we have a moment, your Honor?

21 MS. STEWART: My error, Judge. I am sorry.

22 (Reading continued)

23 MR. McCARTHY: Your Honor, the next conversation
24 is Government Exhibit 308T, which is CM 7B. It is a
25 transcript of portions of the tape that is 308E, a

1 conversation on May 19, 1993. Again, Mr. Khuzami will read
2 the lines attributed to Emad Salem and Mr. Fitzgerald will
3 read the lines attributed to Siddig Ali.

4 (Government's Exhibit 308T in evidence read to
5 the jury)

6 MR. McCARTHY: Your Honor, is this an appropriate
7 point?

8 THE COURT: Yes. Ladies and gentlemen, we are
9 going to break for the day. Please leave your notes and
10 other materials behind. Please don't discuss the case, and
11 we will resume on Monday. Have a pleasant weekend. Also, I
12 have left this out occasionally but please don't read about
13 this case or any related matter if there should be an
14 article.

15 Monday is a holiday, so it will be Tuesday when
16 we next sit in this case. Next Tuesday.

17 (Proceedings adjourned until 9:30 a.m., Tuesday,
18 May 30, 1995)

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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,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

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

15 IBRAHIM A. EL-GABROWNY,

16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

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

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

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

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May 30, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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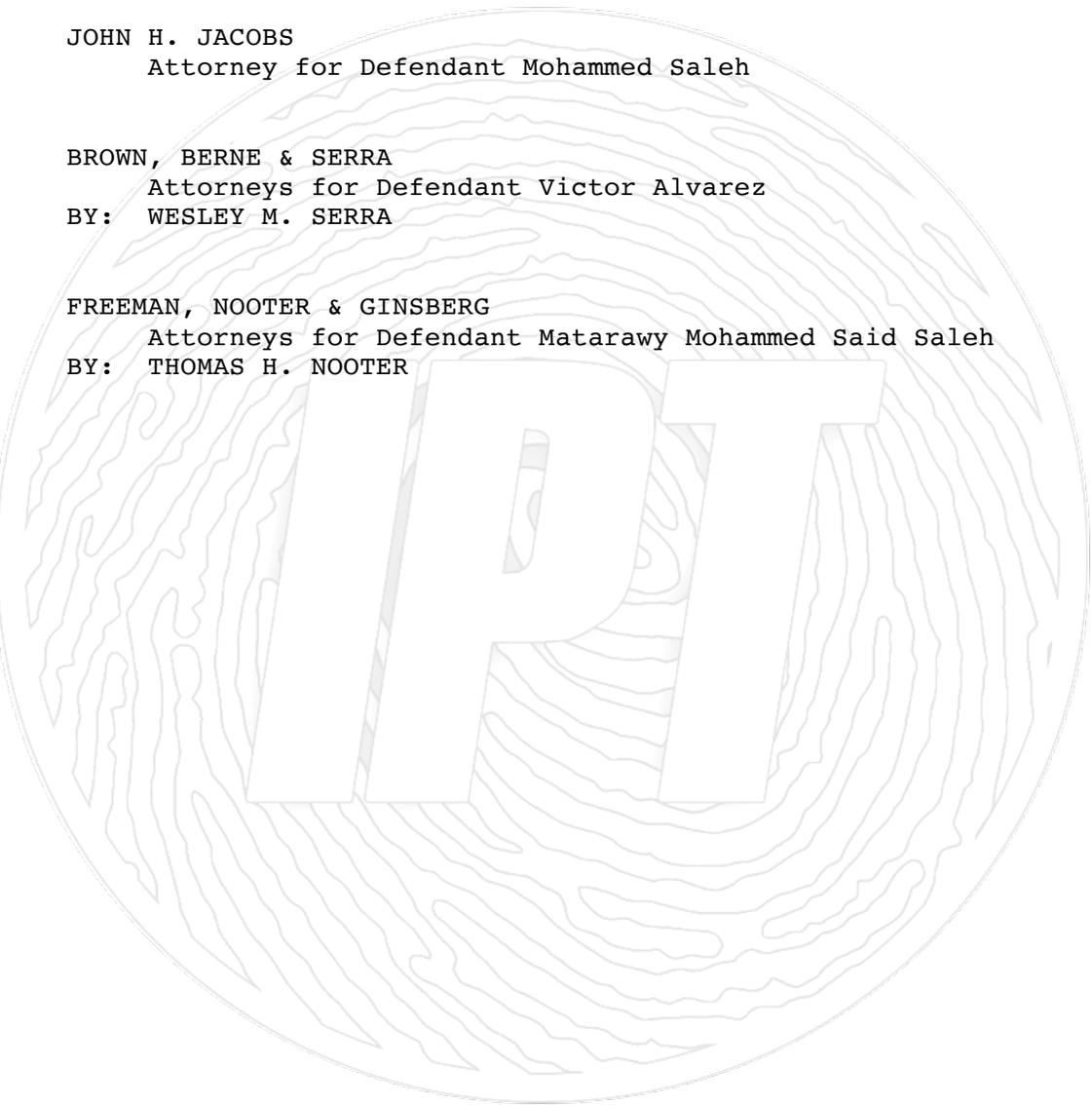
APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed; jury not present)

2 THE COURT: Good morning.

3 MR. BERNSTEIN: Your Honor?

4 THE COURT: Yes.

5 MR. BERNSTEIN: I have to go over to Judge Keenan
6 for swearing in for my paralegal, now admitted. I am going
7 to have Mr. Jacobs cover for me. Apparently Judge Keenan,
8 I think Judge Keenan is not waiving the presence of
9 sponsors, so I am going to be out for a while.

10 THE COURT: Is that satisfactory, Mr. Abdelgani?

11 DEFENDANT AMIR ABDELGANI: Yes.

12 THE COURT: Thank you very much.

13 THE COURT: Before you go, do you have --

14 MR. BERNSTEIN: I am not going anywhere yet.

15 THE COURT: Do you have the government's letter?

16 Did you get the government's letter with respect
17 to a transcript?

18 MR. BERNSTEIN: No, I did not, Judge.

19 Yes, I did, your Honor. This one, yes. If that
20 is what we are talking about, sure.

21 MR. McCARTHY: From last Friday, Judge?

22 THE COURT: Right. The question is, is that
23 something we are going to have to grapple with before he
24 gets back or not?

25 MR. McCARTHY: No.

1 THE COURT: All right.

2 MR. McCARTHY: Your Honor?

3 THE COURT: Yes.

4 MR. McCARTHY: Is the court going to put
5 something on the record about Mr. Alvarez and Mr. Serra?

6 THE COURT: I'm sorry. Mr. Serra is not here.

7 MR. STAVIS: Your Honor, Mr. Serra is ill. We
8 have had contact with him, and he has asked that I represent
9 Mr. Alvarez, and Mr. Alvarez has consented, although he will
10 consent to that on the record.

11 THE COURT: Is that satisfactory, Mr. Alvarez?

12 DEFENDANT ALVAREZ: Yes, your Honor.

13 THE COURT: Thank you very much.

14 Thank you for pointing that out.

15 MR. McCARTHY: Your Honor, we left off at page 12
16 of 308T, which is what we would start with today.

17 MS. AMSTERDAM: Just for informational purposes,
18 how far are we reading before we call witnesses as to the
19 FISA's?

20 MR. McCARTHY: Just this transcript.

21 MR. FITZGERALD: As to the cassettes?

22 MS. AMSTERDAM: No, I just wanted to -- that's my
23 question.

24 MR. JACOBS: Your Honor?

25 THE COURT: Yes.

1 MR. JACOBS: On these FISA's, obviously the ones
2 with the defendants, there are no objections as to
3 relevancy, but as to FISA's where there are nondefendants, I
4 think we need to have some discussions of whether these are
5 co-conspirators' statements coming in. When we get to
6 those, perhaps we could get a few minutes to review those.

7 MR. FITZGERALD: For scheduling purposes, Judge,
8 I can advise you that we were intending to authenticate the
9 cassettes this morning, but not offer the transcripts until
10 after lunch, because I have had a number of discussions with
11 some defense counsel, so if there are objections that need
12 to be raised, we could save time by doing it after lunch and
13 not doing it this morning. I will just put the cassettes in
14 now.

15 THE COURT: All right. Fine.

16 Which page in 308?

17 MR. McCARTHY: Page 12, your Honor, where it says
18 in the brackets 14 to 21.

19 THE COURT: Right.

20 (Jury present)

21 THE COURT: Good morning, ladies and gentlemen.

22 JURORS: Good morning.

23 THE COURT: When we broke, we were reading from a
24 transcript that's marked 308T. It should be in the books
25 that are in the 300 series. Correction, 300 to 325. It is

1 the volume that is marked 300 to 325.

2 308T is a transcript dated May 19, 1993, and we
3 will pick up on page 12 of that transcript, just after the
4 bracketed entry that says pages 14-21 on page 12 of 308T.

5 MR. McCARTHY: Thank you, your Honor.

6 Mr. Fitzgerald will continue to read the lines
7 attributed to Siddig Ali, and Mr. Khuzami will continue to
8 read the statements attributed to Emad Salem.

9 (Government Exhibit 308T was read to the jury)

10 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, the government calls
2 Dawn Lutz, L-U-T-Z.

3 DAWN LUTZ,
4 called as a witness by the government,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FITZGERALD:

8 Q Could you spell your last name for the record.

9 A L-U-T-Z.

10 Q Would you just keep your voice up and it will
11 help if you speak at the directional microphone. You can
12 cheat a little if you speak up. OK?

13 A OK.

14 Q Ms. Lutz, can you tell the jury what you do for a
15 living?

16 A I am a special agent with the FBI.

17 Q For how long have you been an agent with the FBI?

18 THE COURT: You can't be heard. You will have to
19 lean into that microphone a bit. Thank you.

20 Q How long have you been an agent?

21 A I have been an agent for 11 years.

22 Q Where are you currently assigned?

23 A To the New York office.

24 Q Were you assigned to the New York office in the
25 spring of 1993?

1 A Yes, I was.

2 Q During the spring of 1993, did you play a role in
3 the interception and recording of FISA interceptions?

4 A I was the program manager. I helped to
5 coordinate the lines that came into the system.

6 Q Can you just tell us what happens when a FISA
7 wiretap, when it was intercepted did the signal get split at
8 some point?

9 A The signal is split as it comes into our floor.
10 There are two different pieces of equipment that the signal
11 goes to. There are the Revox reels where the signal is
12 recorded. There is also digital equipment, where the audio
13 signal is stored digitally.

14 Q The Revox reel, is that an ordinary tape system?

15 A Yes, those are 9-inch reels.

16 Q Separate and apart, the signal is also sent to
17 the digital storage system?

18 A Correct.

19 Q What happens to the signal once it goes to the
20 digital storage system?

21 A It is stored on a hard drive temporarily, which
22 gives people access to the audio. It is also permanently
23 archived on 8-millimeter digital tape.

24 Q What is done to the signal itself? Is it
25 converted in any way?

1 A The digital equipment is converted from analog to
2 digital, and that is how it is stored on the 8-millimeter
3 tapes as compared to the reels, where it is never converted.

