

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA,

5 v.

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

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

16 IBRAHIM A. EL-GABROWNY,

17 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)

18 a/k/a "Abdul Rashid Abdullah,"
19 a/k/a "Abdel Rashid,"
20 a/k/a "Doctor Rashid,"

21 AMIR ABDELGANI,
22 a/k/a "Abu Zaid,"
23 a/k/a "Abdou Zaid,"

24 FARES KHALLAFALLA,
25 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
June 1, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge
and a Jury

APPEARANCES

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United States Attorney for the
Southern District of New York

BY: ANDREW McCARTHY

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1 (Trial resumed; jury not present)

2 MS. AMSTERDAM: Your Honor, may I put one minor
3 thing on the record, housekeeping?

4 THE COURT: Yes.

5 MS. AMSTERDAM: I have a personal matter to
6 attend to, and I am going to leave at about 20 after 12
7 today. I may be slightly late getting back after 2. My
8 client has consented to have Mr. Lavine cover for me in my
9 absence.

10 THE COURT: Is that satisfactory,
11 Mr. Khallafalla? Yes?

12 DEFENDANT KHALLAFALLA: Yes.

13 THE COURT: Thank you very much.

14 May I see Mr. Wasserman at the side.

15 (At the side bar)

16 THE COURT: This has to do with scheduling your
17 review of the tape. You said you needed another six hours?

18 MR. WASSERMAN: No, I think hopefully we can get
19 it done between two and four hours. That is basically --

20 THE COURT: What I am going to do is break at
21 3:30 today. I would like you to try to finish it this
22 evening if you can. That is, after court.

23 MR. WASSERMAN: OK, I would like to, too, truly.

24 THE COURT: If you can't, maybe you can slop over
25 an hour tomorrow beginning at about noon. There is a

1 scheduling problem with the marshals because there is a
2 rotation of people flying out and so forth, but that will be
3 the accommodation. OK?

4 MR. WASSERMAN: OK. That's fine.

5 THE COURT: Thank you.

6 MR. WASSERMAN: Thank you very much.

7 MR. MCCARTHY: While Mr. Wasserman is here, may I
8 just take one second. I just want to alert you, I think
9 after the morning break we will get to a CM that
10 Mr. Bernstein has an objection to that we are going to need
11 a ruling on from your Honor. We won't get to it until after
12 the break.

13 THE COURT: Also, I will tell everybody, but I am
14 going to break at 3:30 today because of a scheduling problem
15 relating to his review of the tape.

16 (In open court)

17 THE COURT: We are going to break today at 3:30
18 because of a scheduling problem.

19 Mr. Serra, good to see you back.

20 MR. SERRA: Thank you, your Honor. It is good to
21 be back. Virtually anything beats lying in bed for six
22 days. Not meaning to be a left-handed compliment, Judge.

23 MR. FITZGERALD: Wait until we start reading
24 transcripts.

25 THE COURT: Off the record.

1 (Discussion off the record)

2 MR. SERRA: Your Honor, Mr. Khuzami just advised
3 me that the government intends to introduce exhibits this
4 morning to which I and several other counsel have an
5 objection. Since I haven't been here the last couple of
6 court days, I don't have exhibits numbers, but they are
7 eight-by-ten photos of 26 Federal Plaza.

8 Does the court have copies of these?

9 THE COURT: I should tell you that in your
10 absence, a large photo, an aerial photo of 26 Federal Plaza
11 was admitted.

12 MR. SERRA: Not the aerial photo, your Honor. I
13 am not talking about the aerial photo.

14 THE COURT: All right. So it is not the fact
15 that it is a photo of 26 Federal Plaza, but rather something
16 about the photo?

17 MR. SERRA: It is something about the photo.

18 Your Honor, I don't have Government Exhibit
19 numbers on these, but I take it the court now has them. If
20 I could briefly draw the court's attention to two of these
21 four in particular.

22 THE COURT: The jury is about to come out.

23 MR. SERRA: I'm sorry, your Honor?

24 THE COURT: I said the jury is about to come out.
25 Is this going to happen before the break?

1 MR. KHUZAMI: I believe so, your Honor.

2 THE COURT: Keep going.

3 MR. SERRA: Your Honor, if I could draw the
4 court's attention to two in particular. On one of those two
5 the most significant feature is the Duane Street sign.

6 THE COURT: Right.

7 MR. SERRA: That picture is clearly of 26 Federal
8 Plaza, but it not only shows the guard tower with the
9 entrance, which I assume is the probative value that the
10 government wishes to paint, but it also shows the playground
11 for the Fed Kids day care center.

12 THE COURT: Wait a second.

13 MR. SERRA: The Duane Street sign, your Honor, is
14 what I am talking about.

15 THE COURT: Right.

16 MR. SERRA: I have no quarrel with the government
17 wanting to show entrances to the garage and the guard tower
18 and so forth. But that picture shows clearly the Fed Kids
19 day care center playground in the background. That really
20 isn't necessary to satisfy any legitimate interest the
21 government has in this.

22 MR. KHUZAMI: Your Honor, about all due respect,
23 I think that is hardly glaring, perhaps not even
24 recognizable as a playground. There are no children there,
25 and the point of that angle being taken was to be able to

1 capture the Duane Street sign, the guard tower, and the
2 street.

3 MR. SERRA: Your Honor, we will stipulate that
4 that is Duane Street. If the government wants to establish
5 that the street outside a particular guard tower entrance is
6 Duane Street, we will stipulate to it. That is easy.

7 MR. KHUZAMI: Your Honor, if they are willing to
8 stipulate, that is fine. But I just don't think that there
9 is prejudice.

10 THE COURT: I don't think there's glaring
11 prejudice either. But I suppose if somebody were to examine
12 this in very close detail -- and they would have to examine
13 it in very close detail to perceive that there are play
14 items in there. I mean, the only thing that gives that away
15 is the fact that they are colored yellow. There are some
16 structures colored yellow that I guess are play item, and
17 you know what that is and I know what it is. I don't know
18 that the jury would know what it is. But, in any event,
19 since there's been a stipulation offered -- the exhibit with
20 the Duane Street sign, that is the one you are talking
21 about, correct?

22 MR. SERRA: Yes. Your Honor, that is the one I
23 am talking about.

24 THE COURT: Then that is out.

25 MR. SERRA: The other one which I at least object

1 to is one which was taken from Broadway toward Centre
2 Street, showing the corner of the Court of International
3 Trade, and also showing this courthouse in the background.

4 Again, if the government wants to show the guard
5 tower and the entrance, they are entitled to do that. There
6 are certainly conversations in which Siddig Ali discusses
7 it. But there is no need to reemphasize to the jurors that
8 one of the alleged targets is something that is a hundred
9 yards from where the jurors sit.

10 Once again, it's simply that the picture includes
11 material which is not necessary for whatever the government
12 wants to prove and is prejudicial. All you need to do, your
13 Honor, for this particular picture is to cut off the
14 courthouse.

15 MR. KHUZAMI: Your Honor, there was testimony in
16 one of the CM's that was read I believe earlier, part of 20,
17 21, where Emad Salem and Siddig are discussing the target,
18 and they indicate that it is not the building where
19 Ibrahim's trial was held, but was the other one.

20 Second of all, this shows Duane Street. It shows
21 the building. It shows the guard tower, and it shows the
22 beginning portions of the ramp where the --

23 THE COURT: I don't think locating it
24 geographically is -- everybody knows where Duane Street is.
25 I don't see the prejudice.

1 MR. SERRA: Your Honor, with the suggestion of
2 simply cropping the picture to remove the courthouse, how
3 does that affect what Mr. Khuzami just said was the
4 probative value? I have no problem with the rest of the
5 picture, just remove the courthouse.

6 MR. KHUZAMI: Again, as with the playground, I
7 just don't see the substantial prejudice here from the
8 picture. It is a target that the defendants chose and
9 discussed, and it is where it is.

10 MR. SERRA: Your Honor, even if there isn't
11 substantial prejudice, there is no reduction in the
12 probative value by removing the courthouse, none whatsoever.

13 THE COURT: I am not going to delay the proof in
14 order have the government produce a bowdlerized copy of this
15 thing.

16 MR. SERRA: Your Honor, a pair of scissors is all
17 that is necessary.

18 MR. KHUZAMI: They are all in the jurors' binders
19 as well.

20 THE COURT: I am not going to hold this up for
21 that. It's too remote. It's been testified to. Everybody
22 knows where it is. The objection is overrules.

23 Let's go.

24 MR. JABARA: Your Honor?

25 THE COURT: Yes.

1 MR. JABARA: With regard to the third photograph,
2 we would have an objection to the photograph that contains a
3 Ryder truck that is in the picture. Ryder trucks have
4 become associated with --

5 MR. McCARTHY: We will stipulate that that is not
6 the one that blew up.

7 MR. JABARA: Also, my understanding is that this,
8 the photograph is of Worth Street rather than Thomas, where
9 I think the testimony was that --

10 THE COURT: There is nothing on Thomas Street.
11 It's the other entrance to 26 Federal Plaza.

12 MR. JABARA: In any case, I would object to the
13 photograph on the basis of the Ryder truck.

14 THE COURT: The objection is overruled. Let's
15 go.

16 MR. McCARTHY: Your Honor, for the court and
17 counsel, we will be resuming 321T at page 60 of the
18 transcript, almost halfway down the page with the
19 attribution to Mr. Salem that begins, "OK, Sheik."

20 It is Government's Exhibit 321T, which is the
21 combined CM20 and 21 transcript, page 60, about halfway down
22 the page starting with the attribution to Salem, "OK,
23 Sheik."

24 (Jury present)

25 THE COURT: Good morning, ladies and gentlemen.

1 JURORS: Good morning, your Honor.

2 THE COURT: I'm sorry for the false alarm a
3 minute ago, but we were involved in a discussion that I
4 thought would end sooner than it did. Obviously, it went
5 longer. In any event, I'm glad you're here.

6 Mr. McCarthy?

7 MR. McCARTHY: Yes, your Honor.

8 Your Honor, we'll be resuming the reading of
9 Government's Exhibit 321T.

10 THE COURT: 321T at page 60?

11 MR. McCARTHY: Yes, your Honor.

12 THE COURT: Tab 321T, at page 60.

13 MR. McCARTHY: Your Honor, again, this is a
14 conversation that took place May 29 to 30, 1993. Mr.
15 Khuzami will continue to read the attributions to Mr. Salem;
16 Mr. Fitzgerald will read the attributions to Mr. Siddig Ali;
17 and I will read the attributions to Mr. Amir Abdelgani.

18 We're picking up at page 60, almost halfway down
19 the page with the attribution to Mr. Salem that begins, "OK,
20 Sheik."

21 (Government Exhibit 321 was read to the jury)

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1 MR. McCARTHY: Your Honor, at this point we skip
2 over to page 85, the attribution to Mr. Siddig Ali at the
3 middle of the page, which begins unintelligible, this is the
4 thing itself, on page 85.

5 THE COURT: Skip over to page 85, in the middle
6 of the page. Go ahead.

7 (Reading continued)

8 MR. SERRA: Your Honor, may Mr. Khuzami and I
9 approach the side bar for a moment.

10 (At the side bar)

11 MR. SERRA: Your Honor, during the reading of the
12 transcript Mr. Khuzami was good enough to send me a note
13 bringing to my attention that the picture that the court
14 just excluded is in the jury's binders. I don't know if you
15 want to take a break now and remove it. That is probably
16 the way I would suggest proceeding.

17 MR. KHUZAMI: Your Honor, Mr. Fitzgerald is
18 prepared to go ahead with another witness and we can do him
19 and remove them at the next break.

20 MR. SERRA: Fine.

21 (In open court)

22 MR. FITZGERALD: Your Honor, the government calls
23 Gamal Abdel-Hafiz.

24 If I could have a moment with Mr. Jacobs, your
25 Honor.

1 THE COURT: Yes.

2 GAMAL ABDEL-HAFIZ,

3 called as a witness by the government,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FITZGERALD:

7 Q Good morning, Mr. Abdel-Hafiz.

8 A Good morning, sir.

9 Q Is it fair to say that you are still employed as
10 an interpreter for the FBI?

11 A Yes?

12 A Yes, sir, I am.

13 Q I have placed before you a number of tape
14 exhibits and I will read the numbers into the record.
15 Government's Exhibits 733, 735, 736, 737, 741, 742, 752,
16 753, 756, 758, 764, 770, and 770A as in apple, 772, 773,
17 774, 775, and finally 793.

18 Mr. Abdel-Hafiz --

19 A I believe you mentioned 764?

20 Q If I didn't, I should have. 764.

21 A I am not seeing 764 here.

22 Q Thank you. Have you had a chance to look at
23 those exhibits as I have read off the numbers?

24 A Yes, sir.

25 Q Do you recognize those exhibits?

1 A Yes, sir.

2 Q How do you recognize each of the exhibits?

3 A With my initial on it.

4 Q Have you listened to each of those cassettes?

5 A Yes, sir, I have.

6 Q I have also placed before you on your left two
7 stacks of documents, and I will read those numbers into the
8 record. The first is 733T, 735T, 736T, 737T, 754T, 752T,
9 753T, 758T, 770T, 773T, 774T, 775T, and 793T. Is that
10 correct, sir?

11 A And there is 777.

12 Q You can put that to the side. Thank you. The
13 stack that I just read to you, are those items translations
14 from Arabic into English of conversations that appear in the
15 corresponding tapes?

16 A Yes, sir, it is.

17 Q Did you review those translations?

18 A Yes, sir, I have.

19 Q Are each of those translations fair and accurate
20 translations of the conversations appearing on the tapes
21 with the corresponding numbers?

22 A Yes, sir.

23 Q For item 770, there is a voice attribution to the
24 name Tarig Elhassan.

25 A Yes, sir.

1 Q In making that attribution, did you rely upon
2 information about what someone else testified to about the
3 voice in the courtroom?

4 A Yes, sir.

5 Q Did you listen to the 770 and 770A, the two
6 different cassettes?

7 A Yes, sir, I did.

8 Q Are they the same conversation recorded on the
9 two different cassettes?

10 A They are the same conversations.

11 MR. FITZGERALD: Your Honor, subject to some
12 relevance objections that I think we need to raise at the
13 side bar as to specific items, and one technical
14 typographical change that Mr. Jacobs pointed out to me, we
15 would be offering them subject to connection, with those
16 translations.

17 MS. LONDON: Mr. Fitzgerald is offering --

18 MR. FITZGERALD: The identified transcripts, the
19 T series.

20 THE COURT: T series, subject to relevance
21 objections and an unspecified technical typographical error.

22 MR. JACOBS: Your Honor, we have some objections.

23 MR. FITZGERALD: We can deal with those later.

24 MR. LAVINE: Could I have one second, your Honor?

25 THE COURT: Sure.

1 Subject to those, they are received.

2 (Government's Exhibits 733T, 735T, 736T, 737T,
3 754T, 752T, 753T, 758T, 770T, 773T, 774T, 775T, and 793T
4 received in evidence)

5 Q Mr. Abdel-Hafiz, if you could look at the other
6 stack of documents, which should be 741T, 757T, 764T and
7 772T.

8 A Yes, sir.

9 Q Are those transcriptions of telephone calls that
10 took place in English?

11 A Yes, sir, they are.

12 Q Did you review those transcripts of those
13 telephone conversations that took place in English?

14 A Yes, sir, I have.

15 Q Are those items fair and accurate transcriptions
16 of what was said during those telephone conversations?

17 A Yes, sir, they are.

18 MR. FITZGERALD: Thank you. Nothing further,
19 Judge.

20 THE COURT: Cross? Ms. London, representing
21 Mr. Elhassan, go ahead.

22 CROSS-EXAMINATION

23 BY MS. LONDON:

24 Q Good morning, Mr. Abdel-Hafiz.

25 A Good morning, ma'am.

1 Q Do you have the transcripts in front of you, sir?

2 A Yes, ma'am.

3 Q I would ask you to direct your attention to
4 Government's Exhibit 770T.

5 A Yes, ma'am.

6 Q It is your testimony, is it not, that you did not
7 make the voice identifications for this transcript?

8 A I have relied on other tapes that was identified
9 by somebody else.

10 Q Do you know who made the identifications?

11 A Yes, I am aware of it now. I was told this
12 morning.

13 Q Is that Mr. Haggag?

14 A Yes, ma'am.

15 Q Did you have a conversation with Mr. Haggag about
16 the voice identification?

17 A No, I have not.

18 Q This is a telephone call to Mr. Ali, isn't that
19 correct?

20 A Yes, ma'am, it is.

21 Q In the second attribution on that page, which is
22 the attributed to Mr. Elhassan, the words are "it's for me,
23 Siddig." That is how you translate, correct?

24 A Yes.

25 Q It is fair to say that is a literal translation,

1 isn't it? That is a very literal translation?

2 A I don't know what you mean by, quote, a literal
3 translation.

4 (Continued on next page)

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1 Q It is a word-by-word translation as opposed to
2 giving the actual sense of what's being said, correct?

3 A That is the best way to translate this particular
4 sentence.

5 Q But, in fact, in English, as a speaker making a
6 telephone call, an English speaker would be more likely to
7 say, "It's me who's making the call. It's me, Siddig,"
8 isn't that correct, as opposed to what you've translated,
9 "It's for me, Siddig," correct?

10 A Yes. But he said, "It's for me, Siddig."

11 Q Do you recall the words that he used when he said
12 "for me?"

13 A Yes.

14 Q What are those?

15 A He said, "Alashani ana, Siddig."

16 Q And the "ana" part is "me," correct?

17 A Ana means me.

18 Q Right.

19 THE COURT: Excuse me "ana" is A-N-A?

20 THE WITNESS: A-N-A.

21 THE COURT: Go ahead.

22 Q I am sorry.

23 What was the word he used as "for"?

24 A "Alashani," A-L-A-S-H-A-N-I, "alashani."

25 Q He didn't use the word "lei," meaning "for"?

1 A I don't recall.

2 Q If in fact the word "lei," I would say
3 transcribed as L-E-I were used --

4 A If it's for lei, it means, "It's for me." "Lei
5 alashani," it's for me. They are both the same.

6 Q Continuing down that page to the ninth
7 attribution, which, again, is attributed to Mr. Elhassan,
8 saying, "I'm sorry," you have translated words in there that
9 say, "Pay attention."

10 Do you see that translation?

11 A Yes.

12 Q That is, again, a literal translation of what you
13 heard, isn't that correct?

14 A Yes.

15 Q But, in fact, the sense of those words in that
16 context where the speaker is saying: "I'm sorry. I don't
17 have change. Pay attention. That's why I called you
18 collect," the sense is rather: "I'm sorry. I don't have
19 change, you know," or, "you know what I mean. That's why I
20 called you collect." It's a more casual sense than the
21 strong "pay attention."

22 A Well, I'm trying to avoid to use anything other
23 than what the person said. These are the words he said.

24 Q And would you agree with me that the sense of
25 those words he said is something casual, like, "You know,"

1 or, "You know what I mean"?

2 A Yes. That's a fact.

3 Q In the line below that attributed to Mr. Ali, you
4 have translated something as, "Man, don't worry, man."

5 A Yes.

6 Q Would it be fair to say that that is the Sudanese
7 word "zol"?

8 A "Zol," yes.

9 Q Z-O-L?

10 A Yes. But he did not call him "zol." He called
11 him "ragul."

12 Q Directing your attention to page 2, around the
13 middle of the page, or just about the middle in the longest
14 attribution on that page attributed here to Mr. Elhassan,
15 you translate a segment that talks about, "Those guys said.
16 I told them."

17 A Yes.

18 Q Is it your testimony that you explicitly heard
19 him, the speaker, referring to more than one person, "guys"
20 in the plural, "them" in the plural?

21 A Yes.

22 MS. LONDON: I have no further questions.

23 THE COURT: Anyone else? Any redirect?

24 MR. FITZGERALD: Just one, Judge.

25 THE COURT: Yes.

1 MR. FITZGERALD: If it wasn't clear, I meant to
2 offer 775T as one of the Arabic transcripts into English.
3 There was some confusion. But if that is in there, then I
4 have nothing else to ask.

5 THE COURT: All right.

6 MR. FITZGERALD: Mr. Gamal Abdel-Hafiz if you
7 could check the list for 775T, one of the transcripts.

8 THE COURT: You mentioned that.

9 MR. FITZGERALD: OK. I am a little confused.

10 THE WITNESS: It's here.

11 MR. FITZGERALD: OK. I would make that same
12 offer. Thank you.

13 THE COURT: All right. You're excused.

14 THE WITNESS: Thank you.

15 (Witness excused)

16 MR. FITZGERALD: Your Honor, at this time we
17 would read from two exhibits.

18 THE COURT: I think before we do that we are
19 going to take a break, ladies and gentlemen.

20 Please leave your notes and other materials
21 behind. Please don't discuss the case, and we will resume
22 in a few minutes.

23 (Jury not present)

24 THE COURT: Mr. Bernstein?

25 MR. BERNSTEIN: Judge --

1 THE COURT: Yes.

2 MR. BERNSTEIN: -- there are a number of matters
3 to raise on some of these. But there is a CM22 coming up
4 later this morning, and I have a 403 issue that I want the
5 court to know about.

6 THE COURT: Can I get the exhibit number?

7 MR. BERNSTEIN: Yes. The exhibit number would be
8 323.

9 THE COURT: All right. Where in the --

10 MR. BERNSTEIN: It would from the middle of page
11 6 through 7. I will give the court a little background so
12 you will understand what our application is. This is a
13 conversation in the car returning from Queens right after
14 the tape that's just been read to the jury, 20 and 21.

15 20 and 21 you will recall toward the end of it is
16 when there is this display by Mr. Salem, and a discussion of
17 the jewelry business, a \$40,000 or \$50,000 item.

18 What then happens in the car ride back into
19 Manhattan is that they pass through the Garment Center, the
20 diamond jewelry center. There is no prior and no subsequent
21 issue regarding the jewelry center being a target. It is
22 never a plan. This is a conversation that takes place in
23 jest. It is a conversation that is not acted upon, not
24 thought about, not planned. It's simply in and of itself an
25 isolated conversation.

1 I am sure the government would say to the court
2 that it is listed as an overt act in the indictment, but I
3 didn't know whether there would be any proof beyond this
4 conversation making it something more probative down the
5 line. It's pretty clear now there is nothing.

6 There will be no other evidence there is no
7 indication that this is anything other than that
8 conversation, and under 403 our position is it should be
9 stricken. It is highly prejudicial, and, being that it is
10 no more than a conversation with no action and no intent to
11 act, I would ask that it be stricken.

12 MR. MCCARTHY: Your Honor, this is an extremely
13 important piece of evidence both given the charges in the
14 indictment and the position that was taken by counsel from
15 the beginning of this case.

16 To begin with, there is a suggestion by Amir
17 Abdelgani that perhaps some thought should be given to the
18 idea of placing a bomb in the Diamond District and
19 detonating it. Aside from the other charges in the
20 indictment, Mr. Abdelgani is charged in this case with
21 conspiracy to bomb. One of the things we have to prove in
22 the trial is that he had and shared that intent with the
23 others.

24 While I was trying to get ready to decide what I
25 was going to say when Mr. Bernstein made this point, I

1 flipped through his opening to try to be reminded of the
2 position that he's taken with respect to Mr. Abdelgani in
3 this indictment.

4 The claim that's been made from the beginning of
5 the trial is that Mr. Abdelgani was duped by Mr. Siddig Ali,
6 who Mr. Bernstein cast as a sort of swashbuckling
7 charismatic type, to whom, or as to whom Mr. Abdelgani was
8 sort of under a Pied-Piper-like spell. Also, Mr. Salem, who
9 is alleged to have roped in both Siddig Ali and
10 Mr. Abdelgani and the other Sudanese members of the
11 conspiracy because he was, as Mr. Bernstein argued to the
12 jury and suggested in his cross-examination of Salem, an
13 Egyptian intelligence agent who was placed here basically to
14 do an operation against Sudanese people.

15 Mr. Bernstein also argued to the jury that
16 Mr. Abdelgani was essentially fooled. He thought that the
17 safe house plot was either a bomb for Bosnia or training for
18 Bosnia. He argued to the jury in the opening that what he
19 really thought was going on was that this was Afghanistan,
20 round two, that everybody was just going to get ready to go
21 over to --

22 THE COURT: I have your point.

23 MR. MCCARTHY: OK.

24 MR. BERNSTEIN: I am sorry, Judge?

25 THE COURT: I told him I understand his point.

1 MR. BERNSTEIN: Yes. And the point remains. The
2 fact is that Mr. Abdelgani -- there are UI's in at least
3 three of the lines prior to and including Mr. Abdelgani's
4 line. If you look at the conversation in total, it's pretty
5 clear that my client merely asked the question about knowing
6 47th Street, this comes on the heels of Mr. Salem's business
7 discussion. Siddig Ali and Emad Salem then go on off on a
8 tear, so to speak, about doing this.

9 It doesn't change the perspective if people are
10 training, using simulated targets in New York City as
11 potential bomb targets if they are simulated. The problem
12 with this particular conversation is it goes to the Jews, it
13 goes to things that I think historically in this case the
14 court has tried to carve out in prejudice.

15 THE COURT: I tried to carve them out when they
16 don't have any clear relevance.

17 MR. BERNSTEIN: Nothing ever happens here. This
18 would be as if we were passing a football field and say,
19 "Hey, let's play football." If we were on our way to and
20 from our training camp, that would be the same kind of
21 thing. It doesn't change the nature of whether or not the
22 jury believes or disbelieves the training events. All it
23 does is it prejudices that aspect.

24 THE COURT: You can argue that to them. The
25 objection is overruled.

1 What else do I have to deal with now?

2 MR. FITZGERALD: For counsel's benefit, I think
3 there are six FISA's we intended to read this morning. I
4 think there is an objection to several of them. I will
5 identify them.

6 We intend to read 733, 735 through 737, 752, and
7 742, and I believe my understanding of Mr. Jacobs' objection
8 is I think it ran to 736, 737, and 752.

9 THE COURT: All right. Mr. Jacobs?

10 MR. JACOBS: Yes, your Honor. Let's begin with
11 736T.

12 THE COURT: All right.

13 MR. JACOBS: It is a telephone call that Siddig
14 Ali has with some unknown individual, somebody named Ahmad
15 last name unknown. Siddig Ali, my client's name is on page
16 3, and he has a conversation with this other person.

17 THE COURT: Right.

18 MR. JACOBS: I'm not sure if this other person is
19 a co-conspirator or not. If he is not, I would object to
20 the conversation, and I think -- it is not a question of
21 relevancy as much as what's the legal theory of the
22 admissibility of this statement.

23 MR. FITZGERALD: Your Honor, these are offered as
24 co-conspirators' statements. The person speaking is Ahmed
25 Yousef from the Sudanese mission. In fact, in one of those

1 calls, Siddig Ali, who had told Emad Salem he could arrange
2 for a visa through the Sudanese mission calls Ahmed. That's
3 752.

4 In those calls it makes clear one that Ahmed
5 Yousef is someone who placed Mohammed Saleh in touch with
6 Siddig Ali. We have had testimony about the involvement of
7 Ahmed Yousef and one other individual from the Sudanese
8 mission already to date. That, for example, I think Mr.
9 Haggag testified that Siddig Ali got information about
10 Mubarak's itinerary from them. We have already read a
11 number of CMs where Siddig Ali indicates that he is going to
12 obtain information from the mission. It also becomes clear
13 that Ahmed Yousef is a person who is going to help get him
14 photographs of the UN.

15 In these conversations, it becomes clear that
16 Mohammed Saleh is introduced to Siddig by these people, and
17 there is a series of calls which includes Mohammed Saleh
18 saying he's getting together with these two persons in
19 upstate New York and invites Siddig along to join them.

20 Later, Siddig in a CM conversation invites Emad
21 Salem to join them, and then there is a problem with
22 scheduling because of a religious holiday. These are the
23 people that Siddig goes back to for a visa. This makes
24 clear that the relationship between Siddig Ali and Mohammed
25 Saleh arose out of the Sudanese mission putting them

1 together. It is in furtherance of the conspiracy. You have
2 to take, I think, the three or four conversations together
3 and put them in context with the CM's.

4 MR. JACOBS: Well, the government can have
5 whatever interpretation they want to have. The question
6 is -- first of all, this conversation that's been offered
7 doesn't list the person's last name. So up until Mr.
8 Fitzgerald getting up and putting it on the record, it says
9 LNU, so the government did not identify the speaker's last
10 name. So to some extent we were a little bit confused.

11 But if the government claims that this Ahmed
12 Yousef is a co-conspirator. That is what their claim is.
13 But I think it should be clear in the record if that is
14 their position. Is that what they are going to argue to the
15 jury?

16 THE COURT: Mr. Fitzgerald is nodding his head
17 "yes."

18 MR. FITZGERALD: Yes.

19 THE COURT: That objection is overruled.
20 What is the next one?

21 MR. JACOBS: Fine. Then we have --

22 THE COURT: 737?

23 MR. JACOBS: Generally, your Honor, that was the
24 same nature of objection.

25 THE COURT: Same ruling.

1 MR. JACOBS: OK.

2 752, Mr. Fitzgerald, is that right?

3 MR. FITZGERALD: Yes, I believe so.

4 THE COURT: One second.

5 MR. JACOBS: For that one, I'm not sure, is this
6 the same person as the other one?

7 MR. FITZGERALD: It is the same person.

8 MR. JACOBS: It is. Then your Honor has
9 overruled the objection on that.

10 THE COURT: Right.

11 MR. JACOBS: Then I think we might be --

12 THE COURT: You mentioned 742.

13 MR. JACOBS: I'm sorry?

14 THE COURT: 742.

15 MR. JACOBS: I'm sorry. These three were 52,
16 your Honor, 36 and 37.

17 THE COURT: Right.

18 MR. JACOBS: Those are all the same three
19 speakers.

20 THE COURT: Right.

21 MR. JACOBS: Your Honor has made a ruling on
22 that.

23 THE COURT: I have.

24 MR. JACOBS: OK. I have 753 then. Has that been
25 offered yet, Mr. Fitzgerald?

1 THE COURT: It has.

2 MR. FITZGERALD: We won't get to it this morning,
3 but we can deal with it now.

4 THE COURT: Since we are talking about it, let's
5 talk.

6 MR. JACOBS: I have an objection of the same
7 nature. Is Yousef an alleged co-conspirator here?

8 MR. FITZGERALD: Yes, your Honor.

9 MR. JACOBS: Thank you. I am not sure of the
10 relevancy, but I want to make sure that these are
11 co-conspirators' statements that the government is
12 attempting to offer.

13 MR. FITZGERALD: There was a fax referred to
14 during Emad Salem's testimony where he was faxing to the
15 United Arab Emirates to try to get money for the plot, and
16 there was cross-examination by Ms. Amsterdam as to why
17 didn't they get the money. Mr. Salem said that he thought
18 the case was taken down too soon, and she was asking him
19 about the effort, whether this existed, and this is the
20 phone call where Siddig Ali reaches Yousef Hussein in the
21 United Arab Emirates and gets his phone number, and then we
22 will later have the fax. Haggag as well testified about
23 Yousef Hussein.

24 THE COURT: All right.

25 MR. JACOBS: I don't see how that makes him a

1 co-conspirator in this case. The fact that, if you credit
2 Emad Salem's testimony -- and I don't -- if he somehow
3 solicits money from somebody without any details of whether
4 this person has knowledge of what he is being solicited
5 for --

6 THE COURT: I think, with all due respect to both
7 of you, you are off on a somewhat irrelevant issue. The
8 question is not whether it is a co-conspirator's statement
9 or not. It corroborates the fact that there is somebody in
10 the United Arab Emirates who is being solicited for money.

11 Certainly, Siddig Ali is alleged to be a
12 co-conspirator and can be found to be a co-conspirator.
13 They are his statements soliciting the money. The
14 statements don't necessarily have to be made to somebody who
15 is actually a co-conspirator.

16 MR. JACOBS: The question is does it come in. I
17 don't know if this is a critical issue on this particular
18 one, but the question is, do these statements come in for
19 the truth, or do they come in on some other form.

20 When you say "corroboration," I understood
21 exactly what your Honor meant, but does the jury take some
22 unknown person's statement for the truth of it?

23 THE COURT: No, there is no assertion in here --
24 and obviously I have been speed-reading this while you have
25 been talking, so it is a little bit of a diversion, but I

1 don't see any assertion in here by the person identified as
2 Hussein. What I do see is the giving of a telephone number.
3 This is a conversation with Siddig Ali.

4 MR. JACOBS: OK.

5 THE COURT: It is the fact that that conversation
6 took place when combined and compared with other evidence
7 that is relevant. The objection is overruled.

8 MR. JACOBS: I think the last one I have, your
9 Honor, 774, again is a conversation that is under the name
10 Awad last name unknown. It is a conversation on June 22,
11 1993. There I have -- I think Ms. Amsterdam wants to
12 address it, since her client is referred to. I am not sure
13 what the relevancy is and whether this is a statement made
14 in furtherance of the conspiracy.

15 THE COURT: What is this, Mr. Fitzgerald?

16 MR. FITZGERALD: This is akin to the last
17 conversation. This is Siddig Ali asking Awad for money for
18 jihad purposes, and saying, "If you can give to a good
19 Islamic deed, give the money to Fares." Our argument will
20 be that he's indicating that Fares Khallafalla will collect
21 for it.

22 MS. AMSTERDAM: I'm sorry. I couldn't hear the
23 last part. Fares Khallafalla what?

24 MR. FITZGERALD: Will collect the money if he's
25 willing to pay money. I believe it's page 4. Yes. It's

1 page 4, and then it's referred to again on the last page.

2 THE COURT: All right. One second.

3 MR. JACOBS: Your Honor, I don't understand how
4 this person is a co-conspirator.

5 THE COURT: The theory is Siddig Ali is the
6 co-conspirator trying to raise money. He doesn't have to be
7 raising it from another co-conspirator.

8 MR. JACOBS: But somebody is subsequently making
9 statements about the defendants in the case.

10 THE COURT: The someone, however, is Siddig Ali.

11 MR. JACOBS: No, no, no. I understand what your
12 Honor is saying. Siddig Ali is soliciting money.

13 THE COURT: Right. And saying, "Give it to
14 Fares."

15 MR. JACOBS: Yes.

16 THE COURT: But it is Siddig Ali who made that
17 statement, not the person to whom he is talking.

18 MR. JACOBS: The person is acknowledging things;
19 he's acquiescing in taking certain action. Is that person a
20 co-conspirator or not?

21 If we get it in the front of the jury, what is
22 the government's position? Is everybody who solicited money
23 a co-conspirator?

24 I think we are entitled, at least as to these, to
25 know what these are being offered for. I suppose it comes

1 in for all purposes if it is a co-conspirator's statement by
2 Awad as opposed to something else.

3 THE COURT: What statement by Awad do you see in
4 here?

5 MR. JACOBS: Well, your Honor, every time he says
6 "OK. God bless you. I agree," these are statements by
7 somebody agreeing that he will attempt to contribute money.
8 Now, for whatever purpose that is, that person is
9 acquiescing. I don't know what he is acquiescing to.

10 THE COURT: The statement I agree is not an
11 assertion. It is a verbal act.

12 MR. JACOBS: Well, is that verbal act being
13 admitted as a statement in furtherance of the conspirators,
14 or is it just being admitted by the government to show --

15 THE COURT: It is being admitted as a verbal act.
16 It is the solicitation by Siddig Ali that's being offered.
17 We both know that.

18 MR. JACOBS: I understand.

19 THE COURT: The objection is overruled.

20 Mr. Wasserman?

21 MR. WASSERMAN: Judge, a personal matter:
22 Because of the scheduling of the last few days, and
23 including what we want to do this afternoon, can my client
24 be excused to go back to MCC and brought back at 3:30? He
25 would waive his appearance for the rest today's proceeding.

1 My understanding is there is nothing coming up pertaining to
2 him.

3 MR. McCARTHY: Can I have a moment with
4 Mr. Wasserman?

5 THE COURT: Sure.

6 (Counsel conferred)

7 MR. McCARTHY: Thank you, your Honor. I think
8 Mr. Wasserman is going to add something.

9 MR. WASSERMAN: At the government's request, the
10 specific reason is that my client has been brought very
11 early each day to court and we have been staying after, so
12 he's extremely tired and I want him to be as fresh as
13 possible this afternoon at 3:30, and that is the reason for
14 requesting that he be excused.

15 THE COURT: All right. Is that satisfactory to
16 you Mr. Hampton-El?

17 DEFENDANT HAMPTON-EL: Yes.

18 THE COURT: All right.

19 MR. McCARTHY: Your Honor, I'm sorry, one more
20 moment. There is something I forgot.

21 THE COURT: Yes.

22 (Counsel conferred)

23 MR. WASSERMAN: Thank you, your Honor.

24 THE COURT: OK. Let's take our break.

25 (Recess)

1 (In open court; jury present)

2 THE COURT: Mr. Khuzami.

3 MR. KHUZAMI: Your Honor, the government calls
4 Detective Corrigan as its next witness.

5 THOMAS F. CORRIGAN,

6 called as a witness by the government,

7 having been duly sworn, testified as follows:

8 THE COURT: Go ahead.

9 DIRECT EXAMINATION

10 BY MR. KHUZAMI:

11 Q Detective Corrigan, directing your attention to
12 last Friday, May 26, 1995, were you involved in taking some
13 pictures on that day?

14 A Yes, sir, I was.

15 MR. KHUZAMI: Your Honor, may I approach?

16 THE COURT: Yes.

17 Q Let me show you what have been marked for
18 identification as Government's Exhibits 293A, B and D, and
19 ask you to take a look at it.

20 A Yes, sir.

21 Q Do you recognize those as some of the pictures
22 you were involved in taking last Friday?

23 A Yes, sir, they are.

24 Q What was your role in taking those pictures?

25 A I directed the photographer to take the shots,

1 sir.

2 Q Were you present when they were taken?

3 A Yes, sir, I was.

4 Q What was the address of the building that you
5 took pictures of?

6 A 26 Federal Plaza.

7 Q Do Government's Exhibits 293A, B and D fairly and
8 accurately show the portion of the building at 26 Federal
9 Plaza as they appeared last Friday?

10 A Yes, sir, they do.

11 MR. KHUZAMI: Your Honor, I would move
12 Government's Exhibits 293A, B and D into evidence.

13 THE COURT: Those are received. Prior objections
14 are overruled.

15 (Government's Exhibits 293A, B and D were
16 received in evidence)

17 THE COURT: Go ahead.

18 MR. KHUZAMI: Your Honor, at this time I would
19 ask that the jury be referred to their binders, I believe
20 the binder marked 152 to 299, where there are copies of the
21 pictures.

22 THE COURT: That should be a thick binder marked
23 Exhibits 152-299.

24 MR. KHUZAMI: 293A, B and D.

25 Q Detective Corrigan, I wonder if you might go

1 through each of the pictures and describe the scene that is
2 depicted.

3 Before you do that, are you familiar with how the
4 building of 26 Federal Plaza appeared in June 1993?

5 A Yes, sir, I am.

6 Q How is it that you are familiar with that?

7 A That is where I work every day.

8 Q As you go through each of the photos, in addition
9 to describing the scene can you please indicate whether or
10 not there is anything in the pictures that were marked
11 Government's Exhibits 293A, B and D, that you recognize as
12 being different than the scene as it appeared in
13 approximately June 1993?

14 A Government's Exhibit 293A is a picture of Duane
15 Street looking eastbound from Broadway. Basically it is the
16 international court building to the left, in the picture to
17 the left, black building. There is a guard booth entrance
18 ramp to underground parking garages. Everything here is
19 basically the same. There is a yellow and a white trailer
20 in the left of the photo that weren't there in June of '93.
21 They have recently done some work on the Plaza area over by
22 Lafayette Street, and those two trailers are in connection
23 with that, and they weren't there in June 1993.

24 Q 293B?

25 A 293B is the guardhouse as well as the entrance

1 into the basement of the building I described a few minutes
2 ago. Again, the picture is basically the same as it was in
3 June 1993, with the exception of the white trailer and the
4 yellow trailer to the right of the photo now, again in
5 connection with the Lafayette plaza work.

6 Q And picture D?

7 A Picture D is Worth Street. Looking eastbound
8 from Broadway, 26 Federal Plaza is the building on your
9 right-hand side, basically a checkered building. The
10 picture is a little bit different in June 1993 in that there
11 is construction being done on the Broadway side plaza, which
12 would account for the fence. Where you see that white guard
13 booth, there is a driveway that enters underneath the
14 building, another entrance to a parking garage that is
15 utilized for parking for employees at 26 Federal Plaza. The
16 white guard booth was not there in June of '93, but the
17 picture itself, except for the fence and the construction
18 work and the guard booth, is basically the same as June of
19 '93.

20 Q Detective Corrigan, is 26 Federal Plaza the
21 building where the FBI is headquartered?

22 A That is correct, sir. In fact, the parking
23 garage that I am talking about, FBI vehicles utilize that
24 parking garage.

25 Q Leaving the photographs aside for a moment,

1 Detective Corrigan, in addition to being a detective with
2 the New York City Police Department, do you have any other
3 law enforcement appointments?

4 A Yes, sir, I do.

5 Q What are those?

6 A I am a special deputy marshal.

7 Q What is a special deputy marshal?

8 MR. STAVIS: Objection, relevance, your Honor.

9 THE COURT: Do you want to come up --

10 MR. RICCO: Excuse me.

11 MR. STAVIS: After conferring with counsel, I
12 will withdraw the objection, your Honor.

13 THE COURT: Go ahead.

14 Q What is a special deputy marshal?

15 A Basically it is an appointment by the Marshal
16 Service where I have some federal, I guess, leeways, as far
17 as arrests and investigative avenues that I can do outside
18 my scope as a New York City detective. If I have to do
19 investigations outside the New York area, such as in Jersey,
20 I can effect arrests and do investigations, carry my weapon.
21 Basically it helps me in my law enforcement duties.

22 Q Approximately how long have you been a deputy
23 marshal?

24 A Approximately 10 years.

25 Q Did you get that in connection with your work

1 with the Joint Terrorist Task Force?

2 A Yes. In 1985 when I was assigned to the Joint
3 Terrorist Task Force, one of the obligations was that I
4 become a deputy marshal.

5 Q Were you a special deputy marshal in March of
6 1993?

7 A Yes, sir, I was.

8 MR. KHUZAMI: No further questions.

9 THE COURT: Mr. Ricco, representing Mr.
10 El-Gabrowny. Go ahead.

11 CROSS-EXAMINATION

12 BY MR. RICCO:

13 Q Good afternoon, Detective Corrigan.

14 A Good morning, sir.

15 Q Mr. Khuzami just asked you if you were a special
16 deputy marshal in March of 1993, correct?

17 A That is correct, sir.

18 Q Specifically, you are a deputy federal marshal on
19 the date that you arrested Mr. El-Gabrowny?

20 A That is correct, sir.

21 Q Right?

22 A That is correct.

23 Q On that day you were conducting an investigation,
24 isn't that correct, and executing a warrant?

25 A That is correct. That was part of a search

1 warrant, sir.

2 Q When you arrived at Mr. El-Gabrownny's residence
3 that day, you were aware that Mr. El-Gabrownny may or may not
4 be there, isn't that right?

5 A That is correct. I wasn't sure if he was there
6 and I didn't know if he was home or I didn't know if he was
7 out, that is correct, sir.

8 Q But it is clear before you went there, you knew
9 who Mr. El-Gabrownny was?

10 A I had heard of him, yes, sir.

11 Q That is because you had been participating in
12 this joint task force, isn't that correct?

13 A That is correct, sir. I was familiar with his
14 name.

15 Q The photographs that you took that were just
16 introduced into evidence, the date you took those
17 photographs are when?

18 A Last Friday, May 26, sir, '95.

19 Q In relationship to this case -- withdrawn. When
20 you took the photographs, you knew that the photographs were
21 going to be used as evidence and presented to the jury,
22 isn't that right?

23 A Yes, sir, I did.

24 Q And you took those photographs at the direction
25 of the U.S. Attorney, I would imagine.

1 A That is correct, sir.

2 MR. RICCO: I have no further questions.

3 THE COURT: Anyone else? Any redirect?

4 MR. KHUZAMI: None, your Honor.

5 THE COURT: Thank you. You are excused.

6 (Witness excused)

7 MR. FITZGERALD: Your Honor, at this time the
8 government would offer for all purposes Government Exhibits
9 733, 735, 736 -- actually, the list I offered this morning
10 with Mr. Abdel-Hafiz, and the underlying tapes are those
11 portions of the tapes as reflected on the transcripts as to
12 the Arabic translations, and for the English tapes we would
13 offer those tapes themselves with the transcripts offered as
14 an aid to the jury.

15 THE COURT: Those are received.

16 (Government Exhibits 733, 733T, 735, 735T, 736,
17 736T, 737, 737T, 741, 742, 742T, 752, 752T, 753, 753T, 756,
18 758, 758T, 764, 770, 770A, 770T, 772, 773, 773T, 774, 774T,
19 775, 775T, 793, 793T were received in evidence.)

20 MR. FITZGERALD: We would now propose to read
21 from Government's Exhibit 733, copies of which should be in
22 the jury's binders, 733T.

23 THE COURT: There is a binder of exhibits marked
24 700 through 750, which should contain 733T.

25 MR. MCCARTHY: 733T.

1 MR. FITZGERALD: Your Honor, before reading 733T,
2 I would request permission to read one entry from a chart
3 previously received in evidence, Government's Exhibit 506A,
4 and that is the Attica visitors log.

5 THE COURT: Go ahead.

6 MR. FITZGERALD: The entry for May 21, 1993, on
7 Government's Exhibit 506A, the Attica visitors log for El
8 Sayyid Nosair indicates three visitors: Ali A. El-Gabrownny,
9 Emad Salem, and Siddig Ali.

10 THE COURT: That is for which date?

11 MR. FITZGERALD: For the date of May 21, 1993.

12 We will now read from Government's Exhibit 733T,
13 which is dated May 21, 1993, at 11:06 in the evening. I
14 will read the statements attributed to Siddig Ibrahim Siddig
15 Ali, Mr. McCarthy will read the statements attributed to the
16 defendant Omar Abdel Rahman.

17 THE COURT: This tape is also dated May 21?

18 MR. FITZGERALD: Yes, same day.

19 (Government's Exhibit 733T read to the jury)

20 MR. FITZGERALD: The government would next read
21 from Government's Exhibit 735T, which should be in the same
22 book. 735T is a conversation that took place on May 23,
23 1993, at 9:47 in the morning. I will read the statements
24 attributed to Siddig Ali and Mr. McCarthy will read the
25 statements attributed to Mohammed Saleh.

1 (Government's Exhibit 735T in evidence read to
2 the jury)

3 MR. FITZGERALD: The next transcript we would
4 read, Judge, is Government's Exhibit 736T, which follows in
5 the jury book. That is a conversation later on in the same
6 morning, May 23, 1993, at 11:12 a.m. I will read the parts
7 attributed to Siddig Ali, Mr. Khuzami will read the
8 statements attributed to Ahmed, and Miss Chu will read the
9 parts attributed to the unidentified female.

10 THE COURT: Go ahead.

11 (Government's Exhibit 736T in evidence read to
12 the jury)

13 THE COURT: Ladies and gentlemen, we are going to
14 break for lunch. Please leave your notes and other
15 materials behind. Please don't discuss the case, and we
16 will resume at 2:00. I should tell you that we are going to
17 break today at 3:30, at the time that we usually simply take
18 the afternoon break, because I have some additional matters
19 I need to talk to the lawyers about. So we will finish the
20 day today at 3:30.

21 (Jury excused)

22 THE COURT: May I see Mr. Wasserman briefly at
23 the side.

24 (At the side bar)

25 THE COURT: We are breaking today at 3:30, and I

1 have conferences tomorrow morning, so they can't produce
2 your client until tomorrow afternoon. I gather he raised
3 some problem because tomorrow is Friday. He is just going
4 to have to work that out.

5 MR. WASSERMAN: I will speak with him and we will
6 try to work something out. If you can finish it this
7 afternoon and this evening better yet, but there is a limit
8 to how much --

9 MR. WASSERMAN: I understand. There is a much
10 shorter but similar problem with CM 41 which will come hard
11 on the heels of CM 45. I will speak with Mr. McCarthy. I
12 am anxious to schedule for tomorrow so we will try to work
13 around my client's Jummah situation. I want to take care of
14 both these matters and not have this hanging next week.

15 THE COURT: Fine.

16 (Luncheon recess)

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

2 Time noted, 2:10 p.m.

3 (Pages 11531 to 11533 sealed)

4 (In open court, jury not present)

5 THE COURT: Mr. Stavis?

6 MR. STAVIS: Yes, your Honor. Recently you
7 authorized the release of certain subpoenaed materials from
8 the Clerk's Office to be released to defense counsel. Among
9 those items was a Worker's Compensation file. I have given
10 over the original Worker's Compensation file to Mr.
11 Fitzgerald this afternoon under Rule 16. I just wanted the
12 record to reflect that.

13 THE COURT: All right. You have a record. Thank
14 you very much.

15 Can we get started.

16 (Jury present)

17 THE COURT: Good afternoon, ladies and gentlemen.

18 JURORS: Good afternoon.

19 THE COURT: Mr. Fitzgerald?

20 MR. FITZGERALD: Yes, your Honor. We would like
21 to continue by reading from Government Exhibit 737T in the
22 same book.

23 THE COURT: The same book as this morning.

24 MR. FITZGERALD: Government Exhibit 737T is
25 another conversation intercepted on May 23, 1993 at 11:23 in

1 the morning, and again I will read the statements attributed
2 to Siddig Ali and again Mr. Khuzami will read the statements
3 attributed to Ahmad.

4 (Government Exhibit 737T was read to the jury)

5 MR. FITZGERALD: The next exhibit, Judge, is
6 Government Exhibit 752T. It should be in the same binder.

7 THE COURT: No, it is not. It is in the next
8 volume. There is a volume that runs from 751 through 850.

9 Go ahead.

10 MR. FITZGERALD: For 752T, this is a conversation
11 intercepted on June 13, 1993 at 7:44 in the evening. I
12 will, once again, read the statements attributed to Siddig
13 Ali, and Mr. Khuzami, once again, will read the statements
14 attributed to Ahmad.

15 (Government Exhibit 752T was read to the jury)

16 MR. McCARTHY: May we have a moment, your Honor?

17 THE COURT: Yes.

18 (Pause)

19 MR. McCARTHY: Your Honor, at this time the
20 government would request to read from Government's Exhibit
21 339T, which for counsel is CM37.