4 Q So reels store sound as analog and the digital
5 stores digitally?

6 A Correct.

7 Q The digital system, can it be converted back to
8 analog at a later point in time?

9 A Yes, it can. All the 8-millimeter heater tapes
10 that are stored are labeled for system, date and time, and
11 they are able to be reloaded back into the system, converted
12 to analog, and recorded if necessary and reviewed.

13 Q If both systems operate correctly at the same
14 time, you will end up with one tape and at the same time the
15 same tape will be recorded on the digital system as well?

16 A Yes, that is correct.

17 MR. FITZGERALD: Thank you. I have nothing
18 further.

19 THE COURT: Cross? Any cross? You are excused.
20 Thank you very much.

21 MR. FITZGERALD: The government calls Andrea
22 Furman, F-U-R-M-A-N.

23 ANDREA FURMAN,

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 Miss Furman, would you just keep your voice up a
4 little bit more so everyone can hear you. If you lean
5 toward the microphone it gets a little easier.

6 Can you tell the jury what you do for a living?

7 A I am a telecommunications specialist with the
8 FBI.

9 Q For how long have you worked for the FBI?

10 A I will be there 17 years.

11 Q Have you ever testified before?

12 A No.

13 Q In the last week sometime, were you asked to
14 generate 18 cassettes?

15 A Yes, I was.

16 Q Did you generate those cassettes?

17 A Yes.

18 Q Was that from the digital recording system?

19 A Yes.

20 Q Can you just briefly describe what you do to
21 generate the cassettes?

22 A They give me the phone number and the date and
23 the time of the conversation. I load a digital tape into
24 the computer and I make a cassette recording.

25 Q Very good. Let me approach you with 18

1 cassettes. I will borrow your microphone for one second,
2 just to read the numbers into the record. As I read each
3 number I will show you each tape, if you could take a look
4 and see if you recognize each one and I will ask you some
5 questions at the end. Showing you Government's Exhibits
6 733, 735, 736, 737, 741, 742, 752, 753, 756, 758, 764, and
7 770. I will give you a chance to catch up. 772, 773, 774,
8 775, 777, and 793.

9 Have you had a chance to look at each of those
10 cassettes?

11 A Yes.

12 Q Do you recognize them?

13 A Yes, I do.

14 Q If you could keep your voice up a little bit more
15 and just tell the jury how you recognize those cassettes.

16 A I have my initials on them and it is my
17 handwriting.

18 Q Are those the cassettes you generated last week
19 from the digital recording system?

20 A Yes, they are.

21 Q Did you write the phone number of the intercepted
22 line and the date and time of each call on the cassette?

23 A Yes, I did.

24 MR. FITZGERALD: Thank you. I have nothing
25 further, Judge.

1 THE COURT: Cross?

2 MR. JABARA: I have one question.

3 THE COURT: Go ahead.

4 CROSS-EXAMINATION

5 BY MR. JABARA:

6 Q Good morning, Miss Furman.

7 A Hi.

8 Q Ms. Furman, could you tell us how many hours one
9 of these reels contain in FISA wiretaps?

10 A I don't understand.

11 Q These FISA wiretaps are recorded on a reel, is
12 that correct?

13 A No, this doesn't come from a reel.

14 Q Does not come from a reel? What does it come
15 from?

16 A It comes from an 8-millimeter tape.

17 Q 8 millimeter tape, and how many minutes does that
18 tape play?

19 A It could hold 10 days' worth.

20 Q How many? How long?

21 A It could hold probably -- I mean, sometimes they
22 could hold up to 10 days' worth of information.

23 Q How many hours would that be? Would that be 240
24 hours, when you are talking about 10 days?

25 A Sometimes.

1 Q That is as much as it holds?

2 A I mean, I'm not positive, but it could be up to
3 10 days.

4 MR. JABARA: Thank you.

5 THE COURT: Anybody else? Ms. London,
6 representing Mr. Elhassan.

7 CROSS-EXAMINATION

8 BY MS. LONDON:

9 Q Miss Furman, when you were asked to make 18
10 cassettes, you made these from the digital originals, so to
11 speak, is that correct?

12 A Yes.

13 Q Were you instructed which conversations you were
14 to make cassettes of?

15 A Yes.

16 Q Did you identify those conversations by sound or
17 by some kind of written signal in the digital recording? I
18 must confess ignorance on how the process works.

19 A It will come up on the cassette. It will tell
20 you the phone number and date and the time.

21 Q So you relied on the written signal in that
22 digital recording?

23 A Yes.

24 Q What kind of break is there between one recording
25 and the next recording? How do you identify the end of the

1 recording?

2 A You will get like a couple of beeps.

3 Q Beeps on the computer screen?

4 A Yes.

5 Q So when you do these recordings, you are working
6 off of a computer screen, is that right?

7 A Yes.

8 MS. LONDON: I have no further questions.

9 THE COURT: Anyone else? Any redirect?

10 MR. FITZGERALD: Yes, I had one question I forgot
11 to ask.

12 REDIRECT EXAMINATION

13 BY MR. FITZGERALD:

14 Q Ms. Furman, I have placed before you Government's
15 Exhibit 770A. Is that another cassette that you generated,
16 with your initials?

17 A Yes, it is.

18 MR. FITZGERALD: Thank you. Nothing further.

19 THE COURT: Anything else? All right, you are
20 excused, Ms. Furman.

21 (Witness excused)

22 MR. KHUZAMI: The government calls Joseph Cordaro
23 as its next witness.

24 (Continued on next page)

25

1 JOSEPH CORDARO,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 MR. KHUZAMI: May I proceed?

5 THE COURT: Yes.

6 DIRECT EXAMINATION

7 BY MR. KHUZAMI:

8 Q Mr. Cordaro, if you could speak into the
9 microphones a little so everyone can hear you.

10 You have testified previously in this case, is
11 that correct?

12 A Yes.

13 Q And you are a detective with the New York City
14 Police Department?

15 A Correct.

16 Q You have been involved in the investigation of
17 this case?

18 A Yes.

19 MR. KHUZAMI: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q Detective Cordaro, I have placed next to the
22 witness stand what have been marked as Government's Exhibits
23 294A and B and 293E and F, and I ask you to take a quick
24 look at them, please. Do you recognize those?

25 A Yes.

1 Q Without indicating what is in those exhibits, do
2 you recognize the scene that is depicted in them?

3 A Yes.

4 Q Were you involved in taking those photographs?

5 A Yes.

6 Q What was your role?

7 A I supervised the photographer in the aircraft
8 when we took them.

9 Q When were those photographs taken?

10 A Probably late in 1993.

11 Q Do those photographs fairly and accurately depict
12 the scene that you saw when those pictures were taken?

13 A Correct.

14 (Continued on next page)

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1 MR. KHUZAMI: Your Honor, I would move
2 Government's Exhibits 294A and B and 293E and F into
3 evidence.

4 MR. STAVIS: Objection, your Honor.

5 THE COURT: May I see you at the side.

6 (At the side bar)

7 THE COURT: I can tell they are photos but I
8 can't tell of what.

9 MR. STAVIS: Mr. McCarthy has them here.

10 MR. KHUZAMI: They are two aerial photographs of
11 26 Federal Plaza and two of the United Nations. I didn't
12 ask the witness what they were because we have drawn
13 objections from that in the past.

14 MR. STAVIS: Yes. I object to these aerial
15 photographs. I don't think that they relate to anything.
16 If the theory of their admission is that they relate to
17 proposed targets for the bombing conspiracy, I don't see how
18 the aerial nature of the photographs adds anything or absent
19 testimony that they were aerial surveillances by these
20 defendants.

21 MR. KHUZAMI: Your Honor, the evidence in this
22 case shows that the entire buildings were targets. These
23 are pictures of the entire buildings. I think that alone
24 establishes the relevance.

25 THE COURT: I will let them in. I don't think

1 they are terribly prejudicial.

2 MS. AMSTERDAM: As a separate matter, if it would
3 be possible to see myself and my client separately I would
4 appreciate it, in the robing room.

5 THE COURT: Yes.

6 MS. AMSTERDAM: Thank you.

7 (Continued on next page)

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1 THE COURT: All right. The objection is
2 overruled. 294A and B and 293E and F are received.

3 (Government's Exhibits 294A, 294B, 293E and 293F
4 for identification were received in evidence)

5 Q Detective Cordaro, I am going to ask Mr. McCarthy
6 to place the photographs on the easel one by one. I wonder
7 if you might step down and just explain to the jury what is
8 shown in each of the four photographs.

9 (The witness stepped down from the stand)

10 Q Starting with Government Exhibit 294A.

11 A This is the UN building.

12 Q I'm sorry?

13 A The United Nations.

14 Q And 294B.

15 A Again, just a different angle of the United
16 Nations building.

17 Q 293E.

18 A That is 26 Federal Plaza.

19 Q The street that is, as you look at the
20 photograph, just to the left of 26 Federal Plaza, do you
21 know what street that is?

22 A That is Broadway.

23 Q And last, 293F.

24 A A different view of 26 Federal Plaza.

25 MR. KHUZAMI: No further questions.

1 THE COURT: Cross, Mr. Stavis?

2 MR. McCARTHY: Mr. Stavis, do you want these
3 here?

4 MR. STAVIS: Yes, why not?

5 MR. McCARTHY: Why not.

6 CROSS-EXAMINATION

7 BY MR. STAVIS:

8 Q Detective Cordaro, you said that you supervised
9 the photography in these pictures, Government's Exhibits 293
10 and 294?

11 A Yes.

12 Q It was aerial photography did you say?

13 A Yes.

14 Q Was it an airplane or a helicopter that was used?

15 A A helicopter.

16 Q A helicopter?

17 A A helicopter.

18 Q Was it an FBI helicopter?

19 A I don't recall at this time. I go up in many
20 helicopters to do different things. At that time I don't
21 remember.

22 Q Did you go up in the helicopter when these
23 photographs were taken?

24 A Yes.

25 Q What kind of equipment did you have in that

1 helicopter?

2 A I had a camera, 35 millimeter, and also the
3 photographer had his camera.

4 Q Who took the photographs, you or the
5 photographer, or both?

6 A I don't recall. We both took photographs. I
7 don't recall who took these specific photographs.

8 Q What was the date on which these photographs were
9 taken?

10 A I don't recall the date.

11 Q Now, did you order, or, as the supervisor, did
12 you have to order a helicopter on that day to take these
13 photographs?

14 MR. KHUZAMI: Objection.

15 THE COURT: Sustained.

16 Q Where did you go into the helicopter before you
17 took off?

18 A I would have to say probably the Wall Street
19 heliport.

20 Q How many people were in the helicopter that day?

21 A I really don't recall. It's according to whose
22 helicopter it was. Everybody flies different.

23 Q What do you mean by that, "everybody flies
24 different" --

25 A It's an FBI helicopter --

1 Q Please allow me to finish the question --

2 A OK.

3 Q -- before you give the answer.

4 A Go ahead.

5 Q What do you mean by that, that everyone flies
6 differently?

7 A If it is a police department helicopter, they
8 have a pilot and a copilot. If it is an FBI helicopter,
9 they have just one pilot. If it is a Port Authority
10 helicopter, they have two pilots.

11 Q What kind of helicopter did you use on that day?

12 A I don't remember.

13 Q How many photographs did you take from that
14 helicopter?

15 A I couldn't give you the total amount.

16 Q How about an approximation?

17 A Approximate, maybe three rolls, four rolls.

18 Q And how many photographs on a roll?

19 A At least 24.

20 Q And where are the remainder of those photographs?

21 A Probably in a file.

22 Q And how many photographs did the photographer
23 take in that helicopter on that day?

24 A Including that, that's myself and the
25 photographer.

1 Q Three rolls total?

2 A Maybe four rolls.

3 Q Did you have keep a log of the photographs that
4 you were taking on that day?

5 A No.

6 Q Did you file any report with regard to the
7 photographs you were taking on that day?

8 A No.

9 Q What was the name of the photographer in the
10 helicopter on that day?

11 MR. KHUZAMI: Objection.

12 THE COURT: Sustained.

13 Q You were the supervisor of this aerial
14 photography, is that correct?

15 A Yes, it was my job to do it.

16 Q Did you make any notes or any reports regarding
17 what you were doing on that day?

18 A No.

19 MR. STAVIS: I have no further questions, your
20 Honor.

21 THE COURT: Any other cross? Any redirect?

22 I'm sorry. Mr. Jabara, representing Dr. Abdel
23 Rahman.

24 CROSS-EXAMINATION

25 BY MR. JABARA:

1 Q Officer, could you tell us what year it was that
2 you took those photographs?

3 A '93.

4 Q 1993?

5 A Yes, sir.

6 MR. JABARA: Thank you.

7 THE COURT: Anything else?

8 You are excused. Thank you.

9 (Witness excused)

10 MR. McCARTHY: Your Honor, the next thing we
11 would propose to do would be to offer into evidence the
12 transcript 309T and the portions of the tape 309E which are
13 reflected on the transcript.

14 THE COURT: Why don't we take a break first.

15 Ladies and gentlemen, we are going to take a
16 short break. Please leave your notes and other materials
17 behind. Please don't discuss the case, and we will resume
18 shortly.

19 (The jury was excused)

20 (Jury not present)

21 MS. AMSTERDAM: Your Honor, I need to see you in
22 the robing room.

23 THE COURT: OK.

24 (Pages 11418 to 11425 sealed)

25

1 (In open court)

2 MR. WASSERMAN: Your Honor, if I may, Ms. Stewart
3 will cover for me with your Honor's permission. My client
4 will consent. There will just be reading of the
5 transcripts, and I have a matter that I have to take care of
6 related to this case.

7 THE COURT: Mr. Hampton-El, is that satisfactory?

8 DEFENDANT HAMPTON-EL: Yes.

9 THE COURT: Thank you.

10 MR. WASSERMAN: Thank you, your Honor.

11 (Jury present)

12 THE COURT: Mr. McCarthy?

13 MR. McCARTHY: Yes. Thank you, your Honor.

14 At this time, the government offers the portions
15 of the tape that is 309E, which are reflected in the
16 transcript which is 309T, and we propose to read the
17 transcript 309T.

18 THE COURT: Go ahead.

19 MR. McCARTHY: This is a conversation which for
20 counsel's benefit is also known as CM8. It takes place on
21 May 19, 1993. Once again, Mr. Fitzgerald will read the
22 portions of the transcript attributed to Siddig Ali and Mr.
23 Khuzami will read the remarks attributed to Emad Salem.

24 (Government Exhibit 309T was read to the jury)

25 (Continued on next page)

1 MR. McCARTHY: Your Honor, the next conversation
2 we would offer is Government's Exhibit 315T, which is a
3 transcript of the portions of Government's Exhibit 315E,
4 which we offer at this time.

5 THE COURT: 315E and T are received. Go ahead.
6 (Government's Exhibits 315E and 315T received in
7 evidence)

8 MR. McCARTHY: Exhibit 315T is a transcript of
9 portions of a conversation taking place on May 15, 1993.
10 Mr. Khuzami will read the words attributed to Emad Salem, I
11 will read the words attributed to the defendant Omar Abdel
12 Rahman, and Mr. Fitzgerald will read the lines attributed to
13 Siddig Ali.

14 (Government's Exhibit 315T in evidence read to
15 the jury)

16 MR. McCARTHY: May I have a moment, your Honor.
17 Your Honor, at this time the government would
18 offer Government's Exhibit 320T and the portions of the tape
19 320E reflected in 320T.

20 THE COURT: All right.

21 MR. McCARTHY: That is not the next conversation
22 in the book, it is one beyond that.

23 THE COURT: You pass that?

24 MR. McCARTHY: Yes, your Honor.

25 For counsel's benefit, 320 is CM 19.

1 (Government's Exhibits 320E and 320T received in
2 evidence)

3 MR. McCARTHY: Your Honor, Government's Exhibit
4 320T is a conversation that is on May 28, 1993. With
5 respect to the participants, Mr. Khuzami will read the lines
6 attributed to Emad Salem, Mr. Fitzgerald will read the lines
7 attributed to Siddig Ali, Miss Chu will read the lines
8 attributed to Fares Khallafalla, and I will read the lines
9 attributed to Amir Abdelgani.

10 I want to just note for the record that the
11 conversation is picked up in progress, as indicated on page
12 1 of the transcript.

13 (Government's Exhibit 320T in evidence read to
14 the jury)

15 (Continued on next page)

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1 MR. FITZGERALD: Judge, we can break here for
2 lunch if you'd like.

3 THE COURT: All right. Ladies and gentlemen, we
4 are going to break for lunch. Please leave your notes and
5 other materials behind. Please don't discuss the case. I
6 have some issues to talk to the lawyers about, so we may not
7 get started at 2 sharp, but we will try to get started as
8 soon after that as we can.

9 Have a pleasant lunch.

10 (The jury was excused)

11 (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, 2:15

3 (Jury not present)

4 MR. McCARTHY: Your Honor, do you want to take up
5 the matter of scheduling first or the disputed transcripts
6 that will come up this afternoon? Or whatever your Honor --

7 THE COURT: Let's do whatever is necessary for us
8 to go forward.

9 MR. McCARTHY: All right. I have had extensive
10 conversations with a number of the lawyers when we came back
11 today. It is the consensus of both sides that things will
12 go more smoothly if we took off tomorrow rather than
13 Thursday, given where the problem areas are which are coming
14 up pretty fast.

15 THE COURT: All right. Fine.

16 MR. McCARTHY: That is number one. Number two --

17 THE COURT: Can we take part of tomorrow to
18 resolve other matters that are open? I mean, it doesn't
19 have to be devoted exclusively to your meetings, does it?

20 MR. McCARTHY: Whatever --

21 MS. AMSTERDAM: Your Honor, I just would not want
22 to be in a situation -- I know that tomorrow I have to go to
23 the MCC to meet with my client. I don't know what other
24 matters are out there, but if your Honor wants to schedule a
25 conference, I wouldn't want to mislead your Honor into

1 believing that I had a lot of time available tomorrow for
2 that.

3 THE COURT: First off, I am not considering
4 anything that is going to take a lot of time. Secondly, I
5 don't think it relates to matters that concern your client.

6 MR. McCARTHY: The only problem area that I think
7 will come up today is with respect to Government's Exhibit
8 321, which is the combined transcripts of what is CM20 and
9 21. This is the matter related to Mr. Bernstein's client
10 that I mentioned in the letter of Friday.

11 THE COURT: OK. Why don't I hear from
12 Mr. Bernstein.

13 MR. BERNSTEIN: Yes, Judge. I presume the court
14 has copies of from Mr. McCarthy's letter of the few pages
15 involved.

16 THE COURT: I do. Let me ask you: Are you going
17 to argue entrapment?

18 MR. BERNSTEIN: I don't know if we are going to
19 meet the threshold on entrapment. It depends on whether my
20 client testifies or not as to whether entrapment is going to
21 be an issue. It may be that I am not going to be arguing
22 under that framework, and under the circumstances, even
23 under Mr. McCarthy's viewpoint, under 403 I should prevail.
24 It seems to me there is a way of resolving it later on if we
25 get to that point later on.

1 THE COURT: Then it seems to me it would come in
2 under rebuttal.

3 MR. BERNSTEIN: That is my concern. I would
4 withdraw any objection --

5 THE COURT: And it is something that is, in a
6 sense, extraneous to the matter at hand.

7 MR. BERNSTEIN: Yes. Because it's the very end
8 of the conversation.

9 THE COURT: It also relates to a subject apart --

10 MR. BERNSTEIN: It is totally not within the
11 conspiracy.

12 THE COURT: OK. We all agree. That is, you and
13 I agree, and Mr. McCarthy will go along with it.

14 What else?

15 MR. McCARTHY: I think as long as I am winning I
16 will stop.

17 THE COURT: You can proceed to the other matter
18 you raised, which was related to Mr. Nosair, as to which I
19 think you also lose.

20 MR. McCARTHY: OK.

21 THE COURT: Because that, I think, is flat-out
22 hearsay. It is Salem talking to Siddig Ali, correct?

23 MR. McCARTHY: It is Salem talking to Siddig Ali.
24 I don't think it's hearsay at all.

25 THE COURT: How?

1 MR. McCARTHY: It is not offered for the truth.

2 THE COURT: It is offered to show that Siddig Ali
3 heard it?

4 MR. McCARTHY: It is offered to reinstate him
5 with a prior consistent statement.

6 THE COURT: Antidating his motive to falsify?

7 MR. McCARTHY: The point is, that he was
8 cross-examined, number one, quite extensively in fact by
9 Mr. Wasserman about whether in fact he ever mentioned things
10 to Siddig Ali that came up in what we call the first phase
11 of the investigation. There was a considerable amount of
12 cross-examination --

13 THE COURT: That I don't recall, and you are
14 going to have to point me to it. I'm sorry. Go ahead.

15 MR. McCARTHY: But the general theme of the
16 cross-examination, we would submit to your Honor, was that
17 much of Salem's articulation of what happened in what we
18 call the first phase of the investigation was a fabrication.
19 We think it is relevant that he gave a consistent version of
20 that to somebody else who had an independent method or means
21 and opportunity and motive to check out the veracity of what
22 he's saying.

23 THE COURT: Mr. Patel?

24 MR. PATEL: Your Honor, I would just like to
25 point out that as to the last comment Mr. McCarthy made

1 Mr. Ali had no motive to double-check on Mr. Salem and, in
2 fact, as repeated, I believe he says it in this CM, and in
3 another CM --

4 MR. STAVIS: The CM being?

5 MR. PATEL: 29, and one of the ones that was just
6 read, that they should not visit Nosair and they should keep
7 a low profile. So he's essentially denying himself an
8 opportunity to double-check on the veracity of it, and if
9 it's the veracity, then it's being offered for the truth,
10 and it is hearsay, your Honor.