22 THE COURT: You should have a volume that is
23 labeled 326 through 399. That is the one that this -- this
24 is which. I'm sorry.

25 MR. McCARTHY: Yes, your Honor. It is 339T.

1 THE COURT: 339. The volume is labeled
2 "326-399." The transcript is 339.

3 MR. McCARTHY: Your Honor, we will be asking to
4 take this portion slightly out of order, that is to say, to
5 read pages 17 until the end at this time, and read 1 to 17
6 at a later point.

7 THE COURT: This is 339T. The transcript is also
8 dated June 13, and you are going to pick up at page 17?

9 MR. McCARTHY: Yes, your Honor, at the bracketed
10 portions which say pages 27 to 32 at the top of the page,
11 and we will be reading to the end of the transcript.

12 THE COURT: You are going to pick up at the top
13 of the page at page 17?

14 MR. McCARTHY: Yes, your Honor.

15 Once again, Mr. Khuzami will read the words
16 attributed to Emad Salem, and Mr. Fitzgerald will read the
17 words attributed to Siddig Ibrahim Siddig Ali.

18 (Government Exhibit 339T was read to the jury)

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1 MR. FITZGERALD: The next exhibit we will read
2 from, Judge, will be Government's Exhibit 323T.

3 MS. AMSTERDAM: Your Honor, could I just have a
4 moment with Mr. McCarthy, please.

5 THE COURT: That is in the volume labled 300 to
6 325.

7 MR. FITZGERALD: This exhibit is Government's
8 Exhibit 323T. For counsel's benefit, it is also known as CM
9 22, recorded on May 29-30, 1993, and Mr. Khuzami will read
10 the statements attributed to Emad Salem, I will read the
11 statements attributed to Siddig Ali, and Mr. McCarthy will
12 read the statements attributed to defendant Amir Abdelgani.

13 (Government's Exhibit 323T in evidence was read
14 to the jury)

15 THE COURT: Gentlemen, please stop for a minute.
16 We need to take a short break. Ladies and gentlemen, please
17 leave your notes and other materials behind. Please don't
18 discuss the case. We will resume shortly.

19 (Recess)

20 MS. AMSTERDAM: Your Honor, can I see your Honor
21 at the side bar with Mr. Fitzgerald, please?

22 THE COURT: Sure.

23 (At the side bar)

24 MS. AMSTERDAM: Your Honor, at the break there
25 were two back-to-back conversations that were read that were

1 attributed to an Ahmad last name unknown. This morning on a
2 motion by Mr. Jacobs the government represented that it was
3 the same Ahmad Yousef at the Sudanese consul. What I have
4 given Mr. Fitzgerald seems to demonstrate that they are
5 different people, and the phone calls are back to back
6 within minutes of each other, and it would appear to be
7 clear that one is to somebody at a mosque and one is to
8 somebody at the consul. While Mr. Fitzgerald is going to
9 check over the weekend, I am somewhat troubled with that
10 being the last moment for before a three-day weekend.

11 THE COURT: It is not the last moment. The last
12 moment will be several conversations removed. There have
13 been at least two conversations read after that, and there
14 is going to be yet another. We will repair it if we have
15 to.

16 MR. FITZGERALD: What she says actually makes
17 sense to me. I told her if we have to fix it we will fix it
18 first thing Monday morning, if it is not the right Ahmad.
19 We will check the phone records.

20 THE COURT: All right.

21 (In open court; jury present)

22 THE COURT: Again, we are on Exhibit 323T.

23 MR. FITZGERALD: Reading at the bottom of page 1
24 of 323T, the last statement attributed to Siddig Ali.

25 (Reading continued)

1 THE COURT: OK.

2 MR. FITZGERALD: I think there was a three-page
3 transcript. That was 742T.

4 THE COURT: Do you want to read that and then
5 break?

6 MR. FITZGERALD: Yes, your Honor.

7 THE COURT: OK. One more. 742T. It is in the
8 thick volume marked 700 through 750. This one is dated May
9 30?

10 MR. FITZGERALD: Yes, Judge, the afternoon.

11 THE COURT: The afternoon of May 30, 1993.

12 MR. FITZGERALD: Yes, judge at 3:56, and I will
13 read the statements of Siddig Ali; Mr. McCarthy will read
14 the statements of defendant Omar Abdel Rahman; and Ms. Chu
15 will read the statements attributed to the unidentified
16 female.

17 (Continued on next page)

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1 (Government Exhibit 742T was read to the jury)

2 THE COURT: Ladies and gentlemen, we are going to
3 break for the day -- for the week actually. Please leave
4 your notes and other materials behind. Please don't discuss
5 or read about the case. Have a pleasant weekend, and we
6 will resume on Monday.

7 (Jury excused)

8 THE COURT: I will see Mr. Wahid Saleh and
9 counsel in the robing room. OK.

10 (Pages 11541 to 11542 sealed)

11 (Proceedings adjourned to Monday, June 6, 1995,
12 at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

3 v.

OMAR AHMAD ALI ABDEL RAHMAN,
4 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,"

EL SAYYID NOSAIR,
7 a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

IBRAHIM A. EL-GABROWNY,
9 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

CLEMENT HAMPTON-EL,
11 a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

AMIR ABDELGANI,
13 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

FADIL ABDELGANI,
17 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.

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June 5, 1995
9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge
25

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and
SALVATORE S. RUSSO

1 (In open court; jury not present)

2 MR. WASSERMAN: Your Honor, my understanding is
3 that there will be several FISA's and CM 25 played this
4 morning. Those are English tapes. I am requesting that you
5 give the standing instruction for when the transcript is an
6 aid to the jury --

7 THE COURT: On an English tape? Right.

8 MR. WASSERMAN: I have a copy.

9 (Jury present)

10 THE COURT: Mr. Fitzgerald.

11 MR. FITZGERALD: Yes, Judge.

12 The government calls Detective Thomas Corrigan.

13 (Continued on next page)

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1 THOMAS F. CORRIGAN,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q Good morning, Detective.

7 A Good morning, sir.

8 Q If you can look to your left, I have placed a
9 number of cassettes in front of you and I should have placed
10 in front of you Government's Exhibits 711 -- in terms of
11 cassettes -- 711, 715, 743, 744, 746, 748, 750, and 751.

12 A Yes, sir.

13 Q And I should also have placed in front of you the
14 corresponding transcripts, 711T, 715T, 743T, 744T, 746T,
15 748T, 750T, and 751T.

16 A Yes, sir.

17 Q Prior to coming to court, did you have occasion
18 to listen to those tapes I numbered and compare them with
19 the corresponding transcripts?

20 A Yes, sir, I did.

21 Q And are the transcripts fair and accurate
22 transcriptions of the tapes listed?

23 A Yes, sir, they are.

24 Q Are the voice attributions contained on those
25 items fair and accurate?

1 A Yes, sir, they are.

2 MR. FITZGERALD: Your Honor, the government would
3 offer those numbered exhibits, both the tapes and the
4 corresponding transcripts.

5 THE COURT: Mr. Wasserman, is this voir dire?

6 MR. WASSERMAN: Yes, Judge. I will pass, Judge.

7 THE COURT: Those exhibits are received.

8 (Government's Exhibits 711, 715, 743, 744, 746,
9 748, 750, 751, 711T, 715T, 743T, 744T, 746T, 748T, 750T, and
10 751T were received in evidence)

11 MR. FITZGERALD: So that we are clear, Judge, I
12 have only offered the transcripts as an aid to the jury.
13 They are English-language tapes.

14 THE COURT: When they are played, I will give the
15 appropriate instruction.

16 Q Also, Detective Corrigan, I have placed before
17 you this morning Government's Exhibit 325T. Have you
18 listened to Government's Exhibit 325, a Nagra tape, and
19 compared it to the transcript in front of you, 325T?

20 A Yes, sir, I have.

21 Q Did you listen to that once or more than once?

22 A Numerous times, sir.

23 Q Can you describe to the jury the quality of the
24 recording on the Nagra tape?

25 A It is a tape that has music and a lot of

1 background sounds in it. There is a lot of music. There
2 was apparently speakers across the street from the apartment
3 and there is a lot of booming music throughout the tape.
4 During the beginning parts when I started listening to it
5 off the Nagra, which is the original tape, I was having a
6 little difficulty with the sound. Sometimes the music would
7 override the voices, so I asked one of the audio tech guys
8 to basically amplify the sounds. Even though the music is
9 amplified, the voices come up, so it is a little bit easier
10 to follow along with the conversations.

11 Q Can you get used to the music in the background
12 after a while?

13 A It got to a point where you can block it out. In
14 the beginning at times it is annoying, but if you focus on
15 the conversations you will be able to hear it. The longer
16 that you listen to the tapes, you start to get a feel for,
17 obviously, the voices. There was almost like at times like
18 walking from a bright sunny day into a darkened room. It
19 takes a while for your eyes to adjust in that case, but your
20 ears adjust. But then you can follow along in the
21 conversation.

22 Q Government's Exhibit 325T, is that a fair and
23 accurate transcription of the conversation that is recorded
24 on Government's Exhibit 325?

25 A Yes, sir, it is.

1 Q To the best of your ability, are the voice
2 attributions fair and accurate?

3 A Yes, they are.

4 Q In particular, is there a reference to an
5 unidentified male at some point in the transcript?

6 A Yes, sir, there is.

7 Q If you can look at page 57.

8 57. How many people were in this conversation?

9 A Three people, sir.

10 Q Who were the people?

11 A Siddig Ibrahim Siddig Ali, Abdel Rashid and Emad
12 Salem.

13 Q When you indicate unidentified male, are you
14 indicating that there is a fourth person there?

15 A No, sir. It is that I couldn't identify clearly
16 which voice it was that was speaking there, I should say.

17 Q That unidentified male at page 57, could you rule
18 out any of the three people?

19 A That conversation, if I can recall, I believe I
20 could rule out Emad Salem but I couldn't rule out Abdel
21 Rashid -- Clement Hampton-El -- or Siddig Ali.

22 Q So it is one of those two, as best you can tell?

23 A Yes, sir.

24 Q Also on page 71, is there a portion of page 71
25 that is Arabic conversation that was translated by someone

1 else?

2 A That is correct, sir.

3 Q Otherwise the rest is in English?

4 A I believe in the beginning of the transcript,
5 sir, there was some conversation in Arabic. I believe they
6 were getting ready to make Salat, and I believe that
7 Mr. Salem and Mr. Siddig were having a conversation in
8 Arabic.

9 MR. FITZGERALD: Your Honor, I would offer 325T
10 as an aid to the jury and the corresponding portion of
11 Government's Exhibit 325 that relates to the transcript.

12 THE COURT: Is this voir dire, Mr. Wasserman?

13 MR. WASSERMAN: Yes, Judge.

14 THE COURT: Representing Mr. Hampton-El. Go
15 ahead.

16 VOIR-DIRE EXAMINATION

17 BY MR. WASSERMAN:

18 Q Good morning, Detective.

19 A Good morning, Mr. Wasserman.

20 Q In reviewing the tape you just testified that
21 music was coming from across the street, is that correct?

22 A I believe so.

23 Q Part of the basis for your belief is that there
24 is conversation in the transcript concerning that music
25 coming from the outside, correct?

1 A I believe so, but I am not sure. I know that
2 there was a discussion about the music and how loud it was
3 and all, but I am not really sure. I shouldn't maybe have
4 spoken. I am not sure where that music was coming from.

5 Q If you would look at page 3, in the middle, I
6 believe it is the fifth attribution -- incidentally, when it
7 comes to attributions, there are hundreds, if not over a
8 thousand attributions in this particular transcript,
9 correct?

10 A Yes.

11 Q At times it is very difficult for you to make out
12 who is the speaker as between Siddig Ali or Hampton-El,
13 correct?

14 A Depending on how much -- if there was a
15 one-sentence or one-word statement, that is correct.

16 Q Also, just going to the transcript itself, there
17 were over a thousand instances where there were
18 unintelligibles listed until the transcript, correct?

19 A I know there is a lot of unintelligibles. I
20 don't know the number.

21 Q I believe it is over a thousand. Would that
22 sound like a reasonable total?

23 A I wouldn't want to give you a figure, sir. I
24 know there was a lot.

25 Q Those portions also include long passages at

1 times, is that correct?

2 A Sometimes short and sometimes long.

3 Q And at times, even though you can make out a word
4 between two unintelligibles, it is difficult to make out
5 what the sense of the passage is because the unintelligibles
6 bracket the word that you hear.

7 A At times, sir, correct.

8 Q Would it be fair to say that in terms of the
9 transcript that you have prepared, it is impossible for you
10 to characterize in that transcript the tonality of the
11 conversation? Would that be fair to say?

12 A I wouldn't say that, no. I mean, there are
13 certain areas that there are conversations that you can
14 understand fully what is meant -- if you are taking the
15 entire --

16 Q Detective, withdrawn. I don't mean to stop you
17 but I think that my question wasn't clear. I don't mean in
18 terms of clarity. There are times when it is clear and
19 times when it is not. But rather in terms of the tone of
20 what the speakers are conveying. In other words, you cannot
21 capture on your transcript, your transcript doesn't contain
22 any notations about body language, for instance, correct?

23 A No, sir. The way that I would -- again --

24 THE COURT: His question simply said, the
25 transcript doesn't contain any notations about body

1 language, correct?

2 THE WITNESS: That is correct.

3 THE COURT: The answer is yes.

4 Q So if the speaker was rolling his eyes or looking
5 puzzled or not paying attention, that would not be reflected
6 in the transcript, correct?

7 A No, sir.

8 Q In particular in terms of difficulty to make out
9 words, would it not be fair to say that "there" and "here"
10 would be confusing at times as to which was being referred
11 to on this tape?

12 A Between the words there and here?

13 Q Yes, sir.

14 A I mean, there are times that "there" and "here"
15 might be confusing but I wouldn't know if it is 5 percent or
16 50 percent.

17 Q Let me give you an example. On page 22 of your
18 transcript, Detective, I refer you to the middle attribution
19 on the page to Hampton-El, and then four lines from the
20 bottom of that attribution there is a sentence which reads
21 "so the awakening has to be here," correct?

22 A That is correct.

23 Q Wouldn't it be fair to say that when you listen
24 to that there are those who listen to that and hear the word
25 "there," so the awakening has to be there?

1 A I can only put down, sir, what I believe I heard.
2 I don't know what other people heard.

3 Q Let me refer you to page 27, the fourth
4 Hampton-El attribution. You have --

5 A Excuse me. From the top or from the bottom? I
6 am sorry.

7 Q From the top, sir. You have "one brother just
8 pled me to go back in." Would it be fair to say that in a
9 phrase like that the sense of it would also be "one brother
10 just left me to go back in"?

11 MR. FITZGERALD: Objection to form.

12 A I am sorry. I don't know what he means by --

13 THE COURT: Sustained as to form.

14 Q The attributions that you have made and the
15 transcript that you have made, given the number of
16 unintelligibles in this transcript and given the difficulty
17 at times of hearing what the speakers are saying, wouldn't
18 it be fair to say that the transcript is a very powerful
19 suggestive tool to what you are listening to?

20 THE COURT: Sustained.

21 MR. FITZGERALD: Objection.

22 THE COURT: Sustained.

23 MR. WASSERMAN: Your Honor, if I may, I don't
24 know if the jury has the transcript in front of them at this
25 point.

1 THE COURT: They haven't been asked to look at it
2 at this point because it hasn't been received. Do you want
3 him to look at it?

4 MR. WASSERMAN: I can come back to this
5 particular subject matter when they have it, so I will do it
6 at that time.

7 In terms of the mechanics, would it be fair to
8 say that Emad Salem was controlling where the Nagra was
9 placed? Correct?

10 MR. FITZGERALD: Objection to scope.

11 THE COURT: Sustained.

12 Q There are times on the tape that the audibility
13 is quite clear, correct?

14 A When the music sometimes subsides, yes, sir.

15 Q There are times even when the music is not
16 subsiding but the audibility is still clear, isn't that
17 correct?

18 A Yes, I would say that occurs at times.

19 Q And there are times particularly at the end of
20 the conversation when Rashid is having an argument or
21 discussion with Siddig that there is no --

22 MR. FITZGERALD: Objection to form.

23 Q -- with the music interfering with audibility but
24 it is still difficult to make out the conversation?

25 MR. FITZGERALD: Objection to form.

1 THE COURT: Why don't you break it up.

2 Q I will refer you to specific pages. If you could
3 look at the last few pages, beginning with page 80 in the
4 middle. Siddig Ali has snapped his fingers and then said
5 "break like straws, boom, five minutes apart," and then
6 there is Hampton-El saying, "with that you don't need," and
7 you have unintelligible.

8 A I am sorry.

9 Q Have you found it?

10 A OK, that's correct.

11 Q Beginning with that, with that you don't need
12 unintelligible, through page 81, 82 and 83, and I would
13 refer you specifically to the top of page 81 where
14 Hampton-El says "because if you do a tunnel, in all
15 probability some people are going to be unintelligible to
16 death, unintelligible in all probability ordinary citizens
17 will be harmed," continuing through that and the balance of
18 it, would it be fair to say that the music does not
19 interfere with the audibility but the Nagra is not picking
20 up the conversation between Hampton-El and Siddig Ali
21 sufficiently to pick up all of the conversation?

22 MR. FITZGERALD: Objection as to form.

23 THE COURT: Sustained as to form.

24 Q In that portion of the tape, is there music which
25 interferes with the recording of the conversation?

1 A I will be honest with you, Mr. Wasserman. I
2 would have to listen to the tape for that area. This is a
3 two-hour conversation. There are different areas that the
4 music is louder. Sometimes the type of music, you can
5 overhear the voices. I would have to listen to that area --
6 I can't answer your question. That is the bottom line.
7 What I have written --

8 Q Fair enough. Maybe if I am more precise in the
9 question. Music is the one thing that interferes with the
10 understanding of the conversation, correct, the music that
11 is going on in the background?

12 A It is the major interference, yes, sir.

13 Q But isn't it also a fact that there are times
14 throughout the tape when it is not the music that is the
15 interference so much as the conversation appears to be
16 muffled?

17 A I found that the conversation became muffled when
18 people tried to whisper. I got the impression they would
19 lower their voices, maybe got close together. I don't
20 remember certain areas -- again I will go back and we will
21 listen to the tape, but if there is areas that the Nagra
22 wasn't performing the way it was supposed to, I didn't hear
23 that.

24 Q Would it be fair to say, though, that the
25 position of the Nagra would be a factor in terms of picking

1 up the conversations?

2 A I believe that would be obvious, if they were
3 having conversations in an area where the Nagra wasn't.

4 Q Would it be fair to say, too, that the Nagra was
5 moved from time to time during the conversation?

6 A That I don't know.

7 Q You have prepared the transcript, correct?

8 A That is correct.

9 Q You recall that there was a time when the
10 briefcase was opened in order for Emad to do the electronic
11 debugging, to take out a device to do electronic debugging,
12 correct?

13 A I have to go back. I know there is areas where
14 the briefcase was opened. If the briefcase remained on a
15 table, remained on a chair, was on the floor, I don't know
16 where that briefcase went. I don't know if the people went.
17 I am assuming --

18 THE COURT: Don't assume.

19 THE WITNESS: I am sorry.

20 A All I can say is that I heard the briefcase open.
21 I don't know where it went.

22 Q In preparing this transcript, did you have
23 occasion to have read the prior CM's or any subsequent CM's
24 to CM 25?

25 A I had a skeleton, yes, sir.

1 Q In other words, you have reviewed the essence of
2 the CM's that precede CM 25 and those which follow, would
3 that be fair to say?

4 A I have looked at those transcripts, yes, sir.

5 Q That would be necessary, would it not, in order
6 to judge or to be accurate or as accurate as possible about
7 the conversation that you are hearing in CM 25, correct?

8 MR. FITZGERALD: Objection.

9 THE COURT: Sustained.

10 Q Would not the -- particularly the CM's which
11 follow, or the conversations between Emad --

12 A I am sorry. Maybe I got -- and I hope I didn't
13 answer your question incorrectly. I haven't listened to the
14 CM's prior or before. I thought if you were talking about
15 transcripts that were prepared for CM 25, that that's what
16 we are talking about. Do you understand what I am saying?

17 THE COURT: In other words, when he asked about
18 transcripts of conversations before, you were referring to
19 prior drafts of CM 25?

20 THE WITNESS: That is correct, sir.

21 Q Is it your testimony that you have no familiarity
22 with the transcripts of other CM's?

23 MR. FITZGERALD: Objection to form.

24 THE COURT: Sustained.

25 Q Have you read transcripts of the CM's before CM

1 25?

2 A Yes, sir, I have.

3 Q Have you read transcripts of the CM's after CM

4 25?

5 A Not all of them.

6 Q Have you read the transcripts which follow CM 25,
7 which is 27 and 29?

8 MR. FITZGERALD: Objection to scope.

9 THE COURT: I will allow it.

10 A I would have to see 27 and 29.

11 Q Conversations between Emad Salem and Siddig Ali
12 after CM 25 is recorded, discussing what took place on CM
13 25, have you reviewed those conversations?

14 A If I did, it was over a year and a half ago. But
15 I don't want to say yes because I am not sure.

16 Q Wouldn't their discussions after CM 25 about what
17 took place during the conversation in CM 25 be a relevant
18 factor in terms of understanding the conversation in CM 25?

19 MR. FITZGERALD: Objection.

20 THE COURT: Sustained.

21 Q Your testimony was that CM 25 is a
22 difficult-to-hear conversation, correct?

23 A That is correct.

24 Q And you had to labor mightily over draft over
25 draft, listening and listening to come up with the

1 transcript you have come up with, correct?

2 A That is correct, sir.

3 Q I am asking, as part of the context so you could
4 best understand the conversation, would it not be relevant
5 to have read the transcripts of conversations between Emad
6 Salem and Siddig Ali about this difficult-to-hear
7 conversation?

8 MR. FITZGERALD: Objection.

9 THE COURT: Sustained. Mr. Wasserman, please
10 move on to something else.

11 Q In this transcript, did you make any attempt to
12 make any explanations when an Arabic word is used such as
13 faloose, that it means money?

14 A No, I didn't do translations of the Arabics.

15 Q If the word faloose appears in the transcript, as
16 it does, that word is not defined in the transcript as
17 meaning money, is that correct?

18 A No, sir.

19 Q Other Arabic expressions that are used frequently
20 like Hamdi Allah and Insha Allah, those are also not
21 defined, is that correct?

22 A I did not do translations of the Arabic words. I
23 tried to do it phonetically the best I could.

24 MR. WASSERMAN: Your Honor, I have additional
25 material but I think it is more appropriate for cross. I

1 conclude voir dire at this time.

2 THE COURT: 325 and 325T as an aid are received.

3 (Government's Exhibits 325 and 325T received in
4 evidence)

5 MR. FITZGERALD: Your Honor, I have nothing
6 further.

7 THE COURT: Mr. Wasserman, do you want the jurors
8 to look at 325T?

9 MR. WASSERMAN: Yes, that would be fine.

10 THE COURT: It is loose. I gather it is not in
11 any book. It is simply a transcript with an exhibit tab
12 attached to it, or a clip to it. It should be loose among
13 the materials.

14 CROSS-EXAMINATION

15 BY MR. WASSERMAN:

16 Q Detective, let's clear up the music, where that
17 was coming from. If I could point you to page 3, in the
18 middle of the page, there is an attribution to Hampton-El
19 which begins with, Yeah, you, I, that's why I asked you.
20 Then it says, we can go in the next room. Correct?

21 A That is correct, sir.

22 Q If you would go then to page 16, from the top of
23 the page your transcript reads Hampton-El: Police or are
24 right on the corners.

25 Siddig Ali: Unintelligible.

1 Hampton-El: I told you what I did already, I
2 tell you what I want, I blocked them.

3 Siddig Ali: I hear it but I don't hear it.

4 Hampton-El: See, you got to know that.

5 Then continuing down the page in the middle,
6 Hampton-El: Unintelligible, they don't know any better,
7 they are ignorant, they are ignorant, they don't know.

8 Salem: Unintelligible.

9 Hampton-El, continuing: It doesn't bother me any
10 more.

11 Siddig Ali: When I lived in the Bronx over there
12 this is what I had in the night unintelligible.

13 Hampton-El: Where I live and the guy did it I
14 went over, boom, boom, boom, I knocked on his door and said
15 you you don't have the right to disturb, unintelligible.

16 Siddig Ali: That's right.

17 And then Hampton-El says: I said you know if you
18 play your records unintelligible and continue, you'll have
19 to deal with me, and he cut it off, but --

20 And then there is Siddig Ali says: Um-hum.

21 And then Hampton-El says: Unintelligible
22 compared to this he had the speakers from here up to the top
23 of this over here.

24 Detective, that discussion would suggest, would
25 it not, that there was someone outside who was playing the

1 music and the people in the conversation are referring to
2 past experiences they have had with people who disturbed
3 literally the peace by playing their music too loud,
4 correct?

5 A All right. I will go back to page 3. I think
6 what happened in the middle attribution by Hampton-El was
7 they wanted to make salat, and what they wanted to do was go
8 into the next room. At that point where he says all right,
9 sir, you can go to the bathroom and make -- basically to
10 wash up. I think they were going to make prayers in another
11 room at the time at that point.

12 (Continued on next page)

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1 Q That's fine, Detective.

2 But it would also indicate that that he was
3 offering another room that was available, and that later on,
4 the references that I have cited on page 16 of your
5 transcript, they are discussing music coming from the
6 outside, correct?

7 A You know what it is, I don't want to get confused
8 why we want went to page 3 and then to page 16. I just want
9 to clear that up for you. The possibility is that maybe
10 they went into the other room because the room was cleaner,
11 to make prayer. I don't know what the reason was.

12 Q I am not asking that. I am simply referring to
13 page 3 as indicating that there was another room being
14 offered.

15 A I'm sorry. Yes, sir.

16 Q Whether it was being offered for prayer or
17 conversation, it was available?

18 A That is correct.

19 Q On page 16 there is the discussion that we have
20 just gone over concerning music coming from the outside,
21 correct?

22 A OK. I am not -- like I said, I know there was
23 music coming, I stated before that it was from across the
24 street. I probably shouldn't have said that, because I
25 don't know where the music was coming from, whether it was

1 from next door or across the street, but I think it's fair
2 to say it was not coming from inside the apartment.

3 Q Thank you. In terms of -- withdrawn. Thank you.

4 You indicated that you could not tell the body
5 language or the attentiveness or the facial expressions of
6 the speakers, correct?

7 A That's correct, sir.

8 Q And that your transcript certainly makes no
9 attempt to convey whether the speakers were serious or not,
10 correct.

11 MR. FITZGERALD: Objection to form.

12 Q What the intent was behind the words, correct?

13 A I mean, there was --

14 THE COURT: In other words, the transcript
15 records what people said. It doesn't read their minds,
16 right?

17 THE WITNESS: That's correct, sir.

18 Q Would it be fair to say that in this transcript
19 there are numerous instances where there is conversation
20 that might be considered extravagant or unreal or fantasy?

21 MR. FITZGERALD: Objection.

22 THE COURT: Sustained.

23 Q Let me refer you to page 10, the second
24 Hampton-El attribution.

25 A Let me just get there, I'm sorry.

1 Q Sure.

2 That attribution reads, "You see, that status of
3 what going on now, they have a thing called chi, chi, chi.
4 It's used in ninja. Sometimes. Ak, (UI), you touch your
5 opponent like that. When you touch (UI) embolism, wherever
6 it wants to, it can go in the body and air pocket,
7 unintelligible, into the heart or the lungs, unintelligible,
8 you have fibrillation and die."

9 Is that a fair reading of your transcript?

10 A Yes, sir.

11 Q And the conversation then goes on to a discussion
12 of acupuncture. Then, on the next page, on page 11, the
13 second Hampton-El attribution reads, "What do you think they
14 did to Bruce Lee. Bruise Lee was revealing the secrets of
15 martial arts. Too many people can see the mind, number one.
16 Our mind, the way we use our mind, our sense of smelling,
17 feelings, emotions, feelings, hatred, anger, but the other
18 parts of our mind that we don't use. That's why Prophet
19 Mohammed, unintelligible, keeps straight meditation,
20 solitude, you isolate yourself from this kind of garbage."

21 Now, the two passages, the first one discusses a
22 method of using a ninja technique to kill somebody by
23 touching them, would that be fair to say?

24 A Yeah, I believe so. There is something there
25 about --

1 Q OK. Then that is connected up with the passage
2 on page 11 with, "What do you think they did to Bruce Lee."
3 In fact to make it clearer if I may, just going from the
4 bottom of page 10 where Emad Salem says, "This is the first
5 time I ever heard of this," and then on page 11 Hampton-El
6 says, "You'll just drop dead and people will say cardiac
7 arrest."

8 Siddig Ali says, "You just die naturally, ah?"

9 And then Hampton-El says, "What do you think they
10 did to Bruce Lee?"

11 Those passages referring to the killing of Bruce
12 Lee through the death touch it, as it were, would you not
13 consider that to be fantasy talk?

14 THE COURT: Sustained. May I see counsel at the
15 side.

16 MR. WASSERMAN: Sure.

17 (Continued on next page)

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1 (At the side bar)

2 THE COURT: If you want to argue in your
3 summation that they weren't serious about parts of this
4 conversation, obviously you are free to do that. But this
5 isn't the way to do it.

6 MR. WASSERMAN: I will take out the argument
7 part. What I would like to do is go over, through
8 questioning, and it won't be that lengthy, this is --

9 THE COURT: I am not talking about the length. I
10 am talking about whether you can get into that kind of
11 cross-examination with this witness or, indeed, anyone other
12 than a participant in the conversation.

13 MR. WASSERMAN: I think to the extent, your
14 Honor, that I am trying to show the bias in the transcript
15 that I should be permitted to, and that I have a point that
16 I am trying to make here.

17 THE COURT: This doesn't show the bias of the
18 transcript. This is asking for speculation about whether
19 somebody was serious or not and I won't permit it. Move on
20 to something else. Let's go.

21 MR. WASSERMAN: May I just take one second. It
22 links up. I just have one more example, and then it links
23 up with the point I am trying to make. I just ask your
24 patience for the one example.

25 THE COURT: No. This is not proper cross.

1 You are asking me to let you ask questions that
2 are totally improper and to let you ask only a couple of
3 more. The answer is no. Let's move on.

4 (Continued on next page)

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1 (In open court)

2 MR. WASSERMAN: Excuse me, your Honor.

3 (Pause)

4 BY MR. WASSERMAN:

5 Q Now, in preparing your transcript, it would be
6 necessary, would it not, to have as much context for the
7 circumstances of the conversation as possible in order to
8 understand what the people were talking about?

9 A I'm sorry. The context of the?

10 Q In other words, if a conversation is difficult to
11 understand, the more information you have concerning the
12 circumstances of the conversation and before and after would
13 help you understand what they're saying, correct?

14 A At times, yes.

15 Q It would be fair to say that if Emad Salem and
16 Siddig Ali referred to Hampton-El as a dud after this
17 conversation in CM27 that that would help you understand
18 that that conversation that took place in CM25 was just a
19 lot of bullshit?

20 A To be honest --

21 MR. FITZGERALD: Objection.

22 THE COURT: Sustained.

23 MR. WASSERMAN: Your Honor, I find it hard to
24 come up with a better word. "Bull" I'll use.

25 THE COURT: I don't think the objection was to

1 that word.

2 MR. WASSERMAN: OK.

3 Q Wouldn't it help you provide an accurate
4 transcription to this jury to know that Siddig Ali and Emad
5 Salem thought that, or their perception of that conversation
6 was that Rashid was a failure?

7 MR. FITZGERALD: Objection.

8 THE COURT: He can answer it. I mean, would it
9 help you to make an accurate transcript to know that if it
10 were true?

11 THE WITNESS: That is a tough question, your
12 Honor. The thing is, I listened to this tape. I didn't
13 make a determination of what anybody thought of anything. I
14 tried to listen to the words the best I could. I tried to
15 do it fairly and accurately.

16 Like you brought up, I didn't put in body
17 movement, I didn't put in anger, I didn't put in laughing.
18 Some of that was in there prior, but I didn't add any of
19 that. That is a tough question.

20 THE COURT: His question is very simple: It's
21 not simple to answer, but it is a simple question, he wants
22 to know whether it would help you figure out what was said
23 in the conversation -- what the words were, not what people
24 meant, not what they thought, just what the words were --
25 would it help you figure that out to know what people

1 expressed in their opinions later on?

2 THE WITNESS: No, sir.

3 Q Even if the opinions later on are to the effect
4 of, "I don't think" --

5 MR. FITZGERALD: Objection, your Honor.

6 THE COURT: Sustained. Move on.

7 Q In terms of your interpretations of what you were
8 hearing, I would like you to turn to page 80.

9 In fact, just for reference if you can go back to
10 page 78. Let's see. It is the second Hampton-El
11 attribution from the top which says: "Very, very important
12 to be patient because, number one, you want to be
13 successful."

14 And then the next Hampton-El attribution, "and,
15 number one is, Allah suallah" -- it should be "simsallah --
16 "is not going to let it happen until it pleases him."

17 Then, the following Hampton-El attribution: "He
18 wants to make sure that you think about all of everything
19 you're doing."

20 OK. Now, the page continues on with a reference
21 to blaming it on kufars, with the last Hampton-El
22 attribution, or drug dealers.

23 Let's go to page 80. In the middle of the page
24 there is a Siddig Ali statement: "Lot easier, lot simpler,
25 nothing simple, it will take a little (UI), you plan, and

1 (UI), plan and take specifics (UI) it takes calculation."

2 Then you have clap in background, pause, snap of
3 fingers, "Break like straws, boom. Five minutes apart."

4 Do you know from listening to the tape what
5 Siddig Ali was referring to or demonstrating by snapping his
6 fingers?

7 A Do I know?

8 Q Yes. Were you able to hear him say at any point
9 in that passage or before that about tunnels?

10 A I would have to go back and read the transcript.
11 Do you want me to go back from 78?

12 Q I am just asking you if you recollect at this
13 point.

14 A I don't recall.

15 Q Now, the next statement is by Hampton-El, and he
16 has, "With that, you don't need --"

17 Wouldn't it be fair to say that where you have
18 "unintelligible," or rather that unintelligible means that
19 there is a word missing from that transcript sentence,
20 correct?

21 A That's correct.

22 MR. FITZGERALD: Objection.

23 Q Well, there is something unintelligible.

24 And what the phrase reads is, "With that you
25 don't need," and then you have "unintelligible," correct?

1 Isn't it a fact that if you listen to the
2 transcript carefully it states, "With that you don't need
3 me"?

4 THE COURT: Do you mean if you listen to the tape
5 carefully?

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

7 THE COURT: Do you mean if you listen to the tape
8 carefully?

9 MR. WASSERMAN: Yes.

10 THE COURT: He wants to know whether it says at
11 that point on the tape, "With that you don't need me."

12 THE WITNESS: I didn't hear that.

13 Q You just heard unintelligible?

14 A I didn't --

15 MR. FITZGERALD: Objection. May I have a moment
16 with counsel, Judge.

17 THE COURT: Yes.

18 (Counsel conferred)

19 Q Would it not help to understand what is now being
20 discussed to go to page 81, and the second Hampton-El
21 attribution says, "Because if you do a tunnel, in all
22 probability some people are going to be, unintelligible, to
23 death, unintelligible. In all probability ordinary citizens
24 will be harmed."

25 Would it not be fair to say that in order to

1 understand what's being said after Siddig Ali snaps his
2 fingers that you have to continue on to that statement about
3 the tunnels causing death to ordinary citizens?

4 A Well, again, some of those unintelligibles, I
5 can't make that out. I don't know what was discussed or
6 what Siddig Ali had said during those unintelligibles. If I
7 could hear it, I would have put it down.

8 Q Would it be fair to say that after that snap of
9 the fingers by Siddig Ali, the tone of the conversation
10 changes from banter and bull to something very serious?

11 A I wouldn't put this as banter or bull. I
12 remember this being a very serious conversation. I could
13 remember, if you're asking me the seriousness of it, yes,
14 it's a very serious conversation. There is talk about
15 people being killed.

16 Q In that particular passage there is, and it's
17 raised by Hampton-El, correct, he's talking about, if you do
18 a tunnel, ordinary people are going to be killed, correct?

19 Yes or no.

20 A Yes.

21 Q Now, prior to that this conversation about
22 getting M80 firecrackers and blockbuster firecrackers,
23 correct, there's a conversation about that in the
24 transcript, correct?

25 A And detonators, yes.

1 Q And detonators. But until you come to that snap
2 of the fingers by Siddig, the conversation is very general
3 and very filled with baloney?

4 A No.

5 MR. FITZGERALD: Objection.

6 THE COURT: Sustained.

7 Q Let me point out to you --

8 THE COURT: Mr. Wasserman, may I see you at the
9 side again.

10 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Let me say it again: Obviously, if
3 you want to argue this in your summation, you may argue it
4 in your summation. You may not do it this way on cross.
5 You may not ask him to speculate on whether it was bull or
6 not bull, just move on to something else.

7 MR. WASSERMAN: Your Honor, if I may --

8 THE COURT: You may not do it. I don't know how
9 else to say it, Mr. Wasserman. I really don't.

10 MR. WASSERMAN: Just one question, and then I am
11 not going to -- he has said that he thought it was a very
12 serious conversation.

13 THE COURT: He said that in response to your
14 question.

15 MR. WASSERMAN: I think I can point out, or you
16 know where the conversation --

17 THE COURT: You can point it out in your
18 summation. Move on to something else.

19 MR. WASSERMAN: If it is not a matter of
20 judgment, but rather a matter of a topic covered, can't I
21 ask about a topic covered? That is all.

22 THE COURT: The topics covered are in the
23 transcript. Whether they were kidding or not kidding or
24 BSing or not BSing is something to be argued in summation.
25 It is not something to cross-examine a witness about who

1 simply prepared a transcript. Let's move on.

2 MR. FITZGERALD: Judge?

3 THE COURT: Yes.

4 MR. FITZGERALD: I just want to put on the record
5 he's gone into some areas where he says it appears to be
6 "bull" and "baloney." There are some areas where it is
7 clearly not, and I intend to --

8 THE COURT: You will not.

9 MR. FITZGERALD: OK.

10 THE COURT: Sauce for the goose is sauce for the
11 gander.

12 MR. FITZGERALD: That is why I wanted to raise
13 it, Judge.

14 THE COURT: Good.

15 (Continued on next page)

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1 (In open court)

2 BY MR. WASSERMAN:

3 Q Detective, would it be fair to say that in the
4 passages that we were just looking at -- I'm referring
5 specifically to the snap of the fingers passage, and then
6 what Hampton-El says after that -- that for the jury to have
7 the best opportunity to hear whether Hampton-El is saying,
8 "With that you don't need me," or, your version, "With that
9 you don't need unintelligible," that they would need to
10 listen to the original Nagra without the signal being
11 dispersed to 40 different headphones?

12 Let me rephrase it.

13 When you listen to the Nagra you listen to it on
14 the Nagra machine, the play-back machine, correct?

15 A With an amplifier, yes, sir.

16 Q With an amplifier.

17 You just had one set of earphones, correct?

18 A I was doing it by myself, sir.

19 Q One set of earphones, correct?

20 A That's correct, sir.

21 Q OK. Is it fair to say that if you are going to
22 have 40 sets of earphones or 30 sets of earphones that it is
23 not going to supply the same clarity that you had when you
24 listened to the tape? Correct?

25 A I am not an audio technical whiz. I have no

1 clue --

2 Q Well, then --

3 A -- whether it would diminish the sound or enhance
4 it. I have no idea.

5 Q Then the jury can judge by listening to what they
6 hear as compared to what you wrote down what might be the
7 difference between the two techniques, correct?

8 MR. FITZGERALD: Objection.

9 THE COURT: Sustained.

10 Q If the jury can't hear what you have in your
11 transcript, might that suggest they are not getting as clear
12 a signal as you had when you prepared the transcript?

13 MR. FITZGERALD: Objection.

14 THE COURT: Sustained.

15 Move on to something else, Mr. Wasserman.

16 MR. WASSERMAN: I just want to finish that point,
17 and then I am complete. If I just may have a moment.

18 (Pause)

19 Q Detective, would it be fair to say that in order
20 to determine what that unintelligible is in the statement by
21 Hampton-El, "With that you don't need (UI), or as I'm
22 suggesting that the tape says, "With that you don't need
23 me" --

24 MR. FITZGERALD: Objection.

25 THE COURT: Do you want to rephrase it,

1 Mr. Wasserman?

2 MR. WASSERMAN: Yes.

3 THE COURT: Without testifying this time.

4 MR. WASSERMAN: I'm sorry, Judge?

5 THE COURT: I said without testifying.

6 MR. WASSERMAN: Yes, sir.

7 THE COURT: Good.

8 Q That for the jury to have an opportunity to
9 determine whether that unintelligible stands for the word
10 "me" on the tape, that they might need to use different
11 equipment than will be used today when they listen to the
12 tape?

13 MR. FITZGERALD: Objection.

14 THE COURT: If you know.

15 Q If you know.

16 A I don't know, sir.

17 Q So then it would be fair to say that for the jury
18 that, as far as you know, you don't -- I'm sorry.

19 Would it be fair to say that you don't know
20 whether if different equipment was used the jury would be
21 able to make out that sentence by Hampton-El says, "With
22 that you don't need me," correct? You just don't know the
23 answer to that?

24 A I don't know, sir.

25 MR. WASSERMAN: OK. Thank you very much.

1 THE COURT: Anyone else? Anything else?

2 MR. FITZGERALD: Yes, Judge.

3 MR. WASSERMAN: Your Honor, may I approach.

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1 (At the side bar)

2 MR. WASSERMAN: Your Honor, I would like to
3 request that on that particular passage, when we come to it,
4 that the jury be permitted, either after the whole tape is
5 played or at that particular point to listen at that
6 particular point in the transcript for that particular
7 phrase, that the jury be permitted to listen to the tape
8 with just two headphones at a time for the jury. My
9 experience has been in actually listening to the tape --

10 THE COURT: They can do it after the tape is
11 played.

12 MR. WASSERMAN: OK.

13 MR. FITZGERALD: I may ask for other sections.
14 We are not going to finish it until after lunch so maybe we
15 can work it out.

16 THE COURT: Fine. Work out what you want
17 listened to with the other equipment, but not until after
18 it's played.

19 MR. WASSERMAN: I understand. Thank you.

20 (Continued on next page)

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1 (In open court)

2 THE COURT: Go ahead.

3 REDIRECT EXAMINATION

4 BY MR. FITZGERALD:

5 Q Detective Corrigan, Mr. Wasserman asked you
6 whether or not it would help to place the conversation in
7 context to know what Siddig Ali or Emad Salem may have said
8 afterward.

9 Would it also help to place the conversation in
10 context to know whom Mr. Hampton-El spoke to afterward?

11 A Yes, sir.

12 Q Mr. Wasserman asked you about a section of the
13 transcript, the last few pages, where on page 80 there is a
14 reference by Siddig Ali, "Break like straws, boom, five
15 minutes apart."

16 Then he directed your attention ahead one page to
17 page 81 where Mr. Hampton-El said, "Because if you do a
18 tunnel, in all probability some people are going to be
19 unintelligible to death."

20 Did you also hear in the transcript one page
21 later, on page 82, Mr. Hampton-El say, "You got to be
22 working. Take your time," the fourth attribution down?

23 A Yes, sir.

24 Q After discussing people being put to death, did
25 Hampton-El say: "You've got to be working. Take your time,

1 get the detonators, unintelligible, everything in one shot,
2 I don't want to, unintelligible, and come back later for
3 it"?

4 A Yes, sir. And also follows up, "So you don't, so
5 you know what you need money unintelligible."

6 Q And in the very last page, immediately following
7 this conversation, is there an attribution at the very top
8 of the page by Mr. Hampton-El continuing from the previous
9 page, "So if you get the money, if you get the money, we can
10 do it"?

11 A That's correct, sir.

12 MR. FITZGERALD: Nothing further.

13 MR. WASSERMAN: Recross, Judge.

14 THE COURT: Go ahead.

15 RE CROSS-EXAMINATION

16 BY MR. WASSERMAN:

17 Q Detective, the fact of the matter is that in the
18 last -- if you look at the page, page 81, after Hampton-El
19 says, "Because if you do a tunnel, in all probability some
20 people are going to be unintelligible to death.
21 Unintelligible in all probability ordinary citizens will be
22 harmed," there are a great deal of unintelligibles on the
23 remainder of that page, correct?

24 A Yes.

25 Q So it is impossible, is it not, for you to

1 understand what Hampton-El is referring to on page 83 where
2 he says, "So if you get the money, if you get the money we
3 can do it," correct?

4 A I wouldn't say that, no, sir.

5 Q How do you know what he's referring to as, "We
6 can do it"?

7 THE COURT: Sustained.

8 Q The unintelligibles that are taking place on page
9 81, wouldn't it be fair to say that characterizes a
10 conversation between Siddig Ali and Hampton-El?

11 A On page 81?

12 Q On page 81, yes.

13 A I don't see Salem in any attribution.

14 Q Siddig Ali and Hampton-El?

15 A That's correct, sir.

16 Q And those unintelligibles cover a discussion, a
17 conversation between Siddig Ali and Hampton-El with
18 reference to the issue of doing a tunnel, isn't that
19 correct?

20 A A lot of it has to do with --

21 Q Yes or no, sir.

22 A How many people -- I'm sorry.

23 MR. FITZGERALD: Objection.

24 THE COURT: Overruled.

25 The objection is sustained.

1 Q Can you answer that question yes or no?

2 A You are going to have to repeat it, sir.

3 Q Isn't it fair to say that the unintelligible
4 conversation which follows Hampton-El's comment about, "If
5 you do a tunnel, people are going to be, ordinary citizens
6 will be harmed," that that conversation you have not
7 transcribed, correct?

8 MR. FITZGERALD: Objection.

9 THE COURT: Sustained. If it is unintelligible,
10 you can't tell what's being discussed. Move on to something
11 else.

12 MR. WASSERMAN: Well, if I may --

13 THE COURT: Mr. Wasserman, move on --

14 MR. WASSERMAN: If I may, Judge.

15 THE COURT: You may not. That is what "move on
16 to something else" means.

17 Q It is your version of what you can hear, correct,
18 it is your transcript, correct?

19 A The words that I heard, correct, sir.

20 Q OK. And it would also be fair to say that you
21 don't know whether the Nagra that was recording this
22 conversation was moved in any way to not make it legible,
23 what was then being discussed between Siddig Ali and
24 Hampton-El, correct, you don't know?

25 A I don't know where the Nagra was, sir.

1 Q You don't know if it was moved at that time,
2 correct?

3 A I think I testified earlier I wasn't in the
4 apartment, sir. I don't know where the Nagra was.

5 Q You've pointed out a phrase on page 83, "So if
6 you get the money, if you get the money, we can do it," and
7 that's followed by Hampton-El saying, "Without the money,
8 it's nothing but" -- do you know what the money was to be
9 for?

10 A To get the money?

11 Q Yes.

12 A For Siddig's operation. He wanted to buy 1,000
13 to 1500 pounds of C-4. That's what he wanted the money for.

14 Q And did they get the money?

15 A Excuse me?

16 Q Did they get the money?

17 MR. FITZGERALD: Objection, scope.

18 A When they left the apartment this day, no, sir.

19 Q Did they ever get the money?

20 MR. FITZGERALD: Objection.

21 THE COURT: Sustained. Mr. Wasserman.

22 MR. WASSERMAN: Yes, Judge?

23 THE COURT: Sit down.

24 MR. WASSERMAN: OK.

25 MR. FITZGERALD: Nothing further.

1 THE COURT: You are excused.

2 (Witness excused)

3 MR. KHUZAMI: The government calls Julio Capizano
4 as its next witness.

5 MR. WASSERMAN: Your Honor, may I just have a
6 quick side bar on the next witness.

7 (At the side bar)

8 THE COURT: What is it?

9 MR. WASSERMAN: Your Honor, the government is
10 going to introduce several surveillance photos, and my
11 objection for the record is that these photos should have
12 been provided a long time ago under Rule 16, and they were
13 just provided to me last week.

14 MR. KHUZAMI: Your Honor, we did just provide
15 them for the first time to Mr. Wasserman a week ago Friday.
16 We delayed putting them in so that he could do whatever he
17 needed to do before putting them in. There are three
18 surveillance photographs of his client. One of his client
19 at Abu Bakr mosque in June of 1992 which connects up with
20 the testimony of Mr. Salem that they met on that occasion.
21 I don't believe that there is any prejudice to
22 Mr. Wasserman. We have delayed the introduction of these
23 photographs to accommodate him, but he is correct that we
24 did not produce them prior to a week ago Friday.

25 THE COURT: What is the prejudice?

1 MR. WASSERMAN: I think that it is something that
2 I would have dealt with in some way at the beginning of the
3 case had I known that there were surveillance photos, or I
4 would have dealt with it on the cross-examination of Emad
5 about this meeting.

6 THE COURT: The objection is sustained. They are
7 out.

8 (Continued on next page)

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1 (In open court)

2 MR. KHUZAMI: Your Honor, the government will not
3 call Mr. Capizano as a witness. He may be excused.

4 THE COURT: All right. You are excused.

5 (Witness excused)

6 THE COURT: The government will call Tom Shaw as
7 its next witness.

8 THOMAS SHAW,

9 called as a witness by the Government,
10 having been duly sworn, testified as follows:

11 THE DEPUTY CLERK: Please speak into the
12 microphone.

13 MR. KHUZAMI: May I proceed, your Honor?

14 THE COURT: Go ahead.

15 DIRECT EXAMINATION

16 BY MR. KHUZAMI:

17 Q Mr. Shaw, how are you employed?

18 A I am a police officer with the New York City
19 Police Department.

20 Q How long have you been a police officer?

21 A For the past 10 years.

22 Q Directing your attention to June 24 of 1993, what
23 was your assignment on that day?

24 A I was patrol supervisor's operator, driving the
25 boss around the precinct.

1 Q What precinct were you assigned to on that day?

2 A Six-Seven Precinct.

3 Q Where is the Six-Seven Precinct?

4 A It's in Brooklyn, the East Flatbush section.

5 Q On June 24, 1993 -- answering yes or no -- did
6 you get a call over your radio concerning a piece of paper?

7 A Yes, I did.

8 Q As a result of that call, what did you do?

9 A I responded to 3301 Newkirk Avenue.

10 MS. STEWART: I can't hear him, Judge.

11 Q If you could please speak up a little. Maybe get
12 a little closer to the microphone so everyone in the
13 courtroom can hear you and repeat your last answer, please.