11 THE COURT: The first thing I want to see is a
12 cross-examination -- when I say "see," just tell me the page
13 of the cross-examination upon which you rely to get this in.
14 But, in any event, we are not going to get to that this
15 afternoon, are we?

16 MR. McCARTHY: No.

17 THE COURT: I'm sorry. Mr. Nooter?

18 MR. NOOTER: A little later this afternoon I
19 would like permission to step out and have my associate,
20 Carol Hofstein, sit in for me while I take care of another
21 matter.

22 THE COURT: Is that satisfactory to you,
23 Mr. Saleh.

24 DEFEDANT WAHID SALEH: Yes.

25 THE COURT: Thank you very much.

1 MR. NOOTER: Thank you.

2 (Jury present)

3 THE COURT: Good afternoon, ladies and gentlemen.

4 JURORS: Good afternoon.

5 THE COURT: Just for your scheduling convenience,
6 there are some legal issues that I need to talk to the
7 lawyers about, and, rather than take your time to do it in
8 segments of today and tomorrow, what we think would probably
9 be most efficient is if we do not sit tomorrow, but rather
10 take tomorrow to resolve those.

11 So what I am telling you is we will not sit
12 tomorrow. We will sit again on Thursday. So tomorrow will
13 be a day off -- for you, that is.

14 Mr. McCarthy?

15 MR. McCARTHY: Thank you, your Honor.

16 Your Honor, when we left off before lunch, we
17 were on page 8 of Government's Exhibit 320T.

18 THE COURT: 320T?

19 MR. McCARTHY: Yes.

20 THE COURT: OK.

21 MR. McCARTHY: That is a conversation, May 28,
22 1993. The last attribution on that page to Siddig Ali.

23 MR. FITZGERALD: Beginning with the last
24 paragraph on page 8 of 320T.

25 (Government Exhibit 320T was read to the jury)

1 MR. McCARTHY: Your Honor, the next exhibit we
2 would offer is the transcript which in the book is the one
3 before the last one we read, Government Exhibit 319T, and at
4 this time we would offer the portions of the tape that is
5 319E, which are reflected on the transcript, 319T.

6 THE COURT: All right. That is received.

7 (Government's Exhibit 319E for identification was
8 received in evidence)

9 THE COURT: Go ahead.

10 MR. McCARTHY: Government's Exhibit 319T is the
11 conversation taking place March 27 --

12 THE COURT: May 27.

13 MR. McCARTHY: I'm sorry, your Honor. Between
14 May 27, 1993 at 11 p.m., and May 28, 1993 at 1:11 a.m.

15 Mr. Khuzami will read the attributions to Emad
16 Salem; Mr. Fitzgerald will read the attributions to Siddig
17 Ali; I will read the attributions to Amir Abdelgani; and Ms.
18 Chu will read the attributions to Fares Khallafalla.

19 (Government Exhibit 319T was read to the jury)

20 (Continued on next page)

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1 MR. McCARTHY: The next transcript, your Honor,
2 is Government's Exhibit 321T, and at this time the
3 government offers the portions of the tape that is 321E,
4 which are reflected on the transcript 321T.

5 THE COURT: That is received.

6 (Government's Exhibits 321E and 321T received in
7 evidence)

8 MR. McCARTHY: Government's Exhibit 321T reflects
9 a conversation which takes place on May 29 and 30, 1993.
10 For counsel, it is CM 20 and 21 combined.

11 Mr. Khuzami will read the statements attributed
12 to Emad Salem, Mr. Fitzgerald will read the statements
13 attributed to Mr. Siddig Ali, I will read the statements
14 attributed to Amir Abdelgani, and Miss Chu will read the
15 statements attributed to the police officer and the food
16 attendant.

17 (Government's Exhibit 321T read to the jury)

18 (Continued on next page)

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1 THE COURT: Excuse me. Could you come to a
2 convenient break point in the next five minutes.

3 MR. McCARTHY: Yes. Your Honor.

4 (Reading continued)

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

9 (Recess)

10 (Jury not present)

11 MR. McCARTHY: Your Honor, right around five
12 o'clock? I am just trying to figure out a place to break.

13 THE COURT: Five.

14 (Jury present)

15 THE COURT: OK. We are on Exhibit 321T, page 29.

16 MR. McCARTHY: Thank you, your Honor.

17 THE COURT: Mr. McCarthy?

18 MR. McCARTHY: I will pick up with the second
19 attribution on page 29.

20 (Reading continued)

21 (Continued on next page)

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1 MR. McCARTHY: Your Honor, should we continue?

2 THE COURT: This is a convenient point at which
3 to break? Do you want to break here or do you want to
4 continue?

5 MR. McCARTHY: I would prefer to break here.

6 THE COURT: Ladies and gentlemen, we are going to
7 break here. Please leave your notes and other materials
8 behind. Again, please don't discuss the case or read or
9 hear or see anything about it. Again, we are not going to
10 sit tomorrow. We will sit again on Thursday. See you then.
11 Good night.

12 (Jury excused)

13 THE COURT: Tomorrow I would like to get together
14 in the afternoon with the government and counsel for Mr.
15 Nosair and counsel for Dr. Abdel Rahman. 3:00?

16 MR. STAVIS: Yes, your Honor.

17 MS. STEWART: That is fine.

18 THE COURT: See you then.

19 Miss Stewart, could I see you inside.

20 MS. STEWART: Sure.

21 (Page 11440 sealed)

22 (Proceedings adjourned until 3:00 p.m.,
23 Wednesday, May 31, 1995)

24

25

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,"
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)

May 31, 1995
3:15 p.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

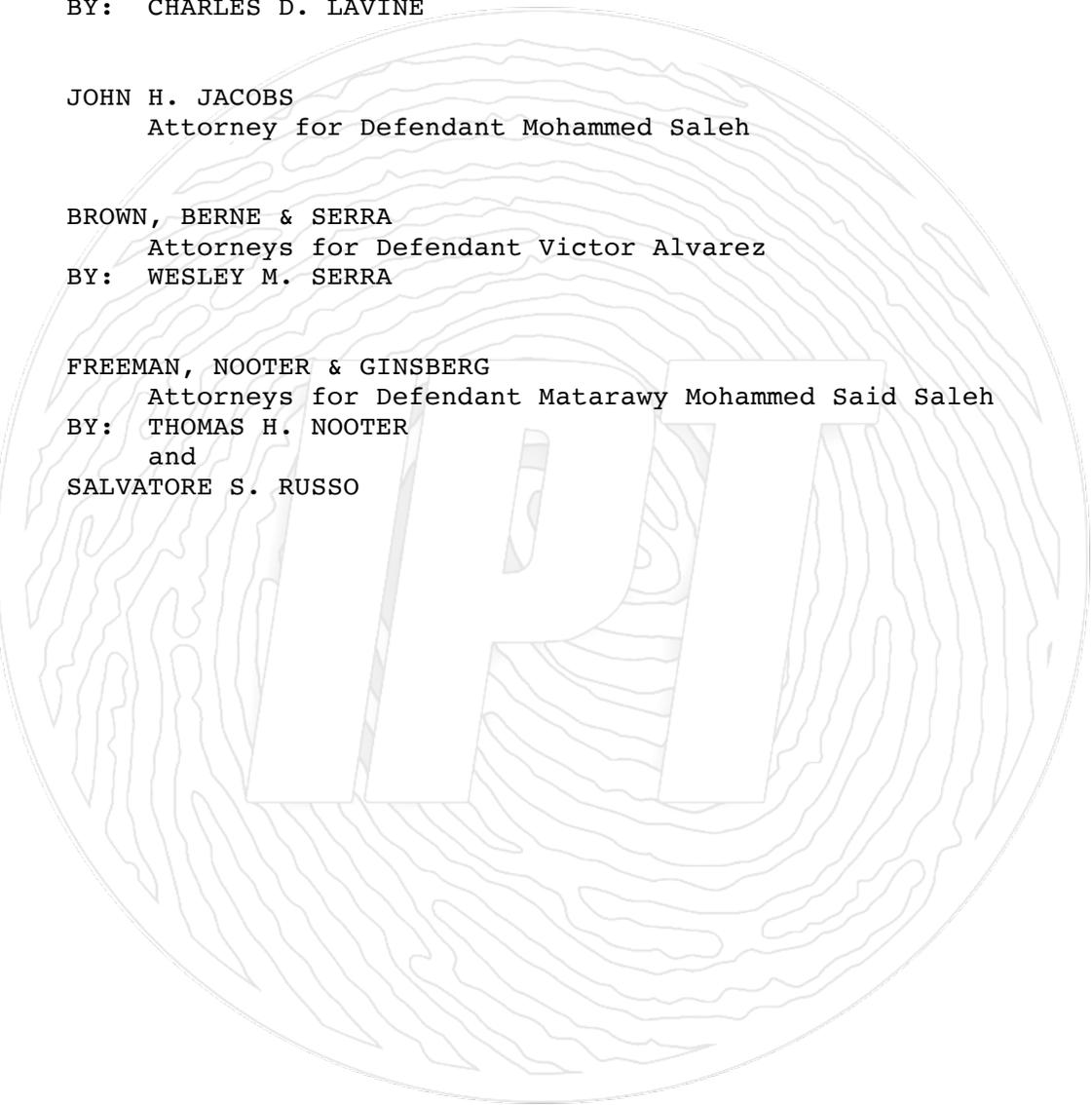
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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

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



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: How are we doing with the
4 transcripts?

5 MR. McCARTHY: We have a serious dispute about
6 the English tape recording CM 25.

7 THE COURT: CM 25?

8 MR. McCARTHY: Yes, your Honor. It is a
9 conversation at the Rogers Avenue location among Salem,
10 Siddig Ali and Hampton-El.

11 THE COURT: When is that supposed to be played?

12 MR. McCARTHY: Tomorrow.

13 THE COURT: Do you have the tape?

14 MR. McCARTHY: The tape is here.

15 THE COURT: How do you propose that we resolve
16 it?

17 MR. McCARTHY: I don't know that we can resolve
18 it without having argument before the court.

19 THE COURT: The question is, do I look at the
20 competing transcripts, listen to the tape and resolve it, or
21 is it a jury issue, or what?

22 MR. McCARTHY: I think for the moment --

23 THE COURT: I don't think you are plugged in. I
24 can hear you. It's not a problem.

25 MR. McCARTHY: The problem, I guess, is the

1 following. Whether we could or could not work out some kind
2 of joint transcript or at least narrow whatever the disputes
3 are between now and Monday is something I am not at all sure
4 we could do anyway. It is important to us, we think, in our
5 proof to get to this conversation in fairly chronological
6 order since many of the conversations that occur after it
7 refer back to it. Mr. Wasserman is currently going through
8 the recording with his client, and they are going through
9 the transcript that we gave them last week. He, as I
10 understand it, and he can speak to this better than I can,
11 needs considerably more time with his client in order to
12 prepare what he would, as I understand it, propose as a
13 counter-transcript.