14 A I responded to 3301 Newkirk Avenue.

15 Q What happened when you got there?

16 A There was a piece of paper on the windshield of a
17 vehicle. I took the paper off that vehicle.

18 Q What kind of vehicle did you take the piece of
19 paper off of?

20 A It was a white Mazda.

21 Q Where was the Mazda parked?

22 A It was parked in the driveway at 3301 Newkirk.

23 Q Did you read the piece of paper at the time that
24 you took it off of the white Mazda?

25 A Yes, I did.

1 MR. KHUZAMI: Your Honor, may I approach.

2 Q Officer Shaw, let me show you what's been marked
3 as Government Exhibit 846 for identification and ask you to
4 take a look at it. Do you recognize that piece of paper?

5 A Yes, I do.

6 Q What is it?

7 A This is a paper I retrieved off of the vehicle at
8 3301 Newkirk.

9 Q How do you know that is the same piece of paper
10 you retrieved?

11 A I know it by -- well, the way it was torn on the
12 side, and also a few of the words inside the note itself.

13 Q Is it in the same condition approximately that it
14 was when you seized it on June 24, 1993?

15 A Yes, it is.

16 MR. KHUZAMI: At this time I would move
17 Government Exhibit 846 into evidence.

18 MR. WASSERMAN: Brief voir dire, Judge.

19 VOIR DIRE EXAMINATION

20 BY MR. WASSERMAN:

21 Q Good morning, sir.

22 A Good morning.

23 Q The note that you retrieved, to your knowledge,
24 that note was purportedly found by a newspaper reporter,
25 correct?

1 A I don't know that. I was advised by Central to
2 go to this location.

3 Q And when you got there, the note was on the
4 windshield?

5 A Correct.

6 Q Do you know who left it there?

7 A No, I don't.

8 MR. WASSERMAN: I have no further questions on
9 voir dire, Judge, but I think we need a side bar.

10 THE COURT: Come on up.

11 (Continued on next page)

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1 (At the side bar)

2 MR. WASSERMAN: Your Honor, this purports to be a
3 note from --

4 THE COURT: I know. I read it.

5 MR. WASSERMAN: I think that the government would
6 agree that this is not -- I mean, this is not from Abu
7 Ubaidah. This is not his handwriting. This is not his
8 note.

9 MR. KHUZAMI: I wouldn't agree to any such thing.
10 I have no idea. I only know what is on the note.

11 THE COURT: I know it says who it is from.

12 MR. KHUZAMI: It refers to the Sheik Abdul
13 Rashid.

14 THE COURT: I know.

15 MR. KHUZAMI: He said this is from Abu Ubaidah.

16 THE COURT: I know.

17 MR. KHUZAMI: I assume that is who it is from,
18 but I don't know his handwriting so I can't respond to
19 Mr. Wasserman's statement about Abu Ubaidah's handwriting.
20 I don't know whether or not as to that it is admissible.

21 MR. WASSERMAN: If the government doesn't know
22 whether he wrote it and have no opinion about it, then how
23 does it come in? On what basis?

24 MR. KHUZAMI: The note is to Abdul Rashid from
25 Abu Ubaidah. What basis is necessary?

1 MR. WASSERMAN: You are just relating what the
2 note says, but you are not saying that the government has a
3 basis for believing that this note was written by Abu
4 Ubaidah. That is what you just said.

5 MR. KHUZAMI: There is an association between
6 your client and Mr. Ubaidah that is well established.

7 MR. WASSERMAN: It doesn't make any difference.

8 MR. KHUZAMI: This is the morning after the
9 search at Rogers Avenue. It refers to a gym. It refers to
10 a raid by the FBI. If you want to put a handwriting expert
11 on and suggest that it is not Abu Ubaidah's handwriting,
12 then go ahead.

13 MR. STAVIS: Your Honor, the note has not been
14 authenticated. If it is admitted, it is hearsay, and it is
15 admitted as in furtherance of the conspiracy, and I think
16 the proponent of the exhibit, which would be the government,
17 has an obligation to show that it is from one co-conspirator
18 to another, and they have not met that obligation.

19 MR. KHUZAMI: It is clearly met by the content of
20 the note itself. It is from Abu Ubaidah.

21 THE COURT: I am going to hold off on ruling on
22 this and take another look.

23 MR. KHUZAMI: We are not going to read it anyway.

24 I was going to ask permission to read it at a
25 later date.

1 THE COURT: Fine. Anything else?

2 MR. WASSERMAN: Thank you, Judge.

3 (In open court)

4 MR. KHUZAMI: No further questions.

5 THE COURT: Cross?

6 MR. WASSERMAN: No, your Honor. Thank you.

7 THE COURT: Anyone else?

8 You are excused. Thank you.

9 (Witness excused)

10 MR. FITZGERALD: Your Honor, at this time the
11 government would ask to play Government Exhibit 711, and the
12 transcript in English is 711T, which I believe is in the
13 jurors' books for the series of Exhibits 700 to 750. This
14 would be the transcript of an English conversation, Judge.

15 THE COURT: All right.

16 Ladies and gentlemen, if you will take out your
17 notebooks, the one marked 700 through 750 has the transcript
18 of 711T.

19 I want to remind you that since this is an
20 English-language conversation that the transcript that the
21 government has offered is received only as an aid in helping
22 you understand the tape. But the evidence is what is on the
23 tape, not what's in the transcript. So if you should hear
24 anything on the tape that you don't see in the transcript,
25 it's the tape that is the evidence; and if you see anything

1 in the transcript that is not on the tape, again, it is the
2 tape that is the evidence. The transcript is only an aid in
3 listening to the tape if it helps you.

4 MR. FITZGERALD: Thank you, your Honor.

5 Government Exhibit 711T is dated April 2, 1993 at
6 8:57 p.m.

7 (Tape played)

8 MR. FITZGERALD: Judge, the government would next
9 play Government Exhibit 715 and Government Exhibit 715T,
10 again, as a transcript of an English conversation, and it is
11 in the same book.

12 THE COURT: All right.

13 That is Exhibit 715. The transcript is 715T.
14 Again, the evidence is what you hear, not what you see.
15 Go ahead.

16 MR. FITZGERALD: Thank you, Judge. And 715T is a
17 conversation of April 8, 1993 at 1:03 in the afternoon.

18 (Tape played)

19 MR. FITZGERALD: Judge, there was one more
20 transcript we were going to play either before or after the
21 break.

22 THE COURT: Long or short?

23 MR. FITZGERALD: Short. Four pages, I believe.
24 Four pages.

25 THE COURT: We will play it now and then take a

1 break.

2 MR. FITZGERALD: Thank you. That would be
3 Government Exhibit 741, and the transcript is 741T.

4 741T is a conversation recorded on May 30, 1993
5 at 1:26 in the afternoon.

6 (Tape played)

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

11 (The jury was excused)

12 (Recess)

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1 (In open court; jury not present)

2 MR. FITZGERALD: Judge, there is one section of
3 the tape that we redacted, which refers to the Mustafa
4 Shalabi incident. It is just a minute. We propose to stop
5 the tape, tell the jury that it has been redacted by
6 agreement, have them lift off their headsets, advance the
7 tape to the appropriate point and have them put their
8 headsets back on.

9 THE COURT: Is that all right?

10 MS. STEWART: Yes, Judge.

11 THE COURT: Will you alert me when the time
12 comes?

13 MR. FITZGERALD: Yes, Judge.

14 (Jury present)

15 THE COURT: Mr. Fitzgerald.

16 MR. FITZGERALD: Yes, your Honor. At this time
17 the government would propose to play Government's Exhibit
18 325, which is CM 25, and the transcript which is in English
19 as an aid to the jury, 325T. That was moved into the
20 jurors' books.

21 THE COURT: That is the loose one that. Detective
22 Corrigan was being asked about earlier this morning. It is
23 now in your books marked 300 to 325, and it is obviously
24 your last exhibit. I remind you once again since this is an
25 English language tape it is the tape that is the evidence,

1 not the transcript. The transcript is only an aid to you in
2 listening to the tape, if you find that it does help you.

3 MR. FITZGERALD: With the agreement of counsel,
4 there is a portion on page 8 that was redacted. I will stop
5 the tape at the appropriate point, I would ask the jurors to
6 remove their headsets and we will cue it up to the right
7 point and I will indicate that and we can put the headsets
8 back on.

9 THE COURT: When we reach page 8 I will ask you
10 to remove your headsets briefly and we will pass by the
11 portion that both parties are not offering into evidence.
12 Go ahead.

13 MS. AMSTERDAM: Your Honor, I apologize. Could
14 you say the number of the exhibit again?

15 THE COURT: 325.

16 MS. AMSTERDAM: Thank you.

17 MR. FITZGERALD: And 325T, the transcript of 325,
18 is dated May 30, 1993.

19 (Government's Exhibit 325 in evidence played)

20 MS. STEWART: The translators are not able to
21 translate directly from the tape.

22 THE COURT: May I see you at the side bar.

23 (At the side bar)

24 MS. STEWART: It is too fast and they can't
25 follow it. In other words, they don't hear it because it

1 is -- the tape is bad, apparently. That is what he just
2 told me, they can't translate.

3 THE COURT: In that event, your client will have
4 to listen to it at leisure with a translator, as he has had
5 the opportunity to do till now.

6 MS. STEWART: I just bring it to your attention.

7 THE COURT: I understand.

8 MR. FITZGERALD: If it helps, they can use the
9 transcript.

10 MS. STEWART: They have the transcript.

11 THE COURT: If they want to work with the
12 transcript that is fine. Otherwise he can listen to it
13 again.

14 MS. STEWART: I am sure it has been translated at
15 some point into the Arabic.

16 THE COURT: It has been available.

17 MS. STEWART: That is not exactly true. This is
18 a revised version, I understand.

19 THE COURT: The tapes were available.

20 MR. WASSERMAN: The tape. It is a very difficult
21 to listen to tape.

22 THE COURT: I am not going to stop the playing of
23 it now.

24 MR. WASSERMAN: The transcript, as you know, we
25 have some concerns, and of course it is the tape that is the

1 evidence. If the translators work off the transcript, then
2 my concern is that the defendants who are relying upon that
3 are getting the version of the transcript and not the tape.

4 THE COURT: That concern should have been dealt
5 with beforehand because again, the tapes were available. I
6 am not going to stop it now.

7 MS. STEWART: Apparently the original Nagra was
8 never able to be done in a form that made it --

9 THE COURT: I am sorry, but this isn't the time
10 to deal with it. Let's go.

11 (In open court)

12 (Tape resumed)

13 THE COURT: Ladies and gentlemen, I will ask you
14 to please remove your headsets at this point, for a moment.

15 (Pause)

16 MR. FITZGERALD: We can put them back on, Judge.

17 THE COURT: You can put your earphones back on.

18 MR. FITZGERALD: We are continuing after

19 "redacted" on page 8.

20 (Tape continued)

21 MR. FITZGERALD: I was just looking at the clock.

22 THE COURT: Ladies and gentlemen, we are going to
23 break. Please leave your notes and other materials behind.

24 Please don't discuss the case. We will resume at 2:00.

25 (Jury excused)

1 THE COURT: Mr. Lavine, may I see you in the
2 robing room.

3 MR. LAVINE: Yes, your Honor.

4 (Continued on next page)

5 (Pages 11608-11609 sealed)

6 (Luncheon recess)

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

2 Time noted, 2:10 p.m.

3 (Jury not present)

4 THE COURT: Ms. London.

5 MS. LONDON: Yes, your Honor. Mr. Elhassan is
6 ill and would like to return to the MCC this afternoon. He
7 has agreed to waive his presence for this afternoon's
8 proceedings.

9 THE COURT: Is that correct, Mr. Elhassan?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. I hope you feel better.
12 You are excused. Thank you very much.

13 (Defendant Elhassan was excused)

14 THE COURT: Excuse me, are we set?

15 MR. MCCARTHY: Yes, your Honor.

16 THE COURT: At what point do you need a ruling on
17 that note?

18 MR. MCCARTHY: On what, your Honor?

19 THE COURT: The note that was found on the car.

20 MR. KHUZAMI: Not today, your Honor. We would
21 probably read that after some of the other search evidence
22 goes in, which would be later in the week.

23 THE COURT: I would refer everybody to three
24 sources: United States v. Lam Muk Chiu, 522 F.2d 330, Point
25 One of that opinion; and United States v. Natale, 526 F.2d

1 1160; also, to Section 2148 of Dean Whitmore's treatise.

2 MR. STAVIS: Did your Honor wish to hear from us
3 after reviewing those authorities?

4 THE COURT: If there is anything for you to say,
5 sure.

6 MS. STEWART: I didn't catch the last citation,
7 Section 2148?

8 THE COURT: Right, of Whitmore. Also, let me
9 just make sure that I understand the state of the record
10 now. The address to which the officer responded is an
11 address at which Mr. Hampton-El resides, is that right? Is
12 that in the record?

13 MR. KHUZAMI: It is not in the record of the
14 proximity to where Mr. Hampton-El resides and where the car
15 was located that the note was found on.

16 THE COURT: That's not?

17 MR. KHUZAMI: That is not.

18 THE COURT: It is in the record that he drives a
19 white Mazda, correct? Because we had the videotape.

20 MR. KHUZAMI: The videotape, that's correct.

21 THE COURT: It is also in the record that Abu
22 Ubaidah was present at the time of the search.

23 MR. KHUZAMI: That's correct.

24 THE COURT: Of the Rogers Avenue location,
25 correct?

1 MR. KHUZAMI: That's correct.

2 THE COURT: All right. Now I understand.

3 (Jury present)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 JURORS: Good afternoon.

6 THE COURT: We are going to continue with Exhibit
7 325.

8 MR. FITZGERALD: Yes, Judge.

9 THE COURT: The transcript is in your books as
10 325T. I think we are resuming at page 11?

11 MR. FITZGERALD: Yes, Judge.

12 THE COURT: Where on that page?

13 MR. FITZGERALD: I think the first attribution is
14 unintelligible, following, "Wow, that's really low." About
15 halfway down the page.

16 THE COURT: A little more than halfway down the
17 page. Once again, I remind you that since this is an
18 English-language tape, it is the tape that is the evidence,
19 not the transcript.

20 (Tape played)

21 (Continued on next page)

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

5 (Recess)

6 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Tomorrow, for your scheduling
3 purposes, we are sitting half a day.

4 MS. AMSTERDAM: Which half?

5 THE COURT: Just like a lawyer. The first half.

6 (Jury present)

7 THE COURT: OK. We are still on Exhibit 325.

8 The tape was at that point corresponding to transcript page
9 34 at the bottom, I believe. Is that right?

10 MR. FITZGERALD: It is either the very bottom of
11 34 or the top of page 35.

12 (Tape played)

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1 THE COURT: We will stop here, ladies and
2 gentlemen. We will continue tomorrow morning. We will sit
3 tomorrow only half a day because some people have some
4 things that they need to do in the afternoon. So tomorrow
5 is only half a day. See you tomorrow morning at 9:30.
6 Please don't discuss the case. Have a pleasant evening.
7 Good night.

8 (Jury excused)

9 MR. WASSERMAN: Your Honor, if I may, tomorrow
10 after the court session in the morning can I remain with my
11 client to go over CM 41 as it will be played in the
12 courtroom? We have a similar situation as with CM 25 but it
13 will be much shorter, and I understand the government is
14 going to play CM 41 on Wednesday.

15 THE COURT: I am sure we will be able to make
16 arrangements, to be absolutely certain. But I hear you.

17 MR. WASSERMAN: Thank you, your Honor.

18 (Proceedings adjourned until 9:30 a.m., Tuesday,
19 June 6, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,

16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

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

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

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

-----x

June 6, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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

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JOYCE E. LONDON

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1 APPEARANCES CONTINUED

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5 JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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7 BROWN, BERNE & SERRA
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8 BY: WESLEY M. SERRA

9 FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
10 BY: THOMAS H. NOOTER and
11 SALVATORE J. RUSSO
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1 (Trial resumed; jury not present)

2 THE COURT: Ms. London?

3 MS. LONDON: Yes, your Honor. I just wanted to
4 bring to the court's attention now that Mr. Elhassan is
5 still not feeling well. He would like to stay for as long
6 as he feels up to it this morning. But at some point, he
7 may wish to return to the MCC. If that comes, I would ask
8 that perhaps the court could take a short break so that he
9 could leave. He has agreed to waive his presence in that
10 event.

11 THE COURT: I appreciate that, but if it comes,
12 you will give me the high sign or something?

13 MS. LONDON: Yes, your Honor.

14 THE COURT: Good. Thank you.

15 (Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 JURORS: Good morning.

4 THE COURT: We are going to pick up again and
5 resume with Exhibit 325. The transcript is 325T. We are
6 going to pick up with that portion of the tape that
7 corresponds to page 64 of the transcript at the bottom of
8 that page.

9 JUROR NO. 8: The bottom of page?

10 THE COURT: The bottom of page 64, 325T. And
11 again I would remind you that it is the tape that is
12 evidence. The transcript is only an aid in listening to the
13 tape.

14 (Tape played)

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1 MR. FITZGERALD: Your Honor, that is the end of
2 that conversation. The government would now propose to play
3 Government's Exhibit 743, and the transcript for 743 is
4 743T, and that is the transcript of an English conversation.

5 THE COURT: That transcript should be in a book
6 marked 700 to 750. 743.

7 MR. FITZGERALD: Government's Exhibit 743 is a
8 conversation recorded also on May 30, 1993, at 10:59 in the
9 evening, and the transcript is 743T.

10 (Tape played)

11 MR. FITZGERALD: Judge, the government would next
12 propose to play Government's Exhibit 744, and the transcript
13 is 744T, also on May 30, 1993, at 11:01 p.m. We will begin
14 playing it now.

15 (Tape played)

16 MR. FITZGERALD: The government would next play
17 Government's Exhibit 746, and the transcript is 746T, and
18 the date of that conversation is three days later, June 2,
19 1993, at 10:23 in the morning.

20 (Tape played)

21 MR. FITZGERALD: The government would next play
22 Government's Exhibit 748, and the transcript is 748T, and
23 that is a conversation recorded on June 5, 1993, at 5:58 in
24 the morning.

25 (Tape played)

1 MR. FITZGERALD: The government would next play
2 Government's Exhibit 750. The transcript is 750T, and the
3 date of that conversation is June 6, 1993, at 12:03 in the
4 afternoon.

5 (Tape played)

6 MR. FITZGERALD: And finally, the government
7 would play Government's Exhibit 751. The transcript is
8 751T.

9 THE COURT: This is in another book, labeled 751
10 through 850.

11 MR. FITZGERALD: 751 is a conversation recorded
12 on June 10, 1993, at 12 minutes after 4 in the morning.

13 (Tape played)

14 MR. McCARTHY: Your Honor, at this point we would
15 return to the CM transcripts, beginning with Government's
16 Exhibit 328, which for counsel is CM 26. It is 328T in the
17 jury's book.

18 THE COURT: This is a thick volume marked 326 to
19 to 399.

20 MR. McCARTHY: Your Honor, the headsets will not
21 be necessary for the next at least five or so transcripts.

22 Government's Exhibit 328T is a conversation heard
23 on June 3, 1993. Mr. Khuzami will read the attributions to
24 Emad Salem, Miss Chu will read the attributions to
25 Mrs. Siddig Ali, and Mr. Fitzgerald will read the

1 attributions to Siddig Ibrahim Siddig Ali.

2 (Government's Exhibit 328T in evidence read to
3 the jury)

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

8 (Jury excused)

9 MR. WASSERMAN: Your Honor, with the court's
10 permission my client would waive his appearance for the next
11 session today so that he can take care of some urgent dental
12 work, which is only available to him if he does it now.

13 THE COURT: Actually, my information was that it
14 would be done later, but if it is available now, it is
15 available now.

16 MR. WASSERMAN: The problem, Judge, is then he
17 would not be available this afternoon to work with me on CM
18 41. So we are just juggling. That is what I have been
19 told.

20 THE COURT: Your information is later and better
21 than mine.

22 MR. WASSERMAN: I want to thank you for arranging
23 it because otherwise he wasn't going to get to the dentist
24 at all.

25 THE COURT: I don't know whether that is true

1 but, as I say, I am happy to take the credit for things I
2 don't do because I get blamed for things I don't do.

3 In any event, Mr. Hampton-El, is that
4 satisfactory to you?

5 DEFENDANT HAMPTON-EL: Yes.

6 (Continued on next page)

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1 (Jury present)

2 MR. McCARTHY: Your Honor, prior to 328, I should
3 have offered into evidence the portions of the tape, 328E,
4 which were reflected on the transcript. I do that now.

5 THE COURT: Those are received.

6 (Government Exhibit 328E for identification was
7 received in evidence)

8 MR. McCARTHY: The next transcript that we would
9 propose to read from is 329T. At this time I would offer
10 into evidence the portions of the tape, 329E, which are
11 reflected on the transcript 329.

12 THE COURT: Those are received.

13 (Government's Exhibit 329E for identification was
14 received in evidence)

15 Exhibit 329T, which for counsel's benefit was
16 CM27, is a transcript of a conversation or portions of a
17 conversation which took place on June 3, 1993. Mr. Khuzami
18 will read the statements attributed to Emad Salem, and Mr.
19 Fitzgerald will read the statements attributed to Siddig
20 Ali.

21 (Government's Exhibit 329T was read to the jury)

22 (Continued on next page)

23

24

25

1 MR. McCARTHY: Your Honor, the next transcript we
2 would read is Government's Exhibit 332T, which, for counsel,
3 is CM 31. At this time I would offer into evidence the
4 transcript 332T, the portions -- I am sorry. I would offer
5 into evidence the portions of the tape Government's Exhibit
6 332E, which are reflected on the transcript 332T.

7 THE COURT: Those are received.

8 (Government's Exhibit 332E received in evidence)

9 MR. McCARTHY: Exhibit 332T is a transcript of a
10 conversation which took place on June 4, 1993. Mr. Khuzami
11 will read the lines attributed to Emad Salem, Mr. Fitzgerald
12 will read the lines attributed to Siddig Ali, and Miss Chu
13 will read the lines attributed to Shayma Ali, Mrs. Siddig
14 Ali.

15 (Government's Exhibit 332T in evidence was read
16 to the jury)

17 THE COURT: May I see counsel, please, at the
18 side.

19 (At the side bar)

20 THE COURT: If you have something you can do in
21 15 minutes, fine. Otherwise I would like to break now
22 because one of the jurors has to catch a train to a medical
23 appointment.

24 MR. McCARTHY: I would prefer to break, too.

25 (In open court)

1 THE COURT: Ladies and gentlemen, we are going to
2 break now for the day. Please leave your notes and other
3 materials behind. Please don't discuss the case. Have a
4 pleasant rest of the day, and we will see you tomorrow
5 morning.

6 (Jury excused)

7 THE COURT: We have two open legal issues, one
8 relating to 327T and the other relating to that note. When
9 did you want to deal with those?

10 MR. STAVIS: I am prepared to deal with the note,
11 your Honor, in view of the cases that your Honor mentioned
12 on the record.

13 THE COURT: Do you want to deal with that now?

14 MR. STAVIS: Yes, your Honor. I believe the
15 testimony was from Police Officer Shaw who recovered the
16 note from the window of a white Mazda at 3301 Newkirk
17 Avenue. There was no indication in the record as to what
18 3301 Newkirk Avenue was, and Mr. Wasserman had raised and I
19 had joined an objection that the document was not
20 authenticated. There was no connection to the address. The
21 white Mazda here, there was some indication earlier in the
22 trial of a white car -- I don't know if it was a Mazda or
23 not but the government could state better than I could
24 whether it was a Mazda.

25 THE COURT: The car in the videotape is a Mazda,

1 yes?

2 MR. KHUZAMI: We reviewed the testimony in the
3 tape last night. I believe the evidence in the tape showed
4 a white car. I don't think there was any indication that it
5 was a Mazda. If I indicated that yesterday, I misspoke.

6 MR. STAVIS: The connection is that there was a
7 white car associated with Mr. Hampton-El earlier and here
8 the note is found in a white car. The Natale case and the
9 other cases refer to authenticating documents, and the
10 Wigmore citation that your Honor gave on the record
11 yesterday, I believe, refers to the fact that the contents
12 of a written communication alone cannot authenticate the
13 written communication unless what is contained therein is
14 peculiarly known by one person.

15 So your Honor had seized upon yesterday the fact
16 that Abu Ubaidah was present for the execution of a search
17 warrant at Rogers Avenue, while I don't know that he was the
18 only one present. It happened in the neighborhood in a
19 building, and I think to underscore that, the note is not
20 signed by Abu Ubaidah but the communication is from Abu
21 Ubaidah. Presumably, in the best case scenario, Abu Ubaidah
22 told someone to write this note, who then put it in a white
23 car. The cases that your Honor cited state that something
24 can be authenticated through circumstantial evidence. I
25 don't believe on this record as it stands now, the testimony

1 of Police Officer Shaw regarding 3301 Newkirk Avenue, of
2 which we know nothing, and the fact that there was a white
3 car are not circumstantial evidence authenticating this
4 purported Government's Exhibit 846, the note.

5 MR. KHUZAMI: Briefly, I think I that the case
6 the court cited indicates that the witness can authenticate
7 the note if it provides sufficient evidence that it is
8 purported to be what it is by someone with knowledge. It is
9 for Abdel Rashid, from Abu Ubaidah, and refers to the FBI
10 raiding the gym. Those are facts uniquely within the
11 knowledge of the person who purports to have sent the
12 message, which is Abu Ubaidah. As the court pointed out, he
13 was there during the search that day. It is true that there
14 was not evidence linking that particular car to
15 Mr. Hampton-El or the residence beyond the evidence that it
16 is white, but the government would certainly be prepared to
17 put a witness on the stand who could testify that where the
18 white car was parked was across the street or in the
19 immediate neighborhood of Mr. Hampton-El's residence.

20 THE COURT: That would advance the ball to some
21 extent in my view, but -- let's assume you made that.

22 MR. KHUZAMI: I think with that, the government
23 has shown sufficiently that it is authenticated, and
24 everything else goes to weight.

25 THE COURT: Why don't I hear from Mr. Stavis.

1 MR. STAVIS: I don't know that I would be making
2 a authentication argument concerning Mr. Hampton-El's
3 residence. At the moment the exhibit was proffered there
4 was none.

5 THE COURT: I know. Your argument might be
6 different. In any event, you say you can present the
7 evidence?

8 MR. KHUZAMI: The evidence of --

9 THE COURT: His address?

10 MR. KHUZAMI: Yes. Frankly, we can also put in
11 evidence that there was, I think, a white Mazda registered
12 to Mr. Hampton-El at that time period.

13 THE COURT: Assuming you put that in, then I
14 would overrule the objection, but I am not going to overrule
15 it yet.

16 Mr. Patel, you read the memo on 327T?

17 MR. PATEL: Yes, your Honor.

18 THE COURT: You want some time?

19 MR. PATEL: Yes. I have spoken to Mr. McCarthy.
20 I think I can have something in to your Honor by Thursday.

21 THE COURT: It needn't be in writing. My
22 inclination just after reading their memo -- obviously I
23 haven't seen what you have to say -- is to receive it but
24 not for the truth. I still think it doesn't qualify under
25 Tome, but particularly in view of prior cross-examination

1 and openings, so if you could focus on that.

2 MR. PATEL: Thank you.

3 THE COURT: Miss Stewart.

4 MS. STEWART: The government has favored us by
5 handing over four more of Abdel Rahman's FISA's. I am going
6 to object to all of them on relevance grounds, as I have
7 done consistently throughout the trial, and to two of them
8 that their prejudicial value outweighs any probative value.
9 I don't think they will be offering them until, I guess,
10 tomorrow or Thursday.

11 MR. FITZGERALD: Yes. I can speak with Miss
12 Stewart later. In terms of turning over the FISA's, we gave
13 her the cassettes, which she previously had copies of
14 before.

15 MS. STEWART: I am not raising Rule 16
16 objections. I am just saying that they have indicated they
17 are presenting them to the jury in this particular form.

18 THE COURT: Which exhibits are those?

19 MS. STEWART: I can give them to you, Judge.
20 702, 729, 731, 732.

21 THE COURT: It is relevance and 403?

22 MS. STEWART: Yes.

23 THE COURT: Ms. Amsterdam.

24 MS. AMSTERDAM: Your Honor, I have some
25 transcript issues to take up with the court, one that

1 pertains to Mr. Bernstein but three that are unique to
2 transcripts pertaining only to my client. I am prepared to
3 deal with that now but I would like to know whether or not
4 it would be possible to let my client and whatever other
5 client wants to leave at this point, because I would like to
6 meet with my client this afternoon. So I wouldn't want to
7 delay the process of getting back to the MCC. I can do this
8 in chambers. I can also do it here. It pertains only to me
9 and some portion to Mr. Bernstein. I thought perhaps one or
10 more defendants would like to be excused.

11 THE COURT: We can excuse the defendants, I can
12 leave, we can deal with it after they have left, or we can
13 do it sometime this afternoon if you are available.

14 MR. BERNSTEIN: I think our preference would be
15 to do it now so we can meet with our clients this afternoon.

16 THE COURT: Fine. Then we will break and
17 reconvene when we are ready to reconvene.

18 MS. AMSTERDAM: Thank you, sir.

19 (Recess)

20 MS. AMSTERDAM: Your Honor, I asked for this
21 conference. I have several matters to address to the court,
22 but I will start with the one that pertains to Mr. Bernstein
23 as opposed to the ones that pertain immediately to my
24 client. When we started the CM process, the exchanging of
25 transcripts, it was my assumption, as I think it was the

1 government's assumption, that people were free to put each
2 other on notice as to areas that were in conflict, and when
3 we did opening statements or when we did cross-examination
4 of Emad Salem, you knew where the lines were in terms that
5 the conflicts had been indicated and designated, and even
6 though there continued to be an exchange of transcripts back
7 and forth between the defendants and the government --

8 THE COURT: Conflicts between who and who?

9 MS. AMSTERDAM: The government and defendants.
10 But even though there continued to be exchange back and
11 forth, there was a working assumption that the universe was
12 getting narrower as opposed to getting broader, meaning that
13 the disputes were continuing to be resolved and remained
14 within the parameters of those disputes. So much so that in
15 fact last week when Mr. McCarthy's translator on his own
16 revisited one of the transcripts pertaining to my client and
17 made changes, Mr. McCarthy stood by the original because
18 they were not areas that had been in dispute

19 Over the weekend Mr. Bernstein for the first
20 time -- although he alerted that there was a letter --
21 raised serious challenges to the transcripts, many of which
22 impact on my client. These were not areas that had ever
23 been previously designated as being in dispute.
24 Accordingly, when I crossed Mr. Salem and when I opened, I
25 had no reason to believe that these areas were areas in

1 dispute. When I saw Mr. McCarthy over the weekend it was
2 Mr. McCarthy who told me about Mr. Bernstein's letter. I
3 had not seen it in fact until yesterday, and indeed I
4 believe there is another letter which I have yet to see that
5 involves some conflicts. When I spoke with Mr. McCarthy
6 over the weekend, he indicated to me that because our
7 working agreement was such that only areas in dispute were
8 being resolved, that even if he agreed to review Mr.
9 Bernstein's challenges the best that he would do vis-a-vis
10 Mr. Bernstein was to indicate that they were in dispute or
11 indicate that they were unknown males, but that he would not
12 produce new transcripts with new attributions of new text to
13 my client. I left believing that the agreement was the
14 agreement and it was the same agreement that I had operated
15 under for the last eight months when I made challenges to
16 the government's transcript.

17 On Monday when Mr. McCarthy spoke with Mr.
18 Bernstein and myself, Mr. McCarthy indicated that he would
19 underline the attributions, indicating that they were in
20 conflict. He even proposed the possibility of making the
21 conflicted attributions unknown male and underlining that,
22 still preserving whatever rights Mr. Bernstein had to
23 interpreter, cross interpreter, whatever was necessary, but
24 that he was not going to produce new transcripts with new
25 texts that were attributed to my client.

1 Because Mr. Bernstein objects to the process by
2 which we have been operating for over a year, I am here
3 before the court. I think it is unfair that Mr. Bernstein
4 having -- I am not saying maliciously or with any bad intent
5 but for whatever reason having breached his agreement with
6 the government, that the government should somehow breach
7 its agreement with me and I should be the recipient of new
8 texts and new attributions none of which I have reviewed
9 with my client at all because they were not attributed to
10 me, especially in light of the fact that I relied in good
11 faith on where we were in proceeding up to this point, a
12 point which is now one week before the closure of the
13 government's case. I would either ask that your Honor not
14 permit that or adopt Mr. McCarthy's suggestions of Amir
15 Abdelgani underlined or unknown male underlined, or failing
16 all that I think that the government has to at least honor
17 its agreement with me and redact those portions of the
18 transcript.

19 THE COURT: First of all, what is the prejudice?
20 What kinds of statements are we talking about?

21 MS. AMSTERDAM: I don't know the whole ambit
22 actually, because I don't have Mr. Bernstein's second
23 letter.

24 MR. BERNSTEIN: The second letter does not
25 pertain to --

1 THE COURT: If we are talking about which
2 defendant said Insha Allah at which point in the
3 conversation, I don't think we ought to spill a lot of blood
4 about that.

5 MS. AMSTERDAM: No. I think what we have are
6 attributions some of which have to do with trusting Muslim
7 brothers, some of which have to do with locations or
8 directions to a plant store in Canal Street --

9 THE COURT: A plant store?

10 MS. AMSTERDAM: A gardening store that might sell
11 fertilizer. Some of the attributions also contain words
12 such as unintelligible, ammonia nitrate, yes it is written 4
13 percent and another is written 2 percent, good. This is an
14 entire area where there had never before been any
15 attributions to my client, and I feel that there is an
16 extreme prejudice.

17 MR. SERRA: Your Honor, may I have a moment with
18 Ms. Amsterdam, something that occurred to me as I was
19 sitting here.

20 (Pause)

21 MS. AMSTERDAM: I apologize, your Honor.

22 THE COURT: That is all right.

23 MS. AMSTERDAM: Mr. Serra pointed out to me that
24 at least in some part, not the part about the ammonia
25 nitrate but some part where they are talking about trusting

1 Muslims, that conversation is in English and I believe that
2 that portion is going to be played to the jury, so
3 ultimately that would be a jury determination in terms of
4 attributions.

5 THE COURT: It will be a jury question as to
6 attributions, but -- OK, go ahead.

7 MS. AMSTERDAM: The second part, which is more
8 troubling, is the whole part of the transcript referring to
9 fertilizer, ammonia nitrate, an area where considering I
10 went in with Mr. Salem to the transcripts that I regarded as
11 problem areas for my client, I certainly would have crossed
12 on, had I known that this was an attribution that was coming
13 at me. I had no reason to know. There has been no notice
14 of this whatsoever. Eighteen months of transcript
15 negotiations have gone by, and I had Mr. McCarthy's
16 assurances as late as this weekend that even if he changed
17 it he would not make new transcripts that pertained to my
18 client, and I would like the government to be held to that.

19 THE COURT: Mr. McCarthy.

20 MR. MCCARTHY: Just goes to show you shouldn't
21 think out loud in front of people. As Ms. Amsterdam knows,
22 when we were having our conversation on Saturday, I was
23 working on the transcript with Mr. Bernstein's objections in
24 front of me, and I was certainly not happy about it at the
25 time and I did in fact say that at most I would underline

1 the transcripts, since I regarded the proposed changes as
2 late. As I got an opportunity to think about it more over
3 the weekend, where I came out was that regardless of how
4 annoying it may be to get something at the last minute when
5 you have any number of people involved, the government as a
6 practical matter can't either stop a defendant from claiming
7 an identification issue or change the record of what these
8 transcripts mean to the jury. In this case, the jury has
9 been told repeatedly that underline means that the
10 government has reviewed it, this is the government's version
11 of what actually happened and we stand by it, but they may
12 hear evidence in the defense case about a different version.
13 I don't see how, having reviewed the transcript and knowing
14 that our interpreter, were he called to the stand, would
15 take a contrary position. I can simply underline Mr.
16 Bernstein's changes because they came in at the last minute.
17 It really undermines the integrity of the whole process. If
18 I said something in a fit of pique on Saturday --

19 THE COURT: The question is not what you said on
20 Saturday, not in my mind anyway. It is the assumptions and
21 the prejudice that Ms. Amsterdam argued that preceded it for
22 a lengthy period of time. Why don't I hear from Mr.
23 Bernstein as to how --

24 MR. McCARTHY: Let me make one other point, your
25 Honor. Does your Honor have --

1 THE COURT: I have your letter.

2 MR. McCARTHY: There is one exhibit to it that I
3 want to point your attention to in particular. There is one
4 collection of pages 84 through 108, the combined CM exhibit,
5 which is June 19, 1993, it says on the bottom left-hand
6 corner.

7 THE COURT: Right.

8 MR. McCARTHY: That is so you can get an idea of
9 exactly what we are talking about. What I did was, when I
10 got Mr. Bernstein's changes, I made the appropriate
11 notations on a transcript and gave it to Abdel-Hafiz to
12 review. He has handwritten changes so that your Honor can
13 see rather than in the abstract exactly what it is we are
14 talking about here. I did a little rough arithmetic last
15 night and this morning, and I think about half of the
16 attribution issues that were raised by Mr. Bernstein ended
17 upcoming out attributed to Abdelgani, the other half ended
18 upcoming out attributed to Khallafalla. As one would
19 naturally probably expect, they are in blocks of
20 conversation rather than more haphazard than that.

21 THE COURT: Is it fair to say that the ones with
22 check marks continue to be attributed, in the government's
23 view, to Abdelgani?

24 MR. McCARTHY: Yes, your Honor. It means he
25 reviewed it and sticks by what was there in the first place.

1 THE COURT: But that the others aren't.

2 What is your response to the prejudice argument?

3 MR. McCARTHY: I think, as unfortunate as it is
4 both for counsel for Khallafalla and for the government who
5 has to sort of react to these things as they come up, nobody
6 in this case knows Mr. Khallafalla's voice better than
7 Mr. Khallafalla, and these tapes have been out there for an
8 awfully long time. I can say no one knows Abdelgani's voice
9 better than Abdelgani. Mr. Abdelgani should have piped up
10 earlier, but at the same time, if Mr. Khallafalla sort of
11 laid low in the tall grass and didn't raise with his counsel
12 or anybody else up about these issues, he is sort of stuck.
13 I don't think he can really be surprised if it's him.

14 Also, I think as a practical matter, the reason
15 why I thought of the unidentified male solution rather than
16 changing the attribution solution was because from the
17 government's perspective it really doesn't make a whole lot
18 of difference whether Abdelgani made a statement and
19 Khallafalla was standing next to him or vice versa. That is
20 more meaningful to the defendants, I think, than it is to
21 us.

22 THE COURT: Yes. Are you saying you do not
23 object to the unidentified male formulation?

24 MR. McCARTHY: I think at this point I have to
25 object to it because I know it not to be true.

1 THE COURT: Yes, you know it not to be true, but
2 I am persuaded by the prejudice argument, and I also dispute
3 to a certain extent the view that nobody knows his voice
4 like a person himself. Have you ever heard your voice on a
5 recording?

6 MR. McCARTHY: I am afraid to say I have.

7 THE COURT: Did you think it sounded like you?

8 MR. McCARTHY: I didn't think it sounded real
9 good and I hoped it didn't sound like me.

10 THE COURT: Which is to say it didn't comport
11 with your own image of your voice, did it? I have had that
12 experience myself and I have a feeling that sitting inside
13 me is different than listening to me recorded.

14 MR. McCARTHY: Maybe not just the sound of a
15 person's voice, but if I was sitting in a place talking
16 about blowing some stuff up I would probably remember what I
17 said, in addition to the sound of the voice.

18 THE COURT: Maybe yes, maybe no.

19 MR. BERNSTEIN: May I be heard, your Honor?

20 THE COURT: Yes.

21 MR. BERNSTEIN: Judge, my concern is as follows.
22 What is real is real, what is not is not, and that has been
23 the court's position since the outset. Let me raise the
24 concerns I have. I attempted to have closure on transcript
25 issues at the beginning of the trial. We had this whole

1 long submission to the court about Rule 16, government
2 transcripts. The well has never dried up and has never
3 closed.

4 THE COURT: What is the prejudice to you from
5 changing the attribution from your client to unknown male?

6 MR. BERNSTEIN: Because if Mr. Khallafalla
7 testifies that it is not him and it is Mr. Abdelgani -- the
8 problem is that Mr. Khallafalla, if he chooses to testify
9 and chooses to testify that those unidentified males, either
10 on direct examination or cross-examination, are not him,
11 presumably the government will ask him who are they, and
12 that's a fair question, and he would then allege that it was
13 Amir Abdelgani. The reality is that the government now
14 believes based upon having reviewed it that they are not
15 Abdelgani.

16 THE COURT: I would suggest that we jump off that
17 bridge when we get to it, if we get to it.

18 MR. BERNSTEIN: My concern, Judge --

19 THE COURT: Your precise answer to my question is
20 that there is no prejudice at all now.

21 MR. BERNSTEIN: To my client?

22 THE COURT: Correct.

23 MR. BERNSTEIN: At this moment, I don't believe
24 there is prejudice.

25 THE COURT: Right. The only prejudice is what

1 might arise later on, correct?

2 MR. BERNSTEIN: On a direct basis.

3 THE COURT: But if Mr. Khallafalla takes the
4 stand and if he so testifies.

5 MR. BERNSTEIN: That is correct, but then we have
6 the problem with how the court deals with the transcript as
7 it comes in where the government has taken the position that
8 these are unidentified males when they are not unidentified
9 males. By the way, Judge, they filled in some unidentified
10 males as to both Abdelgani and Mr. Khallafalla on rereviews,
11 those they had trouble with. Without anybody asking them
12 they have now filled in unidentified males and put in
13 attributions.

14 THE COURT: The problem before me is the one you
15 raised, and that is the one I am going to deal with. Ms.
16 Amsterdam, what is your position on what happens if your
17 client takes the stand and denies that what the government
18 says is his voice is his voice?

19 MS. AMSTERDAM: If I go down that road and he
20 denies that is his voice and that is his position, that is
21 his position. The government is obviously free to call in
22 rebuttal an interpreter to say that it is not, and it would
23 also, it would seem to me, be appropriate to call on my
24 "re-case" an interpreter or on my case in chief an
25 interpreter who would say that he was right on his

1 attributions. But I would not say the government was bound
2 by this transcript to let, if it is an incorrect thing, it
3 to go to the jury. I haven't even had the opportunity to
4 review these with my client, and if we stand by that, we
5 stand by it, and they can call their interpreter.

6 MR. BERNSTEIN: Judge, the concern is, frankly,
7 that there is an unfairness to the fact that throughout the
8 month we were going, going right now, and the government has
9 changed transcripts -- I want the court to understand my
10 position and you are not allowing me to fill it out. Where
11 there are changes in transcripts either by the government's
12 own rereviews, which has happened in some of the CM's in the
13 50's -- they had a 31-page transcript that came back, I
14 think in April, during Salem's cross-examination to us as a
15 50-page transcript. Sometimes certain defendants are
16 advantaged by their rereview because sometimes they have
17 added language that has helped a particular defendant,
18 sometimes it has hurt a particular defendant. This court
19 has never cut off any of that process, and Mr. Abdelgani and
20 Mr. Khallafalla have been benefited and harmed by new
21 additions of the government CM's as they have come out.

22 The simple fact is, we are now being held to a
23 test that no one else has been held to, which is, it is too
24 late for my client to have rereviewed something and said
25 that is not me, I don't want my name attributed to that, and

1 to be told we are -- Judge, I want to finish -- that we are
2 not within the same ambit of that. I understand that in the
3 same past week Mr. Khallafalla has objected to certain
4 references that were not referenced prior and alleged them
5 to be a different defendant in this case. That is not on
6 the table here. That prejudices that defendant. But I
7 don't want to be in a position where it appears that I am
8 the only one who has done this and this is not a 2- or
9 10-way street that we are engaged in.

10 MS. AMSTERDAM: The only record that I would
11 clear up is that the letter Mr. Bernstein is referring to is
12 at least four months old. I spoke to Miss London about it
13 and it is a clerical error. That is resolved.

14 MS. LONDON: Your Honor, the issue is resolved to
15 the extent that --

16 THE COURT: I am sorry, I don't understand you to
17 have a dog in this race.

18 MS. LONDON: Your Honor, I do have a dog in the
19 race but I am casting my dog into a different race, so to
20 speak. I have suffered the same kind of prejudice that Miss
21 Amsterdam has suffered, not only with attributions but with
22 new text attributed to my client from two directions. But I
23 am not asking for the court's intervention here. Miss
24 Amsterdam proffered to the government changes that were
25 attributions to be given to my client. She failed to copy

1 me on the letter and I found out about these changes at the
2 end of last week. I am prepared to have my client listen to
3 them. If they are his voice we will accept them. But the
4 government has also added text to the transcripts, which has
5 added text to my client. All I ask for, and I am working on
6 now, is time to have the interpreters listen to it, my
7 client listen to it. If it is there and we can hear it OK,
8 if not we will ask to underline it and we will challenge it.

9 THE COURT: This is a different problem.

10 MS. LONDON: These are different problems. My
11 request would be, if necessary, time just to go through the
12 changes, and I don't believe I will be needing time. But
13 there are changes going in all directions, from the
14 government to us and from us to them.

15 THE COURT: What I get is that you have been long
16 suffering not only putting up with your nominal adversary,
17 the government to the rear table and the rear table to the
18 government table, but also difficulties within the defense
19 camp. I still come back to the position that I suggested
20 before, which is that I see no prejudice to Mr. Bernstein
21 from removing the attributions to his client that are in
22 fact not attributable to his client even in the government's
23 view, and changing those to unidentified male, and that is
24 how I would resolve it.

25 MR. BERNSTEIN: Judge, if that is what the court

1 wants to do there is no problem. The problem exists when we
2 get to the potential, if that bridge gets crossed, if
3 Mr. Khallafalla wishes to challenge it. The problem we are
4 saddled with is, the unidentified male then becomes
5 theoretically Mr. Abdel-Hafiz, if he is the government's
6 expert on this tape, having to take the witness stand,
7 either called by me or the government, to explain why his
8 opinion is now that it is Mr. Khallafalla or Mr. Abdelgani,
9 whereas the transcript the jury will have had is the
10 unidentified male, and it makes an unseemly process as to
11 his opinion unless there is a curative instruction.

12 THE COURT: I will worry about the seemliness of
13 it. He can simply testify, which is truthful, that after he
14 prepared the initial transcript he reviewed it again at the
15 request of counsel and thinks his view is now that it is
16 Mr. Khallafalla or Mr. Abdelgani, whoever it is.

17 MR. BERNSTEIN: But it is not true. The
18 transcript is prepared now. There is now a written document
19 with his signature over it.

20 THE COURT: I will bar any examination as to the
21 precise date he changed his mind.

22 MR. McCARTHY: Judge, to be clear, he never
23 changed his mind. I want that to be noted. Let me just
24 reiterate what I said to your Honor last week in one of the
25 conferences we had about that. These transcripts were the

1 product of innumerable people. The reason he is reviewing
2 these now is that now for the first time ever our attention
3 has been drawn to attributions which were long ago assigned
4 out to Mr. Abdelgani, for want of a better word. But Mr.
5 Abdel-Hafiz never took the position that that was Abdelgani
6 and hasn't changed his mind.

7 THE COURT: Fine. Then he would simply testify
8 that after the date of the initial transcript he was asked
9 to review it and he believes whatever he believes.

10 MS. AMSTERDAM: I will abide by the court's
11 ruling.

12 THE COURT: That is my ruling. The reason for
13 the ruling is very simply this: When it comes to what I
14 regard as somewhat innocuous attributions that is one thing,
15 but when it comes to things like talking about fertilizer, I
16 can readily understand that that is something that she would
17 have gone into or dealt with in some fashion in an opening
18 or in cross-examination of Salem had it been known that the
19 government's theory was that her client said it. That is
20 not an unreasonable position to take, and for whatever
21 reason, and I am not here assigning blame, it wasn't known
22 at that time, and she can't be put in this position.

23 So those will be changed to unidentified males,
24 and if it comes down to Mr. Khallafalla testifying and being
25 asked about those attributions, then he will simply testify

1 to what he believes to be the case, and if he testifies that
2 it is not his voice, he testifies that it is not his voice.

3 MS. AMSTERDAM: I understand.

4 THE COURT: I would not -- judges even less than
5 prosecutors should think out loud, but it is always possible
6 that we can get voice exemplars. I don't know of any Fifth
7 Amendment right that anybody has to deny them.

8 MR. MCCARTHY: Judge, I really don't think that
9 is the issue. It is a timing issue. I don't think upon
10 enough time to review it Mr. Khallafalla would challenge the
11 fact that it is him. It is just that it has come at the
12 last minute.

13 THE COURT: He may very well not challenge it and
14 we may be talking about a completely abstract problem.

15 MR. MCCARTHY: A more concrete problem is that it
16 has been our position regardless what the draft said that
17 those statements were not made by Siddig Ali or Salem, and I
18 think it is fairly evident that they were not. The reason I
19 don't think from the government's point of view that there
20 is any prejudice to your Honor's resolution is that as a
21 practical matter in this conversation it is either one or
22 the other. So if it is unidentified male, we are not
23 talking about thousands of people that it could possibly be.

24 On the other hand, I just want to make it clear
25 that if there is an argument made that it is Salem or Siddig

1 Ali --

2 THE COURT: I have said this before in other
3 contexts and I will say it again in this one. Nobody who
4 objects successfully to the receipt of a piece of evidence
5 may then turn around and argue, as to that evidence which
6 would tend to prove X, non-X, and that holds true across the
7 board. I have never had to do this, but I would go much
8 further than sustaining an objection if anybody did it, and
9 I don't think anybody here is going to do that.

10 Is there anybody who doesn't understand what I
11 have just said or who is unclear about the meaning?

12 MR. BERNSTEIN: No, Judge.

13 THE COURT: Let's put it this way. To use an
14 example that has nothing to do with this case, if you move
15 to suppress the gun and the gun is suppressed, you can't
16 then get up and argue my client wasn't carrying a gun. If
17 you do, I grant a motion to reopen and I admit the gun.