14 What I proposed to do was to put Detective
15 Corrigan, who prepared the government's transcript, on the
16 witness stand and authenticate the transcript that way, with
17 the, I imagine, usual instruction from the court that
18 because this is an English conversation rather than an
19 Arabic conversation, that what the jury hears controls and
20 that the transcript is simply an aid and doesn't have any
21 more evidentiary value than that.

22 I don't think that procedure is going to be one
23 that Mr. Wasserman finds acceptable, so I think the place
24 where we are is, if we are going to proceed on a schedule
25 that the government wants to proceed on, we will have to do

1 it the way I have described, and I think Mr. Wasserman has,
2 as I understand it, some pretty severe objections to that.

3 MR. WASSERMAN: Good afternoon, your Honor. Your
4 Honor, let me try to separate them into two issues, one in
5 terms of having the comments ready on the government's
6 transcript. The government's transcript was very
7 substantially revised again last week. They had had our
8 transcript, we had theirs, and then they came up with
9 something that had a lot of new stuff. The new stuff
10 evidently came from listening to the original Nagra, which I
11 have been doing with my client. Yesterday we had an hour
12 and 15 minutes and today we worked --

13 THE COURT: How long a tape is it?

14 MR. WASSERMAN: It is about two hours and change.
15 It is about an 80-page transcript. There are numerous
16 difficult-to-make-out passages and we are proceeding slowly.
17 We are at page 55 now. It is not endless. I am in a
18 position to turn over to the government pages 1 through 39
19 or 40 in terms of red-line, what we claim are significant
20 areas in terms of what should be taken out and what should
21 be inserted.

22 I would think based on conversations with the
23 marshals that we could have a couple of hours after today's
24 conference, a couple of hours, perhaps, tomorrow morning
25 before court. Hopefully that would narrow the gap where at

1 most there would be an hour or two left to finish up the
2 transcript and possibly finish at that time. Then my
3 proposal would be that I can get to Mr. McCarthy tomorrow a
4 red-lined version so that he could easily track the changes,
5 and then we could resolve whether they accept the changes we
6 are making and we would be able to narrow for the court's
7 decision, which I believe is required in contesting the
8 accuracy of a transcript, which may end up with your Honor
9 allowing both versions to go to the jury.

10 The government has a scheduling problem and I
11 understand that from conversation with Mr. McCarthy. I have
12 a severe fairness problem in terms of being able to comment
13 on the government's transcript, which I consider to be
14 substantially inaccurate in numerous places. If they want
15 to play the tape, I have no objection. It is the transcript
16 that is the rub, because you have a conversation that is
17 both long, tedious and difficult to make out, and you are
18 going to have a transcript that the jury will be relying on
19 and which is a suggestive tool as to what the jury will be
20 hearing.

21 My understanding is that your Honor has to look
22 over the proposed corrections, and I believe case law allows
23 for both versions to go before the jury in the disputed
24 areas.

25 THE COURT: If case law allows both versions to

1 go to the jury in the disputed areas, what is my function?

2 MR. WASSERMAN: I think the function is, there
3 are certain areas where the government is wildly inaccurate.
4 There is no reason, if I am claiming in good faith that they
5 are inaccurate, for them to be presented to the jury in any
6 form.

7 THE COURT: So my function is to keep their
8 version out and not yours?

9 MR. WASSERMAN: Your Honor, that would presuppose
10 that I am submitting for the jury's consideration or want
11 you to pass upon inaccuracies and let it go before the jury.
12 That is not what I am suggesting. I think the case law
13 provides for the court to review the claimed inaccuracies by
14 the defense of the government transcript.

15 THE COURT: Let's say I agree with them and not
16 with you. What happens?

17 MR. WASSERMAN: I am stuck.

18 THE COURT: With my determination?

19 MR. WASSERMAN: If you rule as a matter of law
20 that no reasonable juror could interpret it or hear it my
21 way, I am stuck. But I think that the case law allows for a
22 reasonable approach that if it is questionable, both
23 versions on a particular passage would go before the jury.

24 THE COURT: So I have to review the transcript to
25 determine whether it is clearly their way, clearly your way,

1 or reasonably your way, right? That is your reading of the
2 law?

3 MR. WASSERMAN: I think before you get to the
4 three steps the first step -- before there is a transcript
5 there is a government transcript. I am claiming that there
6 are inaccuracies in that transcript. Before I have any
7 counter-transcripts to the jury, I am simply saying those
8 inaccuracies should be taken out of the government
9 transcript. It should really not be complicated. It is
10 that the transcript being very powerful should not go before
11 the jury with inaccuracies in it.

12 THE COURT: When you say inaccuracies, what you
13 are saying is that the tape is inaudible in some places,
14 where they have provided text. Is that it?

15 MR. WASSERMAN: I am saying that inaudible is a
16 very elastic word. You can hear some things in some places,
17 some in another. I am not saying you can hear it one way or
18 another. I believe it is only one way and that the
19 government's way is incorrect and that to have it go before
20 the jury -- if I may add one thing, the machine that we are
21 using --

22 THE COURT: I keep trying to ask simple questions
23 and I keep getting complicated answers. Let me recap. As I
24 understand it, after you finish whatever you are doing, my
25 job is to listen to the tape and decide whether it is their

1 way, your way, I guess the third possibility is neither way,
2 or fairly your way or their way, and if it is fairly your
3 way or their way, to put those presumably limited number of
4 passages simultaneously before the jury. Right?

5 MR. WASSERMAN: I think that is a fair and
6 accurate recap.

7 THE COURT: Good. Do you agree?

8 MR. McCARTHY: No. I don't know what case he is
9 relying on. I asked Mr. Wasserman for the authority for
10 that proposition. He gave me the name for one case, which
11 if I am remembering it right is an audibility case. I am
12 not saying it doesn't exist, which is why I asked the
13 question a couple of minutes ago, but I certainly don't know
14 of any case which calls for that procedure.

15 MR. WASSERMAN: U.S. v. Chiarizao,
16 C-H-I-A-R-I-Z-A-O, reads at page 293: "This court has
17 explicitly held that the submission of transcript or tape
18 recordings is not permitted when one side objects to the
19 content of the transcript as inaccurate. Before either tape
20 or transcripts are submitted to the jury, the judge should
21 listen to the tapes and examine transcripts, reviewing both
22 sides' objections to the proposed evidence," citing United
23 States versus Briant.

24 THE COURT: Which court decided the case you just
25 read?

1 MR. WASSERMAN: Second Circuit.

2 THE COURT: Sounds persuasive to me.

3 MR. McCARTHY: I would like to read the case.

4 THE COURT: I would like to read the case, too,
5 but failing that -- have you got a citation?

6 MR. WASSERMAN: Yes, Judge. Chiarizao is 525
7 F.2d 289.

8 THE COURT: At page?

9 MR. WASSERMAN: The page I read, Judge, was 293.

10 THE COURT: That doesn't sound unreasonable. I
11 am obviously not going to be able to do that until you
12 finish, right?

13 MR. WASSERMAN: Right, and I hope that Mr.
14 McCarthy and I -- I would imagine we would get together with
15 the government so that what is presented to your Honor is
16 really focused in terms of the areas under dispute.

17 THE COURT: When tomorrow did you plan to get to
18 that tape?

19 MR. McCARTHY: Late morning, early afternoon.

20 THE COURT: Is there anything else at all that
21 you would be, in an ideal world, inclined to do?

22 MR. McCARTHY: I would like to take, if I may, a
23 little bit of time --

24 THE COURT: To think about it.

25 MR. McCARTHY: Yes.

1 THE COURT: Part of the reason I am being so
2 casual actually relates to something I should have asked Mr.
3 Patel about, and that is Mr. Serra.

4 MR. PATEL: Your Honor, I have not spoken with
5 Mr. Serra today. I did speak to him yesterday and he is
6 very ill. In addition to having a strep infection that did
7 not respond to the first antibiotic, he also has a viral
8 infection and has been on numerous medications. He has not
9 been able to eat for several days. He is not well. Whether
10 he will be here tomorrow -- when I spoke to him last night
11 he was greatly relieved not to be here today because he
12 couldn't have made it.

13 THE COURT: Does he have to come tomorrow?

14 MR. PATEL: There are some photographs that the
15 government intended to produce somewhere along the line.

16 THE COURT: Still photographs?

17 MR. PATEL: Still photographs. Those do in some
18 way relate to his client.

19 THE COURT: They will withhold that. Tell him
20 not to come. When I say tell him not to come, obviously, if
21 he feels --

22 MR. PATEL: He is not barred from the courtroom,
23 I understand.

24 THE COURT: Correct, but obviously all of this is
25 subject to his client's willingness to proceed in his

1 absence on the understanding that no evidence relating to
2 him is going to be offered until Mr. Serra is here.

3 MR. PATEL: Mr. Alvarez has been cooperative on
4 that issue.

5 THE COURT: I know, but that at times is a moment
6 to moment thing.

7 MR. McCARTHY: Can we have about 15 or 20
8 minutes, Judge?

9 THE COURT: Sure. This instant?

10 MR. McCARTHY: Yes, so I can better advise you
11 about where we are going.

12 THE COURT: Sure, do that, and we can deal with a
13 grabbag of evidentiary topics.

14 (Recess)

15 MR. PATEL: Your Honor, during the break I spoke
16 to Mr. Serra. He will be here tomorrow.

17 THE COURT: Why?

18 MR. PATEL: He is only taking two forms of
19 medication and --

20 THE COURT: No. He really feels up to coming
21 tomorrow?

22 MR. PATEL: He feels much -- I will call him back
23 and explain his options to him.

24 THE COURT: That is fine. You tell him we do not
25 live in a country where you get a vacation on the Black Sea

1 for doing this.

2 MR. McCARTHY: Yes, your Honor. We think we have
3 enough to proceed taking a number of the CM's out of order
4 and then marshaling the few things that we have around CM 25
5 that relate directly to it, present it as a block together
6 next week.

7 THE COURT: Fine.

8 MR. McCARTHY: What I ask is some latitude, when
9 we get to the point of telling the jury the dates of the
10 transcripts that they are hearing, making it known to them
11 in some way that we are taking some out of order, so that
12 when we come back, when we go back to May 30 on Monday, that
13 the jury understands that this is not a progression, that we
14 are actually stepping back in time a little bit.

15 THE COURT: You know the proof, I don't. If we
16 have to break somewhat early, I would prefer to break
17 somewhat early than do something that is incomprehensible.

18 MR. McCARTHY: It is not incomprehensible, your
19 Honor. I don't want to cause confusion. I think there is a
20 difference between that and -- if I really thought it were
21 incomprehensible, I would ask your Honor not to go.

22 THE COURT: All right. 163R. I was told to go
23 back and read Mr. Stavis' opening, which I did, and it
24 includes the following points: first, that Mr. Nosair has
25 taken an oath as a citizen; that he has no axe to grind with

1 the United States; that in fact he was working for the City
2 of New York in the justice system; that the concept of jihad
3 is itself entirely consistent with U.S. policy, coincides
4 with U.S. policy, witness Afghanistan. Those are points at
5 pages 1644, 1645, 1651, 1652.

6 At pages 1655 to 1659 Mr. Stavis made the point
7 that as far as Mr. Nosair is concerned, there is no jihad in
8 America, that it is in Palestine, not here. On page 1666,
9 1667 and 1675, he makes the point that in essence Mr. Nosair
10 has an alibi, he has been in prison, that is not a place
11 where you can set up or recruit an army or do anything of
12 that kind.

13 Evaluating 163R against that, I think a good deal
14 of it is admissible. However, I question what you have
15 included, Mr. McCarthy, at the bottom of page 1 --

16 MR. McCARTHY: Yes, your Honor.

17 THE COURT: The "fighting the Jews" argument?

18 MR. McCARTHY: Yes, your Honor.

19 THE COURT: What does that do?

20 MR. McCARTHY: Is this the double-spaced version?

21 THE COURT: It is the double-spaced version,
22 163R.

23 MR. McCARTHY: Your Honor, our argument is at
24 least twofold. Number one, Mr. Stavis argued to the jury in
25 the opening that Mr. Nosair was present at the Marriott

1 Hotel the evening of the homicide, watching the speech,
2 because he had an intellectual curiosity about it.

3 (Continued on next page)

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1 THE COURT: In other words, this is the Kahane
2 incident itself?

3 MR. McCARTHY: You mean, is that a description
4 of --

5 THE COURT: No, that it relates to that?

6 MR. McCARTHY: It relates to that in part, and I
7 think also it relates in part to the argument that jihad is
8 not something for people to be concerned about, certainly in
9 the way that Mr. Nosair and his co-conspirators practiced
10 it. We think it is relevant in the jury's consideration
11 both of the case and of that argument that was made to them.
12 That is, that this is a completely innocent, nonbelligerent
13 jihad. They ought to be able to hear the counterpoint.

14 THE COURT: I don't know that he said it was
15 nonbelligerent. He said it was belligerent -- well, he
16 didn't say it was belligerent either, but by implication.
17 To the extent it's belligerent, it's belligerent someplace
18 else, not here; that was the thrust I thought of his
19 opening.

20 MR. McCARTHY: I don't think he said that. I
21 mean, I think a rational and fair interpretation of what Mr.
22 Stavis argued about the concept of jihad itself, I
23 acknowledge that he said something in his opening about
24 telling the jury that Mr. Nosair cared very deeply about
25 Palestine and had views about that that they may find

1 unusual, but that they should keep in mind that Palestine is
2 over there and not over here. Where he addressed jihad my
3 recollection is that he did not tie jihad to the argument
4 about Palestine.

5 MR. STAVIS: Your Honor, if your Honor has my
6 opening statement, you will --

7 THE COURT: I do.

8 MR. STAVIS: -- see I did state specifically that
9 jihad is also in Palestine. I reviewed my opening after the
10 issue was raised about a week or so ago, your Honor.

11 MR. McCARTHY: I am referring to the part that
12 says, at page 1649: "Jihad does not mean terrorism. It's
13 part of Sayyid Nosair's religion. It's part of Islam, and
14 it is not something to fear. If it was meant terrorism,
15 there wouldn't be a jihad office on Atlantic Avenue. This
16 was out in the open. These were people practicing their
17 religion."

18 MR. STAVIS: May I?

19 MR. McCARTHY: I think, your Honor, our stronger
20 argument, and the one that I would stress is that he did not
21 need to -- I mean, I think your Honor has our point that we
22 think it is admissible regardless of what Mr. Stavis argued.
23 But leaving that on the side, Mr. Stavis was under no
24 obligation to make an affirmative innocent argument about
25 Mr. Nosair's presence at the Marriott Hotel on the evening

1 of November 5, 1990. However, having done so, he's placed
2 the state of mind with respect to that event at issue.

3 I think these are words of his expressing his
4 sentiments which the jury ought to hear in response to
5 what's been argued to them by Mr. Stavis.

6 MR. STAVIS: First of all, your Honor, I was
7 under an obligation to address Mr. Nosair's presence in the
8 Marriott Hotel. The reason being there was a written
9 statement that we had a suppression hearing concerning.
10 Your Honor, had the government said they were not going to
11 use the written statement prior to trial, I wouldn't have
12 had to explain that.

13 THE COURT: You didn't have to give an opening at
14 all. So the fact that you gave one and made certain points
15 makes anything in response to it fair comment. What are you
16 going to say?

17 MR. STAVIS: On page 1656 of the record, at line
18 17, your Honor, I stated to the jury that: "Sayyid Nosair
19 sees a jihad in Palestine. He sees Muslims under attack.
20 He sees Muslims killed. He sees Muslims having their houses
21 bulldozed, Muslims having to carry identification cards.
22 But when you hear this evidence, ladies and gentlemen,
23 remember that that jihad is on the other side of the world,
24 also." So I addressed jihad in Palestine in my opening.

25 THE COURT: I know. I am simply talking about

1 the full paragraph at the bottom of page 1.

2 MR. STAVIS: I think under a 403 analysis, which
3 is what I had asked your Honor earlier --

4 THE COURT: Right.

5 MR. STAVIS: -- "We are from the east side of the
6 river, they are from the west side of the river." That is
7 the paragraph. "We will kill all of the Jews." I think
8 it's a very inflammatory statement, and I think and I submit
9 to the court that if it is at all relevant it is of minimal
10 relevance when compared to the prejudice that will inure to
11 my client from the reading of that.

12 THE COURT: That paragraph is out. The rest,
13 however, is in.

14 MR. McCARTHY: May I just ask one question.

15 THE COURT: Sure.

16 MR. McCARTHY: I assume that Mr. Stavis is not
17 going to make an argument to the jury that there is no
18 evidence that Mr. Nosair had sufficient animus that he would
19 participate in a conspiracy that contemplated indiscriminate
20 mass murder. If he is going to make such an argument -- I
21 would ask your Honor to ask him if he intends to make that
22 kind of an argument.

23 THE COURT: I am not going to ask him because I
24 doubt that he's gotten that far in planning his summation.
25 I will tell everybody that you can't argue the nonexistence

1 of evidence that's been excluded that you know could have
2 been offered but wasn't. That relates to Mr. Stavis, and it
3 relates to every other defendant in this case. I will cut
4 anything like that off. If it is bad enough, I will
5 entertain a motion to reopen. I have never done that, but
6 it's not to say I wouldn't.

7 MR. RICCO: Your Honor, before you move away from
8 this exhibit --

9 THE COURT: Yes.

10 MR. RICCO: -- the exhibit is entitled
11 "El-Gabrowny Audiotape 69," and I would ask that that
12 document not be entitled "El-Gabrowny Audiotape 69."

13 THE COURT: How did it get that title?

14 MR. McCARTHY: We thought it was catchy,
15 actually.

16 (Laughter)

17 MR. STAVIS: Ms. Amsterdam is laughing, but it
18 was going to be named "Khallafalla Audiotape 69."

19 MR. McCARTHY: Your Honor, we will take that out.

20 THE COURT: Let's just call it "Audiotape."

21 MR. McCARTHY: It is a tape that we seized from
22 Mr. El-Gabrowny's home, and we will argue that for whatever
23 it is worth.

24 THE COURT: Fine. But let's not have that title.

25 MR. McCARTHY: Yes.

1 THE COURT: Thank you.

2 OK. Moving along. The metal ring, do you want
3 to be heard further, Mr. Patel? Do you have the
4 government's letter?

5 MR. PATEL: I did get the government's letter.
6 Not just now, your Honor. I may want to come back to that
7 at some later point, but I have to do a little bit of
8 research on that.

9 THE COURT: Government Exhibit 327, that is CM29.
10 I said quickly, well, I thought that was hearsay and
11 excludable.

12 I have a couple of questions thinking about it a
13 little bit. First of all -- and I realize the government
14 was supposed to provide me with additional material and they
15 may -- but did Salem testify to the underlying facts that he
16 is telling Siddig Ali in this segment that you object to?
17 He purports to describe what happened up at Attica in his
18 conversation with Mr. Nosair, is that right?

19 MR. McCARTHY: The conversation actually, your
20 Honor, is a description of a number of things that he did in
21 fact testify to. I think there's the conversations with
22 Nosair up at Attica, the trip back, Ali Shinawy, getting the
23 gun, seeing Mr. El-Gabrownny about detonators. I believe
24 there may be -- off the top of my head I'm not positive of
25 this although maybe Mr. Ricco knows -- I think there is a

1 reference to the conversation about the relative merits of
2 timers versus remote detonators, which Mr. Salem also
3 testified about.

4 MR. PATEL: Mr. McCarthy is correct. CM29 refers
5 to an accumulation of various conversations that Mr. Salem
6 had --

7 THE COURT: That he testified to here?

8 MR. PATEL: Yes.

9 THE COURT: Right?

10 MR. PATEL: I believe so.

11 THE COURT: He says they happened. He told the
12 jury they happened, right?

13 MR. PATEL: I believe so, your Honor.

14 THE COURT: You crossed him on it, or Mr. Stavis
15 crossed him on it?

16 MR. PATEL: Yes.

17 THE COURT: Somebody crossed him on it.

18 Certainly there was an opportunity to cross him on it.

19 MR. PATEL: I'm sorry, Judge. I'm having a lot
20 of trouble hearing you.

21 THE COURT: Certainly there was an opportunity to
22 cross-examine him about it?

23 MR. PATEL: That's correct.

24 THE COURT: In view of the fact that there is
25 already his assertion in the record that the fact existed,

1 that the conversation with Mr. Nosair took place, that
2 certain other conversations took place, what's the real
3 prejudice from having a conversation with Siddig Ali in
4 which he says essentially the same thing?

5 MR. PATEL: OK. First of all, your Honor, it is
6 an accumulation and repetition of what we objected to
7 originally as being hearsay. This tape in my opinion is
8 classic hearsay. It is an out-of-court statement being used
9 to prove that those conversations and those acts occurred.
10 There is no relevance to the fact that Mr. Salem said this
11 to Mr. Siddig Ali.

12 THE COURT: Other than the fact, I guess, that
13 Siddig Ali, for example, had contact with Mr. El-Gabrowny.
14 And I think the record reflects that, doesn't it?

15 MR. PATEL: Yes.

16 THE COURT: I mean, among other things they went
17 up together.

18 MR. PATEL: No, your Honor. They did not go up
19 together. It is a different Mr. El-Gabrowny.

20 THE COURT: I am sorry.

21 MR. PATEL: It's Ali El-Gabrowny, brother of
22 Ibrahim El-Gabrowny.

23 MR. RICCO: You are correct, your Honor, that
24 there is contact between Siddig Ali and Ibrahim El-Gabrowny.

25 THE COURT: All right.

1 MR. PATEL: Your Honor, the point being that why
2 can't the government be permitted to argue that Salem would
3 not have told these things to Siddig Ali unless they were
4 true, because Siddig Ali could easily have talked to any one
5 of a number of people, including Mr. El-Gabrowny, and if he
6 had found any dissonance between what Salem was saying and
7 what happened, Salem would have been exposed.