18 MS. AMSTERDAM: As Mr. Ricco said, shucks, there
19 goes my whole defense out of the game. You take all the fun
20 out of a criminal trial.

21 THE COURT: I try to take as much fun out of it
22 as I can.

23 MS. AMSTERDAM: I have two other, hopefully
24 minor, issues that don't pertain to any other client here.
25 One is a 106 issue. I thought I would bring it to the

1 court's attention now so it would be fresh in everyone's
2 mind. We just heard a transcript read that referred to
3 trying to get money from Abu Ubaidah, \$25,000. In
4 subsequent transcripts there is a mention by -- not a
5 mention. There is a conversation between Siddig and Emad
6 Salem in which Siddig makes mention of the fact that if and
7 when the money comes he was thinking about taking the money
8 and leaving, like taking off with the money and leaving, and
9 Salem says something to the effect of what would that solve,
10 you can't leave me here alone, we have to stay in a complete
11 mission. I think in the context of the government having
12 elicited the \$25,000 of Abu Ubaidah for this illegal
13 purpose, under 106, the language that would suggest that
14 Siddig had at least considered taking the money and running
15 should be admitted for completeness. I say it now while it
16 is clear in everybody's mind.

17 MR. McCARTHY: It is not my clear in my mind.

18 THE COURT: It is not clear that Siddig was at
19 sometime thinking of taking the money and running?

20 MR. McCARTHY: No. I have been available on
21 virtually a 24-hour basis to discuss any of these things
22 that anyone wants to discuss.

23 THE COURT: Why don't you talk to him first.

24 MS. AMSTERDAM: It was the kind of thing that we
25 had agreed to disagree and I thought since it was fresh in

1 everyone's mind I would take it up now. I will discuss it
2 with Mr. McCarthy.

3 With regard to CM 38, 39 --

4 THE COURT: One second. Exhibit 440.

5 MS. AMSTERDAM: On page 10, six attributions from
6 the bottom there is a passage that begins, look at this. Do
7 you see that?

8 THE COURT: Yes, I do.

9 MS. AMSTERDAM: All this military stuff, he has a
10 rocket. And it goes on to the next page where
11 Mr. Khallafalla says at the third attribution, amazing,
12 country of abuse of freedom. There is no dispute between
13 Mr. McCarthy and myself that this is a conversation that
14 occurred when Mr. Khallafalla and Mr. Salem walked in front
15 of the army navy store on Canal Street and there was a
16 gigantic rocket that was chained up in front of the store,
17 and as they walked by my client says look at the rocket, and
18 they have a conversation and Mr. Khallafalla goes on to say
19 amazing country of abuse of freedom. I believe that that is
20 not relevant, and I believe under a balancing test of
21 prejudice versus probative that should be taken out.

22 THE COURT: This is not the first time I have
23 seen this.

24 MS. AMSTERDAM: I crossed Mr. Salem on it but it
25 came up in the context that I asked Mr. McCarthy if he would

1 stipulate, which he said he would, to reminding the jury
2 that this is where this is in the context of the transcript.
3 But even though I dealt with it preemptively through
4 Mr. Salem, I still think that there isn't any relevance to
5 this particular passage. The government does not contend
6 that they were there to buy rockets or missiles, they just
7 happened to be walking by a store that had a rocket and
8 missile chained up in front of it. I believe when you read
9 and see country of abuse of freedom, I think there is a
10 prejudice which is higher than the amount of probative value
11 of this particular statement.

12 THE COURT: I suppose I don't understand the
13 prejudice. This statement in this context could have been
14 many made by Pat Buchanan.

15 MS. AMSTERDAM: That's true.

16 THE COURT: I guess that's prejudicial.

17 MS. AMSTERDAM: Then I don't understand the
18 relevance and I would ask that it be redacted.

19 MR. McCARTHY: I have a seditious conspiracy case
20 against a guy who claims to be an ingenue who was tricked
21 into a safe house. I think he has also requested the court
22 to charge on entrapment.

23 THE COURT: That is something to revisit when the
24 time comes.

25 MR. McCARTHY: He also opened to the jury that he

1 wasn't political, that he is frankly a basketball fan who
2 was in the wrong place at the wrong time on one night but
3 the right place at the right time in New York.

4 THE COURT: And I recall he has a T-shirt that he
5 loves New York. It is part of the exchange. I see the
6 prejudice as minimal. I am going to let it in.

7 MS. AMSTERDAM: The last thing, the first seven
8 pages of the CM, which at a time convenient your Honor would
9 like to read over, it is an exchange regarding an election
10 at the mosque, the night before or within days of going to
11 Canal Street. It has to do with mosque politics --

12 THE COURT: I read it, on the inadvisability of
13 calling the cops.

14 MS. AMSTERDAM: Right, and I would ask that this
15 has no relevance and I would ask that it be stricken.

16 MR. MCCARTHY: I don't think it is all about
17 mosque politics. I think most of it is not about mosque
18 politics. Most of it is about who may be an informant and
19 who may be cooperating with the American government. Again,
20 to the extent that there is a discussion about mosque
21 politics, Mr. Khallafalla makes statements along the lines
22 of, they're playing smart, they're playing games, how did
23 they know the security people would be there --

24 THE COURT: It shows him to be a sophisticate?

25 MR. MCCARTHY: It shows him not to be the person

1 that he was painted into at the opening, and that is an
2 issue of some importance in the case.

3 THE COURT: That objection is overruled.

4 Anything else? Have a nice afternoon.

5 (Proceedings adjourned until 9:30 a.m.,
6 Wednesday, June 7, 1995)

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IPT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

3 v.

OMAR AHMAD ALI ABDEL RAHMAN,
4 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,"

EL SAYYID NOSAIR,
7 a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

IBRAHIM A. EL-GABROWNY,
9 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

CLEMENT HAMPTON-EL,
11 a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

AMIR ABDELGANI,
13 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

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

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

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

20 Defendants.

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S5 93 Cr. 181 (MBM)

June 7, 1995
9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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and
SALVATORE S. RUSSO

1 (In open court; jury not present)

2 THE COURT: Good morning. Mr. Wasserman.

3 MR. WASSERMAN: Your Honor, a couple of matters
4 in connection with what I believe the government intends to
5 do this afternoon. Last night Mr. Khuzami and I went over
6 the government's latest draft of CM 41, and there are
7 additions made to their draft that necessitate my client
8 listening again to the tape, those places where the
9 additions are made. There are about a dozen additions.
10 What was discussed between Mr. Khuzami and myself was that
11 that could be done at lunchtime. How matters would proceed
12 after that in terms of our disputes with those additions is
13 something that I think -- I am not sure yet. I think there
14 are a couple of things that are left out of the government's
15 transcript which I believe should be in. I just haven't
16 made a decision whether that should go to your Honor or just
17 go to the jury.

18 THE COURT: Other than alerting me to the
19 problem, which I appreciate, what is it that you want me to
20 do?

21 MR. WASSERMAN: The first thing, Judge, is to
22 permit my client to listen to the tape to check the
23 additions to the government transcript at lunchtime and then
24 to allow me to present whatever application it is that I
25 need to present after that.

1 The only other matter, your Honor, is that I
2 proposed yesterday that a FISA between my client and Mustafa
3 Mohammed, otherwise known as Mustafa Assad, dated June 11,
4 be played. In discussion with Mr. Fitzgerald, the
5 government's position, as I understand it, is that they
6 would not consent to that FISA being played.

7 What I would request is that I submit to your
8 Honor, hand up to your Honor now a transcript, a copy of
9 what has been given to the government yesterday, and ask
10 your Honor to make a decision as to whether under Rule 106
11 it should be played. The gravamen of the application is
12 simply that the government has introduced several FISA
13 conversations between my client and Mustafa Mohammed and
14 there has been testimony by Detective Corrigan that is
15 relevant to context, who someone calls after a conversation
16 such as took place in CM 25.

17 THE COURT: I don't recall him saying that, but
18 even if he said it, that is completely incompetent evidence.

19 MR. WASSERMAN: It was in terms of context, your
20 Honor.

21 THE COURT: I will look at the conversation and
22 you can argue it, but don't tell me that some policeman
23 testified in the abstract that it helps to know who called
24 somebody after he called somebody else.

25 MR. WASSERMAN: It was, Judge, just in terms of

1 understanding what was being said in the conversation in
2 terms of making it out. But if I may, I will just hand up
3 to your Honor the conversation in question.

4 THE COURT: Fine.

5 MR. WASSERMAN: I would appreciate, after you
6 have reviewed it, if I could address the court in terms of
7 the court's reaction.

8 MR. FITZGERALD: Three brief points. We haven't
9 had a chance since last night to review the transcript for
10 accuracy, but the real point is that the government's view
11 is that if it comes in at all it should come in on the
12 defense case. It is basically a business transaction
13 between Mustafa Mohammed and the defendant Hampton-El as to
14 whether they should rent a parking lot. If it is admissible
15 at all it should come in on the defense case and not
16 interrupt the government's presentation.

17 THE COURT: Let me look at the transcript and I
18 will hear him on what he thinks it shows. Is there anything
19 else that I have to deal with before the jury comes out?
20 Specifically Miss Stewart wanted me to review some
21 transcripts, but do I have to deal with those now?

22 MR. FITZGERALD: No, Judge. We will be calling
23 Mr. Abdel-Hafiz but not as to that.

24 (Jury present)

25 THE COURT: Good morning, ladies and gentlemen.

1 JURORS: Good morning.

2 MR. FITZGERALD: Your Honor, the government calls
3 Detective Thomas Corrigan.

4 THOMAS F. CORRIGAN,

5 called as a witness by the government,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FITZGERALD:

9 Q Good morning, Detective.

10 A Good morning, sir.

11 Q I believe I have placed in front of you a number
12 of exhibits, and looking at the tapes first, they should be
13 Government's Exhibits 754, 755, 757, 759, 762, 763, 765
14 through 769, and 776 and 795, is that correct?

15 A That is correct, sir.

16 Q And I should also have placed before you the
17 corresponding transcripts, which I will just read out loud
18 to make sure you have in front of you 754T, 755T, 757T,
19 759T, 762T, 763T, 765T through 769T, and 776T and 795T. Is
20 that correct?

21 A Yes, sir.

22 Q Have you had occasion to listen to the various
23 tapes before you prior to coming to court?

24 A Yes, sir, I have.

25 Q Have you compared the corresponding transcripts

1 with the tapes?

2 A Yes, sir, I have.

3 Q Are the transcripts fair and accurate
4 transcriptions of what is heard on the cassettes placed
5 before you?

6 A Yes, sir, they are.

7 Q Are the voice attributions accurate?

8 A Yes, sir, they are.

9 MR. FITZGERALD: Your Honor, I would offer those
10 exhibits, the tapes themselves, and I would offer the
11 transcripts as aids to the jury for those English
12 conversations.

13 THE COURT: Those are received without objection.
14 (Government's Exhibits 754, 755, 757, 759, 762,
15 763, 765 through 769, 776, 795, 754T, 755T, 757T, 759T,
16 762T, 763T, 765T through 769T, 776T and 795T were received
17 in evidence)

18 Q Detective Corrigan, on some of the transcripts
19 received in evidence today and yesterday there is a
20 reference to Mustafa Mohammed. Are you familiar with
21 Mustafa Mohammed having any other names he goes by?

22 A Yes, sir, I am.

23 (Continued on next page)

24

25

1 Q What other names do you know Mustafa Mohammed by?

2 MR. JACOBS: Objection.

3 THE COURT: Sustained.

4 Q Have you seen any photographs in evidence of
5 Mustafa Mohammed?

6 A Yes, sir, I entered a photograph of Mustafa Assad
7 Mohammed. I think I also mentioned that his name was John
8 Rodriguez.

9 MR. STAVIS: Objection, move to strike, your
10 Honor.

11 THE COURT: That is stricken. May I see counsel
12 at the side.

13 (At the side bar)

14 THE COURT: If he has a basis for this, let's
15 hear it and let him testify to it, but simply out of the
16 ether that he knows him by another name doesn't do it,
17 number one. Number two, I don't like what he did just now
18 and if you would kindly tell him that he is not at 100
19 Centre Street, the address here is 40 Foley Square.

20 MR. FITZGERALD: I will, your Honor.

21 THE COURT: Thank you.

22 (Continued on next page)

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1 (In open court)

2 BY MR. FITZGERALD:

3 Q Detective Corrigan, without telling us what if
4 anything was said, have you ever spoken to the person whose
5 voice you identified as Mustafa Mohammed?

6 A Yes, sir, I have.

7 Q When you spoke to him, can you tell us what name
8 he gave you as his name?

9 MR. JACOBS: Objection.

10 THE COURT: That is overruled.

11 A I believe it was Mustafa Assad Mohammed.

12 MR. FITZGERALD: Thank you. I have nothing
13 further.

14 THE COURT: Cross? Mr. Wasserman.

15 CROSS-EXAMINATION

16 BY MR. WASSERMAN:

17 Q Good morning, sir.

18 A Good morning, sir.

19 Q These FISA's that you have testified to preparing
20 the transcripts, those are not all the conversations between
21 Mustafa Assad and my client, are they?

22 A I don't believe so, sir, but if I could just go
23 through them quickly.

24 Q Sure.

25 A No, sir, there were other conversations between

1 Mr. Mohammed and your client.

2 MR. WASSERMAN: I have no further questions.

3 Thank you.

4 THE COURT: Anyone else? Anything else?

5 MR. FITZGERALD: Nothing further.

6 THE COURT: Thank you, you are excused.

7 (Witness excused)

8 MR. FITZGERALD: The government calls Gamal
9 Abdel-Hafiz.

10 GAMAL ABDEL-HAFIZ,

11 called as a witness by the government,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FITZGERALD:

15 Q Good morning, Mr. Abdel-Hafiz.

16 A Good morning, sir.

17 Q Can you just keep your voice up a little bit more
18 and point the microphone at you and sit a little bit closer.
19 Just a few questions.

20 Can you tell the jury what the word nam, N-A-M,
21 in Arabic, means?

22 A It means yes.

23 Q Could you tell us what the word aiwa means in
24 Arabic, and if you could spell it?

25 A This is the slang word for yes in Arabic.

1 Q Can you spell it as best you can?

2 A Aiwa, it is A-I-W-A.

3 Q Is nam the proper word for yes?

4 A Nam is the proper word for yes.

5 Q What is the Arabic word for no?

6 A La.

7 Q How would you spell that?

8 A L-A.

9 Q Finally, what does the word shayton,
10 S-H-A-Y-T-O-N, mean?

11 A It is Satan.

12 Q Satan in Arabic?

13 A Or the devil.

14 MR. FITZGERALD: Thank you. Nothing further.

15 THE COURT: Any cross? You are excused.

16 (Witness excused)

17 MR. FITZGERALD: Your Honor, at this point the
18 government would propose to read from Government's Exhibit
19 340T, which is the transcript, for counsel, of CM 38 and 39,
20 which should be in the jurors' books.

21 THE COURT: This is a thick volume marked 326
22 through 399.

23 MR. McCARTHY: Your Honor, with respect to
24 Government's Exhibit 340T, may I advise the court, counsel
25 and the jury of a stipulation between the government and

1 counsel for Mr. Khallafalla?

2 THE COURT: Go ahead.

3 MR. McCARTHY: On page 10 of the transcript which
4 we are about to read, which is Government's Exhibit 340T, at
5 approximately the bottom third of that page, there is a
6 discussion between Mr. Khallafalla and Mr. Salem which was
7 inquired into on Miss Amsterdam's examination of Salem. The
8 parties agree that Mr. Khallafalla and Mr. Salem were
9 observing things on Canal Street at the time that this
10 conversation took place.

11 THE COURT: All right. You are to accept that
12 fact as proved and give it whatever weight you think it
13 deserves in the context of the conversation. Go ahead.

14 MR. McCARTHY: Thank you, your Honor.
15 Government's Exhibit 340T, for counsel, reflects a
16 combination of parts of CM 38 and 39. It is a conversation
17 that takes place on June 13, 1993. Mr. Fitzgerald will read
18 the lines attributed to Siddig Ibrahim Siddig Ali, Mr.
19 Khuzami will read the lines attributed to Emad Salem, I will
20 read the lines attributed to Fares Khallafalla, and Miss Chu
21 will read the lines attributed to the other three
22 individuals listed, that is, Henry last name unknown, the
23 unidentified female, and the unidentified male.

24 MS. AMSTERDAM: One moment, your Honor.

25 MR. McCARTHY: Your Honor, Miss Amsterdam points

1 out quite correctly that although Mr. Siddig Ibrahim Siddig
2 Ali is listed as a participant in the parts of the
3 conversations that are reflected in the transcript, he is
4 not a participant in this particular exhibit.

5 THE COURT: So that the only people known to the
6 jurors whose statements will be put into evidence are
7 Mr. Salem and Mr. Khallafalla, correct?

8 MR. McCARTHY: Yes, sir.

9 MS. AMSTERDAM: Just one moment, your Honor.

10 MR. McCARTHY: One further clarification. The
11 parties agree that there is no suggestion that Mr. Siddig
12 Ali was in this conversation present at the time that it was
13 taking place between Mr. Khallafalla and Mr. Salem. The
14 reason he is listed as a participant is, there is another
15 exhibit which will be coming up shortly which was a part of
16 what was CM 38, when he was a participant. As a result, he
17 is listed in the list of participants at the time.

18 THE COURT: Go ahead.

19 (Government's Exhibit 340T in evidence was read
20 to the jury)

21 (Continued on next page)

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1 MR. McCARTHY: Your Honor, the next exhibit the
2 government would be offering is 339T -- I'm sorry, 339T2.

3 THE COURT: 339T2 is in the same book.

4 MR. McCARTHY: Your Honor, I'm sorry, may I
5 approach briefly with Mr. Wasserman on this transcript.

6 (At the side bar)

7 THE COURT: Yes?

8 MR. McCARTHY: Your Honor, there is a bit of
9 confusion about this one. I just wanted to make sure the
10 record was clear on it. This is a transcript that we read
11 the last 20 pages of last week. Yesterday Mr. Wasserman
12 asked me to make two additions to it under Rule 106 which I
13 agreed to do.

14 At the time he asked me to do it, I had frankly
15 forgotten that we had read part of it last week. One of the
16 additions is no problem because it is the tail end of the
17 part that we're going to read from today. The other one is
18 a problem because --

19 THE COURT: Because it is in the part you already
20 read?

21 MR. McCARTHY: Right. What I propose is, because
22 I think even Mr. Wasserman will probably agree that in a
23 vacuum it means little, but I think that as long as it's in
24 the current transcript and it's in the record, he's got it
25 in to argue from it, whatever it's worth. I don't think in

1 and of itself, without the context that's provided by the
2 rest of the conversation, it means a whole lot.

3 THE COURT: Unless you want him to reread the
4 whole thing.

5 MR. WASSERMAN: It would help me to just take a
6 second a see exactly what Mr. McCarthy is talking about.

7 (Counsel conferred)

8 MR. WASSERMAN: I would like to have it read.

9 THE COURT: Read enough to put it in context.
10 How much would that be? A page?

11 MR. WASSERMAN: Mr. McCarthy?

12 MR. McCARTHY: Can we do this, your Honor: We
13 don't read the part we were going to read, which is the
14 beginning --

15 THE COURT: Right.

16 MR. McCARTHY: -- while we're doing that
17 Mr. Wasserman can tell me what he thinks will put it in
18 context.

19 THE COURT: Then we'll tell the jury this is the
20 part that was read last week, and it's being reread because
21 an additional part has been inserted.

22 MR. McCARTHY: There's one other thing, your
23 Honor. They have a new transcript, and they may be a little
24 confused as to why they have two 339s, and the reason. When
25 we read this initially they had what is 339T. Now they have

1 this new and improved 339T2. And I would just --

2 THE COURT: You say it's a later version of the
3 same transcript?

4 MR. McCARTHY: Yes.

5 THE COURT: All right. Finally --

6 MR. WASSERMAN: Yes, Judge.

7 THE COURT: -- did you get the letter about the
8 photographs?

9 MR. WASSERMAN: Yes. I have spoken to Mr.
10 Khuzami about that. It's totally acceptable to me. I take
11 it if they put in a letter that I got it, I got it.

12 THE COURT: OK. So that will be dealt with at
13 some other point.

14 MR. WASSERMAN: That's fine, your Honor. Thank
15 you.

16 MR. McCARTHY: Thank you.

17 (Continued on next page)

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1 (In open court)

2 MR. McCARTHY: Your Honor, Government's Exhibit
3 339T2 is a version which is a transcript of what counsel
4 know as CM37. It has some minor additions to the transcript
5 that is 339T which the government read from last week. At
6 this point --

7 THE COURT: That is why it's designated T2?

8 MR. McCARTHY: Yes, your Honor. It is the same
9 conversation with a minor addition in the middle and a minor
10 addition in the end.

11 THE COURT: OK.

12 MR. McCARTHY: We'll be reading for the moment
13 the first 17 pages of 339T2. That is a conversation which
14 also takes place on June 13, 1993. Mr. Khuzami will read
15 the lines attributed to Emad Salem, and Mr. Fitzgerald will
16 read the lines attributed to Siddig Ibrahim Siddig Ali.

17 (Government Exhibit 339T2 was read to the jury)

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1 MR. McCARTHY: Your Honor, at this point we would
2 move ahead to page 30, the last four attributions on that
3 page, to complete the transcript.

4 THE COURT: Go ahead.

5 MR. McCARTHY: Beginning with the attribution to
6 Mr. Salem, four attributions up from the bottom.

7 (Reading continued)

8 THE COURT: Ladies and gentlemen, we are going to
9 take our break now. Please leave your notes and other
10 materials behind. Please don't discuss the case, and we
11 will resume in a few minutes.

12 (Recess)

13 (In open court; jury not present)

14 MR. SERRA: Your Honor, when the jury comes out
15 there is a short stipulation that we have with Mr. McCarthy
16 in Government's Exhibit 339T2 which was just read, the
17 references to Mr. Mohammed are not references to Mr.
18 Alvarez.

19 THE COURT: OK.

20 MR. SERRA: The court can do it or, if the court
21 prefers, I can do it.

22 THE COURT: I would be perfectly willing to do it
23 if you want me to do it.

24 MR. SERRA: Your Honor, I am perfectly willing to
25 have the court do it, simply that the references to

1 Mr. Mohammed are not references to Mr. Alvarez.

2 THE COURT: Then I get a speaking part, too.

3 MS. STEWART: Judge, I would just ask the
4 government if they would agree to stipulate that the
5 references to Abdel Rahman are to Haggag.

6 MR. McCARTHY: We do make that stipulation.

7 THE COURT: I will tell them that, too.

8 (Jury present)

9 THE COURT: Is the agreement that those
10 references are to Haggag or simply that they are not to
11 Dr. Abdel Rahman?

12 MS. STEWART: I think it is clear that they are
13 Abdel Rahman Haggag.

14 (Jury present)

15 MR. McCARTHY: Your Honor, that was in the first
16 exhibit that we read this morning, not the last one. I will
17 give you the number in a moment.

18 THE COURT: 340?

19 MR. McCARTHY: Yes, that is right.

20 (Jury present)

21 THE COURT: Ladies and gentlemen, two transcripts
22 were read to you this morning, Exhibits 340 and 339T2, thus
23 far. You should be aware that the parties agree that the
24 references in Exhibit 340 to the name Abdel Rahman are
25 references to Abdel Rahman Haggag, not to Dr. Abdel Rahman,

1 the defendant in this case, and that the references in
2 339T2, which was the last one that was read before the
3 break, the references to Mohammed are not references to Mr.
4 Alvarez, although he is referred to in other conversations
5 occasionally as Mohammed the Spanish. But in 339T2, the
6 references to Mohammed are somebody else, not to him.

7 MR. McCARTHY: Thank you, your Honor.

8 Your Honor, we would next propose to read
9 Government's Exhibit 341T. That is the end segment, for
10 counsel, of CM 38.

11 THE COURT: That is in the same books. 341T.

12 MR. McCARTHY: Thank you, your Honor. 341T is
13 also a conversation that took place on June 13, 1993. Mr.
14 Fitzgerald will read the remarks attributed to Siddig
15 Ibrahim Siddig Ali, and Mr. Khuzami will read the remarks
16 attributed to Emad Salem.

17 (Government's Exhibit 341T in evidence read to
18 the jury)

19 MR. FITZGERALD: Your Honor, at this time the
20 government would move to play Government's Exhibits 754 and
21 755. The transcripts 754T and 755T should be in the other
22 books of the jurors.

23 THE COURT: These are English-language tapes?

24 MR. FITZGERALD: Yes, Judge.

25 THE COURT: Ladies and gentlemen, I remind you

1 that in the case of English language tapes, it is the tapes,
2 not the transcripts, which are the evidence. So, to put it
3 briefly, if there is a difference between what you see and
4 what you hear, it is what you hear that governs as between
5 the two.

6 MR. FITZGERALD: Government's Exhibit 754 is a
7 conversation recorded on June 15, 1993, at 12 minutes after
8 12 in the afternoon.

9 THE COURT: It will be contained in a volume
10 marked 751 through 800.

11 (Tape played)

12 MR. FITZGERALD: Your Honor, the government would
13 next play Government's Exhibit 755 and the corresponding
14 transcript of, again, an English conversation. It is 755T,
15 and that conversation took place the following day, June 16,
16 at 9:35 a.m.

17 (Tape played)

18 MR. KHUZAMI: Your Honor, the government will
19 call a witness, Julio Campuzao, next.

20 JULIO CAMPUZAO,

21 called as a witness by the government,
22 having been duly sworn, testified as follows:

23 MR. KHUZAMI: May I proceed?

24 THE COURT: Go ahead.

25 (Continued on next page)

1 DIRECT EXAMINATION

2 BY MR. KHUZAMI:

3 Q Mr. Campuzao, you have testified previously in
4 this case, is that correct?

5 A Yes, I have.

6 Q And you are a detective in the New York City
7 Police Department, is that correct?

8 A That is correct.

9 Q Directing your attention to June 19, 1992, were
10 you conducting a photo surveillance on that day?

11 A Yes, I was.

12 Q Can you describe for the jury what a photo
13 surveillance is?

14 A Photo surveillance is taking pictures of a
15 certain location, certain person, whatever.

16 Q Do you recall what time of the day on June 19 you
17 conducted this photo surveillance?

18 A Approximately 5:30 p.m.

19 Q For how long did you do that?

20 A About an hour and 10 minutes or so.

21 Q Did you in fact take photos during that time?

22 A Yes, I did.

23 MR. KHUZAMI: Your Honor, may I approach?

24 THE COURT: June 19 of '92?

25 MR. KHUZAMI: That is correct, your Honor.

1 Q Detective Campuzao, let me show you what have
2 been marked as 280A, B and C for identification, and ask you
3 to take a look at them.

4 Q Do you recognize those?

5 A Yes, I do.

6 Q What are they?

7 A Those are the photos I took on that date.

8 Q Those are photos that you took?

9 A Yes.

10 Q Do those photos fairly and accurately depict some
11 of the persons that you took pictures of on June 19, 1992?

12 A Yes, they do.

13 Q Where were you taking the photo surveillance that
14 day?

15 A 115 Foster avenue.

16 Q What is located at 115 Foster Avenue?

17 A That is the Abu Bakr Mosque.

18 MR. KHUZAMI: Your Honor, I would move
19 Government's Exhibits 280A, B and C into evidence.

20 MR. WASSERMAN: Brief voir dire, your Honor.

21 THE COURT: Mr. Wasserman.

22 MR. WASSERMAN: May I approach just to get the
23 pictures?

24 THE COURT: Yes.

25 MR. WASSERMAN: Thank you.

1 VOIR-DIRE EXAMINATION

2 BY MR. WASSERMAN:

3 Q Good morning, sir.

4 A Good morning.

5 Q These three photographs, 280A, B and C, when were
6 these taken in terms of time? Do you have any notations at
7 to when?

8 A The time of the day?

9 Q Yes.

10 A It was between 5:30 p.m. and 6:40 p.m.

11 Q Are these, the people that are depicted in A, B
12 and C, these are supposed to be three separate people or are
13 they the same person?

14 A They are three separate people.

15 Q Do you know who they are?

16 A Do I know who they are now?

17 Q Did you know who they were then?

18 A No, I did not.

19 Q Do you know who they are now?

20 A I am sure of at least one.

21 Q How did you come to ascertain the identity of
22 that person?

23 A From other surveillance I conducted.

24 Q What other surveillance did you conduct?

25 A I have done surveillances on Atlantic Avenue.

1 Q When?

2 A I am not sure of the dates, sir.

3 Q Would you have records that would indicate those
4 dates?

5 A I am sure there is.

6 Q You would in fact prepare surveillance reports
7 for every day that you were out taking pictures, correct?

8 A That is correct.

9 Q Can you produce those reports?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q Did you prepare reports in '92, in June of '92?

13 A Have I -- yes, I have.

14 Q For additional surveillance?

15 A I can't recall.

16 MR. WASSERMAN: One moment, your Honor.

17 No further questions on voir dire, your Honor.

18 THE COURT: The exhibits have been offered, Mr.
19 Wasserman.

20 MR. WASSERMAN: No objection.

21 THE COURT: 280A, B and C are received without
22 objection.

23 (Government's Exhibits 280A, B and C were
24 received in evidence.)

25 (Continued on next page)

1 BY MR. KHUZAMI:

2 Q Detective Campuzao, do you recall approximately
3 how much time had passed between the time that you took the
4 picture marked as Government's Exhibit 280B and you took the
5 picture marked Government's Exhibit 280C?

6 A I believe approximately 15 minutes or so.

7 MR. KHUZAMI: Your Honor, at this time I would
8 request permission to have the jury refer to binders marked
9 Exhibits 152 to 299 and examine these three exhibits.

10 THE COURT: That would be under the tab marked
11 280.

12 (Pause)

13 (Continued on next page)

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1 MR. KHUZAMI: Thank you, your Honor.

2 Q Detective Campuzao, 115 Foster Avenue is located
3 in which borough of New York City?

4 A Brooklyn.

5 Q Were you recently requested to conduct a check of
6 two addresses?

7 A Yes, I was.

8 Q What addresses were those?

9 A 3301 Newkirk Avenue and 1351 New York Avenue.

10 Q And where are those addresses located?

11 A They are also in Brooklyn.

12 Q Did you in fact check those addresses?

13 A Yes, I did.

14 Q What did you check to find out?

15 A That 1351 and 33 --

16 MR. STAVIS: Objection. Not responsive, your
17 Honor.

18 THE COURT: Well, he wants to know the nature of
19 the fact that you were checking. What is it you were asked
20 to check?

21 THE WITNESS: How close they were to each other.

22 Q Did you in fact do that?

23 A Yes, I did.

24 Q When did you do that?

25 A This morning.

1 Q What were the results of your investigation?

2 A 1351 is directly across the street from 3301
3 Newkirk Avenue.

4 Q What street is it directly across from?

5 Withdrawn. Let me rephrase that?

6 What street lies between the address 3301 Newkirk
7 and 1351 New York Avenue?

8 A What street? I'm sorry. I don't understand the
9 question.

10 Q What street lies between the two addresses?

11 A Between the two? We have New York Avenue and
12 Newkirk Avenue, and then we have Foster Avenue down the
13 corner.

14 Q Approximately how far is the address 3301 Newkirk
15 from 1351 New York Avenue, in yardage if you can estimate?

16 A I would approximate about 50 yards.

17 MR. KHUZAMI: No further questions.

18 THE COURT: Cross? Ms. Stewart.

19 MS. STEWART: Yes, Judge.

20 CROSS-EXAMINATION

21 BY MS. STEWART:

22 Q Is it Detective Campuzao?

23 A Yes, ma'am, it is.

24 Q You are a New York City Police Department
25 detective, is that right?

1 A Yes, ma'am.

2 Q Are you assigned to the Joint Terrorist Task
3 Force?

4 A Yes, ma'am, I am.

5 Q Were you so assigned on June of 1992 when you
6 conducted the surveillance?

7 A Yes, I was.

8 Q And this surveillance, when did it begin and when
9 did it end?

10 A Well, my surveillance started at 5:30 p.m. and
11 ended at 6:40 p.m.

12 Q Were there other people on surveillance?

13 A At that time, no.

14 Q Had you ever been detailed to do surveillance at
15 the mosque any time earlier than June 191992?

16 A No, ma'am.

17 Q Were you ever detailed after June of 1992 to do
18 surveillance at the mosque?

19 A No, ma'am, I wasn't.

20 Q Now, Abu Bakr mosque is located on Foster Avenue
21 in Brooklyn, is that right?

22 A That's correct.

23 Q What section of Brooklyn is that?

24 A I couldn't tell you.

25 Q Well, it's about two blocks from Ocean Parkway,

1 is that right?

2 A That's correct.

3 Q It's near the corner of McDonald Avenue, is that
4 right?

5 A Yes, ma'am.

6 Q And the overhead el goes down McDonald Avenue, is
7 that correct?

8 A Yes, it does.

9 Q Abu Bakr mosque is an old row house that appears
10 to have been renovated for the purpose of being a mosque, is
11 that right?

12 MR. KHUZAMI: Objection to form.

13 A I couldn't --

14 MS. STEWART: I will rephrase the question,
15 Judge.

16 THE COURT: If you would. Thank you.

17 Q Where were you when you were conducting the
18 surveillance of Abu Bakr mosque on this occasion?

19 MR. KHUZAMI: Objection.

20 THE COURT: Sustained.

21 Q How far away were you from the mosque,
22 approximately?

23 A I'm not sure. But I was across the street from
24 the mosque.

25 Q Were you able to observe the mosque from where

1 you were located?

2 A Yes, ma'am.

3 Q Did you observe that that block of Foster Avenue
4 is a long -- is a block of row houses connected to each
5 other, isn't that right?

6 A I'm not sure. But I believe it is.

7 Q If you referred to the exhibits, the brick face
8 that is on the front of the mosque appears to have been
9 added at a more recent time than the houses were built, does
10 it not?

11 A I really don't know. I couldn't say.

12 Q Well, it has a brick front on it, is that fair to
13 say?

14 A That's fair to say.

15 Q In one of the photographs you can see the "A"
16 where "Abu Bakr" is written, is that right, just the corner?

17 A Yes.

18 Q Were you ever detailed to survey any other
19 mosques during the years 1992, 1993?

20 MR. KHUZAMI: Objection.

21 THE COURT: Sustained.

22 MS. STEWART: Judge, may we approach?

23 THE COURT: Yes.

24 (Continued on next page)

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1 (At the side bar)

2 MS. STEWART: It is my understanding that it is
3 part of the government's contention that my client's concern
4 for whether or not the FBI was surveilling them, was
5 infiltrating them stemmed from his criminal intent. My
6 intent in asking such a question is to show that indeed the
7 FBI was infiltrating Muslim churches, was infiltrating
8 Moslem gatherings of all kinds, and that there was indeed a
9 reason for concern.

10 MR. KHUZAMI: Outside the scope of the
11 examination of this witness.

12 THE COURT: I will allow it.

13 (Continued on next page)
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1 (In open court)

2 MS. STEWART: If I could have the question read
3 back.

4 (Record read)

5 A No.

6 Q You indicated that you had done surveillance on
7 Atlantic Avenue, is that right?

8 A That's correct.

9 Q Was that at Al Farooq mosque?

10 A No, ma'am, it was not.

11 Q Was it at the Alkifah Refugee Center?

12 A No, ma'am, it was not.

13 MS. STEWART: I have no further questions, Judge.

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

16 CROSS-EXAMINATION

17 BY MR. RICCO:

18 Q Good morning, Detective Campuzao.

19 A Good morning.

20 Q You indicated to Mr. Wasserman that you
21 subsequently was able to identify at least one of the people
22 that you photographed?

23 A Yes.

24 Q When you went there that day to shoot, were you
25 told to take photographs of a particular individual, or were

1 you just taking pictures of any and everybody who came in
2 and out of that mosque?

3 A I took pictures of anybody that came in and out
4 of that mosque.

5 Q So, therefore, those three pictures are just
6 three of many pictures photographed by you?

7 A Three -- yes. Of other photos that I had taken,
8 yes.

9 Q Ms. Stewart asked you a question as to whether or
10 not anybody was conducting surveillance and you said at that
11 time, no.

12 Q Was there anyone conducting a surveillance before
13 5 o'clock on that day?

14 A Not to my knowledge.

15 Q Are you aware that June 19, 1992 was a Friday?

16 A I wasn't sure -- no -- if you say it was, then it
17 was. I wasn't sure.

18 MR. RICCO: I have no further questions.

19 MS. STEWART: Judge, I have one more, if I might.
20 I can do it from here.

21 THE COURT: I don't know whether you can be heard
22 by the interpreters.

23 MS. STEWART: Then I will go up to the lectern.

24 CROSS-EXAMINATION (continued)

25 BY MS. STEWART:

1 Q Two questions, Judge.

2 Are you aware that Friday is a religious holiday,
3 juma, where a congregation gathers together to pray at a
4 mosque?

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

6 Q You indicated in your surveillance, did you not,
7 that you observed a person whom you described as a Middle
8 Eastern male, do you remember doing that?

9 A I believe so.

10 Q What does that mean to you?

11 A To me? In Arabic male.

12 Q What does that mean to you?

13 A Somebody from the Middle East.

14 Q Like Mr. Khallafalla perhaps? The dark-skinned
15 gentleman sitting on the end there or would he be a male
16 black to you?

17 A He would be a male black to me, ma'am.

18 Q Can you detail in any way what a Middle Eastern
19 male looks like to you?

20 A The gentleman -- I couldn't really tell. I can't
21 really tell you exactly.

22 MS. STEWART: Thank you.

23 THE COURT: Anyone else? Any redirect?

24 MR. KHUZAMI: One question, your Honor.

25 THE COURT: Go ahead.

1 REDIRECT EXAMINATION

2 BY MR. KHUZAMI:

3 Q Detective Campuzao, when you conducted the photo
4 surveillance on June 19, 1992, were you aware that someone
5 was supposed to purchase a gun that day?

6 MR. STAVIS: Objection, your Honor.

7 THE COURT: Sustained.

8 MR. KHUZAMI: No further questions.

9 THE COURT: You can step down.

10 (Witness excused)

11 MR. FITZGERALD: Your Honor, at this time the
12 government would offer Government Exhibit 346T, a
13 transcript, and the corresponding portions of the underlying
14 tape, Government Exhibit 346E.

15 THE COURT: OK.

16 MR. FITZGERALD: The government would ask to read
17 that transcript now, which would be in the jurors' books.
18 It corresponds to CM43.

19 THE COURT: The volume marked 326 to 399. It is
20 under tab 346.

21 MR. FITZGERALD: CM43, GX346T, is a conversation
22 recorded on June 16, 1993. Mr. Khuzami will read the
23 attributions to Emad Salem, and I will read the attributions
24 attributed to Siddig Ali.

25 THE COURT: All right. When you reach 12:30,

1 when you come within five minutes or so of that, would you
2 come to some convenient break point?

3 MR. FITZGERALD: Yes, Judge. I think we may hit
4 that at page 12 as a break. We will keep an eye on it.

5 Beginning with GX346T.

6 (Government Exhibit 346T was read to the jury)

7 MR. FITZGERALD: Judge, I think we can break
8 there.

9 THE COURT: Ladies and gentlemen, we are going to
10 break for lunch. Please leave your notes and other
11 materials behind. Please don't discuss the case and we will
12 resume this afternoon.

13 (The jury was excused)

14 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:05 p.m.

3 (In open court; jury not present)

4 MR. McCARTHY: Good afternoon, your Honor.

5 THE COURT: Good afternoon.

6 MR. McCARTHY: After a lot of effort to do so, we
7 were not able to reach agreement about the Government's
8 Exhibit 343, which is a conversation that takes place in the
9 middle of Government's Exhibit 347, the conversation that we
10 are currently reading to the jury. What happens in this
11 sequence of events, which is quite important to the
12 government's case with respect to Mr. Hampton-El, is,
13 Mr. Salem and Mr. Siddig Ali drive to a location, they get
14 out of the car, they meet with Mr. Hampton-El. That is a
15 separate tape. That is the tape that comes up after about
16 page 34 of the exhibit that we are reading now, and then
17 after the meeting with Mr. Hampton-El, the rest of 346,
18 which is now, for the record, 346T2, picks up, which is
19 basically a post mortem between Siddig and Salem about the
20 meeting that they have just had with Hampton-El.

21 I don't like having to ask to do this and we have
22 really tried to avoid having to do this, but this particular
23 block of proof, especially as we get down to what is now the
24 end of the government's case, is very important to us to
25 present in the order in which it comes up. Since we can't

1 work out the dispute, what I would ask the court to do is to
2 allow us to finish 346T, which is the transcript we are in
3 the middle of now, and then out of the presence of the jury
4 have a hearing on the issues raised by Mr. Wasserman with
5 respect to --

6 THE COURT: How long will that take? Is it a
7 question of me listening to something and figuring out what
8 is there?

9 MR. MCCARTHY: I think, your Honor, if I may, I
10 don't think your Honor or anyone else, since the tape is the
11 evidence, can say what the tape says. I think the issue for
12 the court is whether a rational person could hear the things
13 that are on the government's transcript. So I think your
14 inquiry is not so much to determine whether it is accurate
15 but whether it is within the bounds --

16 THE COURT: Whether it is arguably accurate?

17 MR. MCCARTHY: Yes, sir.

18 MR. WASSERMAN: Your Honor, I accept that
19 interpretation. I think there are at least a half dozen
20 attribution or content issues as far as we are concerned.
21 There is also a little bit more time that is needed by my
22 client to review a couple of other parts of the transcript
23 and not a great deal of time. So I would ask your Honor,
24 before conducting a hearing or reviewing it in camera, as
25 your Honor chooses, to allow my client about another half

1 hour with the tape and we will finish up our work on it.

2 THE COURT: I will not allow you. Wait a second.
3 You want me to stop for a half hour for you and then conduct
4 a hearing?

5 MR. WASSERMAN: Your Honor, I will tell you what.
6 It was just to make sure that I wasn't submitting to your
7 Honor anything that shouldn't be contested, and then I will
8 just leave that portion of changes to the transcript that
9 came in yesterday which were not heard by my client and just
10 ask your Honor to review them. I wasn't trying to try your
11 Honor's impatience, I was trying to save your Honor time.

12 MR. MCCARTHY: Your Honor, with due respect to
13 Mr. Wasserman, my perusal of this, for what it is worth,
14 indicates that the areas that are in some dispute are in two
15 or three blocks of conversation. I don't think it is going
16 to make a whole lot of difference -- it is not going to save
17 you from having to have the hearing in any event and it is
18 not really going to narrow in a material way what it is that
19 you would need to review to have Mr. Hampton-El review it
20 yet again.

21 THE COURT: The hearing is going to consist of
22 what? Me hearing literally the tape, right?

23 MR. MCCARTHY: Yes, your Honor.

24 THE COURT: Do you have a version to put in front
25 of me or are you telling me it is in essence inaudible?

1 MR. WASSERMAN: Your Honor, I would be able to
2 note for the court on the government's proposed transcript
3 where we have the issues.

4 THE COURT: I assume he knows where the issues
5 are, right?

6 MR. WASSERMAN: No.

7 THE COURT: He doesn't?

8 MR. WASSERMAN: If I may, there were additions
9 made that we have just had the opportunity to go over. They
10 were underlined in the government's transcript so we could
11 spot them. I would mark out for the court where we would
12 have an issue in terms of those sentences, phrases, or
13 passages.

14 THE COURT: How long is the whole tape?

15 MR. KHUZAMI: I think it takes about half an hour
16 to listen to.

17 THE COURT: We will finish the transcript that
18 you are reading now. I will then simply tell them we are
19 going to have to take an extended break, extended for, I
20 guess about an hour, maybe 40 minutes, and then we will have
21 them break.

22 MR. MCCARTHY: I am sorry.

23 THE COURT: It's all right.

24 (Jury present)

25 THE COURT: Good afternoon, ladies and gentlemen.

1 JURORS: Good afternoon.

2 THE COURT: We were at 346, correct?

3 MR. FITZGERALD: Yes, Judge, 367T, at page 12.

4 THE COURT: 346T, page 12. Go ahead.

5 MR. FITZGERALD: Thank you, Judge. Picking up
6 three quarters of the way down the page at page 12. On page
7 12, we begin at the bracket partway down the page.

8 (Reading continued)

9 (Continued on next page)

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1 THE COURT: Ladies and gentlemen, we have a legal
2 issue that we have to resolve before the next exhibit can be
3 introduced. I've generally tried to avoid doing that in a
4 situation where you have to wait inside, but this is one of
5 those times where I can't avoid it. So we are going to take
6 a break now that will probably run to about 40 minutes or
7 more, and we will resume as soon as we can get that legal
8 issue resolved.

9 Please leave your notes and other materials
10 behind, and please don't discuss the case. I'm sorry it had
11 to happen this way. It isn't anybody's fault. It just
12 happened.

13 MR. SERRA: Your Honor, before the court starts
14 any other proceedings, I have a brief application.
15 Mr. Alvarez is not feeling well. As I see things this
16 afternoon, we are not going to get into, until tomorrow, the
17 conversations that he is involved in.

18 THE COURT: OK.

19 MR. SERRA: Probably all day tomorrow will be
20 conversations that he's involved in. So he would appreciate
21 being able to go back to the MCC.

22 THE COURT: Do you want to be excused
23 Mr. Alvarez? Yes?

24 DEFENDANT ALVAREZ: Yes.

25 THE COURT: Do you waive your presence here?

1 DEFENDANT ALVAREZ: I'm sorry?

2 THE COURT: Are you agreeable to us going on
3 without you here? Indicating with a nod of his head "yes."

4 THE DEFENDANT: Yes.

5 THE COURT: Thank you. All right. You are
6 excused. Thank you very much. I hope you feel better.

7 MR. SERRA: Thank you, Judge.

8 THE COURT: Do you have a player that I can use?

9 MR. KHUZAMI: Judge, we have an amplifier and
10 player right here. I would be happy to move it into the
11 robing room and provide you with a transcript.

12 THE COURT: Thank you very much.

13 MR. WASSERMAN: May I come in, your Honor?

14 THE COURT: Pardon?

15 MR. WASSERMAN: I assume you want me to come in.

16 THE COURT: Are you going to help me listen to
17 it?

18 MR. WASSERMAN: I can point out the passages that
19 are in dispute.

20 MR. KHUZAMI: They are underlined in the
21 transcript, unless you have additional ones.

22 MR. WASSERMAN: Not only the underlined ones are
23 in dispute.

24 THE COURT: If you want to be there, fine.

25 MR. NOOTER: Excuse me, your Honor. May my

1 client also be excused for the rest of the afternoon? As
2 you know, he had the operation yesterday.

3 THE COURT: Is it acceptable that we proceed in
4 your absence, Mr. Saleh?

5 DEFENDANT WAHID SALEH: Yes.

6 THE COURT: All right. You may be excused.

7 (Defendants Wahid Saleh and Alvarez excused)

8 (In the robing room)

9 (Mr. Wasserman, Mr. Khuzami, and Mr. Fitzgerald
10 present)

11 (Discussion off the record)

12 MR. WASSERMAN: If I can just say one thing to
13 the court, we can go right to page 10, if you want, which is
14 approximately around 350, if you want to save some time.

15 THE COURT: Off the record.

16 (Discussion off the record)

17 MR. WASSERMAN: You can skip to page 10, Judge,
18 which is approximately, depending upon the counter, 350 or
19 more. You can find the space, and just save some time.

20 THE COURT: You want to fast forward it to around
21 350, you said?

22 MR. WASSERMAN: Yes, your Honor. That would be
23 about page 10 in the government's transcript. The first
24 disputed portion is on page 10.

25 THE COURT: All right. I am at about 330 now.

1 That should be on about nine or something.

2 MR. WASSERMAN: If you give us a phrase, we can
3 probably find it for you.

4 THE COURT: All right. Fine.

5 (Tape played)

6 THE COURT: I'm on page 9.

7 MR. WASSERMAN: The audibility on this part isn't
8 so bad and that's why there isn't much dispute.

9 Do you have it, your Honor?

10 If I may, on the first one I think it's clear
11 enough that your Honor could make it out, and if you
12 can't --

13 THE COURT: The disputed part is "after the
14 operation you've spoken about"?

15 MR. WASSERMAN: The dispute is simply that we say
16 it is Siddig who says it, and then he says, "after the
17 operation suppose we come, unintelligible."

18 THE COURT: You say it's Siddig who says it, and
19 what he says is, "After the operation you come,
20 unintelligible"?

21 MR. WASSERMAN: "Suppose we come."

22 THE COURT: "Suppose we come, unintelligible."

23 The government says it's Hampton-El who says it,
24 and he says, "It's after the operation you've spoken about."

25 MR. WASSERMAN: Right.

1 (Tape played)

2 THE COURT: I hear it.

3 MR. WASSERMAN: You hear?

4 THE COURT: I mean, I have heard what appears to
5 be on this transcript.

6 MR. WASSERMAN: OK.

7 THE COURT: It appears to be in the same voice as
8 what proceeded it, which is attributed to Hampton-El. Then
9 Siddig Ali comes in later in a distinctly different voice.
10 Again, if the standard is whether a rational person could
11 conclude that that is what it shows, I think a rational
12 person could so conclude.

13 MR. WASSERMAN: That is all we are asking you to
14 pass upon. I mean, I can ask the jury to listen to it.

15 MR. KHUZAMI: Your Honor, this is Steve Wagner,
16 and he should be able to help you with the equipment.

17 (Discussion off the record)

18 THE COURT: What is the next disputed portion?

19 MR. WASSERMAN: The next one, your Honor, is page
20 13, near the bottom.

21 MR. KHUZAMI: It is right before the end of the
22 tape.

23 THE COURT: The question is whether he says
24 "computer"?

25 MR. WASSERMAN: Yes. More than that, it is out

1 of context.

2 MR. KHUZAMI: Mr. Hampton-El's proposed change is
3 what? Perhaps we can just --

4 MR. WASSERMAN: I will tell you what. We can
5 pass that. I think I can work that out with Rob.

6 THE COURT: OK.

7 MR. WASSERMAN: The next one is on page 14, in
8 the middle. They have Siddig Ali saying, "That's right,
9 instead of praying. Do you want to sit down?"

10 We don't hear that at all. We hear, although
11 it's faint, Hampton-El saying, "Unintelligible, plenty of
12 money, if you don't, unintelligible."