8 First of all, there is no proof that Siddig did
9 discuss these things with anyone outside of Emad's presence,
10 Mr. Salem's presence.

11 THE COURT: That is not the point. The point is
12 that he could have.

13 MR. PATEL: Your Honor, just one more point: The
14 proof is that Siddig on a number of occasions said that they
15 should not visit Mr. Nosair because he had a high profile.
16 That is in CM20 and CM19.

17 THE COURT: He said that to whom?

18 MR. PATEL: To Emad Salem.

19 THE COURT: Let's assume that. What about
20 El-Gabrowny?

21 MR. STAVIS: El-Gabrowny was in jail at the time
22 of the May 21 Attica meeting with Siddig Ali, your Honor.

23 MR. PATEL: Mr. Ricco just indicated to me that
24 Emad also says to stay away from the people who are in jail,
25 so that Mr. Siddig Ali could not have confirmed this with

1 El-Gabrownny, Ibrahim El-Gabrownny.

2 MR. McCARTHY: Your Honor, there is evidence in
3 the record from Haggag that Siddig Ali in fact did check out
4 Salem's bona fides with Mr. Shinawy, who was another person
5 that gets referred to in the conversation. I am not looking
6 to undo our argument for why it comes in. I would agree
7 with Mr. Patel this far: I don't think it can come in under
8 any analysis where it comes in because of what gets propped
9 up by a finding that it is not prejudicial. I think it
10 either has to be admissible under the hearsay rules or
11 admissible as nonhearsay for some relevant purpose.

12 THE COURT: Right.

13 MR. McCARTHY: Where I part company with Mr.
14 Patel --

15 THE COURT: The question about prejudice was
16 simply addressed to the question of whether the jury, not
17 having heard it before, would be more likely to consider it
18 for the truth than otherwise.

19 That's not a problem. But the hearsay objection
20 is remaining.

21 MR. McCARTHY: I do think that there are two
22 alternative bases why it comes in. Number one, it comes in
23 because it is a prior consistent statement which goes to a
24 statement that, or a body of testimony at least that he was
25 cross-examined on thoroughly.

1 THE COURT: A prior consistent statement in order
2 to be admissible as a prior consistent statement has to
3 antedate his motive to falsify, correct?

4 MR. McCARTHY: I think, your Honor, there is a
5 difference between whether it comes in strictly under the
6 hearsay rules as substantive evidence under the hearsay
7 exception for prior consistent statements and whether it
8 comes in as nonhearsay to rehabilitate somebody who has been
9 impeached with this suggestion that his testimony before the
10 jury is a fabrication.

11 THE COURT: I don't think the implication is that
12 it is a recent fabrication.

13 MR. PATEL: Exactly, your Honor.

14 THE COURT: That is number one.

15 Number two, he knew, did he not, that the
16 conversation was being recorded?

17 MR. McCARTHY: He knew that the conversation was
18 being recorded, and he also knew that he was speaking with
19 somebody who had the means and a good reason to
20 independently verify what he was saying. Which is to say,
21 that his motive not to fabricate under the circumstances is
22 far stronger than any motive he did have to fabricate. At
23 the time that he made the statements, no arrests had been
24 made, no charges had been brought. There was no reason to
25 concoct --

1 THE COURT: Did he have any reason to believe
2 that there was otherwise a record of what had happened at
3 Attica?

4 MR. PATEL: That was available to Mr. Siddig Ali?

5 THE COURT: Pardon.

6 MR. PATEL: That was available to Siddig Ali,
7 your Honor?

8 THE COURT: No. Record, period.

9 MR. STAVIS: Your Honor, in reviewing the 302s,
10 these fabrications are not recent fabrications. Having
11 cross-examined Mr. Salem, they were contemporaneous
12 fabrications. The record is replete about FBI reports
13 indicating Mr. Salem at the time telling Agent Anticev,
14 Agent Napoli and Agent Floyd what happened after the Attica
15 visit, after the first Attica visit, after the second Attica
16 visit, and after the third Attica visit.

17 There was a record, and the bootleg tapes
18 demonstrate that, too, because he's tape recording --

19 THE COURT: That is not my question.

20 MR. McCARTHY: Is your Honor asking -- I mean,
21 there are obviously visiting records from Attica which show
22 that he was there. There were other people who were present
23 who Siddig Ali could have gotten a version of what had
24 happened from. There were other people --

25 THE COURT: The other people who were present

1 were?

2 MR. McCARTHY: Ali Shinawy on one occasion and
3 Tarig Kattaria on another. And I believe --

4 MR. STAVIS: Mohammed El-Gabrowny.

5 MR. McCARTHY: Mohammed El-Gabrowny, right, on
6 another.

7 MR. STAVIS: And Ali El-Gabrowny.

8 MR. McCARTHY: That was the '93 trip. We are
9 talking about the '92 trips.

10 Plus, I mean, there are other things. If we were
11 just to talk about the Nosair visits, that is one thing, but
12 there are other things that come up in this conversation
13 between Salem and Siddig Ali as to whom there were numerous
14 people who were in the loop of what had happened, including,
15 I believe, the description of what happened at the time that
16 the FBI served subpoenas on people and brought them in,
17 which was the event that we contend distanced Salem from the
18 community of people that he was dealing with at the time.

19 That was in September of '92. But there is
20 discussion between Salem and Siddig Ali about that.

21 THE COURT: Right.

22 MR. McCARTHY: There were some 20 people who were
23 subpoenaed at that time. There are a massive number of
24 people and a massive --

25 THE COURT: Maybe I should get from Mr. Patel

1 more specifically, and from anybody else the pages that you
2 object to in this transcript.

3 MR. PATEL: I hesitate, your Honor, only because
4 I think right now here I have two versions.

5 Your Honor asked a reasonable question and it's
6 somewhat difficult to answer it. The reason being that
7 there are sections of the conversation that I find
8 objectionable, and then there are places, there are breaks
9 where there are sections of the conversation where I feel I
10 don't have grounds to object. So it's not that one can go
11 from page 7, where it starts, to, I believe it's page 13. I
12 believe a redacted version of this transcript could be
13 prepared that retained the sense of the conversation.

14 THE COURT: You mean that was not complete
15 gibberish?

16 MR. PATEL: I'm sorry, your Honor?

17 THE COURT: That is not complete gibberish.

18 MR. PATEL: Exactly, your Honor.

19 THE COURT: When did you plan to present this?

20 MR. McCARTHY: May I have a moment, your Honor.

21 (Pause)

22 MR. McCARTHY: Your Honor, my hesitation is this:
23 Some of the stuff got moved up because CM25 got moved back.
24 We had thought we were not going to get to it until Monday.
25 It actually probably comes up tomorrow.

1 MR. PATEL: Your Honor is looking to me. I'm not
2 quite sure --

3 THE COURT: What I was looking to you for was
4 when you would propose which parts you want out?

5 MR. PATEL: Oh, if the government could get me a
6 copy of this on a disk, I can give it back to them first
7 thing in the morning, Judge.

8 THE COURT: Can't you just do it by hand?

9 MR. PATEL: I could. Probably the most efficient
10 thing is for me to sit down with them.

11 THE COURT: Pardon?

12 MR. PATEL: Yes. I mean, we could do this,
13 Judge, I'm sure.

14 THE COURT: Fine.

15 Why don't you do it by hand, and send them a
16 Xerox copy and me a Xerox copy, OK?

17 MR. PATEL: Yes, Judge.

18 THE COURT: The last thing I wanted to talk about
19 was a question that actually Mr. Jacobs had raised, but was
20 really in part at least Mr. Stewart's issue, and that is the
21 sermons and whether they are or aren't in furtherance and
22 whether that is a decision that I have to make.

23 MR. McCARTHY: I think we should assume that it
24 is a decision that you have to make. I think that they were
25 offered and received without qualification at the time that

1 they came in. I think, however, now that the issue has been
2 raised and there certainly isn't any harm, I mean, I can't
3 contend to you that we are prejudiced because this is raised
4 after we've read all the conversations, since what we are
5 talking about, I guess, is a limiting instruction to the
6 jury about the use of evidence. So I think we should assume
7 that you have to make a determination.

8 My argument to your Honor is that these are
9 statements in furtherance of the conspiracy for a variety of
10 reasons. Without having particular ones in front of me, I
11 will try to characterize them in a more sweeping fashion
12 than I otherwise would. But these are statements which in
13 our view are defining components of the agreement that's
14 charged in the indictment, particularly given the role of
15 the person who makes them. They are statements that are
16 made with the intent that the statements be disseminated.
17 They are statements that are obviously made in a way that
18 shows they were intended to be communicated to other people.

19 THE COURT: What evidence do you have that they
20 were communicated to anybody on trial?

21 MR. McCARTHY: If I may, I don't think that is a
22 necessary component to your decision. I mean, they have to
23 be statements in furtherance of the conspiracy. They don't
24 necessarily have to be received or have their intended
25 effect.

1 They have to be statements that are made by a
2 person in the conspiracy during the course and in
3 furtherance of the conspiracy. They don't have to be
4 received by a co-conspirator in order to be admissible as
5 co-conspirator's statements. They have to be made by the
6 person who is making them as a member of the conspiracy
7 intended to further the conspiracy. They don't necessarily
8 have to have that result.

9 THE COURT: The statements appear on tapes that,
10 as I recall it, were found in a variety of places. I don't
11 know whether any of them have any --

12 MS. STEWART: Provenance?

13 THE COURT: There may be some without any at all.
14 But there were a number, for example, I believe that were
15 seized in a search of the --

16 MR. McCARTHY: Elmasry.

17 THE COURT: -- Elmasry's house.

18 MR. McCARTHY: They come from essentially three
19 places. I think they come from Dr. Abdel Rahman's home,
20 from Elmasry's home, and we have some from Haggag. Those
21 are the main three sources.