13 That will be on a different tape. We should be
14 on the second tape, approximately, say, counter 30, if you
15 back it up a little bit.

16 THE COURT: Where is it?

17 MR. WASSERMAN: OK. It should be counter 30.
18 See what you have, page 14.

19 (Tape played)

20 THE COURT: The tape itself begins on page 14,
21 correct?

22 MR. WASSERMAN: I don't know exactly where it
23 begins, but it is around there, yes.

24 MR. KHUZAMI: I think what it does, the new tape
25 picks up and repeats a little. So the new tape may start

1 around the line, OK, even though it ends here, the new one
2 picks up about five previous lines.

3 THE COURT: I have it.

4 (Tape played)

5 THE COURT: We are focused on whether Siddig Ali
6 said, "That's right, instead of praying"?

7 MR. WASSERMAN: Yes. We don't hear that. We
8 hear instead, Hampton-El saying, "Plenty of money if you
9 don't." But, I mean, the first thing is that we don't hear
10 that.

11 (Tape played)

12 THE COURT: I don't hear it.

13 MR. WASSERMAN: You don't hear it?

14 THE COURT: No.

15 MR. WASSERMAN: You don't hear Siddig Ali saying,
16 "That's right, instead of praying"?

17 THE COURT: Correct.

18 MR. WASSERMAN: OK. That is what we're saying.
19 "Do you want to sit down?" that's not there either?

20 THE COURT: I just don't hear that line.

21 MR. WASSERMAN: Don't mind my density, Judge.

22 What your Honor doesn't hear is, "That's right, instead of
23 praying"?

24 THE COURT: And I can't say that I hear, "Do you
25 want to sit down?"

1 MR. WASSERMAN: I don't hear that either. Our
2 contention is that that line should be out.

3 THE COURT: That line should be out.

4 MR. KHUZAMI: What about the alternative
5 proposal?

6 MR. WASSERMAN: Do you hear Hampton-El saying,
7 "Plenty of money if you don't"?

8 THE COURT: I'll go back and listen for that. I
9 did not pick it up.

10 MR. WASSERMAN: If you would, and then we can
11 move on.

12 (Tape played)

13 (Continued on next page)

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1 THE COURT: I don't --

2 MR. WASSERMAN: It's OK.

3 THE COURT: I just don't hear it.

4 MR. WASSERMAN: The next one, your Honor, the
5 next Siddig Ali attribution, which begins with "I doubt it,
6 I doubt it." We say it ends when he says "Expect cash" and
7 that the phrase "when you get back" is not there, and then
8 the following attribution from Hampton-El is not there as
9 well, when Hampton-El says "all right."

10 (Tape played)

11 THE COURT: I heard "They gonna expect cash when
12 you get back."

13 MR. WASSERMAN: The next one, the Hampton-El
14 attribution with him saying "all right" we contend isn't
15 there. It is just Siddig Ali who says "anyway, all right."

16 THE COURT: I heard an "all right" from another
17 voice.

18 MR. WASSERMAN: All right. Moving down the page,
19 there is Siddig Ali saying "So we want to know," and then
20 the government transcript has Hampton-El saying "I
21 understand," and our contention is that he is not saying "I
22 understand," we think he is saying "I can't."

23 MR. KHUZAMI: Do you have challenges to the whole
24 underscored stuff? You might listen to the whole passage,
25 Judge, on to the next page.

1 MR. WASSERMAN: I think there are a couple of
2 UI's that need to be put in but the --

3 THE COURT: The principal challenge is to "I
4 understand"?

5 MR. WASSERMAN: Right.

6 (Tape played)

7 THE COURT: I don't hear "I understand."

8 MR. WASSERMAN: That is what we contend. Does
9 your Honor hear "I can't," or just that it is
10 undecipherable?

11 THE COURT: It is hard to decipher.

12 MR. WASSERMAN: I will go with a UI, I guess. I
13 can't force the government to put in what I want.

14 THE COURT: We will leave UI at best. What is
15 next?

16 MR. WASSERMAN: Let me just ask the government,
17 is it necessary for me to have it UI's inserted where I
18 think it should be -- let me pass on that.

19 On the next page, your Honor, on page 15 in the
20 middle, they have Hampton-El saying "You wanna, UI, because
21 you, UI, two from each," we have trouble with the "two from
22 each."

23 THE COURT: "Two from each" is the problem?

24 MR. WASSERMAN: Yes, your Honor. I would ask
25 your Honor to confirm the balance of that paragraph, from

1 the middle of the page to the end of 15.

2 THE COURT: OK.

3 (Tape played)

4 THE COURT: The only quibble I have with this is
5 that the car horn is misplaced.

6 MR. WASSERMAN: I am sorry, your Honor.

7 THE COURT: Toward the top of page 15, the car
8 horn is misplaced. Where it says attribution to Hampton-El,
9 I believe the car horn comes before "I will know
10 definitely," rather than at the end of what Hampton-El says.

11 MR. WASSERMAN: Car horn, OK. But you hear "two
12 from each"?

13 THE COURT: I do. I hear references to the
14 sixes, whatever that is.

15 MR. WASSERMAN: Then the next one is, and I think
16 we are at the last, on page 18.

17 THE COURT: That is the "What is tomorrow"?

18 MR. WASSERMAN: No. I wouldn't dare turn to page
19 17. Page 18 at the top. This is making me --

20 THE COURT: "This is making me unintelligible"?

21 MR. WASSERMAN: Right. I don't hear that. I
22 don't know how the government is going to argue.

23 Judge, I will pass on that. I think it is
24 immaterial. I won't take your time with it. I don't see
25 that it is going to affect anything.

1 THE COURT: So we leave it?

2 MR. WASSERMAN: Yes. It is all right.

3 MR. KHUZAMI: I just sent Ms. Chu to make
4 corrections and while I have a witness on, Detective
5 Corrigan may need a few minutes to run the corrections and
6 make copies so the witness can put the transcript in.

7 MR. WASSERMAN: Thank you, Judge.

8 THE COURT: Don't thank me.

9 (Recess)

10 (In open court; jury not present)

11 THE COURT: We have one juror for whom on
12 Wednesdays we have been breaking at 4:45 because he goes to
13 school in the evening. We are not done adjusting the
14 notebooks, are we?

15 MR. KHUZAMI: Not yet, your Honor. We expect
16 them shortly.

17 THE COURT: Why don't we just break for the day
18 and do this tomorrow. This is taking longer than I thought
19 and it is pointless to start and stop in the middle or to
20 sit until 6. I am just not going to do that. Let's get
21 them back and we will break for the day.

22 MR. PATEL: Is it necessary to bring them back in
23 and tell them to go?

24 THE COURT: I can go back there if you trust me
25 to do it.

1 MR. PATEL: No objection.

2 (In the jury room)

3 THE COURT: Here I am again, which means what it
4 usually means. I am sorry, the matter that we had to deal
5 with simply took longer than I thought it would, and for us
6 to start now would mean that we would have to break
7 something in the middle, and it is pointless to do that
8 given the amount that we have. So rather than throw good
9 time after bad, we will break for the day now and resume
10 tomorrow. Sorry again.

11 A JUROR: We love you.

12 (Laughter)

13 THE COURT: The feeling is mutual.

14 (Laughter)

15 JURORS: Good night.

16 (In open court; jury not present)

17 THE COURT: Is there anything else we can
18 accomplish now?

19 MR. WASSERMAN: Just, your Honor, if I may, your
20 Honor, I submitted a proposed, under Rule 106, FISA
21 conversation. I have no problem with your Honor making a
22 decision tomorrow.

23 THE COURT: I looked at it. I will look at it
24 again.

25 MR. WASSERMAN: Thank you.

1 THE COURT: What about the transcripts that Miss
2 Stewart wanted me to read?

3 MR. FITZGERALD: They are not for tomorrow. She
4 is not here.

5 THE COURT: Then let's not do it.

6 THE COURT: See you tomorrow.

7 Mr. Wasserman?

8 MR. WASSERMAN: Forgive me. When Detective
9 Corrigan testified about the FISA's coming in I had no
10 objection to their coming in and I did not cross him at that
11 time. I of course have no objection about those FISA's
12 having come in, but I do have a question or two about those
13 transcripts and I would request the court's permission,
14 since they have not been put before the jury yet, that I may
15 question him --

16 THE COURT: When he next takes the stand?

17 MR. WASSERMAN: Yes, sir.

18 THE COURT: Yes, you may.

19 MR. WASSERMAN: Thank you, your Honor.

20 THE COURT: One more thing. When the
21 surveillance detective was on the stand, there was a series
22 of questions in essence aimed at suggesting that he had been
23 taking pictures at random or whatever, and then there was an
24 attempt on redirect to ask whether he knew there was a
25 particular transaction planned for that day and I sustained

1 an objection. In retrospect I don't think I should have
2 sustained it, and if that sort of thing happens again I
3 won't, so no one should proceed on the assumption that that
4 ruling is going to replicate itself. If there was an
5 attempt to create on cross a suggestion that he was simply
6 there taking pictures at random and in fact he was there for
7 some focused reason, I am going to permit that to be
8 introduced on redirect.

9 MR. RICCO: Your Honor, the basis of Mr. Stavis'
10 objection --

11 THE COURT: I didn't recall that it was
12 Mr. Stavis who made the objection.

13 MR. STAVIS: It was, your Honor.

14 THE COURT: I thought there were a number of
15 heads that popped up.

16 MR. RICCO: There were a number of objections but
17 in the indictment on that date, June 19, the indictment
18 says --

19 MR. STAVIS: It is overt act W, your Honor.

20 MR. RICCO: The indictment says that the gun
21 transaction, the sale was supposed to take place on June 29,
22 1992, not June 19, 1992, and we thought that the basis for
23 asking the question --

24 THE COURT: That the government wouldn't have a
25 basis for asking the question.

1 MR. RICCO: I can live with the answer. I just
2 thought the basis was improper, given the reading of the
3 indictment.

4 THE COURT: That wasn't the basis of my ruling.
5 It would have been had you explained it.

6 MR. STAVIS: I didn't see the necessity.

7 (Continued on next page)

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1 MR. STAVIS: I didn't see the necessity.

2 MR. WASSERMAN: I didn't have to answer Mr.

3 Stavis's objection. But my understanding is that the basis
4 is there was no -- on June 19 there is alleged that there
5 was a conversation at Abu Bakr mosque, but not that there
6 was any proposed gun transaction.

7 THE COURT: In that event, I guess I'm glad I
8 sustained the objection, although for the wrong reasons. In
9 any event, I will see you all tomorrow.

10 (Proceedings adjourned to Thursday, June 8, 1995
11 at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,

16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

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

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

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

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June 8, 1995
9:40 p.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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United States Attorney for the
Southern District of New York

BY: ANDREW McCARTHY

PATRICK FITZGERALD

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1 (Trial resumed; jury not present)

2 THE COURT: Good morning.

3 MR. MCCARTHY: Good morning, your Honor.

4 MR. SERRA: Your Honor, until the air
5 conditioning is fixed in here, does the court have a problem
6 if we don't wear jackets?

7 THE COURT: No, I don't. I am told that the air
8 conditioning is working.

9 MR. SERRA: Is it?

10 THE COURT: Yes. And the maintenance people have
11 told us that if we can't imagine that within a half hour,
12 that we should call them.

13 MR. SERRA: Thank you, Judge.

14 THE COURT: So try to imagine it for the next
15 half hour. If you can't and I can't, we'll call. And so
16 far I can't imagine that it's air conditioned in here, but
17 we'll work on it.

18 (Jury present)

19 THE COURT: Good morning, ladies and gentlemen.

20 JURORS: Good morning, your Honor.

21 THE COURT: You may notice that some of the
22 lawyers are in shirt sleeves. That's not out of any
23 disrespect for you or the court, but simply out of
24 recognition of the fact that it is hot in here.

25 They asked for permission to do it; I said they

1 could. The building maintenance people have told us that
2 the air conditioning is in fact on and that it will take
3 about a half hour for it to start to cool down and that we
4 shouldn't start to nag them until a half hour has passed, so
5 we won't.

6 Mr. Khuzami?

7 MR. KHUZAMI: Your Honor, the government calls
8 Detective Corrigan.

9 THOMAS F. CORRIGAN,
10 called as a witness by the Government,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. KHUZAMI:

14 Q Detective Corrigan, are you familiar with the
15 face of Clement Hampton-El?

16 A Yes, sir, I am.

17 Q How is it that you are familiar with his face?

18 A In the course of the investigation -- through the
19 course of my investigation in this matter, I've become
20 familiar with his face.

21 Q Prior to the commencement of the trial,
22 approximately how many times had you seen him?

23 A In person, probably between 10 and 15 times.

24 MR. KHUZAMI: Your Honor, may I approach.

25 THE COURT: Yes.

1 Q Detective Corrigan, let me show you what's been
2 entered into evidence as Government Exhibit 280B as in boy
3 and ask you to take a look at that.

4 A Yes, sir.

5 MR. KHUZAMI: Your Honor, at this time I would
6 request permission to have the jurors refer to Government
7 Exhibit 280B, which is located in the binder marked Exhibits
8 152 to 299.

9 THE COURT: OK. If you will turn to that
10 exhibit. It is under a tab marked 280.

11 Q Detective Corrigan, do you recognize the person
12 depicted in that picture?

13 A Yes, sir, I do.

14 Q And who is it?

15 A It's Clement Hampton-El, also known as Abdul
16 Rashid.

17 Q And do you recognize the location depicted in
18 that picture?

19 A Yes, sir, I do.

20 Q What is that?

21 A That is the Abu Bakr mosque.

22 Q Now, Detective Corrigan, does the FBI have the
23 ability to trace motor vehicle registrations and licenses?

24 A Yes, sir, they do.

25 Q And how is that done?

1 A They enter into the DMV computer base, DMV,
2 Department of Motor Vehicles.

3 Q I'm sorry, they --

4 A They enter into the Department of Motor Vehicles
5 database to retrieve the information.

6 Q What division or office within the FBI does that?

7 A Well, that is done by the Operations Center.

8 Q Do you know whether or not they have access to
9 historical as well as current motor vehicle information?

10 A Yes, sir, they do.

11 Q They do have both?

12 A They have both.

13 Q And when such a request is made, how do you get
14 the information back?

15 A On a computer printout, sir.

16 Q And have you been recently requested to conduct
17 such a motor vehicle trace?

18 A Yes, sir, I was.

19 Q And with regards to whom?

20 A Clement Hampton-El's vehicle.

21 Q And when did you do that?

22 A June 6, I believe.

23 Q What information did you ask for?

24 A The registered owner for New York registration, I
25 think it's 7 King Peter 839. When I say "King Peter," that

1 means KP. 7KP 839. But I'm not entirely sure of that
2 plate.

3 Q Where did you get that license plate number?

4 A That's the vehicle of -- Mr. Hampton-El's car.

5 Q How do you know that?

6 A From numerous surveillances. The first time I
7 observed it was December 20th of 1992.

8 Q Did you review a video indicating that he had
9 that license?

10 A Yes, sir, but I knew from that date that that was
11 the vehicle that was registered to Mr. Hampton-El.

12 Q And did you in fact get a printout from that
13 trace?

14 A On December 20, '92?

15 Q No. Recently.

16 A Recently, yes, sir.

17 Q How soon after you made the request did you get
18 the printout?

19 A The same day.

20 Q Does the FBI Operations Center use Department of
21 Motor Vehicle information in the regular course of its
22 activities?

23 A Yes. During the course of investigations on a
24 daily basis.

25 Q Is it their regular practice to run traces of

1 auto registration and license information?

2 A Yes, sir, it is.

3 MR. KHUZAMI: Your Honor, may I approach?

4 THE COURT: Yes.

5 Q Let me show you what's been marked for
6 identification as Government Exhibit 847. I ask you to take
7 a look at it.

8 A Yes, sir.

9 Q Do you recognize that?

10 A Yes, I do, sir.

11 Q What is it?

12 A That's the computer printout of Mr. Hampton-El's
13 vehicle.

14 MR. KHUZAMI: Your Honor, I would move Government
15 Exhibit 847 into evidence.

16 MR. WASSERMAN: No objection.

17 THE COURT: 847 is received without objection.

18 (Government Exhibit 847 was received in evidence)

19 Q Reading from that document, Detective Corrigan,
20 can you indicate what type of car was registered to
21 Mr. Hampton-El.

22 A Yes, sir, I can.

23 Q What is it?

24 A It's an '86 white Mazda, two-door sedan, plate
25 number is New York registration 7K, as in king, P as Peter,

1 839.

2 Q Does it indicate for what period of time that
3 vehicle was registered to Mr. Hampton-El?

4 A It is valid from February 11, 1992 through
5 3/1/94. It expired on March 1 of 1994, the tags did.

6 Q Does that document also indicate Mr. Hampton-El's
7 address?

8 A Yes, sir, it does.

9 Q What is it?

10 A 1351 New York Avenue, Brooklyn, New York.

11 Q Thank you.

12 Detective Corrigan, I've placed before you two
13 cassettes which have been marked as Government Exhibits
14 343E, two of seven and three of seven, and ask you if you
15 recognize them?

16 A Yes, sir, I do.

17 Q How do you recognize them?

18 A My initials are on them, sir.

19 Q Have you listened to those two tapes?

20 A Yes, sir, I have.

21 Q How many times?

22 A Numerous times, sir.

23 Q And did you prepare a transcript as a result of
24 your review of those tapes?

25 A Yes, sir, I did.

1 Q Does the transcript you prepared reflect all or
2 part of what's on the cassette tapes marked 343E, two of
3 seven and three of seven?

4 A A part, sir. It's the English translation of it.

5 Q When you listened to the tapes, did you recognize
6 the voices of the people that you heard on the English part
7 of that tape?

8 A Yes, sir, I did.

9 Q Who do you recognize the voices to be?

10 A Emad Salem, Siddig Ibrahim Siddig Ali, Clement
11 Hampton-El, also known as Abdul Rashid.

12 Q Did you hear any other voices in addition to
13 those three persons?

14 A Yes, sir, I did.

15 Q And who were they?

16 A Just actually I think -- I believe there was two
17 unmales that I couldn't identify.

18 Q When you say "unmales," what do you mean?

19 A Unknown males, I'm sorry. I'm sorry.

20 Q And how did you indicate in the transcript
21 statements attributed to unidentified or unknown males?

22 A "U/M." In fact, I might have left out -- I
23 should have numbered them one and two. I apologize for
24 that.

25 Q They're indicated as "U/M"?

1 A They're indicated -- right, that's correct.

2 Q If you pick up the transcript next to you, which
3 has been marked as government Exhibit 343T for
4 identification, and I ask you if you recognize that.

5 A Yes, sir, I do.

6 Q What is it?

7 A That's the transcript that I prepared from the
8 tapes.

9 Q Now, when you made the transcript, did you have
10 any difficulty in hearing what was being said on the tape?

11 A At times, sir.

12 Q Can you describe the type of difficulty you had.

13 A At times the voices were muffled. At times there
14 was whispering. At times there was background noise, to
15 include, you know, cars and buses, that type of noise, sir.

16 Q To the best of your ability, does the transcript
17 reflect what it is you heard on the tape?

18 A Yes, sir, it does.

19 Q To the best of your ability, does the transcript
20 reflect who said what on the tape?

21 A Yes, sir, it does.

22 Q Was there also some Arabic spoken within the
23 English portion of the tape that you listened to?

24 A Yes, sir, there was.

25 Q Can you recognize some of that Arabic language?

1 A Some of it I did. It was Arabic readings.
2 Different, certain phrases that I've become familiar with.
3 I marked --

4 Q How --

5 A I'm sorry.

6 Q How did you mark those in the transcript?

7 A I would put a "PH" for phonetic.

8 Q You spelled it out in English?

9 A Yes, I spelled it out -- no, I'm sorry. I
10 spelled it out in Arabic and marked the "PH" at the end to
11 indicate phonetic.

12 Q Were there other --

13 THE COURT: When you say you spelled it out in
14 Arabic, you mean you used English characters to write Arabic
15 words?

16 THE WITNESS: That's correct, sir, to the best of
17 my ability.

18 Q Were there other Arabic phrases in that tape that
19 you were unfamiliar with?

20 A Yes, sir, there was.

21 Q And did you translate those?

22 A No, sir, I did not.

23 Q Do you know who translated those?

24 A Yes, sir, I do.

25 Q Who was that?

1 A Gamal Abdel-Hafiz.

2 Q And how is that indicated in that transcript?

3 A Before the statement there was an A, usually an A
4 placed in parentheses to indicate that it had been
5 translated from Arabic into English.

6 Q Is there a point during this conversation in
7 which Mr. Hampton-El is no longer a participant?

8 A That's correct.

9 Q From that point forward what language is spoken?

10 A Arabic, sir.

11 Q Did you transcribe that?

12 A No, sir, I did not.

13 MR. KHUZAMI: Your Honor, at this point I would
14 offer into evidence Government Exhibits 343E, two of seven
15 and three of seven, and the accompanying transcript 343T as
16 an aid to the jury.

17 MR. WASSERMAN: Voir dire, Judge?

18 THE COURT: Go ahead.

19 (Counsel conferred)

20 MR. WASSERMAN: My understanding, your Honor, is
21 that Mr. Khuzami has completed his examination of this
22 witness, and, therefore, I'll combine the voir dire with the
23 cross.

24 THE COURT: Is that true?

25 MR. KHUZAMI: That's fine, your Honor. We would

1 request permission to play the tapes at this point.

2 THE COURT: All right. Well, then, the tape has
3 been offered. You'll combine the voir dire with the cross.

4 MR. MCCARTHY: May we have a moment, your Honor.

5 (Government counsel conferred)

6 MR. KHUZAMI: As Mr. McCarthy points out, your
7 Honor, I believe that the two tapes are already in subject
8 to connection. So I would just alter my offer to offer
9 those portions of Government Exhibit 343E two of seven and
10 three of seven, the English portions, and the transcript as
11 an aid to the jury.

12 THE COURT: All right. I'll hold off on the
13 ruling until after the cross and any redirect. Go ahead.

14 MR. WASSERMAN: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MR. WASSERMAN:

17 Q Good morning, sir.

18 A Good morning, Mr. Wasserman.

19 Q Detective Corrigan, let's just turn to CM41 for a
20 minute, the transcript that you prepared.

21 In essence I'll do the voir dire aspect of it.

22 When you did your transcript you weren't starting
23 with a blank slate, were you?

24 A No, sir, I was not.

25 Q You were working from a transcript that had been

1 prepared by other people, correct?

2 A That's correct, sir.

3 Q And you made modifications on that transcript,
4 correct?

5 A I changed and added some things, yes, sir.

6 Q So that there were things that you heard which
7 the transcripts that you were working with, the draft that
8 you were working with did not have, and things that it had
9 that you did not hear, am I correct?

10 A There were some things that I added, some things
11 that I removed, yes, sir.

12 Q OK. So would it be fair to say that on this
13 difficult-to-hear-at-times tape, there are matters of
14 interpretation as to what he is being said or in fact
15 difficulty in understanding sometimes what's being said,
16 correct, there can be differences of opinion?

17 A I don't -- you know, I don't really get into
18 that, sir. I just do what I hear. You know, the words that
19 are on the tape is what I listen to.

20 Q When I say "differences of opinion," I simply
21 mean to point out that your version of what's on that tape
22 differs in places with what you were working on as a draft,
23 correct?

24 MR. KHUZAMI: Objection.

25 THE COURT: I will allow that.

1 A Yes. But I believe that it is because I'm
2 familiar with the voices of the participants as opposed to
3 people that prepared the draft prior to my draft. There
4 were not -- I'm sorry.

5 THE COURT: He didn't ask you why.

6 THE WITNESS: I'm sorry.

7 THE COURT: He just asked you whether there are
8 differences.

9 THE WITNESS: Yes, sir, there are differences.

10 THE COURT: The answer is yes. Go ahead.

11 BY MR. WASSERMAN:

12 Q Now, leaving CM41 for a moment and going back to
13 the picture that you identified, you testified that you had
14 first observed Mr. Hampton-El on December 20 of 1992, is
15 that correct?

16 A The first time live, yes, sir.

17 Q And would it be fair to say that was the occasion
18 of Garrett Wilson meeting with my client?

19 A That's correct, sir.

20 Q OK. Now, you also testified yesterday about
21 certain FISA transcripts that you had prepared, correct?

22 A That's correct, sir.

23 Q Do you have those in front of you now?

24 A No, sir, I do not.

25 MR. WASSERMAN: May I ask the government to

1 please provide them.

2 Your Honor, I have copies.

3 Q Detective Corrigan, I just want to ask you a few
4 questions about several of those FISA's.

5 To begin with, number 766T, that's on June 19, is
6 that correct, sir?

7 A That's correct, sir.

8 Q And you have a time on that transcript of 11:04
9 p.m. Where did you get that time from?

10 A I believe that was taken off when the call came
11 out of the trap. There was a trap on the phone call when it
12 came into Mr. Hampton El's line, and it printed out the time
13 of the call as well as the number that was trapped.

14 Q OK. The time is 11:04 p.m., is that correct?

15 A That's correct, sir.

16 Q And this is a conversation between Siddig Ali and
17 Hampton-El, correct?

18 A Yes, sir, it is.

19 Q To the best of your recollection, it is accurate
20 at the bottom where there is a phone number given by Siddig
21 Ali to Hampton-El, is that correct?

22 A Yes, sir.

23 Q That phone number is the phone number that Siddig
24 Ali is giving to Hampton-El where Siddig Ali can be reached,
25 is that correct?

1 A Let me just --

2 Q Sure. I mean, does the transcript accurately
3 reflect that?

4 A I am sorry, sir. I didn't catch that last
5 question.

6 Q OK. I withdraw that question.

7 A Let me -- if I can just for one second, let me
8 just read this.

9 Q All right.

10 (Pause)

11 A OK, sir.

12 Q OK. That is a simply a telephone number that in
13 the transcript Siddig Ali is giving to Hampton-El?

14 A I believe it's Emad Salem's cell phone.

15 Q Fine. Now, following that transcript, you've
16 prepared a transcript 768T?

17 A That's correct, sir.

18 Q The time on that is 11:14 p.m., correct?

19 A That's correct, sir.

20 Q And that would be the same date, June 19?

21 A That's correct, sir.

22 Q OK. Now, is it, to the best of your
23 recollection, is it accurate in line, I believe 4, you have
24 "Yeah, man, I forgot about you, man. A guy called me
25 earlier and he told me no can do, bro"?

1 A Right.

2 Q To the best of your recollection is that
3 accurate?

4 A Yes, sir, it is.

5 Q Following that phone call, also at the bottom,
6 where Hampton-El says, "No problem. I'll just tell the
7 people inshallah," that's also accurate?

8 A That's correct, sir.

9 Q Correct. Following that phone call, virtually
10 at -- you have another transcript, 769T, that's also June
11 19, am I correct?

12 A That's correct, sir.

13 Q And that's lists 11:14 p.m. also?

14 A That's correct, sir.

15 Q I take it that phone call followed -- did that
16 phone call follow the no-can-do conversation, to the best of
17 your recollection?

18 A Yes. I believe Mustafa Mohammed --
19 Mr. Hampton-El had beeped Mustafa Mohammed. Mustafa
20 Mohammed returned the call. This conversation occurred.
21 Mr. Hampton-El then reached out for Mr. Ali.

22 Q OK. And the number that he called was the number
23 that Siddig Ali had given him in the 11:04 conversation,
24 correct?

25 A I believe so, sir.

1 Q OK. And in that phone conversation of 769T, the
2 one between Hampton-El and Siddig Ali, approximately six
3 lines down Hampton-El says, "la," and Siddig Ali says, "la,"
4 correct?

5 A That's correct, sir.

6 Q Am I correct in saying that "la" means "no" in
7 Arabic? Is that your understanding?

8 A It's my limited understanding, yes, sir.

9 Q Fine. And then, just asking you one other
10 question about an Arabic word, and if you know the answer to
11 it, fine, and if you don't, no problem: In the first
12 transcript where Siddig Ali gives him the phone number,
13 that's 766T at 11:04 p.m., there's a phrase used by
14 Hampton-El about seven lines down.

15 A I'm sorry. 757T?

16 Q No, sir. 766T. That's the first conversation we
17 discussed.

18 A OK.

19 Q Hampton-El says, "You've, you, inta, inta,
20 intacof." And then you have phonetic in parentheses.

21 Now, Siddig Ali says, "Oh, sorry," and then
22 Hampton-El then says: "You do the intacof."

23 And Siddig Ali says, "No, actually we came here
24 to Brooklyn. I was in Brooklyn."

25 Do you know what "intacof" means?

1 Are you familiar with that, that that refers to
2 staying in the mosque overnight and reading Koran?

3 A I've gotten that from reading the transcripts.

4 Q Fine. Thank you, sir.

5 Now, these conversations all took place on June
6 19, correct?

7 A That's correct, sir.

8 Q And there were conversations on June 18 and June
9 17 between, that you've prepared transcripts for between
10 Siddig Ali and Hampton-El and between Hampton-El and Mustafa
11 Mohammed?

12 A I have to back you up a little bit. I only have
13 June 17, I don't think I have the 18th one.

14 Q I'm referring to the transcripts that you put in
15 yesterday.

16 A OK. Go ahead.

17 Q Now, the one that you do have in your hand, June
18 17, that's at 9:54 a.m., in the morning, correct?

19 A That's correct, sir.

20 Q And Hampton-El, you have the third Hampton-El
21 attribution, to the best of your recollection it's correct
22 that he's saying to Siddig Ali, "Listen, I think everything
23 is going to be good"?

24 A That's correct, sir.

25 Q OK. Thank you.

1 Now, moving to CM41 in your transcript, that
2 takes place, that conversation takes place on June 16,
3 correct?

4 A That's correct, sir.

5 Q So all of these phone conversations we are
6 talking about occurred after that, correct?

7 A That's correct, sir.

8 Q OK. Now, just to clarify for the jury, the
9 audibility on the FISA conversations is excellent, is it
10 not?

11 A For the most part, yes, sir.

12 Q You can hear almost as if you're on the line?

13 A Almost, sir.

14 Q OK. Whereas CM41 is at times very difficult to
15 hear, correct?

16 A There are times that the voices are muffled.
17 There are other times that they're as clear as a bell.

18 Q There are times that there is a conversation, but
19 at least in terms of your preparation of the transcripts,
20 you could not make out what that conversation was about,
21 correct? It was too muffled? You hear voices in the
22 background, but you can't determine what they're saying,
23 correct?

24 MR. KHUZAMI: Objection to form.

25 THE COURT: Sustained.

1 Q There are times that the tape has conversation
2 that you can hear this conversation going on, but you could
3 not make out what that conversation was, correct?

4 A Certain areas.

5 Q Yes. And there are times that -- particularly if
6 more than one speaker is talking at the same time -- that it
7 can be difficult to make out who is speaking?

8 A What I --

9 Q At times.

10 A At times.

11 Q Fine. Now, you mentioned earlier in your
12 testimony that it helped you in terms of preparing your
13 version of the conversation that you were familiar with the
14 voices of the people, correct?

15 A That's correct, sir.

16 Q And you're familiar because you have spoken to
17 and heard Emad Salem on tape, correct?

18 A Yes, sir.

19 Q And Siddig Ali, you've spoken to him, correct?

20 A Yes, sir, I have.

21 Q And you've heard him on tape?

22 A Yes, sir, I have.

23 Q OK. In addition to having the benefit of knowing
24 their voices, did it help you in preparation of the
25 transcript to know the subject matter of what the

1 conversations were about?

2 A No, sir.

3 Q OK. When you have on page 13 of your transcript
4 at the bottom, the second Siddig Ali attribution from the
5 bottom, you have Siddig Ali saying, "Inshallah, they bring
6 you, unintelligible, pause, faces, unintelligible, working
7 on it."

8 Is it fair to say that you're able to pick up the
9 word "faces" because that's a word that you ran into or
10 heard in CM25, which is another CM that you transcribed,
11 correct?

12 A To be honest with you, sir, I didn't hear
13 "faces." That was something that was a stipulation between
14 you and the government.

15 Q Is it your testimony that this transcript
16 contains things that you didn't hear?

17 MR. KHUZAMI: Objection. Your Honor, may we
18 approach?

19 THE COURT: Yes.

20 (Continued on next page)

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1 (At the side bar)

2 MR. KHUZAMI: The word "faces" was added as a
3 result of a reconciliation process between myself and
4 Mr. Wasserman.

5 THE COURT: If you want to start running away
6 from stipulations, I will strip this whole thing down to the
7 government's version and you can put in your own later.

8 MR. WASSERMAN: That is not my intention.

9 THE COURT: That is the intention behind your
10 question.

11 MR. WASSERMAN: Judge, if I may, I wouldn't ask
12 such a question if I wasn't -- if I may, the process of
13 working out these transcripts --

14 THE COURT: The objection to the question was
15 sustained. I don't want history. Don't ask that question
16 with relation to things that you have agreed to.

17 MR. WASSERMAN: Judge, I just want to clarify for
18 the court because it is important.

19 THE COURT: It is not important. We can clarify
20 it at leisure. Move on to something else.

21 MR. WASSERMAN: I just want you to know I thought
22 that he had heard it and that's why I asked the question.
23 That's all.

24 THE COURT: Fine.

25 (Continued on next page)

1 (In open court)

2 THE COURT: Go ahead.

3 MR. WASSERMAN: Thank you, your Honor.

4 Q Sir, in addition to preparing the transcript for
5 CM41, you prepared the transcript for CM25, correct?

6 A That's correct, sir.

7 Q And I think that it was just last week that you
8 testified concerning that transcript, is that correct?

9 A I believe the beginning of this week, sir.

10 Q This week?

11 A I might be wrong.

12 Q I believe it was last week.

13 A All right. I'm sorry.

14 Q No matter.

15 Do you recall that transcript?

16 A Yes, sir, I do.

17 Q OK. And do you recall that in that transcript my
18 client is talking about having more than one passport and
19 saying, "I got my faces at home," and he's talking about
20 passports at that time?

21 MR. KHUZAMI: Objection, scope.

22 THE COURT: Sustained.

23 Q Do you recall the conversation about passports in
24 CM25?

25 A Yes, sir, I do.

1 MR. KHUZAMI: Objection.

2 Q Do you recall that a word used for "passports" in
3 CM25 was "faces"?

4 A No, sir, I don't.

5 MR. WASSERMAN: Your Honor, may I approach to
6 refresh the witness's recollection.

7 THE COURT: No.

8 Q In preparing the transcript, were you aware that
9 immediately prior to the conversation in CM41 that Emad
10 Salem tells Siddig Ali in CM43, "We're going to get two
11 things" --

12 MR. KHUZAMI: Objection.

13 Q -- "from Rashid, passports and balls"?

14 MR. KHUZAMI: Objection.

15 THE COURT: Sustained.

16 Q Did you use any CM's prior to 41 to help you
17 prepare the transcript for 41?

18 A No, sir.

19 Q Do you know what transpired between Siddig Ali
20 and Emad Salem prior to, immediately prior to CM41?

21 A No, sir.

22 Q So that you are -- OK.

23 Are you aware of Emad's testimony concerning
24 asking Rashid for passports and balls at this meeting on
25 June 16?

1 MR. KHUZAMI: Objection.

2 THE COURT: Sustained.

3 Q Would it be fair to say that it is your testimony
4 that you know nothing concerning the request for passports
5 in this conversation?

6 MR. KHUZAMI: Objection.

7 THE COURT: Sustained.

8 MR. WASSERMAN: I have no further questions.

9 THE COURT: The exhibit has been offered.

10 MR. WASSERMAN: Your Honor, I have no objection.

11 THE COURT: All right. 343E 2 and 3 and 343T are
12 received.

13 (Government's Exhibits 343E2, 343E3 and 343T were
14 received in evidence)

15 MR. KHUZAMI: At this time I would ask permission
16 to play --

17 THE COURT: Is there any other cross of this
18 witness? Any redirect?

19 MR. KHUZAMI: None, your Honor.

20 THE COURT: You're excused. Thank you.

21 THE WITNESS: Thank you, your Honor.

22 (Witness excused)

23 MR. KHUZAMI: At this time we would ask
24 permission to play the English portions of Government
25 Exhibit 343E, two of seven and three of seven, and ask that

1 the jury be permitted to follow along with the transcript
2 marked 343T.

3 THE COURT: There is an exhibit book marked 326
4 to 347 that would include 343.

5 MR. KHUZAMI: For counsel's benefit that's
6 CM41/45. Your Honor, before we get started, may I advise
7 the court and counsel and the jury that there will be two
8 brief stops during the playing of this. One at page 4 of
9 the transcript where there is a redaction stipulated between
10 the parties where we will simply move the tape forward. And
11 at page 13 we will stop to switch tapes.

12 (Tape played)

13 (Continued on next page)

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1 MR. KHUZAMI: Your Honor, at this time the
2 government would request permission to read the last three
3 pages of Government's Exhibit 343T, which is Arabic
4 conversation between Mr. Salem and Mr. Siddig.

5 THE COURT: Go ahead.

6 MR. KHUZAMI: I will read the voices attributed
7 to Mr. Salem and Mr. Fitzgerald will read the voices
8 attributed to Mr. Siddig Ali.

9 MR. FITZGERALD: Starting with page 18.

10 (Government's Exhibit 343T in evidence read to
11 the jury)

12 MR. MCCARTHY: Your Honor, at this point the
13 government would propose to read from Government's Exhibit
14 756T.

15 THE COURT: That is in the binder marked 751 to
16 850.

17 MR. FITZGERALD: Government's Exhibit 756T,
18 Siddig Ali FISA dated June 16, 1993, at 9:56 in the morning.

19 I am sorry, your Honor. I was confused. This is
20 in English because it is an English-speaking person. We
21 will play the tape.

22 (Tape played)

23 MR. FITZGERALD: Your Honor, the government would
24 next propose to play Government's Exhibit 757, and the
25 transcript for that is 757T, and again, this will be an

1 English conversation. 757T was recorded on June 17, 1993,
2 at 9:54 in the morning.

3 (Tape played)

4 MR. FITZGERALD: Your Honor, the government would
5 next propose to read from CM 47, which is GX 349T.

6 THE COURT: It is in the binder marked 348
7 through 399.

8 Before we start this one we are going to take a
9 break. Ladies and gentlemen, we are going to take a break.
10 Please leave your notes and other materials behind. Please
11 don't discuss the case, and we will resume in a few minutes.

12 (Recess)

13 (Jury not present)

14 THE COURT: It is a little cooler.

15 MR. NOOTER: Your Honor, despite the better
16 atmosphere, my client is not feeling all that well and would
17 prefer to go back and would waive his presence.

18 THE COURT: Is that satisfactory, that we
19 continue, Mr. Saleh?

20 DEFENDANT WAHID SALEH: Yes.

21 THE COURT: I hope you feel better. You are
22 excused.

23 MR. MCCARTHY: Your Honor, I believe before the
24 morning break we will get to the very long transcript of
25 June 19, 1993, which is Government's Exhibit 352T. The

1 reason I bring that up now is, there is a code that we have
2 used in this transcript which is being used for the first
3 time, and that is that, particularly in conversation where
4 Mr. Alvarez is a participant, there is generally speaking
5 English conversation, which is interrupted periodically with
6 Arabic conversation. In those blocks of conversation, we
7 have double underlined the Arabic words. We didn't want to
8 just underscore it because that means something different to
9 the jury.

10 THE COURT: We will explain it when it happens.

11 MR. MCCARTHY: Thank you.

12 (Jury present)

13 THE COURT: Go ahead.

14 MR. FITZGERALD: Yes, Judge. The government
15 would propose to read from Government's Exhibit 349T, which
16 is CM 47.

17 THE COURT: 349T.

18 MR. FITZGERALD: Government's Exhibit 349T, also
19 known as CM 47, was recorded on June 17, 1993. Mr. Khuzami
20 will read the attributions of Emad Salem and I will read the
21 statements attributed to Siddig Ali.

22 (Government's Exhibit 349T in evidence read to
23 the jury)

24 MR. FITZGERALD: Your Honor, the government would
25 now propose to play a series of exhibits in a different

1 book, but they are all in the same book, beginning with
2 Government's Exhibit 759, which is an English conversation,
3 of which the transcript is Government's Exhibit 759T. The
4 first exhibit will be Government's Exhibit 759 and the
5 transcript 759T. 759 is a conversation recorded on a
6 Hampton-El FISA on June 18, 1993, at 7:03 in the morning.
7 It is a conversation largely in English.

8 I will be playing the tape.

9 (Tape played)

10 MR. FITZGERALD: Your Honor, also at this time
11 there is a stipulation with Mr. Wasserman that on June 18,
12 later that day at 11:57 a.m. there was a beep placed from
13 the Hampton-El telephone and the number dialed was area code
14 917-897-8089, and that was at 11:57 a.m., and now we will
15 play Government's Exhibit 762, the transcript of which is
16 Government's Exhibit 762T, also at 11:57 a.m., on June 18,
17 1993.

18 (Tape played)

19 MR. FITZGERALD: The government would next play
20 Government's Exhibit 763, the transcript of which is
21 Government's Exhibit 763T, another call on the Hampton-El
22 telephone FISA of June 18, 1993, and this is at 12:01 p.m.

23 (Tape played)

24 MR. FITZGERALD: The government would next play
25 Government's Exhibit 764, again an English conversation, and

1 the transcript is 764T, and that is a conversation recorded
2 over the Siddig Ali FISA on June 18, 1993, at 9:20 in the
3 evening.

4 (Tape played)

5 MR. FITZGERALD: The government would next play
6 Government's Exhibit 765, again an English conversation for
7 which the transcript is Government's Exhibit 765T, that
8 conversation recorded on the Hampton-El telephone FISA on
9 June 19, 1993, at 3:59 in the morning.

10 (Continued on next page)

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1 MR. McCARTHY: Your Honor, the good news is it
2 won't be necessary to change binders for a while. Anyhow,
3 the government would now ask to read and play tape portions
4 in connection with Government's Exhibit 352T, which for
5 counsel reflects portions of CM's 48, 49, 50, 51, 52 and 66,
6 as designated as they come up in the transcript.

7 THE COURT: 348T?

8 MR. McCARTHY: 352T.

9 THE COURT: I'm sorry. 352T.
10 In the binder marked 348 to 399.

11 MR. McCARTHY: Your Honor, Government Exhibit
12 352T reflects conversations which occurred on June 19, 1993.
13 We will be reading for the first approximately one-third of
14 the transcript before we begin to play some tapes. For that
15 portion Mr. Khuzami will read the words attributed to Emad
16 Salem; Mr. Fitzgerald will read the words attributed to
17 Siddig Ali; I will read the words attributed to Amir
18 Abdelgani; and Ms. Chu will read the words attributed to
19 Ms. Shayma Siddig Ali

20 (Government Exhibit 352T was read to the jury.)

21 MR. McCARTHY: Your Honor, is this an appropriate
22 point to stop?

23 THE COURT: We are going to break now for lunch,
24 ladies and gentlemen. Please leave your notes and other
25 materials behind. Please don't discuss the case and we will

1 resume this afternoon.

2 (The jury was excused)

3 (Jury not present)

4 THE COURT: Mr. Jabara, do you know if Ms.
5 Stewart is planning on showing up today?

6 MR. JABARA: She will not be in today.

7 THE COURT: She will not be in today?

8 MR. JABARA: No.

9 THE COURT: Do you know whether disclosure has
10 been made about experts or proposed experts?

11 MR. JABARA: No, your Honor. We are still
12 discussing those people. We have not made the disclosure
13 yet, but we will.

14 THE COURT: All right. At some point you start
15 running out of time.

16 MR. JABARA: Your Honor, we'll get that
17 information.

18 THE COURT: Thank you.

19 (Luncheon recess)

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AFTERNOON SESSION

2:10 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: We are continuing with 352T, is it?

MR. McCARTHY: Yes, your Honor, 352T at page 26,
and the interpreters have asked us to slow down a little
bit, so we are going to try to do that.

THE COURT: This again is a conversation on June
19, '93.

MR. McCARTHY: Yes, your Honor.

THE COURT: Page?

MR. McCARTHY: Page 26, beginning at the, I
believe, seventh attribution to Mr. Siddig Ali, starting
with "But we need people."

THE COURT: Go ahead.

(Reading continued)

(Continued on next page)

1 MR. MCCARTHY: Your Honor, is this an appropriate
2 point to break?

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

7 (Recess)

8 (Jury not present)

9 MR. LAVINE: Your Honor, I have a matter I have
10 to take care of later this afternoon. I understand that
11 what we are going to continue to do is to continue with the
12 prosecutors reading through this material for the rest of
13 the day. Ms. London has agreed to guard my client's
14 interests while I am away towards the end of the afternoon.

15 THE COURT: Is that satisfactory, Mr. Abdelgani?

16 DEFENDANT FADIL ABDELGANI: Yes.

17 THE COURT: Thank you.

18 MR. LAVINE: Thank you, Judge.

19 MS. AMSTERDAM: I don't know if your Honor has
20 any time at end of the session, but if there would be a few
21 moments where I might have the opportunity to speak to your
22 Honor, I would appreciate that.

23 THE COURT: OK. I will see you at the end of the
24 day.

25 MR. JABARA: Your Honor, Mr. Wasserman indicated

1 he may be a few minutes late, and I agreed that I would
2 cover for him.

3 THE COURT: OK. Thank you.

4 Is that OK, Mr. Hampton-El?

5 DEFENDANT HAMPTON-EL: Yes.

6 THE COURT: Thank you very much.

7 Yes, Mr. McCarthy?

8 I'm sorry. Mr. Wasserman is here as it happens.

9 MR. McCARTHY: We are going to begin playing the
10 tape, and this is where the double underlines will become
11 relevant for the jury's consideration.

12 THE COURT: Do you want me to tell them about it,
13 or do you want to tell them about it?

14 MR. SERRA: I don't care, your Honor.

15 MR. McCARTHY: I'll tell them about it. That's
16 fine by me.

17 THE COURT: Fine. You tell them about it.

18 MR. McCARTHY: Judge, also, about probably a
19 minute into this, there is about a ten-minute section which
20 we are going to skip which is reflected as prayers in the
21 transcript.

22 MS. AMSTERDAM: I'm sorry, Mr. McCarthy. I
23 didn't hear you.

24 MR. McCARTHY: There is about a ten-minute
25 section which is reflected on page 72 about time spent

1 praying at the bottom of that page. We are going to skip
2 it.

3 THE COURT: I assume you can fast forward through
4 that. Can you?

5 MR. McCARTHY: I will.

6 THE COURT: Good.

7 MR. McCARTHY: But I will have to stop it in
8 order to do that.

9 THE COURT: Fine. All right.

10 (Jury present)

11 THE COURT: Mr. McCarthy?

12 MR. McCARTHY: Yes, your Honor. Your Honor, at
13 this point we are going to resume with the transcript that
14 is 352T. However, from here on out, we will be playing
15 mostly portions of the tapes that coordinate to this
16 transcript. There are blocks of conversation which go on
17 for several pages throughout the rest of the transcript,
18 some of which is double underlined.

19 By agreement of the parties, during those
20 particular blocks of the transcript, which mainly involve
21 times when Mr. Alvarez is present, the double underline
22 remarks indicate that those passages are in Arabic, even
23 though it's an English translation of the tape. The rest of
24 the passages which are not underlined are spoken in English
25 for the most part.

1 THE COURT: All right. So we are on page 72 now.
2 Because this is an English-language, or
3 principally an English-language section, we are going to be
4 listening to it on the tape, and you will be using the
5 transcript as an aid. But Mr. McCarthy indicated that there
6 is double underlining under those passages where the words
7 in the tape are in Arabic. What you're seeing is the
8 English translation. Those are double underlined. This is
9 not the kind of underlining that indicates a dispute. That
10 is the single underlining. This is the underlining that
11 simply indicates that passages within the English text are
12 in Arabic, and that's a double underline if you look closely
13 at it.

14 MR. MCCARTHY: Thank you, your Honor.

15 One other thing: About a minute into this I will
16 have to stop briefly to fast forward the tape.

17 We will be picking up on page 72 under the
18 bracketed portion which indicates Alvarez enters.

19 (Tape played)

20 (Continued on next page)

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1 MR. McCARTHY: I am just going to fast forward
2 the tape.

3 (Tape continued)

4 MR. McCARTHY: Your Honor, at this point we would
5 read the next page and a quarter and then resume with
6 playing the tape, beginning at page 78 with Amir Abdelgani
7 on the phone.

8 (Reading)

9 MR. McCARTHY: At this point we would resume
10 playing the tape.

11 (Tape continued)

12 MR. McCARTHY: I am sorry, your Honor.

13 (Tape continued)

14 MR. McCARTHY: I believe at this point we are at
15 the point where I intended to start from, which is the
16 fourth attribution on page 79.

17 THE COURT: Go ahead.

18 (Tape continued)

19 THE COURT: Ladies and gentlemen, we are going to
20 break here. Please leave your notes and other materials
21 behind. Have a pleasant weekend, and we will see you again
22 on Monday. Please don't discuss the case.

23 (Jury excused)

24 THE COURT: Ms. Amsterdam, you wanted to see me?

25 MS. AMSTERDAM: Yes.

1 THE COURT: In the robing room?

2 MS. AMSTERDAM: Sure.

3 THE COURT: Good night.

4 MR. MCCARTHY: Good night, your Honor.

5 (Pages 11763 through 11767 sealed)

6 (Proceedings adjourned until 9:30, Monday, June

7 12, 1995)

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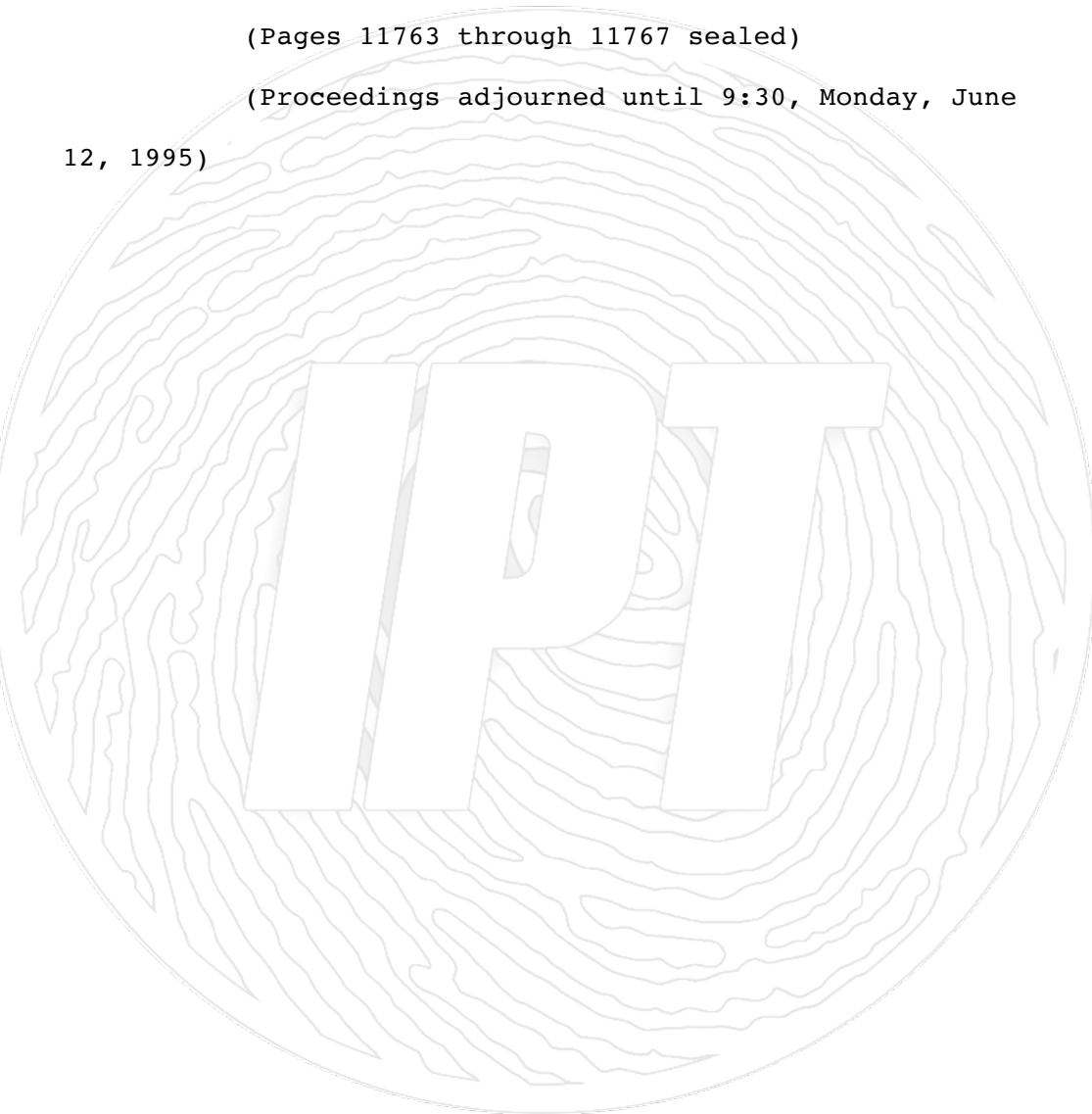
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

3 OMAR AHMAD ALI ABDEL RAHMAN,
4 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,"

EL SAYYID NOSAIR,
7 a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

IBRAHIM A. EL-GABROWNY,
9 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

CLEMENT HAMPTON-EL,
11 a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

AMIR ABDELGANI,
13 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

FADIL ABDELGANI,
17 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.

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S5 93 Cr. 181 (MBM)

June 12, 1995
9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge
25

APPEARANCES

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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 had the
4 following difficulty with a juror. Number 104 called, not
5 my chambers but the marshals, this morning, to say that he
6 had gone to the hospital to have a boil taken care of. He
7 didn't indicate what hospital or how long he would be
8 immobilized. My deputy clerk had a number for him where,
9 actually, he said he no longer was because of a fire in the
10 apartment. In any event, she called that number and was
11 told by a person there, he is not here, he just went across
12 the street.

13 This is not the first time that we have had
14 difficulty with this juror. He was late literally every day
15 last week. Back in May, I forget the date -- May 23 -- he
16 said he had become ill on the way in but nonetheless
17 indicated where he was and said that he was going to try to
18 continue to come in. We had a van wait for him for about an
19 hour and 10 minutes or an hour and a half. Where he claimed
20 to have been at the time that he made the call was
21 inconsistent with the time that it took him to arrive.

22 MS. LONDON: Excuse me, your Honor. We are
23 unclear as to which juror number you are talking about.

24 THE COURT: It is number 104, who is number 9.

25 MS. LONDON: Thank you, your Honor.

1 THE COURT: I have also had occasion to make a
2 record on other occasions of the difficulties that we have
3 had and I am not going any further with it. I intend to
4 seat an alternate, who will be number 15, who is juror
5 number 264.

6 Miss Stewart.

7 MS. STEWART: Judge, I would request that at
8 least we should speak to this juror, who has been with us
9 six months, before dismissing him.

10 THE COURT: I have no way of speaking with him.
11 I don't know where he is. I don't know whether he is at
12 home. A message was left that he called, he has not called
13 back.

14 MS. STEWART: We don't know who it is who might
15 have called or who said he went across the street for
16 whatever reason. People have exigencies whatever they are.
17 I think to allow this person to go without an explanation --
18 we have had this juror for six months.

19 THE COURT: Mr. Serra.

20 MR. SERRA: Your Honor, he has been with us for
21 six months despite having diabetes. That is a disease that
22 is difficult to control and it takes a good deal of effort
23 and dedication on his part to have been here. I join what
24 Miss Stewart said. Simply to dismiss the juror and replace
25 him with an alternate without talking to him is

1 unceremonious at best and I would ask the court not to do
2 that.

3 THE COURT: I think I have leaned over more than
4 I have, frankly, with any juror since I have been here in
5 order to keep him here. His problem is not physical, it is
6 attitudinal, and I am not going further with it.

7 MS. AMSTERDAM: Your Honor, may I request before
8 the juror is excused that you try the phone number one last
9 time?

10 THE COURT: I tried it one last time.
11 Mr. Stavis.

12 MR. STAVIS: I don't know whether anybody has
13 said this. I object to the discharge of this jury. I
14 believe he was selected by the defense in this case. He has
15 served -- I don't believe he has missed a day. I don't
16 believe he has been sick. He may have been sick but his
17 attitude or whatever, I think that he has not indicated his
18 inability to serve and I think he should serve, and he has
19 been selected by the defense.

20 THE COURT: I think his inability to serve is
21 patent. Ms. London.

22 MS. LONDON: I join to the remarks of cocounsel.

23 MR. BERNSTEIN: I assume the court understands
24 that silence from other counsel is an adoption of that
25 position.

1 THE COURT: I assume everybody objects.

2 MR. RICCO: Your Honor, I would just add that
3 other jurors have missed days because of either illnesses to
4 themselves or family members, and when that has happened,
5 for some reason those jurors have not been discharged
6 without any inquiry.

7 THE COURT: They have called in and left -- first
8 of all they have called chambers. They have left verifiable
9 messages. And they have not had the history that he has
10 had.

11 MR. RICCO: Judge, sometimes emergency
12 circumstances require people to go to a hospital without
13 prior notice, and if in fact he is in the hospital then his
14 discharge would have been inappropriate.

15 THE COURT: I understand your point.

16 MR. RICCO: That is why I think Miss Stewart is
17 saying that he should have at least an opportunity to be
18 heard to say whether he is in fact in a hospital.

19 THE COURT: We are going to proceed.

20 MR. RICCO: Your Honor, before the jury comes in,
21 I have to take care of a matter this morning. Mr. Hueston,
22 who is in the courtroom, is going to sit in for me. We say
23 Serra will cover the objections. Mr. Hueston is admitted in
24 the Southern District but Wes will be here to cover for me
25 in the event something comes up. I have spoken to the

1 government. They don't plan to introduce evidence directly
2 relating to Mr. El-Gabrowny.

3 THE COURT: Is that satisfactory to you, Mr.
4 El-Gabrowny?

5 DEFENDANT EL-GABROWNY: That is satisfactory.

6 THE COURT: Thank you very much.

7 (Jury present)

8 THE COURT: Good morning, ladies and gentlemen.

9 JURORS: Good morning, your Honor.

10 MR. MCCARTHY: Good morning, your Honor. We are
11 resuming this morning with the playing and reading of
12 various portions of Government's Exhibit 352.

13 THE COURT: 352?

14 MR. MCCARTHY: Yes, your Honor. That is the
15 single exhibit in the large binder.

16 THE COURT: The binder is marked 38 to 399. What
17 page are we on?

18 MR. MCCARTHY: We are on page 98, at the bottom,
19 your Honor. We are at, for counsel, page 98, the bottom of
20 that page of Government's Exhibit 352, and where we left off
21 was the next to last attribution on that page to Mr. Salem.

22 THE COURT: This is a tape that we are listening
23 to?

24 MR. MCCARTHY: Yes, your Honor.

25 THE COURT: So that everybody will need their

1 earphones.

2 MR. McCARTHY: Your Honor, we will be
3 periodically stopping to change tape exhibits and,
4 unfortunately, relying on my dexterity in these matters most
5 of the day.

6 THE COURT: I want to remind the jurors that when
7 we play a tape in English, it is the tape that is the
8 evidence rather than the transcript, as opposed to when they
9 are reading from a foreign language tape translated. In
10 those instances it is the transcript that is the evidence.
11 Go ahead.

12 MR. McCARTHY: We haven't started playing yet. I
13 am going to begin playing the tape.

14 (Tape continued)

15 MR. McCARTHY: I am stopping briefly to change
16 the tape.

17 We resume the tape at this point.

18 (Tape continued)

19 MR. McCARTHY: Changing the tape.

20 We begin the tape again.

21 (Tape continued)

22 MR. McCARTHY: Your Honor, the next portion of
23 the transcript is mostly in Arabic and we would propose to
24 read from pages 111 through the top of page 118.

25 THE COURT: Go ahead.

1 MR. McCARTHY: In this portion of the transcript,
2 Mr. Fitzgerald will read the remarks attributed to Siddig
3 Ali, Mr. Khuzami will read the remarks attributed to
4 Mr. Salem and I will read the remarks distributed to Amir
5 Abdelgani and to Fares Khallafalla.

6 (Portions of Government's Exhibit 352 in evidence
7 read to the jury)

8 (Continued on next page)

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1 MR. McCARTHY: At this point, we would resume
2 playing the tape. Proceed with the tape.

3 (Tape played)

4 MR. McCARTHY: I have to advance the tape. Your
5 Honor, I am prepared to resume the tape. We will resume it
6 briefly. I will have to advance it again in a moment.

7 THE COURT: OK.

8 (Tape played)

9 MR. McCARTHY: I think we're ready to resume on
10 page 123.

11 THE COURT: Go ahead.

12 (Tape played)

13 MR. McCARTHY: I have to advance the tape.

14 I think we're ready to resume.

15 (Tape played)

16 MR. McCARTHY: Your Honor, at this point we would
17 read the next portion of the transcript, which is about the
18 last half of this page and the first half of the next page,
19 before proceeding to the next portion of the tape.

20 THE COURT: All right. Read that, and we will
21 take a break.

22 MR. McCARTHY: Yes, your Honor. I will read the
23 remarks attributed to Amir Abdelgani, and Mr. Khuzami will
24 read the remarks attributed to Mr. Salem.

25 (Government Exhibit 352 was read from to the

1 jury)

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

6 (The jury was excused)

7 (Recess)

8 (Continued on next page)

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1 (Jury present)

2 THE COURT: Mr. McCarthy.

3 MR. McCARTHY: Yes, thank you, your Honor. Your
4 Honor, before we resume with the playing of the tape at page
5 137 of the transcript, I would like to go back for a moment
6 to page --

7 THE COURT: I am sorry. I thought we were on
8 131.

9 MR. McCARTHY: Yes, your Honor, 131.

10 Before we resume with that, at page 125 of the
11 transcript, about seven lines down, there is an attribution
12 to Siddig Ali and the line unintelligible traffic noise,
13 what do you think of Showkat.

14 THE COURT: We are on page 125 of the transcript
15 we have been dealing with.

16 MR. McCARTHY: Seven attributions down.

17 THE COURT: Yes.

18 MR. McCARTHY: The parties agree that that line
19 erroneously appears in the transcript and it should be
20 stricken.

21 THE COURT: In other words it should simply be
22 unintelligible?

23 MR. McCARTHY: Yes, your Honor, and the
24 attribution to Mr. Siddig Ali.

25 THE COURT: In other words, there should be no

1 attribution and simply unintelligible conversation?

2 MR. McCARTHY: Yes, your Honor.

3 THE COURT: All right.

4 MR. SERRA: Your Honor, may I have a moment with
5 Mr. McCarthy?

6 MR. McCARTHY: Your Honor, we may want to clarify
7 exactly the terms of the stipulation.

8 THE COURT: In any event, we can do that later.
9 With that clarification, let's resume on page
10 131.

11 MR. McCARTHY: We will be playing the tape. We
12 will be picking up right after the last double underlined
13 attribution.

14 (Playing continued)

15 MR. McCARTHY: I have to change the tape, your
16 Honor.

17 We can resume the tape.

18 (Tape continued)

19 MR. McCARTHY: I would resume the tape at this
20 point, page 138.

21 (Tape continued)

22 MR. McCARTHY: Your Honor, we would next propose
23 to read the next couple of pages of the transcript, down to
24 the bottom of page 143. I want to just note, at the request
25 of counsel for Mr. Fadil Abdelgani, the references in the

1 transcript to Abdelgani, whether they are to A. Abdelgani or
2 just Abdelgani, refer to Amir Abdelgani, not Fadil
3 Abdelgani.

4 THE COURT: Go ahead.

5 (Reading resumed)

6 (Continued on next page)

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1 MR. McCARTHY: At this point, your Honor, we
2 would resume playing the tape.

3 THE COURT: All right.

4 MR. McCARTHY: Beginning at the bottom of page
5 143.

6 (Tape played)

7 MR. McCARTHY: Is this an appropriate point to
8 stop?

9 THE COURT: Yes.

10 Ladies and gentlemen, we are going to break now
11 for lunch. Please leave your notes and other materials
12 behind. Please don't discuss the case, and we will resume
13 at 2 o'clock.

14 (Jury not present)

15 THE COURT: At what point do we need to resolve
16 the issue of the transcripts that Ms. Stewart raised, I
17 think it was last week.

18 MR. FITZGERALD: I believe tomorrow. We have had
19 some discussions where I told her there may be some
20 transcripts that we are not offering, and we will resolve
21 that today.

22 THE COURT: OK. Thank you.

23 MR. McCARTHY: Your Honor, there will probably be
24 at least one issue regarding one of the CM's that will be
25 coming up fairly soon, either day or tomorrow, that will

1 need to be taken up. I don't think it will take much of
2 urine's time.

3 THE COURT: Is this something that I have already
4 seen or --

5 MR. McCARTHY: No, your Honor. It is actually a
6 pretty black and white issue. The question is,
7 Mr. Wasserman would like to include in a transcript a
8 discussion between Salem and Detective Napoli that was
9 recorded in the course of events, and the government does
10 not intend to play that.

11 THE COURT: All right.

12 MR. McCARTHY: It is about three pages of
13 transcripts, and I will provide it to the court after the
14 break.

15 THE COURT: Fine. Thank you.

16 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:05 p.m.

3 (In open court; jury not present)

4 MR. McCARTHY: Your Honor, the state of the
5 stipulation from before, I believe, is that the parties
6 agree that Mr. Siddig Ali was not in the car at the time
7 that the statements on page 125 of the transcript were made.
8 There is no application to strike the line. The line stays
9 in. The point is that Mr. Siddig Ali was not in the car.

10 THE COURT: So instead of Siddig Ali it should be
11 UM?

12 MR. McCARTHY: Yes, your Honor.

13 THE COURT: All right.

14 (Jury present)

15 THE COURT: Good afternoon, ladies and gentlemen.

16 JURORS: Good afternoon.

17 THE COURT: We are going to resume with Exhibit
18 352T. We are on page 152 of that exhibit. But before we do
19 that, the parties have consulted further about the line on
20 page 125 about which there was some confusion this morning,
21 and the confusion is cleared up to this extent: On page
22 125, the seventh attribution on the page, which says Siddig
23 Ali, should not say Siddig Ali because they have agreed that
24 Mr. Siddig Ali was not in the car at the time that that
25 statement was made. There is no agreement as to who it was

1 who said it, so the attribution should be UM, meaning many
2 unidentified male. Somebody in the car but not Mr. Siddig
3 Ali.

4 With that clarification, if you want to call it
5 that, we can resume listening to the tape at the point
6 corresponding with page 152 of the transcript. Where are we
7 on that page?

8 MR. McCARTHY: Your Honor, about five
9 attributions or so up from the bottom of the page there is
10 an indication of the car door opening and closing, and that
11 is the point, I believe, that we left off/on.

12 (Tape continued)

13 (Pause)

14 MR. McCARTHY: Your Honor, what would you prefer
15 I did?

16 THE COURT: I think you better go back and replay
17 what was started. We are going back to 152.

18 MR. McCARTHY: We begin again at page 152 and
19 going over to page 153.

20 (Tape continued)

21 MR. McCARTHY: At this point, your Honor, we
22 would read the rest of that page and about three quarters of
23 the next page. I will read the lines attributed to Amir
24 Abdelgani, Mr. Khuzami will read the lines attributed to
25 Emad Salem, and Mr. Fitzgerald will read the lines

1 attributed to the unidentified male, and also the lines
2 attributed to Mr. Siddig Ali. We will be reading down to
3 three quarters of the way down on page 157, to the point
4 about six attributions up, when Mr. Salem makes the
5 statement \$200.

6 (Continued on next page)

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1 MR. McCARTHY: At this point we'll begin playing
2 the tape again.

3 (Tape played)

4 MR. McCARTHY: At this point, your Honor, we
5 would read the next several pages, down to about page 192.

6 MS. AMSTERDAM: Could you repeat that,
7 Mr. McCarthy, I apologize.

8 MR. McCARTHY: I said we would read the next
9 section of the transcript, beginning with the sixth
10 attribution on page 165, and continuing to page 192.

11 (Government Exhibit 352 was read from to the
12 jury)

13 (Continued on next page)

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1 MR. McCARTHY: Your Honor, at this point we need
2 to break for the tape.

3 THE COURT: We will take our break now. Ladies
4 and gentlemen, please leave your notes and other materials
5 behind. Please don't discuss the case, and we will resume
6 in a few minutes.

7 (Jury excused)

8 MR. STAVIS: Your Honor, this afternoon I was
9 provided with a copy of discovery material for a witness
10 named Scott Stewart, who I understand may be called this
11 afternoon with regard to some passports that were recovered
12 from Mr. El-Gabrownny. I know that the El-Gabrownny passport
13 offenses are substantive offenses as to Mr. El-Gabrownny
14 alone. If this evidence is being introduced as to Mr.
15 El-Gabrownny alone, I would ask the court to consider an
16 instruction to the jury that the testimony is coming in for
17 that specific purpose.

18 MR. McCARTHY: Your Honor, the evidence is
19 offered against all defendants as evidence of a conspiracy.
20 It does specifically relate to counts in which only Mr.
21 El-Gabrownny is charged, but I don't think it would be
22 appropriate to give a limiting instruction as Mr. Stavis
23 describes.

24 THE COURT: This relates to what, to the
25 identification documents that were found in his possession?

1 MR. McCARTHY: Yes, your Honor.

2 THE COURT: It relates to those documents. How
3 the jury views it is up to you to argue and up to them to
4 decide. See you later.

5 (Recess)

6 (Jury not present)

7 MR. NOOTER: Your Honor, my client, because of
8 the way he is feeling, would like to be excused for the
9 short balance of the day, and concedes to let us go ahead.

10 THE COURT: Mr. Saleh, is that right? Do you
11 agree to go to let us go ahead in your absence?

12 DEFENDANT WAHID SALEH: Yes.

13 THE COURT: Thank you. You are excused.

14 MR. McCARTHY: Your Honor, I just want to make
15 this request. The tape that we are about to play is
16 probably the worst quality tape that we have in our
17 evidence. That is even mindful of CM 25, which was no
18 picnic to get through.

19 MS. AMSTERDAM: I am sorry, Mr. McCarthy. I
20 can't hear you.

21 MR. McCARTHY: I was commenting on how poor the
22 quality of this particular recording is, and while we have
23 had two years to struggle with it to arrive at a transcript,
24 the jury will get it as it comes to them today. I proposed
25 to Mr. Serra the possibility of simply reading the

1 transcript, and he, as is quite right, given that it is an
2 English conversation, would like the jury to hear the tape,
3 which is very difficult. I would ask the court, given the
4 difficulty of this transcript and this tape, to remind the
5 jury again that the tape is the evidence in an English
6 conversation and that the reason they are hearing the tape
7 as opposed to some of the stuff we have been reading to them
8 is because the tape is the evidence.

9 THE COURT: OK.

10 (Jury present)

11 THE COURT: Ladies and gentlemen, we are about to
12 hear the tape that is the remainder of Exhibit 352, which
13 picks up at that portion of the transcript corresponding to
14 page 192. I have been told that this segment of tape is bad
15 even by the standards of the recordings that you have heard,
16 which is a pretty low standard to start with. So I will
17 remind you again at this point that it is the tape that is
18 the evidence. The transcript is only for your use as an aid
19 in helping you listen to the tape. So make the best of it
20 that you can, but please be forewarned that this tape is a
21 low quality.

22 MR. McCARTHY: Thank you, your Honor. We are
23 beginning at page 192, after the bracketed portion, which
24 says the conversation from pages 192 to the end is in
25 English except where indicated by double underlined Arabic

1 passages.

2 (Tape played)

3 MR. McCARTHY: May we approach, your Honor?

4 MR. SERRA: May we approach?

5 (At the side bar)

6 MR. McCARTHY: I think both Mr. Serra and I agree
7 that as bad as this tape is, it is possible to get machinery
8 that will make it whatever the verbal equivalent of legible
9 is.

10 MS. AMSTERDAM: Audible.

11 MR. McCARTHY: There you go. Audible. I have
12 been plugged in too long.

13 MR. SERRA: The short is that everything you have
14 told the jury about it is correct, this is a bad tape, but
15 both Mr. McCarthy and I know that you can get it going
16 better than it is.

17 MS. AMSTERDAM: Miss Amsterdam is prepared to go
18 with the tape as it is.

19 MR. McCARTHY: We can call the witness that we
20 have and prepare the equipment.

21 THE COURT: By tomorrow?

22 MR. McCARTHY: Yes, your Honor.

23 (In open court)

24 THE COURT: As you have heard, this tape is not
25 only bad, as it came over the earphones, but it is dismal.

1 It appears that there may be some equipment that may be able
2 to present this tape in a way that makes it more audible
3 than it was at this time. So what we are going to do is
4 stop the playing of the tape, the government will call the
5 person who was supposed to testify as the next witness, and
6 they will see if they can get it better by tomorrow. But we
7 will ask you to put your earphones down and your transcripts
8 down, and we will see if we can do better by tomorrow.

9 MR. FITZGERALD: Thank you. The government calls
10 Scott Stewart.

11 (Continued on next page)

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1 SCOTT THOMAS STEWART,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q Good afternoon, Mr. Stewart.

7 A Good afternoon.

8 Q Can you tell the jury what you do for a living.

9 A I am a special agent with the United States
10 Department of State.

11 THE COURT: Excuse me. If you could talk into
12 the one in front of you is probably best. Try to move up
13 close to it.

14 A I am a special agent with the U.S. Department of
15 State.

16 Q For how long have you been a special agent with
17 the State Department?

18 A I became a special agent in 1988.

19 Q I have placed before you a number of items
20 received in evidence on your left, which are five Nicaraguan
21 passports marked Government's Exhibits 135B through F, five
22 birth certificates marked 136A through E, and two other
23 documents marked 135G and H. I would just ask you to
24 briefly review those items and tell us whether you have seen
25 them before?

1 A Yes, I have seen these items before.

2 Q Did there come a time in the course of your work
3 for the State Department when you were assigned to the case
4 concerning those sets of documents?

5 A Yes, that is correct. I was assigned to
6 investigate these documents.

7 Q Approximately when were you assigned to
8 investigate those documents?

9 A It was early 1993, shortly after the bombing of
10 the World Trade Center.

11 Q Did that cause you to go overseas as part of your
12 investigation?

13 A Yes, I traveled to Nicaragua as part of my
14 investigation into these documents.

15 Q How many trips to Nicaragua did you make?

16 A Directly in this case I made four.

17 Q Could you look at the first set of documents, the
18 pink ones in front of you, 136A through E. Can you tell the
19 jury what these appear to be?

20 A These documents appear to be backdated birth
21 certificates. They are called reposiciones in Nicaragua.
22 After the earthquake a lot of documents were damaged and you
23 were able to go back after the fact and put in a request for
24 a new document.

25 Q Is that spelled R-E-P-O-S-I-T-I-O-N-E?

1 A R-E-P-O-S-I-C-I-O-N-E-S.

2 Q Thank you.

3 Did you make inquiry with the Nicaraguan
4 government as to those five particular documents?

5 A Yes, I did.

6 Q What did you learn from your investigation?

7 A I learned that these particular reposiciones were
8 obtained by someone using fraudulently obtained or forged
9 orders, I guess would be the best way to put it, and that
10 the signatures that appeared on these reposiciones as well
11 were forged.

12 Q Were these reposiciones on file anywhere in
13 Nicaragua?

14 A No, they were not.

15 Q The place they were supposed to be issued was
16 checked to see if they were there?

17 A Yes, and the judge that allegedly signed them
18 declared in a document that was given to us that he did not
19 indeed sign them.

20 Q The people listed in those documents -- let me
21 see if we have the names correctly. Would that be Victor
22 Noel Jafry, J-A-F-R-Y; Ninfa, N-I-N-F-A, middle name Safary,
23 S-A-F-A-R-Y, Calderon, C-A-L-D-E-R-O-N; and then Jaime,
24 J-A-I-M-E, Marcos, M-A-R-C-O-S, Safary, same spelling;
25 Jorge, J-O-R-G-E, Marcos Safary; and Maria Marcos Safary?

1 A That is correct.

2 Q Did you ask the Nicaraguan government to do an
3 investigation into any evidence as to those five persons,
4 whether they ever lived in Nicaragua or traveled in or out
5 of the country?

6 A Yes, I did, and they advised me that they had no
7 record of those persons ever having existed in Nicaragua.
8 They likewise had no record of any of them ever having
9 entered or exited Nicaragua.

10 Q The two documents marked 135G and H, can you look
11 at those for a moment. What do those appear to be?

12 A They appear to be Nicaraguan driver's licenses.

13 Q Did you tell us the names appearing on those
14 driver's licences?

15 A Victor Noel Jafry and Ninfa Safary Calderon.

16 Q Did you ask the Nicaraguan officials to check the
17 authenticity of those driver's licenses?

18 A Yes, I did, and they told me they were forgeries,
19 that these were numbers of driver's licenses that had been
20 issued to other people.

21 Q What about the addresses appearing on the two
22 licenses?

23 A The addresses were false. One corresponded to a
24 bank, a branch of a bank, and the other was a nonexistent
25 address.

1 Q If I could ask you to look at the five Nicaraguan
2 passports, Government's Exhibits 135B through F. Did you
3 make inquiry as to whether or not those passports were
4 actually issued by the Nicaraguan government?

5 A Yes, I did.

6 Q What did you learn?

7 A That these were legitimately issued passports,
8 they were real passports that were issued.

9 Q The names in the passports, would they be the
10 same five individuals whose names appear in the
11 reposiciones?

12 A That is correct.

13 Q Did you actually go to the office where the
14 passport files are kept?

15 A Yes, I did.

16 Q Can you tell us what you did when you got there?

17 A When I went there I was working with the
18 Nicaraguan officials and we went to their computer and cued
19 up the file reference. From the file reference we went to
20 the actual file folders with the applications and the
21 supporting documentation. Then what we did is, I grabbed
22 the original copies -- or they permitted us to take them as
23 evidence, the original passport applications, for these five
24 specific passports.

25 Q So those five applications were filed in the

1 passport office and issued by the government?

2 A Yes, they were.

3 Q Did you see what documents were submitted as part
4 of the request to obtain those passports?

5 A Yes. The documents that were submitted were
6 copies of these reposiciones along with the court order that
7 was also submitted.

8 Q Did you determine the date when those five
9 passports were actually issued by the Nicaraguan government?

10 A Yes, they were issued on the dates that they say
11 on the documents, which were July 9 and 10, 1991.

12 Q Did there come a time in recent years when
13 Nicaragua changed the type of passport it issued?

14 A That is correct.

15 Q Is this the old passport or the new passport?

16 A This is a new passport. It looks a lot like a
17 U.S. passport and it is what is called machine readable,
18 like a U.S. passport. You can zip it through a card reader.

19 Q What type of paper is used inside the passport?

20 A You could call it security paper. You have
21 microprinting on it like we do in the U.S. passport, and it
22 would also show if somebody tried to erase -- like a
23 security paper.

24 Q Do you know the approximate date when Nicaragua
25 changed to the new passports with the special security

1 paper?

2 A I believe it was in 1990 after the change of the
3 government from the Sandinistas to the **whatever
4 administration.

5 Q The passports in Nicaragua, are they used as an
6 identification?

7 A Yes, like inside this country.

8 Q How about reposiciones?

9 A Yes, these are valid as a birth certificate, as
10 you would use here in the United States.

11 Q And the driver's licenses in Nicaragua?

12 A Yes, they are used the same as here in the United
13 States.

14 Q Are there any other documents that are commonly
15 used in Nicaragua?

16 A Yes, a cedula.

17 Q That would be C-E-D-U-L-A?

18 A Right.

19 Q Could you explain to the jury what a cedula is?

20 A Cedula is what they issue in Latin American
21 countries as an ID card. It is small, and it folds like
22 your passport. It has your picture and your number. Your
23 cedula number is like your Social Security number in the
24 United States. When you go to get a check cashed you give
25 your cedula number on the back of the check like you would

1 use your Social Security number here. It is very common.

2 (Continued on next page)

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1 Q Did you make any inquiry as to whether or not
2 there were cédulas issued in the five names that appear in
3 the passports and other documents?

4 A Yes, I did.

5 Q What did you learn?

6 A That there had been no cédulas issued at last as
7 to the two adults. Normally you are not issued a cédula
8 until you are 18.

9 Q So as to the two adults depicted in the
10 passports, no cédulas were issued in those names?

11 A Never.

12 Q Did you determine when you were in Nicaragua as
13 to how physically the five passports that were issued, how
14 the application came into the passport agency in Nicaragua?

15 A Yes, we did. On the back of the passport
16 application was a stamp from a travel agency that had
17 submitted the documentation along with the application to
18 the passport office.

19 Q Where was that travel agency located?

20 A In Managua.

21 Q Is that unusual, that passport applications were
22 sent from a travel agency in Nicaragua to the passport
23 office?

24 A No, it is not. It is a commonly used method of
25 obtaining a passport, and there is a special window that

1 they use for travel agency referrals.

2 Q And when someone applies for a passport in
3 Nicaragua through the travel agency, do they have to
4 personally appear?

5 A No. When you apply through the travel agency,
6 you don't have to appear at the office. Otherwise, you have
7 to do it yourself and you have to show up at the office.

8 MR. FITZGERALD: Your Honor, if I could have one
9 moment.

10 I have nothing further, Judge.

11 THE COURT: Cross?

12 Mr. Ricco?

13 CROSS-EXAMINATION

14 BY MR. RICCO:

15 Q Good afternoon.

16 A Good afternoon.

17 Q My name is Anthony Ricco. I am the person that
18 was on the other end of the telephone.

19 A It's nice to meet you in person.

20 Q Good. You do recall that several days ago
21 yourself and I, Mr. Fitzgerald and an investigator, Frank
22 Gonzalez, we had a conference telephone call concerning much
23 of your testimony here today?

24 A Yes, I recall that.

25 Q And during that time period, during that

1 conversation we talked about what your investigation was in
2 relationship to the passports and the other documents that
3 you just testified to, correct?

4 A Yes, we did, correct.

5 Q Now, one thing is clear, and that is that the
6 five passports are legitimately issued passports, isn't that
7 correct?

8 A That is correct.

9 Q However, they were issued on the basis of the
10 presentment of fraudulent documents, is that fair to say?

11 A Yes, that is correct.

12 Q So that the court order, court orders, and the
13 birth certificates were fraudulent or forged documents,
14 isn't that right?

15 A That is correct.

16 Q And the way in which the individual who in
17 Nicaragua initiated the transaction did this was through a
18 travel agency, isn't that correct?

19 A Yes, it is.

20 Q In fact, your offices are aware of the person in
21 Nicaragua who was involved with the transaction, isn't that
22 correct?

23 A Yes.

24 Q And what you were able to discover is that the
25 normal process for obtaining a Nicaraguan passport, the time

1 would have been much longer, several months, isn't that
2 correct?

3 A Yes, it is.

4 Q But what this individual did was he utilized a
5 process that's known in Nicaragua for the purposes of
6 getting them in a much faster time period, isn't that
7 correct?

8 A Yes.

9 Q So that the passports were applied for on or
10 about July 1, 1991, isn't that correct?

11 A I believe that's the date that is signed on the
12 application.

13 Q And the passports were picked up, received and
14 issued on July 9 and July 10, 1991, isn't that correct?

15 A Yes.

16 Q The normal process to get those passports would
17 have taken about five months, isn't that correct?

18 I'm sorry, three to five months?

19 A That depends. If someone was applying from, say,
20 New York City through the Nicaraguan consulate, it would
21 probably take that long because of the bureaucracy of going
22 through the foreign ministry, through the consulate. It
23 would be shorter than that in Nicaragua if you showed up at
24 the passport agency.

25 Q But one thing that we're certain about is that

1 the individual utilized this expedited method of getting
2 these passports, isn't that correct?

3 A Yes.

4 Q In fact, you have had an opportunity to speak to
5 this individual, I think, isn't that correct?

6 A Yes, I interviewed him.

7 Q And what he was able to relate to you was that
8 this -- well, withdrawn.

9 This individual was a sort of a rogue, isn't that
10 correct? Well, let me withdraw that.

11 The individual that you met in reference to the
12 passports was an individual who, for a fee, would present an
13 application for passports, isn't that correct?

14 A Yes, it is.

15 Q In fact, the fee that he would charge would be
16 somewhere around \$10 United States money?

17 A Maybe. I'm not sure on what was charged in this
18 particular case.

19 Q But it was some nominal fee?

20 A Yes.

21 Q And this individual was a person who had some
22 skill at accumulating fraudulent documents for the purpose
23 of presenting them in order to get the legitimate passports,
24 isn't that right?

25 A He worked as a paralegal for lawyers, and,

1 therefore, he had access to forms, yes.

2 Q What you were able to discover was that what this
3 individual also possessed was the lawyer's stamps and
4 signature stamps, isn't that correct?

5 A Yes.

6 Q And what he would do is that he would improperly
7 utilize those stamps for the purposes of working these
8 deals, isn't that correct?

9 A Yes.

10 Q He was like a hustler, isn't that right? For the
11 right price he would get the job done?

12 A He was a document vendor.

13 Q He was a?

14 A A document vendor. He sold documents.

15 Q Illegally?

16 A Yes.

17 Q OK. Now, in order to utilize this process of
18 obtaining the documents or working with this individual, he
19 basically would work for anybody who paid him his fee, isn't
20 that correct?

21 A Yes.

22 Q So you didn't have to be an agent or have any
23 type of intelligence contact to get him to do what he did,
24 isn't that right?

25 A I would assume not.

1 Q In fact, he offered to get you a passport for a
2 fee, isn't that right?

3 A He did say that he could do it easily, yes.

4 Q The passports have a picture of a male, adult
5 male, right?

6 A Yes.

7 Q An adult woman, and two small boys and a small
8 girl, isn't that right?

9 A Yes.

10 Q Just so that we're clear, the photograph of the
11 male is a picture of the defendant El Sayyid Nosair, isn't
12 that correct?

13 A Yes, it is.

14 Q And the picture of the woman, if you know, was a
15 picture of his wife, isn't that right?

16 A Yes, it bears a strong resemblance to the
17 photograph on her U.S. passport application.

18 Q And the three children are their children, isn't
19 that correct?

20 A Yes.

21 Q Now, at the time these documents were seized from
22 Mr. El-Gabrownny, the documents were inside Government
23 Exhibit -- to your knowledge, they were inside Government
24 Exhibit 137A, which has been received into evidence.

25 A Yes, I was not at the scene, but I was told by

1 another investigator that they were inside this envelope.

2 Q And that envelope appears to be an envelope from
3 the consulate general's office here in New York City, isn't
4 that correct?

5 A Yes, it is.

6 Q And it's addressed to an office in Managua,
7 Nicaragua, isn't that correct?

8 A Yes.

9 Q Now, the passports themselves and the other
10 documents that were recovered, that is, the driver's
11 licenses, which are false --

12 A Yes.

13 Q -- isn't that correct?

14 A Yes.

15 Q And the applications for the passports were sent
16 to the FBI forensic lab, isn't that correct?

17 A Yes.

18 Q And they were sent there for examination and
19 evaluations, isn't that correct?

20 A Yes.

21 Q You were able to determine from your
22 investigation that Mr. El Sayyid Nosair also had a
23 legitimate U.S. passport, isn't that correct?

24 A Yes.

25 Q That his wife also had a legitimate U.S.

1 passport, isn't that correct?

2 A Yes.

3 Q Those documents were discovered along with those
4 Nicaraguan passports, isn't that correct?

5 A I don't --

6 Q If you know.

7 A I don't know about the wife's, but I believe
8 Mr. Nosair's U.S. passport was in there. I don't believe
9 the wife's was.

10 Q OK. And the children, the children also have
11 legitimate U.S. passports, isn't that correct?

12 A Yes, they do.

13 MR. RICCO: I have no further questions.

14 One second, your Honor. One of my colleagues
15 would like to confer with me.

16 (Counsel conferred)

17 MR. RICCO: No further questions, your Honor.

18 THE COURT: Anything else.

19 MR. FITZGERALD: Brief redirect.

20 THE COURT: Go ahead.

21 REDIRECT EXAMINATION

22 BY MR. FITZGERALD:

23 Q Now, Agent Stewart, Mr. Ricco asked you about the
24 person, the document vendor, the illegal document vendor in
25 Nicaragua who obtained these passports and mentioned that

1 you don't need a special contact if you are willing to pay
2 this person money. Can you tell the jury what the document
3 vendor needed to be provided besides money in order to get
4 the passports.

5 A Normally, in this type of process, the document
6 vendor needs photos, of course, the photos which would
7 appear in all of these passports, and he would also need
8 brief bio data so he would have the approximate dates of
9 birth. And in fact, in this case, with most of them he had
10 the exact dates of birth although a couple of them were
11 transposed. So in this case the photographs and the
12 biographic data as far as the dates of birth were provided.

13 Q When you went to the Nicaraguan office and looked
14 in the passport application file, did you see the original
15 application made for these particular passports?

16 A Yes, I did. And in fact I brought them home with
17 me and I have them here.

18 Q Do they have photographs attached to each of
19 them?

20 A Yes, they do.

21 Q So whoever went to the document vendor had
22 photographs of the five people in the passports?

23 A He had four copies of each photograph.

24 Q Now, Mr. Ricco asked you about Mr. Nosair's
25 American passport, which I think was placed before you as

1 135A.

2 A Yes.

3 Q Now, there is also a passport, one of the
4 Nicaraguan passports with a likeness of the same person but
5 a different name, Victor Noel Jafry?

6 A Yes, I have it here.

7 Q OK. If you can just read the number of the
8 exhibit into the record. It should be a sticker --

9 A It is Exhibit 135B.

10 Q B. OK.

11 135B, being issued by the Nicaraguan government
12 would allow people to travel certain places in the world,
13 correct?

14 A Correct.

15 Q And 135A, the American passport, would allow
16 people to travel different places as well, correct?

17 A Correct.

18 Q If someone used 135B --

19 MR. STAVIS: Objection as to form. Your Honor.

20 MS. AMSTERDAM: Can we have a side bar, your
21 Honor.

22 THE COURT: No. The objection is overruled. Go
23 ahead.

24 Q If someone used 135B, what name would be entered
25 in the records of travel and entries and exits to different

1 countries?

2 A Noel -- or Victor Noel Jafry.

3 MR. FITZGERALD: Thank you. Nothing further.

4 MR. RICCO: Just a few questions.

5 THE COURT: All right.

6 RECROSS-EXAMINATION

7 BY MR. RICCO:

8 Q Is it fair to conclude that the possessor of the
9 Nicaraguan passports was attempting to hide his true name?

10 MR. FITZGERALD: Just objection as to form.

11 THE COURT: Sustained as to form.

12 MR. RICCO: I understand.

13 Q The Government Exhibit, the Nicaraguan passport
14 of the male adult, that's --

15 A I guess I don't understand "the possessor of the
16 passport" or the person --

17 MR. RICCO: The judge asked me to rephrase the
18 question.

19 THE COURT: I sustained an objection to form,
20 which means he has to ask it a different way, so don't worry
21 about the way that one was phrased.

22 Go ahead.

23 Q The passport that contains the photograph of the
24 adult male, the Nicaraguan passport --

25 A Yes.

1 Q -- that's El Sayyid Nosair, isn't that correct?

2 A Yes.

3 Q It has a different name on it, isn't that
4 correct?

5 A Yes.

6 Q The name is not El Sayyid Nosair?

7 A No, it is not.

8 Q The name is a name of someone else or it was made
9 up, isn't that correct?

10 A Yes.

11 Q But one thing we know for sure is that the name
12 on that Nicaraguan passport is not El Sayyid Nosair, isn't
13 that right?

14 A Correct.

15 Q And the names on the other Nicaraguan passports
16 are not the actual names of the wife and the children, isn't
17 that correct?

18 A Yes, it is.

19 Q One thing that we know for a fact is that those
20 passports were issued July 9 and July 10 of the year 1991,
21 isn't that correct?

22 A Yes, it is.

23 MR. RICCO: No further questions.

24 THE COURT: Anything else?

25 MR. FITZGERALD: No, Judge.

1 THE COURT: All right. Just one minor
2 clarification: You said that the envelope was from the
3 consulate general in New York, do you mean the consulate
4 general of Nicaragua?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Thank you. Go ahead.
7 You're excused.

8 (Witness excused)

9 MR. McCARTHY: May we approach, your Honor.

10 THE COURT: Yes.

11 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: Your Honor, I apologize. I didn't
3 think we would ever get to Mr. Stewart today. We had him as
4 sort of a backup in case --

5 THE COURT: Are you telling me you are out of
6 witnesses?

7 MR. McCARTHY: Yes, your Honor. I thought the
8 exhibit was actually going to take the whole day.

9 THE COURT: I know. All right. We will break
10 for the day. We can deal with some other things.

11 MR. McCARTHY: Thank you, your Honor.

12 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, we've run a
3 little short, partly because that tape didn't work out as it
4 should. In any event, we are going to break for the day.
5 Please leave your notes and other materials behind. Please
6 don't discuss the case, have a pleasant evening, and we will
7 see you tomorrow.

8 (Jury not present)

9 THE COURT: One of the loose ends remaining from
10 last week was a question with regard to disclosure of
11 experts.

12 MR. MCCARTHY: Yes. Your Honor, we have gotten a
13 notice from Ms. Stewart, and I don't want to make an
14 application at this point because --

15 MS. LONDON: I'm sorry. It is very hard to hear
16 back here.

17 MR. MCCARTHY: I'm sorry. Let me turn this.
18 We've gotten a notice from Ms. Stewart.

19 Mr. Fitzgerald and Ms. Stewart had a conversation earlier
20 today about bringing the notice more into compliance with
21 Rule 16. The notice has a curriculum vitae, but it does not
22 describe the testimony as --

23 THE COURT: What you are saying is it's too early
24 to talk about it?

25 MR. MCCARTHY: As far as that goes, your Honor,

1 yes.

2 THE COURT: Fine.

3 MR. McCARTHY: Your Honor, I would ask your Honor
4 to do this, and that is to set a deadline for notices of
5 expert testimony.

6 I think Mr. Wasserman advised us earlier today
7 that he, too, proposes to call an expert. From our point of
8 view, more important than even knowing who the expert is, is
9 what it is intended that the expert would talk about. I
10 don't even think we can have an intelligent conversation
11 about it without knowing at least that much information.

12 THE COURT: Mr. Wasserman?

13 MR. WASSERMAN: Your Honor, the notice actually
14 was given quite some time ago. The CV was provided today.
15 Actually, the substance of what the expert will testify
16 about is somewhat focused to be a little bit different than
17 what we had anticipated because the government is not
18 presenting to the jury the cannon fuse charge in the
19 indictment. I would have for the government I would expect
20 within about 10 days the Rule 16 amplification that Mr.
21 Fitzgerald asked me for. I laid out in a general fashion in
22 the notice what the witness will testify about, and I'll
23 amplify it for the government within that time period.

24 MR. McCARTHY: I just want to make it clear in
25 response to that, I mean, we got something from

1 Mr. Wasserman a while back, but it didn't come close to what
2 Rule 16 describes, which is a written summary of testimony
3 that the defendant intends to use under Rule 702, 703 and
4 705. The summary must describe the opinions of the
5 witnesses and the bases and reasons therefore. We haven't
6 gotten anything close to compliance with that. I am not
7 waiving a right at this point to complain about that at a
8 later time.

9 THE COURT: I don't want to have to either start
10 excluding testimony for failure to comply with something
11 simple like that or having to grant continuances so can we
12 come up with a reasonable time.

13 Ms. Stewart?

14 MS. STEWART: I just want to rise to say that it
15 is -- I have spoken to the government. We noticed them
16 before the beginning of the trial or at the beginning of the
17 trial that we intended to call Islamic experts, and I think
18 it to be apparent to them from the tenor of their
19 indictment, the description of Islam in their indictment
20 what will be the substance of these experts' testimony. I
21 don't think it is a big secret. I mean, there will be
22 relevant --

23 THE COURT: In that event, it certainly isn't a
24 big deal to put it in writing and to make what you claim is
25 obvious explicit. I don't detect any description of Islam

1 in their indictment, but you do, and that's fine.

2 MS. STEWART: I think that they say that the
3 sheik's own brand of Islamic interpretation.

4 THE COURT: That is a different story.

5 MS. STEWART: That is what I think must clearly
6 be met by the defense by calling an expert. To me, I
7 understand the rule so that they have some kind of notice
8 and can indeed prepare an expert or prepare their
9 cross-examination.

10 THE COURT: Not at all. That may be one reason.
11 It is also to make sure that the testimony is in compliance
12 with the rules of evidence.

13 MS. STEWART: I understand, Judge. I just -- I
14 will leave at it that.

15 THE COURT: Including 704(b).

16 MR. NOOTER: Your Honor?

17 THE COURT: Yes?

18 MR. NOOTER: I may be someone who is considering
19 the use of experts as well. Certainly a translator, but
20 other experts which we have not picked or interviewed yet.
21 But I have actually drafted something earlier today to give
22 to Mr. McCarthy. I don't think that it is anything that
23 would be of any great surprise, and it may not be something
24 that we are going to use at all. But it is something we are
25 planning on.

1 THE COURT: Whether it is surprising and whether
2 or not you use it, there has to be compliance with the rule,
3 and what I am trying to arrive at is a date that is
4 realistic by which you can provide what the rules say you
5 can get.

6 MR. NOOTER: If I could suggest something like
7 three weeks. We have, in my own particular case, we have
8 material coming up. I can give them a letter tomorrow
9 outlining in general terms what it is.

10 MR. McCARTHY: I want to object to that. What
11 Rule 16 talks about is pretrial notice. The idea is not
12 that you wait until the government's case is over, after you
13 have seen what you want to attack, and then file the notice
14 that should have been filed before the trial started.

15 THE COURT: There may be reasons for granting
16 extensions beyond pretrial, but as to Ms. Stewart and
17 Mr. Wasserman, I want them filed by the close of business on
18 Friday, today being Monday.

19 MS. STEWART: We will do the best we can, Judge.
20 As you know, we have been playing catch-up. I can probably
21 file partially -- I can't say that it is going to be the
22 most complete thing in the world.

23 Judge, what I bit by tongue about ten minutes ago
24 was that this government, who was supplying us with Rule 16
25 material the day that they intended to put it in, such as

1 the bank account of the sheik, which was handed to us the
2 morning they called the woman from the bank, and we got no
3 relief whatsoever suddenly on the defense case takes a very
4 harsh --

5 THE COURT: Excuse me. I don't recall any
6 claimed violation of Rule 16 nor do I recall a request for
7 relief.

8 MS. STEWART: I think Mr. Stavis made numerous
9 objections under Rule 16 at the beginning, and then we just
10 sort of acquiesced as to what was going to be business as
11 usual, that we were receiving discovery, but what were
12 really items of discovery on the very day that they were to
13 be introduced. I would stand by the fact we received some
14 bank account materials, but we did not receive the bulk of
15 them until the day they were to be introduced.

16 MR. MCCARTHY: We complied with Rule 16. We gave
17 the discovery when we had it and when it came into the
18 possession of the government. A lot of the discovery that
19 we gave out the day of the testimony was stuff that was
20 available for two years and unclaimed during that period of
21 time. I want to also point out I didn't -- although I think
22 I would have every right to move to preclude Ms. Stewart
23 from offering expert testimony. I simply asked for
24 compliance with the statute so that we can prepare our case.

25 THE COURT: OK. I am interested in having the

1 rule complied with, and I'm also interested in particular as
2 to the experts that you have suggested you are going to
3 call, whether that testimony is competent and is admissible
4 under 704B.

5 MS. STEWART: Would you explain what the meaning
6 is of "competent"?

7 THE COURT: Sure. Any expert whose testimony is
8 going to be taken as testimony as to what your client
9 intended there's going to be a problem with.

10 MS. STEWART: Our experts, as I said in my letter
11 of many months ago, intend to testify as experts in the
12 study of Islam, as to what Islam states is jihad, as to what
13 Islam states is a fatwa, as to what Islam says, not as to
14 what my client says.

15 THE COURT: OK.

16 MS. STEWART: What the jury may draw as a
17 conclusion ultimately from that testimony is another
18 question. But they are certainly not going to have --

19 THE COURT: I am not sure that any of that is
20 relevant to this case.

21 MS. STEWART: Well, I would just say that we are
22 basing it on the indictment as charged and the surplusage
23 that was never stricken.

24 THE COURT: We may have to have a discussion
25 about that at a later date, but I think it would help focus

1 that discussion to have a proffer of the content of that
2 testimony as well as, obviously, the identity of who it is
3 is going to testify to it.