22 THE COURT: OK.

23 MR. McCARTHY: Haggag bought some from the sheik
24 also. I mean, that is in the record, and that's at least
25 some evidence tending to show that he intended to

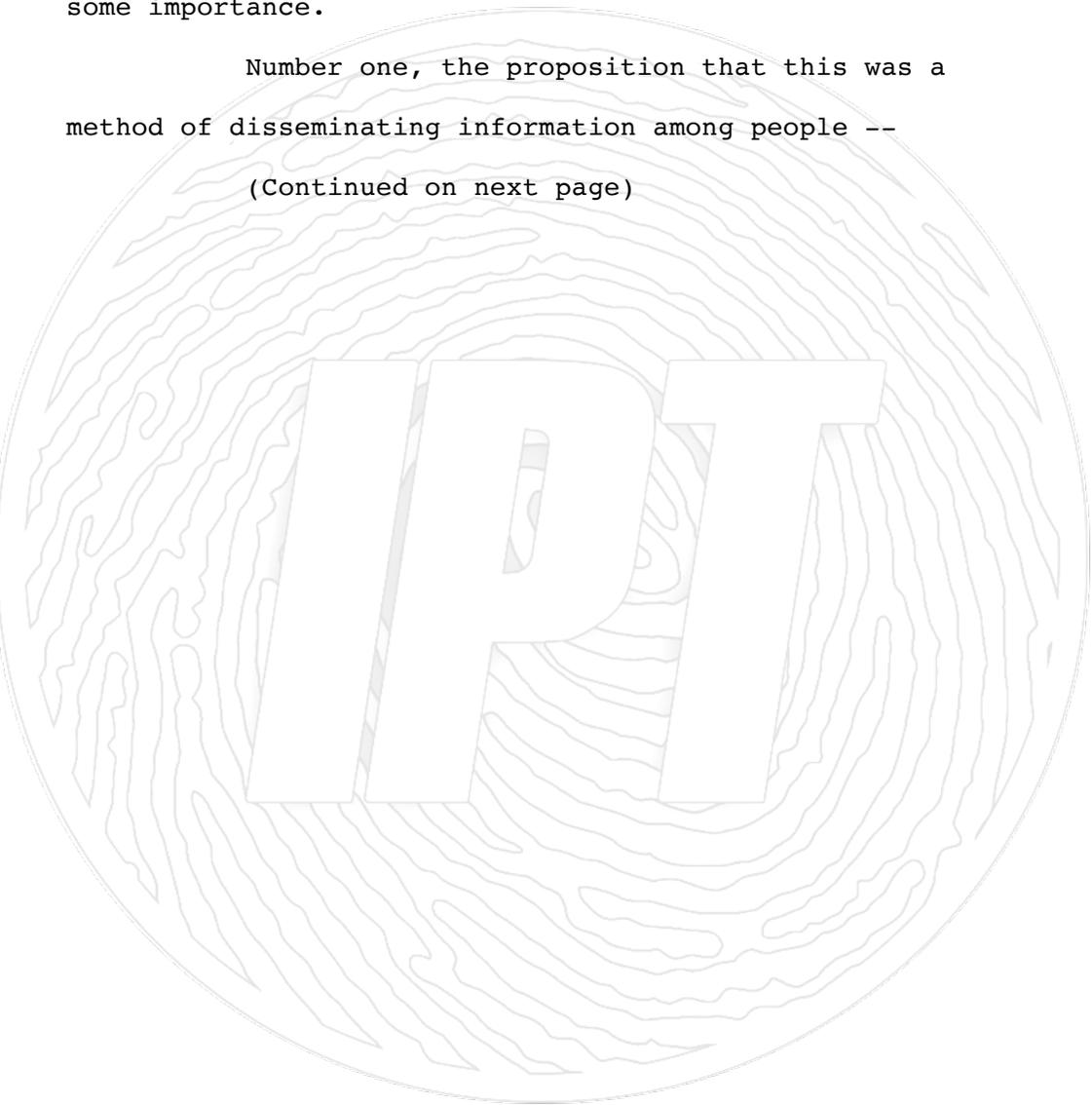
1 disseminate these kinds of statements.

2 Your Honor, I think that there is a lot of
3 evidence in the record for two propositions which may be of
4 some importance.

5 Number one, the proposition that this was a
6 method of disseminating information among people --

7 (Continued on next page)

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1 THE COURT: This being tapes?

2 MR. McCARTHY: Yes, tape recording statements and
3 disseminating. There was a good deal of evidence that a
4 number of the people in the conspiracy memorialized things
5 on tape and actually disseminated information on tape. The
6 sheik did it, Nosair did it, Abouhalima did it. I mean,
7 there are tape recordings throughout the case and it can
8 certainly be argued that this was a method of communicating
9 information. The fact that Dr. Abdel Rahman -- there is
10 evidence in the record, which I don't think was actually
11 disputed on cross -- actually did sell and disseminate these
12 things himself is additional evidence, I would contend, of
13 the obvious, that these things were memorialized for a
14 reason, and that that reason was to get the word out.

15 The second proposition I think there is evidence
16 in the record that supports is that the sentiments
17 particularly about jihad from Dr. Abdel Rahman were a matter
18 of extreme importance to a number of people in this
19 conspiracy. There is evidence in the record certainly that
20 Siddig Ali felt that way, that Nosair felt that way, that
21 Abouhalima felt that way, and a number of others as well.

22 I think taking those two things in conjunction
23 and also considering, as you are allowed to do under
24 Bourjaily, the substance of the statements themselves, which
25 we would contend do, to find many of the parameters of the

1 organization and the operating principles of it, there is
2 sufficient evidence from which to conclude that Dr. Abdel
3 Rahman is a member of the conspiracy, that these are
4 statements that were made with the intent that they be
5 communicated to others including other members of the
6 conspiracy, and that members of the conspiracy did take
7 direction from Dr. Abdel Rahman.

8 THE COURT: He has to know, doesn't he, that an
9 agreement being a two-way street, that what he says is
10 important to people who hear it, because otherwise it seems
11 to me that if he simply gets up and espouses a point of
12 view, which he has a right to do, even a violent point of
13 view, as he has a right to do, and other people act on it
14 without any agreement, then whatever you think of it or
15 whatever I think of it is not conspiracy.

16 MR. McCARTHY: Right. But if, on the other hand,
17 there is evidence from which a rational person could find
18 that there is an agreement, if there is evidence of people
19 speaking to him on the telephone and asking him things like,
20 do you have any orders for us, which is a repeated refrain
21 in many of his FISA conversations, if you have evidence
22 where it is clear that people will not undertake actions
23 without his, whether you call it fatwa or approval or
24 imprimatur or whatever the right word for it is, I think
25 that takes the situation out of what your Honor describes

1 and into something else.

2 I also think that in order to get a statement in
3 as a coconspirator statement, we don't have to win the point
4 on agreement first and then get the evidence that shows the
5 agreement in later. I think this is all evidence from which
6 the jury is called on at the end to decide whether there is
7 an agreement or there isn't one.

8 THE COURT: This is unlike the usual
9 coconspirator debate in the sense that we are not talking
10 about some statement that would otherwise be hearsay, that
11 is admitted against a particular defendant because it shows
12 what that defendant did or didn't do, but that comes in
13 because it is a statement in furtherance. All we are
14 talking about here is the question of whether I do or don't
15 give a limiting instruction, correct?

16 To put it another way, I don't have to make a --
17 I do have to make a finding about whether a rational jury
18 could consider it in furtherance but I certainly would not
19 ever instruct this jury, any more than I would instruct any
20 other, that it was admitted for that reason. That is up to
21 the lawyers to argue.

22 MR. McCARTHY: No, I think that is right. I
23 think the question is whether your Honor limits what we can
24 use it for. It isn't whether you tell them that they get to
25 use it for everything.

1 MS. AMSTERDAM: Your Honor, I think that Mr.
2 McCarthy is really using a very broad brush stroke here in
3 terms of all the various tapings. There may be some
4 argument, for example, in a situation where Sheik Rahman
5 sold or distributed a cassette of a particular sermon that
6 maybe for argument's sake one could rationally find that
7 that was intended to be a furtherance of the conspiracy.
8 However, tapes that are kept at his home which may be
9 nothing more than the verbal diaries of a blind man, with no
10 further showing that they were intended to be distributed, I
11 do not think can be treated the same way. If it were a
12 diary situation, we really would kind of step back and we
13 would say is this something that this man is writing down so
14 that he can remember his thoughts or is this something that
15 he wants other people to hear and perhaps further. Here you
16 have someone who is blind and may make recordings in lieu of
17 a diary, and I do think that the ones in his homes have to
18 be analyzed differently.

19 THE COURT: I am not so sure they do. It depends
20 in substantial part on their content. There was nothing
21 that was introduced into evidence, certainly, that suggests
22 a diary in the sense of what happened on day one or two or
23 three. It is all preachment.

24 MS. AMSTERDAM: Thomas Jefferson wrote reams
25 about his concept of democracy which were regarded as his

1 personal papers. I do not think necessarily those could be
2 viewed as statements intended to further some conspiracy. I
3 mean, this man may have his personal recordings of his
4 personal political and religious beliefs, but by no means in
5 the absence of some other showing can we vault forward and
6 say these statements were obviously intended to be in
7 furtherance of the conspiracy.

8 THE COURT: Sure, you can. It depends, number
9 one, on the nature of the statements, and, number two, on
10 what else you have. If you have identical statements or
11 statements of similar import being distributed, it seems a
12 fair inference that he intended the ones that he had to be
13 distributed.

14 MS. AMSTERDAM: I agree with that. I say rather
15 than being a broad brush there have to be specific findings
16 of individual tapes. If you have an individual tape in the
17 sheik's home where there are no duplicates, no showing that
18 it was ever published, I think that falls in a very
19 different category.

20 MR. McCARTHY: I would disagree for a number of
21 reasons. Number one, most of the tapes themselves actually
22 capture public statements. They are not in the nature of
23 somebody sitting around a house memorializing something that
24 is akin to a diary. Most of them actually are public
25 statements. Secondly, I think your Honor's point that you

1 look at the content of it and see is a correct one. Diaries
2 have certain particular characteristics that statements that
3 are made intended for dissemination don't, and I think that
4 looking at the four corners of the statement --

5 THE COURT: It is not just the four corners of
6 the statements. It is other statements that you have. What
7 I am saying is, for example, if the tapes at Mr. Elmasry's
8 house or the tapes that Mr. Haggag bought were of a certain
9 kind, and you have the same kind or what is arguably the
10 same kind at the defendant's home, then it seems to me there
11 is a fair inference to be drawn that that was intended for
12 distribution as well.

13 MS. AMSTERDAM: Your Honor, I just want to place
14 this in context so that your Honor is aware of all the
15 facts. I think there probably are three to five defendants
16 in this case who not only never met the sheik before being
17 arrested but arguably never attended a sermon of the sheik's
18 and these statements, if you were to accept the government's
19 theory these statements will come in as coconspirator
20 statements of someone who actually never heard them, never
21 met him, never attended a lecture.

22 THE COURT: Sure. There are people fixing the
23 tracks up in the Bronx who never met the director of the
24 Metropolitan Transit Authority, but if you conceive of the
25 subway system as a conspiracy, they are all working for the

1 same conspiracy.

2 MS. AMSTERDAM: I just want to say to your Honor
3 that this is a close issue, and I bring that to the court's
4 attention because there is no factual basis to say that all
5 of these people were in some way on the distribution train
6 here, distribution subway train, were buying these videos,
7 listening to these audios, or in any way desirous of getting
8 those particular lectures. I know that is not a fact that
9 legally tips it, but in a close situation I want your Honor
10 to be aware of that in terms of balancing out what an
11 appropriate limiting instruction may or may not be.

12 THE COURT: I am aware of that. All I am saying
13 is that I don't know that the government has to show that
14 everybody was on the distribution list actually or
15 potentially, or indeed that there was a conventional
16 distribution list. But I will be interested in whatever
17 else you can get for me by the time it is time for me to
18 instruct on that, which is going to be sooner rather than
19 later, I assume.

20 That exhausts my list. I will deal with whatever
21 else you want to deal with.

22 Nothing, OK. Thank you.

23 (Proceedings adjourned until 9:30 a.m., Thursday,
24 June 1, 1995.

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