4 MS. STEWART: To echo Mr. McCarthy, as soon as we
5 have the information you will get it. I will do everything
6 in my power to comply with the Friday deadline.

7 THE COURT: You have made known, as I recall it,
8 the names of two people who you wanted here. I don't know
9 who else you are thinking of.

10 MS. STEWART: One of them has declined as of
11 yesterday to testify, Judge.

12 THE COURT: OK.

13 MS. STEWART: So that is why Mr. Jabara is not
14 here today. He is renewing our search so to speak.

15 THE COURT: He is out fishing --

16 MS. STEWART: Yes.

17 THE COURT: -- as it were.

18 Mr. Wasserman? Friday?

19 MR. WASSERMAN: I would absolutely do my best.

20 THE COURT: Understand there is a rebuttable
21 presumption that you can do it at that time, and, if you
22 can't do it at that time, you are going to have to provide a
23 good reason why not.

24 MR. WASSERMAN: I understand, your Honor.

25 THE COURT: Now, Mr. Nooter --

1 MR. NOOTER: I think I can summarize certainly by
2 Friday what I expect the experts, if we call them at all, to
3 discuss, but I can't disclose who they are.

4 THE COURT: You can't disclose who they are?

5 MR. NOOTER: I don't know who they are.

6 THE COURT: You know what they are going to say,
7 but not who they are.

8 MR. NOOTER: Except for my translator, who is no
9 big surprise at all.

10 THE COURT: That's fine. That often happens in
11 the expert testimony business. Ms. London?

12 MS. LONDON: Yes, your Honor. I rise on a
13 different Rule 16 matter. Friday, June 9, I received from
14 the government a transcript of a Dr. Abdel Rahman FISA,
15 dated February 3, 1993, reel 4, call 26, which lists
16 Mr. Elhassan as a participant in the phone call with
17 Dr. Rahman.

18 In the last two years I have gone through every
19 transcript provided from Dr. Rahman's FISA's. I have
20 subsequently examined the chronology of phone calls which
21 the government had periodically given us. There was no
22 indication of that phone call on the chronology of the
23 FISA's, and there was never a transcript provided on it.
24 This has come out at me out of the blue.

25 The government has explained to me that they only

1 very recently identified the voice of Tarig who speaks on
2 the transcript as Mr. Elhassan. Although the transcript is,
3 as I understand it from the government, being produced only
4 to show association between Dr. Rahman and my client, the
5 basis -- I mean, the sum and substance of this transcript is
6 Mr. Elhassan calling Dr. Rahman saying that he had prayed at
7 a certain prayer station at which the Sheik Omar led the
8 prayers, and he had not had an opportunity to talk with him,
9 was unable to talk to him, and was asking if he would be
10 leading prayers. He asks in this telephone conversation
11 where Dr. Rahman would be leading prayers that evening
12 because he would like an opportunity to talk to him. Your
13 Honor, I would ask that this transcript be precluded.

14 MR. FITZGERALD: The transcript Ms. London is
15 referring to is simply offered, as she said, simply for
16 association.

17 MS. LONDON: I'm sorry. I can't hear you.

18 MR. FITZGERALD: Is offered for association. The
19 government was reviewing some calls on the date of February
20 23, and in reviewing that discovered that apparently Tarig
21 Elhassan was intercepted calling the defendant Abdel Rahman.
22 We sent it back to verify the voice and then produced a
23 transcript as soon as we could.

24 There's nothing -- the point of the conversation
25 is he calls up an establishes he's familiar with the

1 defendant Abdel Rahman. It is offered simply for
2 association.

3 THE COURT: Regardless of what it is offered for,
4 it's too late. Your application is that it be excluded?

5 MS. LONDON: Yes, your Honor.

6 THE COURT: It's granted.

7 MS. LONDON: Thank you.

8 THE COURT: What else? Mr. Wasserman?

9 MR. WASSERMAN: Your Honor, Mr. McCarthy had
10 mentioned earlier in the day there are two 106 matters, one
11 of which I think will be resolved.

12 THE COURT: Is that the transcript that you
13 handed me? L?

14 MR. WASSERMAN: No, your Honor.

15 THE COURT: Oh.

16 MR. WASSERMAN: These are two CM 106 applications
17 on behalf of my client, one having to do with CM60 and one
18 having to do with CM62. I can hand up to your Honor the
19 excerpts that we're interested in, and, as your Honor sees
20 fit, I don't know what Mr. McCarthy wants to do, if he wants
21 to wait until tomorrow to discuss them.

22 MR. MCCARTHY: What I would like to do, if he can
23 hand your Honor CM62, which I can assure you we have an
24 objection to. And I'll look at CM60. I may simply agree to
25 add the portion he is talking about.

1 THE COURT: Wait a second. You are talking in
2 terms of CM's, which is not a language that I speak.

3 MR. WASSERMAN: Yes, Judge.

4 THE COURT: What exhibit? I speak exhibit.
5 What exhibit is it?

6 MR. WASSERMAN: Mr. McCarthy I think can help me
7 out on that one.

8 MR. McCARTHY: Anything I can do to help.

9 MR. WASSERMAN: I am sure.

10 MR. McCARTHY: Your Honor, 364 and 368.

11 THE COURT: I gather I don't have those yet. As
12 I recall the dispute, it was a question of whether the
13 material that Mr. Wasserman is about to hand up to me should
14 be inserted within the exhibit. It seems to me until I see
15 the exhibit I can't figure out whether it ought to be
16 inserted.

17 MR. McCARTHY: You're quite right.

18 THE COURT: OK. So why don't I wait until I get
19 the exhibit, unless I can get it now.

20 MR. WASSERMAN: Your Honor, if I may, on 60, I
21 think the government has what it intends to use, so that
22 what I could hand up to the court would be recognizable as
23 where it fits in. On 62, I haven't seen what the government
24 has.

25 MR. McCARTHY: 62 I'm sure I have here. 60, if

1 you want to show it to me, I may just agree to it.

2 MR. WASSERMAN: OK.

3 THE COURT: When are these supposed to be shown
4 on the jury or played?

5 MR. McCARTHY: Tomorrow and the next day, I
6 think.

7 THE COURT: All right. Then, if you can get me
8 whatever is going to be played tomorrow now, I would like to
9 look at that.

10 MR. McCARTHY: Yes, your Honor.

11 (Counsel conferred)

12 MR. McCARTHY: Your Honor, I can hand up the
13 draft which contains the whole of what Exhibit 364 is a part
14 of. The conversation that is in dispute runs from page 29
15 to about the top of page 32. Mr. Wasserman is most
16 interested, I think, in the portion on page 30.

17 MR. WASSERMAN: That's correct, your Honor. It's
18 a portion dealing specifically with my client. If I may
19 approach, I'll hand it up.

20 Thank you, Judge.

21 THE COURT: OK. I will look at it. Thank you.

22 Have a good night.

23 (Proceedings adjourned to Tuesday, June 13, 1995,
24 at 9:30 a.m.)

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,

16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

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

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

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

-----x

June 13, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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Southern District of New York

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1 (Jury not present)

2 THE COURT: Good morning.

3 MR. NOOTER: Your Honor?

4 THE COURT: Yes.

5 MR. NOOTER: My client originally thought he may
6 want to be excused today again because his shoulder is
7 bothering him, but he's decided at least to wait until the
8 break, and then at the break I may make an application that
9 my client be excused.

10 THE COURT: All right. Thank you.

11 (Jury present)

12 THE COURT: Good morning, ladies and gentlemen.

13 JURORS: Good morning, your Honor.

14 THE COURT: Mr. McCarthy?

15 MR. McCARTHY: Good morning, your Honor.

16 At this time the government would like to offer
17 into evidence blowup photographs which correspond to other
18 photographs that have already been received in evidence at
19 the trial, and I would like to read the numbers into the
20 record. The blowup photographs have a corresponding X
21 number at the end which matches up to the exhibit that's
22 already been received.

23 THE COURT: Have defense counsel seen these?

24 MR. McCARTHY: They have, your Honor.

25 Those numbers are the following: 133C1X, 133BX,

1 133D1X, 135GX, 133AX, 135BX, and W90BX.

2 THE COURT: Those exhibits are received.

3 (Government's Exhibits 133C1X, 133BX, 133D1X,
4 135GX, 133AX, 135BX, and W90BX were received in evidence)

5 MR. McCARTHY: Your Honor, I would ask to be able
6 to put the exhibit up on one of the stands so that the jury
7 can see it.

8 MR. STAVIS: I have no objection, your Honor.

9 THE COURT: All right.

10 MR. McCARTHY: Thank you, your Honor. I think we
11 are ready at this point to proceed with the audio portion of
12 the tape that we were not able to proceed with --

13 THE COURT: The tape we tried yesterday?

14 MR. McCARTHY: Yes, your Honor.

15 THE COURT: All right. This is 352?

16 MR. McCARTHY: Yes, your Honor. Exhibit 352T is
17 the transcript, and it is the tape portion that corresponds
18 from page 192 to the end.

19 THE COURT: Page 192?

20 MR. McCARTHY: Yes, your Honor.

21 Your Honor, if I could direct everyone's
22 attention to five attributions down where it says:

23 "Salem: Yes."

24 And then in brackets, "Door opens."

25 THE COURT: Yes.

1 MR. McCARTHY: We have tried to cue up the tape
2 so that it begins at the point where it reflects "door
3 opens" on the transcript.

4 I am going to begin the tape.

5 (Tape played)

6 MR. McCARTHY: At this point, your Honor, we
7 would ask to read the Arabic passages reflected on 193 over
8 to 194 while I flip the tape over.

9 THE COURT: Go ahead.

10 MR. McCARTHY: I will read the lines attributed
11 to Mr. Khallafalla, and Mr. Khuzami will read the lines
12 attributed to Mr. Salem.

13 (Exhibit read)

14 MR. McCARTHY: We are going to resume with the
15 tape at this point.

16 (Tape played)

17 MR. McCARTHY: May I have a moment, your Honor?

18 THE COURT: Yes.

19 MR. McCARTHY: Your Honor, we are going to move
20 the tape ahead to the portion which corresponds to the
21 bottom of page 197 over to 198.

22 THE COURT: Go ahead.

23 MR. McCARTHY: It will just take me a moment.

24 (Pause)

25 MR. McCARTHY: We are ready to proceed with the

1 tape.

2 (Tape played)

3 MR. McCARTHY: I have to switch the tape.

4 Picking up on page 200.

5 Begin the tape.

6 (Tape played)

7 MR. McCARTHY: At this point, your Honor, we
8 would ask to be able to read the Arabic passages that go
9 from page 201 on the transcript over to page 203 while I
10 move the tape ahead.

11 THE COURT: Go ahead.

12 MR. McCARTHY: I will read the lines attributed
13 to Mr. Elhassan; Mr. Khuzami will read the lines attributed
14 to Mr. Khallafalla; and Mr. Fitzgerald will read the lines
15 attributed to Mr. Siddig Ali.

16 (Exhibit read)

17 MR. McCARTHY: We will pick up with the tape at
18 that point.

19 I will begin playing the tape.

20 THE COURT: All right.

21 (Tape played)

22 MR. McCARTHY: Your Honor, at this point, while
23 we skip ahead to the next English part of the tape, I would
24 ask to read the Arabic passages on 203 going over on to the
25 next page. Once again, Mr. Fitzgerald will read the lines

1 attributed to Siddig Ali; Mr. Khuzami will read the lines
2 attributed to Khallafalla; and I will read the lines
3 attributed to other speakers.

4 THE COURT: Go ahead.

5 (Exhibit read)

6 (Tape played)

7 MR. McCARTHY: Your Honor, I would now request to
8 read, and this would be the last portion that we would read
9 of the transcript, the Arabic speech passages from page 204
10 through page 206.

11 THE COURT: Go ahead.

12 (Exhibit read)

13 MR. McCARTHY: Your Honor, we will proceed from
14 here on out with the tape, the portion from page 206, going
15 over to page 207.

16 (Tape played)

17 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, the next five
2 exhibits the government would like to offer are 766 through
3 770, and the transcripts are 766T through 770T.

4 THE COURT: This is in a binder marked 751
5 through 850.

6 MR. FITZGERALD: It is Government's Exhibits 766T
7 through 770T. 766T was also recorded on June 19, 1993, a
8 conversation on the Hampton-El FISA telephone at 11:04 p.m.,
9 and it is in English.

10 (Tape played)

11 MR. FITZGERALD: Your Honor, Government's Exhibit
12 767T is recorded that same day, six minutes later at 11:10
13 p.m. on June 19. It is also at least largely in English.

14 THE COURT: Go ahead.

15 (Tape played)

16 MR. FITZGERALD: Government's Exhibit 768T is
17 recorded that same night, four minutes later at 11:14 p.m.,
18 and is also in English.

19 (Tape played)

20 MR. FITZGERALD: Government's Exhibit 769 is
21 recorded also on June 19, 1993, also at 11:14 p.m., on the
22 same telephone, and it is in English.

23 (Tape played)

24 MR. FITZGERALD: Your Honor, at this time the
25 government would read Government's Exhibit 770T, which is a

1 transcript of an Arabic, primarily Arabic language
2 conversation.

3 THE COURT: Go ahead.

4 MR. FITZGERALD: That is the following day, June
5 20, 1993, at 5:18 in the morning. I will read the
6 statements attributed to Mr. Siddig Ali, Mr. Khuzami will
7 read the statements attributed to Tarig Elhassan, and Mr.
8 McCarthy will read the statements attributed to the AT&T
9 operator.

10 (Government's Exhibit 770T in evidence was read
11 to the jury)

12 MR. MCCARTHY: Your Honor, would this be an
13 appropriate point?

14 THE COURT: Yes. Ladies and gentlemen, we are
15 going to take a break at this point. Please leave your
16 notes and other materials behind. Please don't discuss the
17 case, and we will resume in a few minutes.

18 (Jury excused)

19 THE COURT: Is there anything that I need to deal
20 with in order for us to complete the balance of the morning?

21 MR. MCCARTHY: No, your Honor. What I think we
22 are going to do -- I would like to take a couple minutes to
23 think about it. We have a couple of things outstanding, but
24 we may continue with the chronology and come back to that
25 after June 23. I would like to take a minute with my two

1 colleagues. The one outstanding issue that I think your
2 Honor needs to deal with is Government's Exhibit 327, which
3 we don't need to handle now, we can actually cut back to.

4 THE COURT: Thank you.

5 MR. NOOTER: Your Honor, I think my client would
6 like to go back. The wound where he had the little
7 operation is seeping, and he would feel more comfortable
8 being back in MCC.

9 THE COURT: Is it satisfactory that we proceed in
10 your absence? Yes?

11 DEFENDANT WAHID SALEH: Yes.

12 THE COURT: Thank you, Mr. Saleh. Hope you feel
13 better.

14 MR. McCARTHY: Mr. Wasserman reminds me of
15 Government's Exhibit, I believe it is 364? No.

16 THE COURT: Is that the segment that I got
17 yesterday?

18 MR. McCARTHY: Yes, your Honor.

19 THE COURT: That doesn't require being received
20 under 106, if that is what the argument is.

21 MR. McCARTHY: That is the issue.

22 MR. WASSERMAN: Your Honor, can I be heard on
23 that?

24 THE COURT: Sure.

25 MR. WASSERMAN: It seems to me that 106 is a

1 fairness rule and what that conversation between Emad Salem
2 and --

3 THE COURT: It is fairness as to the particular
4 conversation. I didn't say it wasn't admissible at another
5 time if you call a witness. I simply said it is not
6 required to be admitted in order to understand the
7 conversation that preceded it.

8 MR. WASSERMAN: That is what I wanted to address.
9 If your Honor preferred that I do it at another time, I will
10 do it.

11 THE COURT: No, do it now.

12 MR. WASSERMAN: It seems to me there are two
13 aspects of that conversation. One has to do with whether or
14 not my client's going to the safe house is involved with
15 what is going on at the safe house, and the second is a
16 meeting that Emad has arranged to take place on June 24
17 between Siddig Ali and my client. Both matters occurring in
18 that conversation, I think, are highly relevant in terms of
19 all the conversations that have been placed into the record
20 and played before the jury as to my client's involvement.
21 Emad says in the conversation that my client has his own
22 project, that he is not involved with what Detective Napoli
23 is talking about in terms of the safe house.

24 THE COURT: Did you cross-examine Salem about
25 this?

1 MR. WASSERMAN: I asked Salem whether he told
2 Detective Napoli that my client had his own project, and he
3 testified yes, he did. There was no cross-examination of
4 Detective Napoli. But I think the issue under 106 is
5 whether the context is fair without that conversation and my
6 argument to the court is that it is not. This conversation
7 fleshes out where my client stands on June 23, and the
8 statements of Napoli and Emad Salem are critical --

9 THE COURT: The suggestion by Napoli that your
10 client is, quote, not involved, unquote, is not competent
11 evidence. His opinion or lack of it as to whether your
12 client is, quote, involved or not, proves nothing. So far
13 as whether you can get in other parts of that conversation
14 by testimony either through Salem or Napoli is a different
15 issue, but it is certainly not necessary in order to set the
16 preceding conversation in context.

17 MR. WASSERMAN: Your Honor, if I may address the
18 court's first point as to competent evidence, I am not
19 claiming that he is binding the government. What he is
20 saying is we have got to get the doctor involved, and I
21 think --

22 THE COURT: You say you don't want to bind the
23 government and then you tell me in the same breath it is a,
24 quote, classic admission, unquote. It is not a classic
25 admission.

1 MR. WASSERMAN: The government can argue that his
2 opinion as to whether the doctor is involved does not
3 involve the government, but it is a statement by him at the
4 time --

5 THE COURT: Yes, I know what it is. I heard it,
6 I saw it. This came up during hearings before trial, as I
7 recall it.

8 In any event, Mr. McCarthy.

9 MR. MCCARTHY: Your Honor, I don't think under
10 Rule 106 it is necessary to understand anything that we
11 intend to offer. I don't think it is admissible. I think
12 if the statement had been the doctor is involved and I tried
13 to get it in, you would be looking at me like I had three
14 heads, and I don't think it is really much different because
15 it cuts the other way.

16 MR. WASSERMAN: I think the fact that there is a
17 meeting arranged for June 24 and that that statement by
18 Napoli is coupled with that meeting that Emad describes to
19 him in the succeeding exchange between Napoli and Emad is
20 highly relevant both in terms of being competent evidence
21 and in terms of being admissible under 106 at this time.

22 THE COURT: I don't think 106 requires that it be
23 admitted, which is all that I have to deal with now.
24 Whether it is admissible at all is something that we can
25 deal with during your case.

1 MR. WASSERMAN: Your Honor, I think there has
2 been a motion preceding the trial and I think government
3 misconduct applies there as well.

4 THE COURT: That is a completely different issue.
5 We will take our break.

6 (Recess)

7 (Jury present)

8 MR. FITZGERALD: Your Honor, the next exhibits
9 the government would propose to play or read are 772, the
10 transcript of which is 772T, 773, the transcript of which is
11 773T, and 758, the transcript of which is 758T.

12 THE COURT: Starting with 772?

13 MR. FITZGERALD: Yes, Judge, and Government's
14 Exhibit 772 is in English.

15 THE COURT: So we will be listening to the tape?

16 MR. FITZGERALD: Yes, Judge. 772 is a
17 conversation intercepted on the Siddig Ali FISA on June 21,
18 1993, at 11:24 in the morning. We will proceed with the
19 tape.

20 (Tape played)

21 MR. BERNSTEIN: Judge --

22 MR. FITZGERALD: It's supposed to be silent.

23 (Playing continued)

24 MR. FITZGERALD: Your Honor, we will be reading
25 the next exhibit, which is Government's Exhibit 773T. 773T

1 is a transcript of a conversation primarily in Arabic, also
2 coming from a Siddig Ali FISA interception on June 21, 1993,
3 10 minutes later, at 11:34 a.m. I will read the statements
4 attributed to Siddig Ali, Ms. Chu will read the statements
5 attributed to the unidentified female, and Mr. McCarthy will
6 read the statements attributed to Amir Abdelgani.

7 (Government's Exhibit 773T in evidence read to
8 the jury)

9 MR. FITZGERALD: The next exhibit the government
10 would read is Government's Exhibit 758T, and 758T, I
11 believe, is in the same books. It is a transcript of a
12 conversation intercepted on the Siddig Ali FISA
13 interception, also on June 21, 1993, at 11:50 in the
14 morning, and I will read the statements attributed to Siddig
15 Ali and Mr. McCarthy will read the statements attributed to
16 Amir Abdelgani.

17 THE COURT: Go ahead -- one second.

18 MR. FITZGERALD: We will proceed with reading
19 758T.

20 (Government's Exhibit 758T in evidence was read
21 to the jury)

22 MR. McCARTHY: Your Honor, at this point the
23 government would read from Government's Exhibit 364T, which
24 is in a different book. For counsel, this is what was CM
25 60.

1 MR. McCARTHY: Government's Exhibit 364T is also
2 a conversation which took place on June 21, 1993. Mr.
3 Khuzami will be reading the lines attributed to Emad Salem;
4 Mr. Fitzgerald will read the lines attributed to Siddig Ali;
5 and I will read the lines attributed to Amir Abdelgani.

6 (Government Exhibit 364T was read to the jury)

7 MR. McCARTHY: Your Honor, the next exhibit is a
8 tape that will, I guess, take about 20, 25 minutes.

9 THE COURT: We are going to break now, ladies and
10 gentlemen. Please leave your notes and other materials
11 behind. Please don't discuss the case, and we will resume
12 this afternoon.

13 (Jury not present)

14 THE COURT: Mr. Jacobs?

15 MR. JACOBS: My client would like to be excused
16 this afternoon. The government gave us some FISA to review.
17 We haven't had a chance to listen to it. We think we can
18 move it along if he is excused this afternoon to go back to
19 MCC and review it. I don't think there is going to be
20 testimony involving him this afternoon anyway.

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

22 (Counsel conferred)

23 MR. JACOBS: There is no problem, your Honor.

24 THE COURT: All right. Mr. Saleh, is it
25 agreeable That we go ahead this afternoon?

1 DEFENDANT MOHAMMED SALEH: Yes, your Honor.

2 THE COURT: OK. Then you are excused for the
3 afternoon. Thank you. I will see you this afternoon.

4 MR. McCARTHY: Thank you, your Honor.

5 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:10 p.m.

3 (In open court; jury present)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 JURORS: Good afternoon.

6 THE COURT: Having said that, I think I neglected
7 to say good morning to you this morning. Please be assured
8 that we are going to try to maintain standards of civility.
9 I was preoccupied and I apologize for that.

10 Mr. McCarthy.

11 MR. McCARTHY: Good afternoon, your Honor.

12 THE COURT: Good afternoon.

13 MR. McCARTHY: We would like to proceed now with
14 Government's Exhibit 361, which is a tape, and the
15 transcript 361T. For counsel, it is CM 57.

16 THE COURT: That is in a volume 348 to 399.

17 THE COURT: This is a tape?

18 MR. McCARTHY: Yes, your Honor. 361 is a
19 conversation which took place on June 21, 1993.

20 Your Honor, if I may, I will proceed with the
21 tape. Just to make everybody alert to it, there is a
22 section at the bottom of page 1 where there was about a
23 seven-line attribution to Mr. Siddig Ali. During the course
24 of that I will stop the tape and move it forward. Otherwise
25 we will have some delay.

1 (Tape played)

2 MR. McCARTHY: Your Honor, at this point there is
3 Arabic conversation going over to the next page. Mr.
4 Fitzgerald will read the lines attributed to Mr. Siddig Ali
5 and Mr. Khuzami will read the lines attributed to Mr. Salem,
6 while I advance the tape.

7 (Reading)

8 MR. McCARTHY: At this point we resume playing
9 the tape.

10 (Playing continued)

11 MR. McCARTHY: The remainder of the tape is in
12 Arabic. Mr. Khuzami will read the attributions to
13 Mr. Salem, Mr. Fitzgerald will read the attributions to
14 Mr. Siddig Ali, and I will read the attributions to Amir
15 Abdelgani.

16 (Reading continued)

17 MR. McCARTHY: The next conversation is
18 Government's Exhibit 364T2, which, for counsel, is CM 60,
19 part 2, also in the same book.

20 THE COURT: It is in the book after 364T but
21 under the same divider. It is under the same divider marked
22 364T, but there is a second transcript there marked 364T2.

23 MR. McCARTHY: We will continue with the same
24 people reading the same attributions.

25 (Government's Exhibit 362T2 was read to the jury)

1 MR. McCARTHY: The next conversation, your Honor,
2 is Government's Exhibit 3634T. For counsel, that is CM59.
3 Government's Exhibit 363T is a conversation which took place
4 on the evening of June 21, 1993 at about 10:30 p.m.

5 Mr. Khuzami will read the attributions to Emad
6 Salem; Mr. Fitzgerald will read the attributions to Siddig
7 Ali; Ms. Chu will read the attributions to Amir Abdelgani;
8 and I will read the attributions to Tarig Elhassan.

9 (Government Exhibit 363T was read to the jury)

10 THE COURT: All right. Ladies and gentlemen, we
11 are going to take a break now. Please leave your notes and
12 other materials behind. Please don't discuss the case and
13 we will resume in a few minutes.

14 (Recess)

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1 (Jury present)

2 MR. McCARTHY: Thank you, your Honor. The next
3 exhibit is 362T, which is, for counsel, CM 58.

4 MS. LONDON: Excuse me, your Honor. May we
5 approach briefly on this?

6 THE COURT: Yes.

7 (At the side bar)

8 MS. LONDON: Your Honor, on behalf of
9 Mr. Elhassan, I would like to express an objection to
10 reading of this transcript and ask for some time for him to
11 review the latest transcript. We did get a transcript on
12 Sunday which I sent over to him last night with extra copies
13 of the tapes. The interpreter called him down but he didn't
14 show up. He says he would like more time to review it.

15 I would advise the court that the changes that
16 have been made, the Arabic changes are changes which the
17 defense requested several months ago and which were reviewed
18 with him. The only changes that he has not reviewed are
19 changes in the English transcript, which I have reviewed. I
20 did give him a copy of the transcript.

21 THE COURT: In that event, express my regrets to
22 Mr. Elhassan but I am not going to stop for this additional
23 review. As you said, changes were those that were requested
24 by the defense, the Arabic changes, and it seems it is those
25 as to which he would be particularly knowledgeable. I am

1 not going to stop to go over English translations that have
2 been reviewed by counsel.

3 MS. LONDON: Thank you, your Honor.

4 (In open court)

5 THE COURT: 362T?

6 MR. McCARTHY: Yes, your Honor. 362T is a
7 conversation which occurred in the late evening hours of
8 June 21 and the early morning hours of June 22, 1993. The
9 first 23 pages we will read, the remainder of the transcript
10 we will play a tape. Once again, Mr. Fitzgerald will read
11 the attributions to Siddig Ibrahim Siddig Ali, Mr. Khuzami
12 will read the attributions to Emad Salem, I will read the
13 attributions to Tarig Elhassan, and Miss Chu will read the
14 attributions to Amir Abdelgani. The portions where Victor
15 Alvarez and Fares Khallafalla are speakers will be on the
16 tape.

17 (Government's Exhibit 362T in evidence read to
18 the jury)

19 MR. McCARTHY: Your Honor, at this point the tape
20 begins. Playing the largely English portion of the tape,
21 beginning at the top of page 22.

22 (Tape played)

23 MR. McCARTHY: Would this be an appropriate point
24 to break, your Honor?

25 THE COURT: We can break at this point. Ladies

1 and gentlemen, we are going to break for the day. Please
2 leave your notes and other materials behind, please don't
3 discuss the case, and we will resume tomorrow morning.

4 (Jury excused)

5 (Proceedings adjourned until Wednesday, June 14,
6 1995, at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

3 OMAR AHMAD ALI ABDEL RAHMAN,
4 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,"

EL SAYYID NOSAIR,
7 a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

IBRAHIM A. EL-GABROWNY,
9 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

CLEMENT HAMPTON-EL,
11 a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

AMIR ABDELGANI,
13 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

FADIL ABDELGANI,
17 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.

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S5 93 Cr. 181 (MBM)

June 14, 1995
9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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and
SALVATORE S. RUSSO

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: I received a letter from the
4 government this morning relating to some background material
5 about two witnesses, named Belhabri and Karim. Do I need to
6 deal with that now?

7 MR. KHUZAMI: They are expected to testify in the
8 afternoon, your Honor.

9 THE COURT: OK.

10 MR. RICCO: Your Honor, Mr. Hueston is going to
11 sit in for me this morning. I have spoken to Mr.
12 El-Gabrownny and he consents to that arrangement.

13 THE COURT: Is that all right, Mr. El-Gabrownny?

14 DEFENDANT EL-GABROWNY: That's OK.

15 THE COURT: Thank you very much.

16 Will you be back this afternoon?

17 MR. RICCO: Yes, sir.

18 (Jury present)

19 THE COURT: Good morning, ladies and gentlemen.

20 JURORS: Good morning.

21 THE COURT: Mr. McCarthy, we are on?

22 MR. MCCARTHY: Thank you, your Honor. We are on
23 Government's Exhibit 362, and E is the tape and T is the
24 transcript.

25 THE COURT: Page 35 of that transcript?

1 MR. McCARTHY: Page 36, I think, your Honor.

2 THE COURT: Page 36 of that transcript.

3 MR. McCARTHY: We will need the headsets. Maybe
4 before we put them on, let me just say where the tape is
5 cued up, so if people want to look at the transcript they
6 can follow along. About two thirds of the way down the page
7 on page 36, there is an attribution to Siddig Ali which in
8 the transcript reads unintelligible let's go unintelligible
9 forget it. The tape should be cued up approximately at the
10 words forget it, and we proceed from there, and for
11 everybody's benefit, I will be stopping the tape at page 44
12 to change tapes.

13 May I proceed, your Honor?

14 THE COURT: Go ahead.

15 (Tape continued)

16 MR. McCARTHY: I am changing the tape.

17 We are ready to proceed.

18 (Tape continued)

19 (Continued on next page)

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1 MR. McCARTHY: Your Honor, by agreement with
2 counsel for Mr. Khallafalla, we are going to read the last
3 few pages. The Arabic portions. Mr. Fitzgerald will read
4 the attributions to Siddig Ali; Mr. Khuzami will read the
5 attributions to Mr. Salem; and I will read the attributions
6 to any other speakers.

7 MR. FITZGERALD: Starting at the top of page 55,
8 the first double underlined attribution.

9 (Exhibit read)

10 MR. FITZGERALD: Your Honor, the government would
11 next read from two exhibits, GX 774T, and Government Exhibit
12 775T.

13 MR. McCARTHY: 774T and 775T.

14 May I have a moment, your Honor?

15 (Pause)

16 THE COURT: Yes.

17 MR. FITZGERALD: Government Exhibit 774T is a
18 conversation intercepted on the Siddig Ali FISA on June 22,
19 1993 at about five minutes before noon. I will read the
20 statements attributed to Mr. Siddig Ali, and Mr. McCarthy
21 will read the statements attributed to Awad, last name
22 unknown.

23 (Government Exhibit 774T in evidence was read to
24 the jury)

25 MR. FITZGERALD: Government Exhibit 775T is also

1 a conversation intercepted on the Siddig Ali FISA on the
2 same date, June 22, 1993, and this is at 12:21 p.m. I will
3 read the lines attributed to Siddig Ali, and Mr. Khuzami
4 will read the lines attributed to Mohammed Saleh.

5 (Government Exhibit 775T in evidence was read to
6 the jury)

7 MR. FITZGERALD: Your Honor, the next four
8 exhibits are in the 360 series.

9 The next one will be Government Exhibit 365T.
10 For counsel's benefit, Government Exhibit 365T is also known
11 as CM61. Government Exhibit 365T was recorded on June 22,
12 the same day, 1993, at about 8 p.m., in the evening. I will
13 read the statements attributed to Mr. Siddig Ali; Mr.
14 Khuzami will read the statements attributed to Mr. Salem;
15 and Mr. McCarthy will read the statements attributed to Amir
16 Abdelgani.

17 (Government Exhibit 365T in evidence was read to
18 the jury)

19 THE COURT: We are going to take a break now,
20 ladies and gentlemen. Please leave your notes and other
21 materials behind. Please don't discuss the case and we will
22 resume in a few minutes.

23 (Jury not present)

24 (Recess)

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1 (In open court; jury not present)

2 MR. McCARTHY: Your Honor, just to put everyone
3 on notice, we are about to do Government's Exhibit 367T,
4 which is CM 64 part 1.

5 (Jury present)

6 MR. McCARTHY: Thank you, your Honor. Your
7 Honor, the government would next read Government's Exhibit
8 367T. Exhibit 367T is a conversation which took place on
9 June 23, 1993, at approximately 11:15 in the morning. Mr.
10 Khuzami will read the lines attributed to Emad Salem, and
11 Mr. Fitzgerald will read the statements attributed to Siddig
12 Ibrahim Siddig Ali, and I will read the statements
13 attributed to an unidentified male.

14 (Government's Exhibit 367T in evidence read to
15 the jury)

16 (Continued on next page)

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1 THE COURT: Ladies and gentlemen, we are going to
2 break now for lunch. Please leave your notes and other
3 materials behind. Please don't discuss the case, and we
4 will resume close to 2 o'clock.

5 See you then.

6 (Jury not present)

7 THE COURT: Ms. Amsterdam, may I see you in the
8 robing room.

9 (Pages 11865 through 11870 sealed)

10 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:15 p.m.

3 (In open court; jury not present)

4 THE COURT: Good afternoon.

5 MS. STEWART: Your Honor, I haven't been here for
6 a couple of days but I read through the transcripts. There
7 was no clarification on juror 104. Did he ever come in?
8 Did he ever call?

9 THE COURT: There were conflicting reports. His
10 mother says he was seriously ill and admitted to the
11 hospital. He called in the evening to say that he was
12 coming back at that time, and that's where that ended. So
13 he couldn't keep his stories straight.

14 Mr. Ricco is not back yet?

15 MR. HUESTON: No, he is not back, yet.

16 MR. SERRA: I spoke to Mr. Ricco on the
17 telephone. He spoke to the counsel office, said he was
18 delayed --

19 THE COURT: Here is Mr. Ricco.

20 As long as Ms. Stewart raised the the subject of
21 juror number 104, I took a look at the transcript and there
22 was something in something that Mr. Ricco said that
23 suggested that somehow he was treated differently from the
24 way others had been treated, and I thought that I responded
25 to that adequately, but just let me add that in addition to

1 what I said at the time, those of you with good memories
2 will recall that juror number 6 was excused under similar
3 circumstances, namely a report that she had gone to the
4 emergency room, otherwise unelaborated on.

5 MS. AMSTERDAM: On the other hand, your Honor,
6 that was close to the first day of trial. It is not an
7 analogous situation when we are six months into the trial.
8 I don't want to put words in Mr. Ricco's mouth -- but I will
9 in any event, because we discussed it in a group, and there
10 were accommodations made for jurors who were ill,
11 accommodations for jurors who --

12 THE COURT: As to all those jurors --

13 MS. AMSTERDAM: If I might finish. There was a
14 report of a juror who might have to undergo a surgical
15 procedure for a hernia problem and your Honor indicated that
16 we would address the issue whether or not we might consider
17 waiting several days for that juror to come back and you did
18 not foreclose the possibility that we would indeed wait for
19 him. I think the problem that we had with juror 104, the
20 excusal of 104, was that this was a man who had never missed
21 a day at all, who had never in fact called in sick, and who
22 indeed we discharged after six months without hearing the
23 full story.

24 THE COURT: Ms. Amsterdam, your presentation so
25 far is a wild distortion of the facts. He has missed half

1 days. We in fact broke early a number of times because of
2 problems related to him. He, as I pointed out, in May was
3 late under circumstances that conflicted with the excuse
4 that he gave. And so far as the other jurors who were
5 accomodated, what they all had in common was notifying us in
6 a proper way, in advance, under circumstances that allowed
7 us to plan for it. He did none of those things. Let's go
8 ahead.

9 MR. JACOBS: Your Honor, sometime could we check
10 about the financial documents, before the witnesses testify?

11 THE COURT: I just have one question and that is,
12 as far as what I am looking at, are any of those receipts
13 signed by the witnesses? I don't think they are.

14 MR. KHUZAMI: I don't believe they are.

15 THE COURT: Whatever information you disclosed to
16 Mr. Jacobs, and I didn't look at the corresponding 3500
17 material because I didn't have it in front of me at the
18 time, does he have in essence by category the breakdown of
19 expenses?

20 MR. KHUZAMI: He has the amounts of the payments
21 and --

22 THE COURT: Does he have, for example, how much
23 is rent and how much is other?

24 MR. KHUZAMI: No. That, as I indicated in my
25 letter, we will solicit from the witnesses on direct

1 examination.

2 THE COURT: That should be broken down. Other
3 than that, all this is is receipts from third parties and
4 internal memoranda. None of it is 3500 material, none of it
5 is Giglio material or Brady material or anything of the
6 kind. If you want to tell them how much they paid for rent,
7 that is fine.

8 MR. JACOBS: May I be heard, your Honor?

9 THE COURT: Yes.

10 MR. JACOBS: The government gives me a document
11 that indicates that the witnesses received payments over a
12 year or so. Not only is there no breakdown of the payments,
13 there is no explanation as to why the witnesses got money.
14 The government on their examination is going to attempt to
15 elicit why they got the money. If I am permitted and if I
16 wanted to, I suppose I could suggest the government is
17 buying their testimony. If the government is in possession
18 of internal memoranda which explains why these witnesses are
19 getting money, I think I am entitled to see that as Giglio
20 because --

21 THE COURT: I don't.

22 MR. JACOBS: For example, if I could state as
23 follows, I requested that the government turn over to us a
24 letter from the FBI agent in charge requesting special
25 immigration exemptions for these witnesses and work permits

1 so that, quote, from a document not marked as 3500, due to
2 the need of these individuals to support themselves prior to
3 their testimony, I would appreciate if you would give them
4 work permit visas. If the government is giving them
5 additional money where the FBI has requested work permit
6 visas, I would like to see internal memoranda to that
7 effect, because we have the FBI document stating one thing
8 and then the FBI apparently giving these witnesses some
9 other reason. Why am I bound by the witnesses' answer as to
10 why they are getting money?

11 THE COURT: That is why I suggested that they
12 simply indicate the amounts and the purpose for which they
13 are given. That is the only things that are disclosed in
14 the documents other than internal memoranda related to the
15 witnesses and why somebody thinks they are valuable, which I
16 don't think have to be turned over at all.

17 MR. JACOBS: Your Honor, the question of why
18 someone thinks they are valuable, I can understand that. If
19 the answer is that the FBI approved payments for A, B, C and
20 D, I would like to see that in writing from the FBI so that
21 I can at the appropriate time make the decision how I want
22 to proceed. If the FBI decided to give these people money
23 for food, I would like to see that in writing, or if they
24 are giving that to them so they can buy their testimony, I
25 would like to see that as well.

1 THE COURT: That was not among the memoranda that
2 they gave.

3 MR. JACOBS: In any event, I think I am entitled
4 to see a detailed explanation as to why these witnesses got
5 monthly payments.

6 THE COURT: I think all you are entitled to and
7 all you will get is the category. You have your record.
8 You also have my ruling.

9 Let's get the jury.

10 (Jury present)

11 THE COURT: Good afternoon, ladies and gentlemen.

12 MR. FITZGERALD: Your Honor, the next exhibit the
13 government would propose to play from in part and read from
14 in part is Government's Exhibit 366T. For counsel's
15 benefit, 366T corresponds to CM 63. Government's Exhibit
16 366T is a conversation recorded on June 23, 1993, beginning
17 at approximately 10 minutes after 12 noon. It is both in
18 Arabic and in English. Mr. Khuzami will read the lines
19 attributed to Emad Salem. I will read the lines attributed
20 to Siddig Ali. Mr. Victor Alvarez and the parts of
21 unidentified male and unidentified female fall within the
22 English sections. Miss Chu will read the parts attributed
23 to Shaymah Ali. We will start at the top of page 1,
24 continue to the middle of page 2, and play the tape until
25 the middle of page 6.

1 (Government's Exhibit 366T in evidence read to
2 the jury)

3 MR. FITZGERALD: Now the English portion begins,
4 and we will be playing from page 2 to part way down page 6.

5 (Tape played)

6 MR. FITZGERALD: Your Honor, we will resume the
7 reading at that point until page 16, where there are two
8 more pages in English. Starting at the top of page 6, just
9 after the car engine starts.

10 (Reading resumed)

11 MR. FITZGERALD: Your Honor, we would resume
12 playing the tape at this point.

13 (Tape continued)

14 MR. FITZGERALD: Your Honor, we would resume
15 reading at this point.

16 THE COURT: Go ahead.

17 (Reading continued)

18 (Continued on next page)

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1 The next exhibit the government would read from
2 is Government Exhibit 367T2. And for counsel's benefit,
3 that is CM64 part two. That is a conversation recorded on
4 June 23, 1993, 1:20 in the afternoon. Mr. Khuzami will read
5 the lines attributed to Mr. Salem; I will read the lines
6 attributed to Siddig Ali; Ms. Chu will read the lines
7 attributed to Shayma Ali; and Mr. McCarthy will read the
8 lines attributed to the unidentified male.

9 (Government Exhibit 367T2 in evidence was read to
10 the jury)

11 MR. FITZGERALD: Your Honor, the government would
12 next play Government Exhibit 776, the transcript of which is
13 776T. Government Exhibit 776 is a conversation recorded on
14 June 23, 1993 at 5:15 in the evening on the Hampton-El FISA.
15 It is in English.

16 (Government Exhibit 776 in evidence was played)

17 MR. FITZGERALD: Your Honor, we can either break,
18 or we could offer and read a six-page transcript at your
19 Honor's discretion.

20 THE COURT: All right. Let's do the transcript
21 and then we will break.

22 MR. FITZGERALD: Your Honor, the government would
23 offer Government Exhibit 777T, which is a transcript of a
24 conversation recorded on Government Exhibit 777, an Arabic
25 conversation from the Siddig Ali FISA, on June 23, 1993 at

1 5:45 in the evening.

2 I will read the lines attributable to Mr. Siddig
3 Ali; Mr. McCarthy will read the lines attributable to Amir
4 Abdelgani; and Ms. Chu will read the lines attributed to
5 Shayma Ali.

6 (Government Exhibit 777 in evidence was read to
7 the jury)

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

5 (Recess)

6 (Jury not present)

7 THE COURT: For your purposes, we are going to
8 break today at 4:45, so plan accordingly.

9 MR. WASSERMAN: Your Honor, Miss Stewart will be
10 back in about 30 seconds. I will stand in for her.

11 THE COURT: This is by prearrangement, I hope.

12 MR. WASSERMAN: Yes.

13 (Jury present)

14 THE COURT: Mr. Khuzami.

15 MR. KHUZAMI: Your Honor, the government calls
16 Danny Calemine as its next witness, C-A-L-E-M-I-N-E.

17 (Continued on next page)

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1 DANNY CALEMINE,
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. KHUZAMI:

7 Q Mr. Calamine, how are you employed?

8 A I am a detective with the New York City Police
9 Department.

10 Q How long have you been a detective?

11 A Approximately 18 months.

12 Q How long have you been with the police
13 department?

14 A Next month, I will start my tenth year.

15 Q What is your current assignment?

16 A I am currently assigned to the joint task force
17 with the special investigation division.

18 Q Directing your attention to June of 1993, what
19 was your assignment on that day, or that month?

20 A I was assigned to the task force. I was
21 conducting a photographic surveillance.

22 Q Do you recall what date in particular you
23 conducted that photographic surveillance?

24 A It was June 23.

25 Q At what locations did you conduct the

1 photographic surveillance?

2 A The surveillance originated at 413 Bronx River
3 Road, in Westchester, Yonkers.

4 Q Excuse me for interrupting you, but what is
5 located at 413 Bronx River Road?

6 A A Gulf station at the corner of Yonkers Avenue
7 and Bronx River Road.

8 Q If I might, if it is easier for you, you can pull
9 your chair forward.

10 Did you conduct your surveillance at any other
11 location than the Gulf station that day?

12 A Yes, I did, at Mount Vernon Avenue and Bond
13 Street.

14 Q What is located at that location?

15 A Vinnie's Performance Auto Center.

16 Q Do you recall for what period of time on June 23
17 you conducted photo surveillance?

18 A I started approximately 4:00 p.m., and I lasted
19 until approximately 7:22 p.m.

20 Q Do you recall the period of time that you
21 actually took pictures at the two locations?

22 A Yes.

23 Q What is that?

24 A The first photographs I took were approximately
25 taken from 6:43 p.m. until approximately 6:50, when at 6:51

1 I left the first location, which is the Gulf station, and I
2 proceeded to the second location, where I continued to take
3 the remainder of the photographs.

4 Q What did you take pictures of on that day?

5 A I took photographs of a red mini-van and two men
6 operating it, along with other photographs of another
7 individual at the first location.

8 Q Did you know the identities of the persons that
9 you were taking pictures of?

10 A No, I didn't know the identity but I was familiar
11 with one of the three individuals, I saw once before.

12 Q How did you refer to the two occupants of the red
13 van?

14 A Unknown male number one and unknown male number
15 two.

16 Q Which was the driver?

17 A Unknown male number one was the driver.

18 Q How did you refer to the third person that you
19 mentioned?

20 A Unknown male number three.

21 Q Can you describe what happened when the van first
22 arrived at the Gulf station?

23 A When a red van first arrived at the Gulf station,
24 two individuals identified as unknown male number one and
25 two exited the van and entered the gas station, the gas

1 station garage.

2 Q What happened after they entered the garage?

3 A After entering the garage, they came out and
4 loaded two black barrels from the garage into the mini-van,
5 the red mini-van.

6 Q I wonder if you might pick up what is placed next
7 to you in a folder marked 1, and I ask you to look at
8 Government's Exhibits 288, 288A and 288B for identification
9 and ask if you recognize those?

10 A Yes, I do.

11 Q Are those pictures you took on June 23 at the
12 Gulf station?

13 A Yes, they are.

14 Q Are they fair and accurate depictions of the two
15 men who pulled into the Gulf station in the van and who
16 loaded barrels into that van?

17 A Yes, it is.

18 MR. KHUZAMI: Your Honor, I would move
19 Government's Exhibits 288, 288A and 288B into evidence.

20 MR. JACOBS: Voir dire?

21 THE COURT: Go ahead.

22 VOIR-DIRE EXAMINATION

23 BY MR. JACOBS:

24 Q Officer, would you take a look at 288A and 288B,
25 please. Do you have them in front of you?

1 A Yes, I do.

2 Q Do you have any type of log or entry as to
3 exactly when those photos were taken? I think you said that
4 the first photo you took was 6:43, and I think you said the
5 last photograph at the first service station was 6:47. Is
6 that fair?

7 A If I could refer back to my log --

8 Q Sure, please. I have no objection.

9 MR. KHUZAMI: Your Honor, 35128A for
10 identification.

11 A 6:43 were the first sets of pictures.

12 Q Can you tell us whether 288A and 288B were the
13 first photos you took, somewhere in the middle of the photos
14 or the last photos you took at the first service station, if
15 you know, Officer?

16 A The first set of photos, which are on the entry
17 6:43 p.m., I have listed here, I believe, 12 photographs,
18 counsel. I have listed here at 6:43, 12 photographs, and
19 these are part of those 12 that I took at that time.

20 Q My question to you, sir, is, 288A and 288B, the
21 government asked you whether they were fair and accurate, is
22 that correct?

23 A Yes.

24 Q Can you tell us whether this was the first
25 photos, numbers 1 and 2, were they 11 and 12? In what

1 sequence are these photographs?

2 MR. KHUZAMI: Objection to form.

3 THE COURT: Sustained.

4 Q If you know.

5 A If I could look at this --

6 THE COURT: The objection is sustained.

7 Q You say these are fair and accurate. Are they
8 the first photographs or the last ones, if you know?

9 MR. KHUZAMI: Objection.

10 THE COURT: Sustained.

11 Q Do they depict the people leaving, coming or
12 doing something, if you know?

13 A That is 288A and B, you are questioning me?

14 Q Yes.

15 A 288A looks like unknown male number two is by the
16 passenger side and unknown male number one is walking over
17 to the driver's side. This is after the barrels were
18 already loaded into the vehicle.

19 Q So do you have any record of what sequence these
20 two photos were taken? Did you keep any record as to the
21 frames, if you know, Officer?

22 A When I take a group of photographs, if I take 12
23 photographs --

24 THE COURT: Excuse me, Officer, if you could move
25 back just a little from the mike.

1 A If I take 12 photographs, as I did in this case
2 here, I will write down 12 frames next to that time and
3 basically what I observed during that time. Once I have
4 those notes written down and I make the log, as in here,
5 they are numbered, the photographs are numbered. I won't
6 say -- it could be within a minute or two bracket, in that
7 time frame there. It's approximate time.

8 Q In the approximate time that you took the 12
9 photographs, were these the first two or the last two, or
10 how were they taken and in what sequence?

11 MR. KHUZAMI: Objection to form.

12 THE COURT: Sustained.

13 (Continued on next page)

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1 Q Well, you say they are fair and accurate. They
2 are fair and accurate as to what in connection with the
3 other photographs that you took?

4 MR. KHUZAMI: Objection.

5 THE COURT: Sustained.

6 Q Do they depict the people leaving or coming or
7 what? Fair and accurate as to what?

8 THE COURT: That's been asked and answered, and
9 that is argumentative. Anything else?

10 MR. JACOBS: Yes, I object to the photographs at
11 this time.

12 THE COURT: The objection is overruled.

13 288, 288A and 288B are received.

14 (Government Exhibits 288, 288A and 288B were
15 received in evidence)

16 MR. KHUZAMI: Your Honor, at this time I would
17 request permission for the jury to be permitted to refer to
18 these pictures which are located in the binders marked 150
19 to 299. Again they are exhibits 288, 288A and 288B.

20 THE COURT: Only those three.

21 BY MR. KHUZAMI:

22 Q Detective, starting with Government Exhibit 288,
23 can you describe which individual in that picture you
24 designated as Unidentified Male 1 and which you identified
25 as Unidentified Male 2?

1 A In 288 Unidentified Male 1 is the male that is
2 walking towards the open door of the Caravan with the
3 baseball cap on, and Unidentified Male No. 2 is standing by
4 the open door of the Caravan, and he's not wearing a hat.

5 Q Was that picture taken before or after the
6 barrels were loaded into the van?

7 A That's after the barrels were loaded into the
8 van.

9 Q Where did the barrels come from?

10 A The barrels came from that open door that
11 Unidentified Male No. 1 is right in the middle of as he's
12 walking back towards the van door.

13 MR. KHUZAMI: Your Honor, I would just ask that
14 the jury be permitted to look at Government Exhibits 288A
15 and B, and I won't question the witness further about them.

16 THE COURT: OK. I think they've already seen
17 them, so why don't you just proceed.

18 Q Detective, did there come a time when the third
19 person who you identified as Unidentified Male 3 approached
20 the van?

21 A Yes.

22 Q What happened when he did that?

23 A At approximately 6:47, after the first set of
24 photos were taken, Unknown Male No. 3 approached the van.
25 Unknown Male 1 was in the driver's seat already. Unknown

1 Male No. 2 was in the passenger's seat. Unknown Male No. 3
2 approached the van with two boxes, which he placed inside
3 the van.

4 Q I wonder if you might pick up the folder marked
5 "2," and take a look at Government Exhibits 288C, 288D and
6 288E for identification, and I'll ask you if you recognize
7 them.

8 A Yes, I do.

9 Q And did you take those on June 23?

10 A Yes, I did.

11 Q Are they fair and accurate depictions of the
12 person you referred to as Unidentified Male 3 as he was at
13 and approached the van?

14 A Yes, they are.

15 MR. KHUZAMI: Your Honor, I would move Government
16 Exhibits 288C, 288D and 288E into evidence.

17 MR. JACOBS: One question.

18 THE COURT: Go ahead.

19 VOIR DIRE EXAMINATION

20 BY MR. JACOBS:

21 Q Officer, photographs 288C and 288D for
22 identification, those are taken after the other three
23 photographs that are in evidence?

24 A Yes. They were taken after the first set.

25 Q Your testimony is that the other two individuals

1 are in the van at that time?

2 A Yes.

3 Q Were these three photographs, 288C, D, and E,
4 taken together at the same time over several seconds? Is
5 that fair?

6 A Yes.

7 MR. JACOBS: I have no objection.

8 THE COURT: All right. C, D and E are received
9 without objection. That is 288C, D, and E.

10 (Government's Exhibits 288C, D and E were
11 received in evidence)

12 MR. KHUZAMI: Your Honor, I would ask that the
13 jury be permitted to examine those three photographs.

14 THE COURT: All right.

15 MR. KHUZAMI: That is 288C, D, and E.

16 (Pause)

17 BY MR. KHUZAMI:

18 Q Detective, following the loading of the barrels
19 into the van, what did you do next?

20 A After the barrels were loaded into the van, the
21 two males were seated in the van. Unidentified Male No. 3
22 approached, loaded the boxes. After loading the boxes, the
23 van pulled out of the Gulf station and proceeded to the
24 second location, which was Vinnie's Performance Center.

25 Q OK. If you would take a look at the envelope

1 marked "3," if you would take a look at Government Exhibit
2 288I. Did you take that photograph?

3 A Yes, I did.

4 Q Is that a fair and accurate depiction of the sign
5 in front of Vinnie's gas station as it appeared on June 23?

6 A Yes, it is.

7 MR. KHUZAMI: Your Honor, I would move Government
8 Exhibit 288I into evidence.

9 THE COURT: 288I is received without objection.
10 (Government's Exhibit 288I was received in
11 evidence)

12 THE COURT: Go ahead.

13 MR. KHUZAMI: Your Honor, may I ask that the jury
14 be permitted to examine 288I.

15 THE COURT: Skip over G and H for the moment and
16 just look at I.

17 (Pause)

18 Q Detective, can you describe what happened once
19 the van arrived at Vinnie's.

20 A The van had pulled into the second service
21 station. It parked alongside the island where the pumps
22 were. Unidentified Male No. 1 exited the vehicle, and he
23 walked around to the passenger's side of the vehicle.

24 At that time, he had opened the door and he was
25 by the pump area. A male who appeared to have been a worker

1 there had approached the van.

2 Q Could you take a look at the file marked "4."

3 Take a look at Government Exhibit 288F, and I ask
4 you if you recognize that.

5 A Yes, I do.

6 Q OK. Did you take that on June 23?

7 A Yes, I did.

8 Q Is that a fair and accurate depiction of the
9 individual who got out of the van as it was pulled up at the
10 pumps?

11 A Yes.

12 MR. KHUZAMI: Your Honor, I would offer
13 Government Exhibit 288F.

14 THE COURT: 288F is received without objection.
15 Go ahead.

16 (Government Exhibit 288F was received in
17 evidence)

18 MR. KHUZAMI: I would ask that the jury be
19 permitted to examine it.

20 THE COURT: Yes.

21 (Pause)

22 Q Detective, the other photos contained in that
23 envelope, 288 M10 through M19, are those other photographs
24 of the same series when the van arrived at the station and
25 Unidentified Male No. 1 got out of the van?

1 MR. BERNSTEIN: Excuse me. What was that series?

2 MR. KHUZAMI: That is M10 through M19. They are
3 not reproduced in the binders.

4 A Yes.

5 Q You took those at the same time?

6 A Yes, I did.

7 MR. KHUZAMI: Your Honor, I would move Government
8 Exhibits 288 M10 through M19.

9 MR. BERNSTEIN: Objection. May I see them.
10 Is there an offer?

11 MR. KHUZAMI: Yes.

12 MR. BERNSTEIN: No objection.

13 THE COURT: M10 through M19 are received without
14 objection.

15 (Government's Exhibits 288 M10 through M19 were
16 received in evidence)

17 Q Detective, after the van pulls up and the
18 unidentified male got out, what did he do next?

19 A Unidentified Male No. 1?

20 Q That's correct.

21 A He was alongside the van by the pump side, and
22 there -- a male approached as I had said, he looked like a
23 worker there. After that, I saw the male with the diesel
24 fuel, the diesel fuel hose into the van to the barrels.

25 Q Can you pick up the file marked "5" and take a

1 look at Government Exhibit 288G. I ask you if you recognize
2 that.

3 A Yes, I do.

4 Q Did you take that on June 23?

5 A Yes, I did.

6 Q Is that a fair and accurate depiction of
7 Unidentified Male 1 with the diesel hose at the van?

8 A Yes.

9 MR. KHUZAMI: Your Honor, I would move Government
10 Exhibit 288G into evidence.

11 MR. BERNSTEIN: No objection.

12 THE COURT: 288G is received without objection.

13 (Government's Exhibit 288G was received in
14 evidence)

15 MR. KHUZAMI: I ask that the jury be permitted to
16 examine that picture.

17 Q Detective, Government Exhibit 288 M20 through
18 M23, are those additional photos taken in the same series as
19 288G showing the unidentified male at the van with the
20 diesel hose?

21 A Yes.

22 MR. KHUZAMI: The government would offer 288 M20
23 through M23 into evidence.

24 MR. BERNSTEIN: May I see them.

25 Objection, cumulative.

1 THE COURT: Sustained.

2 Q Detective, if you might take file No. 6, and take
3 a look at Government Exhibits 288 M24 through M25, and I ask
4 you if you recognize those.

5 A Yes, I do.

6 Q Did you take those?

7 A Yes, I did.

8 Q What do they depict?

9 A They show the red van parked alongside the diesel
10 pump with the door open.

11 MR. KHUZAMI: Your Honor, I would move Government
12 Exhibits 288 M24 and M25 into evidence.

13 MR. BERNSTEIN: May I see them.

14 No objection, your Honor.

15 THE COURT: M24 and M25 are received without
16 objection.

17 (Government's Exhibits 288 M24 and M25 for
18 identification were received in evidence)

19 Q Detective, would you pick up the folder marked
20 "7" and take a look at Government Exhibits 288 M26 and M27
21 for identification.

22 A Yes.

23 Q And did you take those on June 23?

24 A Yes, I did.

25 Q What do they depict?

1 A They depict Unidentified Male No. 1 standing by
2 the garage door of Vinnie's Auto Performance Center.

3 MR. KHUZAMI: Your Honor, I move Government
4 Exhibits 288 M26 and M27 into evidence.

5 MR. BERNSTEIN: May I see them.

6 (Pause)

7 MR. BERNSTEIN: No objection.

8 THE COURT: 288 M26 and M27 are received without
9 objection.

10 (Government's Exhibits 288 M26 and M27 were
11 received in evidence)

12 Q Would you pick up folder No. 8, Detective.
13 Take a look at Government Exhibit 288J.

14 A Yes.

15 Q Do you recognize that photo?

16 A Yes, I do.

17 Q Did you take it on June 23?

18 A Yes, I did.

19 Q What does it depict?

20 A Unidentified Male No. 1 using the pay phone in
21 front of Vinnie's Performance Auto Center.

22 MR. KHUZAMI: Your Honor, I move Government
23 Exhibit 288J into evidence.

24 MR. BERNSTEIN: No objection.

25 THE COURT: 288J is received without objection.

1 (Government's Exhibit 288J was received in
2 evidence)

3 MR. KHUZAMI: Your Honor, I would ask the jury be
4 permitted to examine that photo.

5 Q Detective, while they are doing that, if you
6 would look at Government Exhibit 288 M28 and M29, also in
7 that folder.

8 A Yes.

9 Q Are those similar photos of the individual at the
10 pay phone?

11 A Yes, they are.

12 MR. KHUZAMI: Your Honor, I move Government
13 Exhibit 288 M28 and M29 into evidence.

14 MR. BERNSTEIN: I haven't seen them, but I think
15 I will have a cumulative objection.

16 THE COURT: If that is all they show, I will
17 sustain it.

18 MR. BERNSTEIN: Yes, Judge. Cumulative.

19 THE COURT: Sustained.

20 Q If you would pick up folder 9, Detective, and
21 look at Government Exhibits 288K and L for identification.

22 A Yes.

23 Q Did you take those photos?

24 A Yes, I did.

25 Q What do they depict?

1 A They depict Unidentified Male No. 1 and No. 2
2 standing at the service station by the pumps.

3 MR. KHUZAMI: Your Honor, I would move 288K and L
4 into evidence.

5 MR. BERNSTEIN: No objection.

6 THE COURT: 288K and L are received without
7 objection.

8 MR. KHUZAMI: I ask that the jury be permitted to
9 examine them in the binders.

10 THE COURT: Go ahead.

11 Q Detective, while they're doing that if you might
12 pick up the folder marked No. 10. If you could take a look
13 at Government Exhibit 288H for identification.

14 A Yes.

15 Q Do you recognize that?

16 A Yes.

17 Q Did you take that on June 23?

18 A Yes, I did.

19 Q What does it show?

20 A It shows Unidentified Male No. 2 standing by the
21 open door of the van, of the Caravan.

22 MR. KHUZAMI: Your Honor, I would move Government
23 Exhibit 288H into evidence.

24 MR. LAVINE: No objection.

25 THE COURT: 288H is received without objection.

1 (Government's Exhibit 288H was received in
2 evidence)

3 MR. KHUZAMI: I would ask that the jury be
4 permitted to examine that photograph.

5 (Pause)

6 Q Detective, did there come a time when the van
7 departed Vinnie's Service Station?

8 A Yes.

9 Q What happened when the van departed?

10 A When the van departed the service station, it
11 traveled in a westbound direction back toward Bronx River
12 Road.

13 Once on Bronx River Road, we traveled in a
14 southbound direction, and there was several turns, U-turns
15 going back in a northbound direction. The van pulled over
16 several times to the curb, made several turns up -- at one
17 time I recall a dead-end street. At that point it seemed --
18 it had seemed to me that --

19 MR. JACOBS: Objection.

20 MR. LAVINE: Objection.

21 THE COURT: Sustained.

22 Q Detective, just indicate what it is that you saw,
23 not what it seemed.

24 A The operator of the van was operating in an
25 evasive manner.

1 MR. JACOBS: Objection.

2 THE COURT: That is stricken.

3 Q Detective, you indicated you saw the van make
4 several U-turns?

5 A Yes, sir.

6 Q In what direction was the van initially traveling
7 when it left the service station?

8 MR. BERNSTEIN: Objection. Asked and answered.

9 THE COURT: Overruled.

10 A The van traveled west, back towards the Gulf
11 station. Then it turned and it made a southbound turn on
12 Bronx River Road.

13 Once on Bronx River Road, the van pulled over to
14 the curb, I believe two or three times. It had made a
15 U-turn, went back in a northbound direction. It had made a
16 turn down a dead-end street, at which time I turned up the
17 street to proceed to follow the vehicle.

18 Once I realized it was a dead-end street, I
19 backed out of the street. Very shortly after that, the van
20 pulled out of that dead-end street and proceeded then
21 southbound on Bronx River Road once again.

22 I continued to follow it, and it made another
23 U-turn to travel in a northbound fashion on Bronx River
24 Road. Several times the speed changed from slow to fast,
25 for no apparent reason.

1 MR. JACOBS: Objection, move to strike.

2 THE COURT: That's overruled. Go ahead.

3 Q Detective, at any point during this route, did
4 the van pull over to the side of the street and stop?

5 A Yes, it did.

6 Q Can you describe what you saw.

7 THE COURT: Overruled.

8 Q You may answer.

9 A The van pulled over and would stop on the side of
10 the road, pull to the curb. I passed it by, and it
11 proceeded back into traffic once again.

12 MR. KHUZAMI: No further questions.

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. We will resume
17 tomorrow morning.

18 Have a good night.

19 (Jury not present)

20 THE COURT: You may step down.

21 (Witness excused)

22 MR. KHUZAMI: Your Honor?

23 THE COURT: Yes.

24 MR. KHUZAMI: Just for the record, there was an
25 understanding that the government was going to move all of

1 those photos in with Mr. Lavine. Apparently that hadn't
2 been discussed with Mr. Bernstein.

3 MR. LAVINE: I am pretty much the culprit, your
4 Honor.

5 THE COURT: Well, I don't know about a culprit,
6 except as far as showing them to people. I think that
7 should have been done. As far as their being cumulative, I
8 thought they were, and that is a proper objection. Whether
9 it was by prearrangement with one lawyer doesn't mean it's
10 by prearrangement with all. I don't regard anybody as
11 blameworthy unless you give me a reason, in which case I
12 would be happy --

13 MR. LAVINE: No, I can't go that far, Judge.

14 THE COURT: -- to point the finger.

15 Is there anything else that I need to do for
16 tomorrow by way of things that are up in the air, like
17 transcripts and so forth?

18 MR. JACOBS: Your Honor, could we see you at the
19 side bar for a moment.

20 (At the side bar)

21 MR. JACOBS: Your Honor, this is on a different
22 subject, on the Yousef matters. We have at least an initial
23 agreement with the government that we'll accept their offer
24 to look at the Yousef material.

25 THE COURT: And that letter this morning?

1 MR. JACOBS: That letter is reserving our rights
2 after we look at things to come back before your Honor.

3 THE COURT: That is the so-called "shoot courier
4 and destroy before opening" arrangement?

5 MR. JACOBS: Yes.

6 THE COURT: In other words, you can hardly even
7 look at them, let alone talk about him or write anything --

8 MR. JACOBS: Yes. In any event, I have discussed
9 it with all counsel, and we will agree to the offer that the
10 government has made.

11 THE COURT: Without prejudice to --

12 MR. JACOBS: Without prejudice to renew anything
13 further. I think your Honor is going to have to sign some
14 kind of order on it. That is why I thought we would alert
15 you. We had a tentative meeting Monday night to look at the
16 stuff. So we thought we would let you know ahead of time.

17 THE COURT: Do you want to propose a draft?

18 MR. JACOBS: I think the government is going to
19 do that.

20 THE COURT: Fine.

21 MR. FITZGERALD: Judge?

22 THE COURT: Yes.

23 MR. FITZGERALD: If we can just seal that portion
24 of the discussion.

25 MR. JACOBS: It doesn't matter to us. I have no

1 objection.

2 MR. FITZGERALD: To the extent it refers to what
3 statements were made in the matters that were under seal, I
4 would rather have that part of the record sealed.

5 THE COURT: The name of the person who he
6 mentioned has been uttered numerous times in open court.
7 The fact that material is being shown is of no moment, it
8 seems to me, and I don't see any point in sealing it. I
9 really don't.

10 MR. MCCARTHY: The fact that he made the
11 statements is not a publicly known fact.

12 MR. JACOBS: I didn't say anything about that. I
13 just said we're looking at some material.

14 THE COURT: They are looking at some material.

15 MR. JACOBS: That is all I said. I haven't
16 characterized it.

17 THE COURT: Mr. Jacobs has uttered that name
18 numerous times in open court, and I don't like to seal
19 things I don't have to seal.

20 MR. JACOBS: OK. Thank you, your Honor.

21 (In open court)

22 THE COURT: We're adjourned.

23 (Proceedings adjourned to Thursday, June 15, 1995
24 at 9:30 a.m.)

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

June 15, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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United States Attorney for the
Southern District of New York

BY: ANDREW McCARTHY

PATRICK FITZGERALD

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1 (Trial resumed)

2 DANNY CALEMINE, resumed.

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning.

5 THE COURT: Detective Calamine, you are still
6 under oath.

7 Are you done with direct?

8 MR. KHUZAMI: No further questions, your Honor.

9 THE COURT: Cross?

10 Mr. Bernstein, representing Amir Abdelgani.

11 CROSS-EXAMINATION

12 BY MR. BERNSTEIN:

13 Q Good morning, Detective Calamine.

14 A Good morning.

15 Q Sir, on June 23, when you were conducting
16 surveillance, were you alone at that time?

17 A Yes, I was.

18 Q And were there any other units conducting
19 surveillance in the area with you?

20 A No, there were not.

21 Q Let me ask, at what time during the day were you
22 informed to set up your surveillance?

23 A I arrived there approximately 4 p.m. I believe I
24 was notified approximately 3:30.

25 Q What type of vehicle were you in, if you were in

1 a vehicle during the surveillance?

2 A I was in a brown Plymouth Caravan.

3 Q Brown what?

4 A Caravan. A minivan.

5 Q Did you park that van somewhere across the street
6 from the gas station when you were taking photographs?

7 A Yes, I was in several positions.

8 Q "Several positions" meaning you moved your
9 vehicle several times, or you physically within the vehicle
10 moved several times?

11 A At the first station, my vehicle was in one spot.

12 Q And it was parked directly opposite the station,
13 correct?

14 A Yes. Yes, sir.

15 Q Now, were you in possession of one or more
16 cameras on that occasion?

17 A One camera.

18 Q What type of camera was that?

19 A A Canon T-70 with a 200-millimeter lens.

20 Q And that is what you call a long lens? You can
21 get a closer picture than the standard 50 millimeter lens
22 would be on that camera?

23 A Yes. As the numbers go up you get more distance,
24 I believe.

25 Q It magnifies?

1 A Yes. Yes, sir.

2 Q Do you know whether or not the vehicle got lost
3 on the way up to -- the first station was called what?

4 A It was a Gulf station.

5 Q A Gulf station.

6 Do you know whether or not the vehicle, to your
7 personal knowledge, got lost going up to the Gulf station?

8 A I'm not aware of that.

9 Q You just saw it pull into the station?

10 A Yes, Counsel.

11 Q Would it be fair to say you didn't see the
12 vehicle for more than a few seconds before it actually got
13 to the station?

14 A Yes, sir.

15 Q When the vehicle came in, was it fair to say that
16 you had a bird's-eye view of the license plate on the
17 vehicle? You could see the license plate on the rear of the
18 vehicle?

19 A When the vehicle pulled in, yes, I did see the
20 license plate.

21 Q Would it be fair to say it had New Jersey plates
22 on it?

23 A Yes, it would.

24 Q Was it what you call an OL plate?

25 A Yes, it was.

1 Q Did you know immediately when you saw that OL
2 plate that it was a livery vehicle that was pulling in at
3 that time?

4 A No, I wasn't aware of that.

5 Q You are not familiar with -- are you familiar
6 with TLC plates in New York?

7 A Yes, I am.

8 Q You are not familiar with New Jersey livery
9 plates?

10 A No, I'm not.

11 Q While you were in your vehicle, did you have the
12 means to communicate with outside police agencies?

13 A Out --

14 THE COURT: In other words, did he have a radio?

15 MR. BERNSTEIN: Yes.

16 A Yes, I did have a radio.

17 Q Did you do what we call a "run" on the plates
18 while you were in the vehicle?

19 A No, I did not. I don't believe so.

20 Q I'm sorry?

21 A No, I did not.

22 Q Now, the photographs that you took in the first
23 series of photos -- 288, 288A, 288B -- I would like to show
24 them to you for a second.

25 Those photographs you took in the first series of

1 the photos you took that day, correct?

2 A Yes, counsel.

3 Q Would it be fair to say that as you described
4 them yesterday those photos, 288 and then following
5 particularly 288A and B, are photos showing the people going
6 back into the van, particularly 288A and B.

7 A A and B, yes.

8 Q And you indicated that you took the photos
9 between 6:43 and 6:47, a total period of four minutes,
10 correct?

11 A No, approximately, approximately 6:43, maybe a
12 minute -- I started the -- I started the photographs at
13 6:43. As I clicked, whatever it took for me to click off
14 the series of photos, in that time frame.

15 Q Would it be fair to say that you never took any
16 photos of the gentlemen loading the barrels into the van?

17 A The first photograph was when they just put the
18 last one into the van.

19 Q But can you see the actual barrel in that 288?

20 A No, I cannot.

21 Q So that you took no photos that actually showed
22 them carrying the barrels out of the garage and putting them
23 in?

24 A No.

25 Q Would it be fair to say that they pulled up

1 somewhere around the 6:40 or 6:41 time period?

2 A 6:40 I indicated on my log.

3 Q They didn't pull the van into the garage area
4 itself, correct?

5 A Exactly where the van is parked now is where
6 it --

7 THE COURT: When you say "the garage," you mean
8 they didn't pull into a bay.

9 MR. BERNSTEIN: Into the physical garage or
10 garage bay.

11 A No. Just actually where it shows on the photo.
12 It never went into the bay. It parked --

13 Q And at the same time?

14 A 6:40 p.m.

15 Q In mid-June?

16 A Yes.

17 Q And that, as it is this time of the year now, was
18 broad daylight, correct?

19 A Yes.

20 Q You took no photos of the van leaving that
21 station, the Gulf station, correct?

22 A No. But I believe the second series of photos at
23 that station, as soon as I was done clicking, they were
24 backing up, and I believe in the photos, the brake lights,
25 you know, were on, the running lights were on.

1 Q Because you could see backup lights on some of
2 the photographs, correct?

3 A Yes.

4 Q But there are no photos of them leaving the
5 station?

6 A No.

7 Q And there's no photos of them on the road going
8 to the next station, correct?

9 A No.

10 Q And there are no photos of them leaving the
11 second station, correct?

12 A No.

13 Q You described various turns and U-turns and stops
14 yesterday afternoon, do you recall that testimony?

15 A Yes, I do.

16 Q There are no photographs of any of the positions
17 that the vehicle was stopped in, correct?

18 A Correct.

19 Q And there's no photographs of them making any
20 turns, correct?

21 A Correct.

22 Q Let me ask: How much film did you have with you
23 that day?

24 A I don't recall. I had a sufficient amount.

25 Q You had more film in the van when you ended the

1 day that you hadn't used, correct?

2 A Correct.

3 MR. BERNSTEIN: I have no further questions.

4 THE COURT: Anyone else?

5 MR. LAVINE: Yes, thank you. Judge.

6 THE COURT: Mr. Lavine, representing Fadil
7 Abdelgani.

8 CROSS-EXAMINATION

9 BY MR. LAVINE:

10 Q Good morning, Detective.

11 A Good morning, Counsel.

12 Q My name is Charles Lavine. I represent Fadil
13 Abdelgani. You testified about an Unknown Male No. 2, do
14 you recall?

15 A Yes, sir.

16 MR. LAVINE: Your Honor, with the court's
17 permission could I ask my client to stand up.

18 THE COURT: Yes.

19 MR. LAVINE: Fadil, will you stand up, please.

20 Q Detective, this man, is this Unknown Male No. 2?

21 A I'm not positive.

22 MR. LAVINE: If I could have just one second.

23 Q Detective, you took lots of pictures that day,
24 right, June 23?

25 A 50 pictures.

1 Q OK. You were watching the people you
2 photographed from a little after 6 o'clock until a little
3 after 7 o'clock, or something like that, is that correct?

4 A 6:40 to 7:22.

5 Q Would it be fair to say that there was an unknown
6 male you call Unknown Male No. 1 who was the driver of the
7 van?

8 A Unknown Male No. 1 was the operator of the van,
9 yes.

10 Q From when you commenced your surveillance until
11 when you finished your surveillance, did you lose sight of
12 that van?

13 A No, I did not.

14 Q Was Unknown Male No. 2 the passenger of that van?

15 A Yes, he was.

16 Q Now, I am going to show you --

17 MR. LAVINE: If I could have just one second.

18 (Pause)

19 MR. LAVINE: Your Honor, I think we have a
20 stipulation as to the introduction of Government Exhibit
21 288B1.

22 THE COURT: OK. That is received.

23 (Government's Exhibit 288B1 for identification
24 was received in evidence)

25 MR. KHUZAMI: For the record, your Honor, it's a

1 blowup of 288B.

2 THE COURT: OK.

3 MR. LAVINE: Yes.

4 May I approach the witness, Judge?

5 THE COURT: Go ahead.

6 Q Detective, I am going to hold this up --

7 THE COURT: Excuse me, Mr. Lavine --

8 MR. LAVINE: I am going to speak up, Judge. I am
9 going to yell.

10 THE COURT: As long as the translators can hear
11 you. That's what I'm concerned about.

12 MR. LAVINE: All right.

13 Q Detective, I am holding up 288B1, and this is a
14 blowup of a photo that you took on June the 23rd, isn't it?

15 A Yes, it is.

16 Q You see two men depicted in this photo?

17 A Yes, I do.

18 Q Do you see a man to your left who seems about to
19 enter the driver's side of the car?

20 A Yes, I do.

21 Q You see a man to your right to seems to be about
22 to enter the passenger's side?

23 A Yes, sir.

24 MR. LAVINE: Now, Mr. Abdelgani, will you stand
25 up?

1 Q Now, Detective, that man who is standing up over
2 there, isn't that the same man who you see in this photo
3 about to enter a passenger's side of the van?

4 A From that picture, no, I cannot tell that.

5 Q All right.

6 A I know that the two individuals that I saw pull
7 up in the van I kept sight of during the time limit that I
8 was taking the photos.

9 THE COURT: Excuse me. Now you can't be heard
10 because you are not talking into the microphone.

11 THE WITNESS: I'm sorry.

12 A The individuals that pulled up in the van,
13 Unknown Male No. 1 and Unknown Male No. 2 were the same
14 individuals that I saw during the course of the photo
15 surveillance and it never changed.

16 Q This Unknown Male No. 2, you'd never seen him
17 before, had you?

18 A Not to my knowledge.

19 MR. LAVINE: Your Honor, we have a stipulation
20 that Unknown Male No. 2, the man who was entering the
21 passenger's side of the car, the van, rather, in 288B1 and
22 the individual who was the passenger in the van was my
23 client, Fadil Abdelgani.

24 THE COURT: OK. The jury is to take that as
25 proven. Go ahead.

1 Q The Canon T-70 with the 200-millimeter lens, was
2 that your camera, your personal camera, or was that a camera
3 that you got from law enforcement?

4 A The United States government property.

5 Q And the 200-millimeter lens, Detective, was that
6 a zoom lens or a fixed lens?

7 A Fixed.

8 Q Did you have any other lenses with you that day?

9 A I don't believe so, no.

10 Q That camera, detective, did that have a date and
11 time stamp on it? Let me withdraw that.

12 Did the Canon T-70 that you got from law
13 enforcement that day to conduct the surveillance with, did
14 that come equipped, or was it equipped with a time and a
15 date stamp? Do you know what I mean by a time and a date
16 stamp?

17 A Yes. There's some cameras state the time -- not
18 the time, but the date on it, and some cameras actually
19 print the time and date on the film. This camera does not
20 print the time or date on the film.

21 Q Does it have that feature, Detective?

22 A I'm not aware of that. None of the photos I have
23 ever taken with that camera have ever stamped out the time
24 or the date.

25 Q Have you received any training on that camera,

1 Detective?

2 A I received surveillance photography training. I
3 have received some other photographic training.

4 THE COURT: He wanted to know whether you
5 received any training on that particular camera.

6 THE WITNESS: No, I did not.

7 Q Detective, where did you receive your
8 surveillance training?

9 A The Federal Bureau of Investigation.

10 Q You were originally with the New York City
11 transit police, is that correct?

12 A Yes, that is so.

13 Q Now you are a New York City detective, is that
14 correct?

15 A Yes, it is.

16 Q When did you become a New York City detective?

17 A December 1, 1993.

18 Q All right. Were you a transit detective first?

19 A Yes, I was.

20 Q When did you become a transit detective?

21 A December 1, 1993.

22 Q So the same day?

23 A I was promoted to detective while I was a member
24 of the New York City Transit Police Department.

25 Q I'm sorry, Detective. Can you speak up just a

1 bit.

2 A I was promoted on December 1, 1993 while I was a
3 member of the New York City Transit Police Department.
4 Since then there's been a merger of the departments.

5 Q So with the merger, is that when you became a New
6 York City police detective?

7 A Yes. That's correct.

8 Q When did you receive your FBI surveillance
9 training, detective?

10 A I couldn't give you the dates that I took it.

11 Q Where did you receive that training, sir?

12 A The photography surveillance school are you --

13 Q Let me withdraw the question.

14 You tell us that you received photography
15 surveillance training, is that correct?

16 A That is correct.

17 Q Have you received general surveillance training?

18 A No, I didn't.

19 Q And how long did the course on surveillance
20 photography last, sir?

21 A I believe it was a week, either four or five
22 days.

23 Q Where did that take place?

24 A That took place at the John Jay College of
25 Criminal Justice.

1 Q Right now you can't remember when that happened,
2 can you?

3 A No, I cannot give you the dates.

4 Q Do you remember if you were already a detective
5 at the time that you took that training or not?

6 A I don't believe I was a detective yet, no. I was
7 still -- I'm pretty sure I was still a police officer at the
8 time.

9 Q When you became a police officer, did you have
10 general training with the transit police?

11 A I attended the New York City Police Department
12 police academy. All three of the departments go through the
13 same academy at the time when I went.

14 Q While you attended the police academy, did you
15 take any courses in observation?

16 A In?

17 Q Observation.

18 A There was no surveillance courses taught, if
19 that's the --

20 Q Did you take any courses in police department
21 forms and how to fill them out?

22 A They teach you how to fill out police department
23 forms, yes, they do.

24 Q When you were conducting your surveillance up in
25 Yonkers on June the 23rd, were you keeping a log?

1 A I was keeping handwritten notes jotted down.

2 Q Do you remember how many sets of -- well, let me
3 withdraw that.

4 Were you writing things down as you sort of saw
5 them happening?

6 A As I was taking the photos, I was jotting them
7 down, yes.

8 Q Do you remember if you jotted down one series of
9 notes while you were conducting this on-the-spot
10 surveillance or more than one series of notes?

11 A What I had done -- I had jotted down as I was
12 taking the photos the number of frames I took and something
13 that would basically remind me of what it was I was taking
14 shots of at that time. And once everything calmed down and
15 the photos were taken, I did -- refreshed myself with the
16 old notes and give myself a clearer set of notes.

17 MR. LAVINE: All right. May I have 35128E.

18 May I approach the witness, your Honor?

19 THE COURT: Yes.

20 Q Detective, I'm showing you what's been marked
21 35128E. Will you take a look at that?

22 A Yes.

23 Q Is that your original set of contemporaneous
24 notes?

25 A Yes. It's my original set of notes.

1 Q Made at the time the events you witnessed were
2 occurring, correct?

3 A Correct.

4 Q Now, let me show you 35128C. Take a look at
5 this.

6 A Yes.

7 Q Yes, what?

8 A It's the second set I did from the first set.

9 Q When did you do the second set?

10 A After the first set.

11 Q Well, the first set you're doing as the events
12 are unfolding. How long after you did the first set did you
13 prepare the second set?

14 A I believe right after the end of the
15 surveillance.

16 Q Do you think it might have been the evening hours
17 of June the 23rd when you prepared 35128C, the second set of
18 notes?

19 A Yes.

20 Q Do you remember where you did that?

21 A From what I recall it was in the van.

22 Q Where was the van at that time?

23 A I don't recall what street I was on, but I
24 believe I was in the van.

25 MR. LAVINE: If I could have just one second,

1 Judge to get some photos together.

2 Q Now, Detective, let me show you -- if I can
3 approach -- Government Exhibits 288, 288A.

4 Before I do that, when the van first pulled into
5 the Gulf station, did you take any pictures of it?

6 A As it was pulling into the Gulf station?

7 Q Yes.

8 A No, I didn't.

9 Q Did you take any pictures of it before it came to
10 a stop at the point that's depicted in 288B1?

11 Do you see this?

12 A Is that B-1?

13 Q Yes, it is. I'm sorry.

14 A No, that's where it was positioned.

15 Q How long had the van been in the Gulf station
16 before you first took photos of it?

17 A Three minutes, as I indicated on the log.

18 Q Can you show us whether either 288 -- these are
19 in evidence -- 288, 288A, 288B or 288C, which of them was
20 taken first?

21 MR. LAVINE: May I approach?

22 THE COURT: Yes.

23 A If I could refer to the original set of prints --

24 Q Please.

25 A -- I will be able to tell you exactly which frame

1 was taken at which time.

2 Q I am now --

3 MR. KHUZAMI: Your Honor, if we can just mark for
4 identification two exhibits, 288X1, a manila folder
5 containing original prints, and 288X2, also a manila folder
6 containing original prints for identification.

7 THE COURT: Go ahead.

8 Q Detective, please take a look at these photos and
9 tell us which is the first photo that you took.

10 A This was the first photograph I took that day.

11 THE COURT: "This" being? Mr. Lavine?

12 MR. LAVINE: Yes, your Honor.

13 THE COURT: If you want him simply, with
14 reference to the 288 series that's already in evidence to
15 indicate which is the first, you can do that. The question
16 as posed now is ambiguous.

17 MR. LAVINE: I am going to try to clear it up,
18 Judge, but this is one that is not in evidence as of the
19 present time.

20 THE COURT: Do you want to introduce it?

21 MR. LAVINE: Yes, your Honor. I would like to
22 introduce them cumulatively under Government Exhibit 288X2.
23 Is there a problem with that?

24 MR. KHUZAMI: No objection.

25 THE COURT: All right.

1 MR. LAVINE: Thank you.

2 THE COURT: The manila folder marked 288X2 is
3 received.

4 (Government Exhibit 288X2 was received in
5 evidence)

6 Q Detective, are you putting those in order?

7 A Yes.

8 Q All right. If you could do that, I would
9 appreciate that.

10 (Pause)

11 (Continued on next page)

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1 Q Detective, are those in order?

2 A Yes, they are.

3 Q And they begin with the first picture you took,
4 being marked on the back 0A/1, being part of Exhibit 288X2,
5 correct?

6 A Correct.

7 Q Detective, doesn't this show Fadil Abdelgani
8 about to enter the passenger seat, passenger side of the
9 car?

10 A It shows unknown male number two by the sliding
11 door. The passenger seat is up farther than where he was.

12 Q I am sorry, you are right. Does it also show
13 another individual walking?

14 A Unknown male number one.

15 Q Unknown male number one being the driver.

16 A The driver.

17 Q As you continue through this series of photos, do
18 you see unknown male two, the passenger, getting into the
19 car and unknown male number one, the driver, also getting
20 into the car on the driver's side?

21 A Yes.

22 Q Is it fair to say that both men start out on the
23 passenger side of the car?

24 A Yes.

25 Q Who gets into the car first?

1 A Pretty much a draw, counselor.

2 Q All right. Before unknown male number two, the
3 passenger, gets into this van, does he do anything?

4 A Before unknown male number two got into the van
5 does he do anything?

6 Q Yes.

7 MR. KHUZAMI: Objection to form. According to
8 the pictures or to what the witness saw?

9 THE COURT: Sustained.

10 Q According to the pictures, before unknown male --
11 according to the pictures and according -- did you see what
12 you were taking pictures of? Were you looking through the
13 lens?

14 A I saw what I was taking pictures of, of course.

15 Q It's a 35 millimeter camera, isn't it?

16 A Yes.

17 Q So you are actually looking right through the
18 lens that takes the picture itself, aren't you?

19 A No, I am not. Sometimes I'm off the lens. Once
20 the camera is focused, at that point I don't necessarily
21 have to stare right through the lens to watch. I can look
22 through my naked eye or hold it and pick it up to get a
23 closer view.

24 Q So whether you looked through the camera or
25 looked through the naked eye, wouldn't it be fair to say

1 that you took pictures of what you saw?

2 A Of course.

3 Q Let me just direct your attention over here to
4 what is marked 2A/3 of Exhibit 288X2, and let me ask you to
5 take a look at that and tell us, before unknown male
6 passenger number two, Fadil Abdelgani, gets into the van,
7 does he do anything?

8 MR. KHUZAMI: Objection.

9 MR. LAVINE: I will withdraw it.

10 Q Do you see him making any motions?

11 A Yes, I do.

12 Q Can you describe that motion?

13 A I believe right after this he waved, as in like a
14 wave goodbye or as -- he held his hand up. I don't know
15 whether it was goodbye or -- I couldn't hear -- or anything.

16 Q But he is standing out there, outside the van,
17 right?

18 A Correct.

19 Q Broad daylight?

20 A Correct.

21 Q And as a matter of fact, in frame number 3A/4 of
22 288X2, don't you see Fadil Abdelgani standing up with his
23 arm raised in the air as if to signify what you just
24 testified to?

25 A I see him with his hand up in the air, yes, I do.

1 Q Then he gets into the van, is that correct?

2 A Yes, after this he did get into the van.

3 Q Did you see Fadil Abdelgani eating anything at
4 the Gulf station ?

5 A Not that I recall.

6 Q Are you sure that there were two passengers in
7 the van that you photographed as it entered the Gulf
8 station?

9 THE COURT: You mean two passengers or two --

10 MR. LAVINE: I am sorry, two occupants. Thank
11 you.

12 A Yes, two occupants were in the van.

13 Q Again, you have no photos of that, have you?

14 A No, I don't.

15 Q Are you sure it was two and not three barrels
16 that were loaded into the van?

17 A I only observed two barrels being loaded into the
18 van.

19 Q And you have no photos of those, do you?

20 A No, I do not.

21 Q When you took your course on photo surveillance,
22 did you learn that it is important to photo what might be
23 important from an evidence point of view?

24 A When you are in a van like I was in, and you move
25 in the van to get a closer perspective, as you move you have

1 to focus the lens, and it wouldn't pay for me to take a
2 picture of something that was --

3 THE COURT: That wasn't his question. His
4 question was simply whether your training included training
5 in photographing what you think might be important from an
6 evidentiary standpoint.

7 A Yes, of course, that was my attempt.

8 Q You had a Canon T70, right?

9 A Yes.

10 Q You didn't have a Brownie, did you? Did you have
11 a Kodak Brownie?

12 THE COURT: Sustained and stricken. If you have
13 questions, ask them. If you have arguments, that comes at
14 the end of a trial.

15 MR. LAVINE: Yes, your Honor.

16 Q That camera had an automatic lens on it, didn't
17 it?

18 A Automatic lens, no.

19 Q It doesn't have an automatic feature?

20 A It has automatic to the aperture speed, it does
21 not have automatic to the focus.

22 Q This camera with the 200 millimeter lens -- let
23 me withdraw that.

24 You just mentioned that sometimes it is hard to
25 take pictures as you get a little closer or farther away

1 from the subject of your photograph, didn't you?

2 A I didn't say harder to take the picture but you
3 want to get it fully in focus, otherwise the picture could
4 come out blurry.

5 Q As you are sitting in that van, how far are you
6 from the van that you are taking pictures of?

7 A I am on Yonkers Avenue, I am parked on Yonkers
8 Avenue.

9 Q How far away in terms of feet?

10 A Approximately 75 feet or 100 feet maybe.

11 Q As you saw the van come in, did you line it up in
12 your camera?

13 A Once the van pulled into the station, then I
14 picked up the camera and I went to focus.

15 Q When you focus a camera, what feature of the
16 camera do you utilize to focus it?

17 A The lens itself.

18 Q Do you focus it by adjusting the distance between
19 where you are and where the subject of your photograph is?

20 A Do I focus it to adjust the distance?

21 Q Yes.

22 THE COURT: Do you mean the question as you asked
23 it?

24 MR. LAVINE: Maybe I ought to withdraw it and
25 make it a little bit clearer.

1 Q When you focus a camera with a telephoto lens,
2 isn't it a fact that you what you are adjusting as you focus
3 is distance?

4 THE COURT: Sustained.

5 Q For whatever reason, you have no photos of the
6 van entering.

7 A Correct.

8 Q You have no photos of the barrels being loaded
9 onto the van.

10 A Correct.

11 Q After the van left the Gulf station , it
12 proceeded to Vinnie's gas station, did it not?

13 A Correct.

14 Q Which roads did it use?

15 A It went down Yonkers Avenue, which turns into
16 Mount Vernon.

17 Q How long did it take that van to get from the
18 first station to the second station?

19 A Two minutes.

20 Q During the course of that two-minute drive, did
21 that van make any U turns?

22 A No, it went directly to the location.

23 Q During the course of that two-minute drive, did
24 that van square any blocks?

25 A It went directly to the location.

1 Q Did it go down any one-way streets, Detective?

2 A It went directly to the location.

3 Q Detective, back at the first gas station, were
4 the barrels loaded into the van while the van was outside
5 the service portion of the gas station?

6 A Yes, it was.

7 Q Did the gas station itself have any garage doors?

8 A The door that is opened in that photograph that
9 you are holding up right now --

10 Q Yes.

11 A -- is where the barrels came out of.

12 Q Would it be fair to say that is a big garage door
13 that would accommodate a vehicle?

14 A No, it doesn't accommodate a vehicle. It's a
15 door, swinging door type thing.

16 Q What about the door that is immediately to the
17 left of this swinging door? Is that a garage door?

18 A It appears to be.

19 Q Is that a garage door that you would normally --
20 let me withdraw that.

21 That's a garage door that accommodates a vehicle,
22 right?

23 A Appears to be.

24 Q What sort of neighborhood is this station in?

25 A It's in Yonkers.

1 Q Is this a residential neighborhood?

2 A The street that this is on, Bronx River Road,
3 it's sort of like a service road to a highway.

4 Q Is it a commercial area?

5 A I don't believe so. There is some kind of a big
6 garage next to this, or actually the rear of this location
7 here, but Yonkers Avenue has just several stores on it, and
8 everything else seems to be residential.

9 Q Let me just direct your attention back to the
10 Gulf station before the car left, the van left and went to
11 Vinnie's. Unknown male number two is the fellow who was in
12 the picture with his hand up in the ear as if to wave
13 goodbye to someone?

14 A His hand is up in the air. I don't know what he
15 was doing.

16 Q At that first gas station, he gets out of the
17 van, doesn't he?

18 A At the first gas station, yes, he comes out of
19 the van.

20 Q He doesn't stay in the van?

21 A No, he gets out of the van.

22 Q Does he walk around the area?

23 A As soon as the van pulled into the station, they
24 went into the office. Then they came right out, came out of
25 this door carrying the barrels.

1 Q Did this unknown male number two ever walk over
2 to any cars and look inside them, that were at that gas
3 station?

4 A Not that I am aware of.

5 Q Did you ever see him try to hide his face?

6 A No, I did not.

7 Q Did you ever see him try try to hide in the van?

8 A No, I did not.

9 Q When the van gets to the second station, to
10 Vinnie's performance, does unknown male number two remain in
11 the van or does he leave the van?

12 A At one point he is out of the van.

13 Q Is he out of the van standing near the pumps
14 while someone else is pumping the diesel fuel?

15 A He is standing by the pumps. I don't recall if
16 anyone was actually pumping the fuel at that time.

17 Q Did you ever see him hiding in the van at the
18 second station?

19 A At the second station, I saw him in the van while
20 unknown male number two, he was in the passenger seat but
21 turned around, and he was watching unknown male number one
22 with the hose over the barrels, and it seemed like they
23 were, you know, conversing or something.

24 Q Did you ever see unknown male number two walk
25 around the second gas station and look in any cars?

1 A No, I did not.

2 Q Did you ever see him walk to the edge of the gas
3 station and look up and down the blocks?

4 A No, I did not.

5 Q As a matter of fact, do you not see him outside
6 the van at the time that the driver is making a telephone
7 call, or shortly thereafter?

8 A I recall him being out of the van. I don't
9 recall if the driver was making a call at the same time he
10 was out of the van.

11 MR. LAVINE: Can I approach the witness again one
12 more time, Judge?

13 THE COURT: Yes.

14 MR. LAVINE: Your Honor, we have a stipulation
15 which calls for the introduction of cumulative exhibit,
16 which would be Government's Exhibit 288X1.

17 MR. MCCARTHY: Mr. Lavine, the government agrees
18 to that.

19 MR. LAVINE: Thank you.

20 THE COURT: That is received on stipulation.

21 (Government's Exhibit 288X1 was received in
22 evidence)

23 Q Will you take a look at the photos that are part
24 of Government's Exhibit 288X1.

25 Do these photos depict the events which occurred

1 at Vinnie's gas station on June 23 as you photographed them?

2 A They depict some of the events that happened.

3 Q Do any of those photos show unknown male number
4 two, the passenger, Fadil Abdelgani, outside the have an?

5 A Yes, they do.

6 Q Can you identify which ones do that?

7 A Frame number 13A/14 of roll number 6109.

8 Q Detective, you may just want to identify those by
9 the frame number. I think that will be sufficient.

10 A Frames 13A/14.

11 Q Before you go too much farther, what does that
12 show?

13 A That shows unknown male number one and unknown
14 male number two standing in the station outside of the
15 vehicle. Number two shows the same thing -- excuse me.
16 Frame 14A/15 shows the same thing.

17 Q Thank you.

18 A 15A/16 shows the same. 16A/17 shows the same.
19 17A/18 shows the same. 18A/19 shows the same. 19A/20 shows
20 unknown male number two standing alone at this point, in the
21 station.

22 Q Out in the broad daylight?

23 A At whatever time it was, 7 p.m.

24 Q It was still light out then, wasn't it?

25 A Yes, it was.

1 20A/21 shows unknown male number two standing
2 next to the open door of the mini-van, at the pumps.

3 Q Does that depict him just standing there with his
4 arms folded?

5 A Correct, counselor.

6 21A/22 shows the same. 22A/23 shows the same.
7 23A/24 shows a vehicle coming down Mount Vernon Avenue,
8 blocking my picture. And 24A shows unknown male number two
9 standing by the open door of the mini-van, by the pumps.

10 Q To your knowledge, was there anything that
11 prevented that man from sitting inside the van while he was
12 being photographed by you in this series of photos?

13 A Not to my knowledge.

14 Q So then is it after the van leaves Vinnie's that
15 it starts to engage in this process of making U turns and
16 pulling to the side of the road, going faster and slower?

17 A Yes.

18 Q And you are, are you not, as this is going on,
19 making some notes, isn't that correct?

20 A I was driving. I couldn't write while I was
21 driving, at that time.

22 Q Did there come a time as this was happening that
23 you made the notes that are reflected in 35128-E? Can I
24 approach? Because you won't find them there.

25 A 7:22 is the time on 35128-E and that's when I had

1 broken off the surveillance. I jotted down a time and I
2 quickly jotted down where I last observed the vehicle, the
3 direction of flight.

4 MR. LAVINE: Move to strike the comment "flight."

5 THE COURT: That is stricken, just the direction
6 they were driving. Go ahead.

7 Q Do those notes say anything about a U turn,
8 Detective?

9 A No, they don't.

10 Q Detective, do those notes contain any information
11 about this case?

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 MR. LAVINE: Let me withdraw that.

15 Q Detective, do those notes contain any information
16 that reflects what it was that you were investigating that
17 day?

18 MR. KHUZAMI: Objection.

19 THE COURT: Sustained.

20 MR. LAVINE: Let me withdraw that.

21 Q Do those notes reflect a license plate number?

22 A Yes, they do.

23 Q Do they reflect a description of the van that you
24 were watching?

25 A Yes, it does.

1 Q Does it reflect the location where you saw the
2 have an the first time?

3 A No, it doesn't.

4 Q Do your notes contain any references to any
5 streets?

6 A 6:55, I put a line to 9, which means nine frames,
7 and then I put another line, says "station," "Bond" and
8 "Vern." These are just abbreviations for me to be taking
9 the photos and watching the individuals --

10 THE COURT: He asked you simply whether they
11 contained any references to streets. Do they?

12 A Yes, it does.

13 Q Do they also contain some references to what the
14 people you were watching were wearing?

15 A Yes, it does.

16 Q It describes the shirts, caps, shoes, things like
17 that?

18 A Yes, it does.

19 Q When you entered that description, did you think
20 that was important?

21 A I wrote it down because that was the description
22 of the individuals I was photographing.

23 Q Detective, wouldn't it be fair to say that of
24 what you wrote down that is reflected in 35128-E, isn't it,
25 Detective, fair to say that there is nothing in there that

1 is not important?

2 A Correct.

3 Q Detective, is there a reference in there to any U
4 turns?

5 A No, there isn't.

6 Q Detective, you testified yesterday about a
7 U-turn, didn't you?

8 A Yes, I did.

9 Q As a matter of fact, at one point you described
10 it as being evasive, didn't you?

11 A No, I did.

12 Q Is that in your report?

13 A Not in the first set, no.

14 Q No. It's going to show up about a week later,
15 though, isn't it?

16 MR. KHUZAMI: Objection.

17 THE COURT: Sustained.

18 Q Detective, let's go back to Government's Exhibit
19 35128-E, one of two reports which you prepared just as these
20 events --

21 THE COURT: That is not a report, it is notes.

22 MR. LAVINE: It is withdrawn. It is withdrawn.

23 Q With reference only to 35128-E, your notes, which
24 you stopped taking at 7:22 p.m. when you lost sight of that
25 van at Bronx River Road, with respect to those notes, didn't

1 you think it was important to put down that the car had made
2 U turns?

3 A I was driving while the car was making U turns.
4 I was following the vehicle.

5 Q Detective, when you wrote down all this
6 information, were you driving?

7 A All this information?

8 Q Yes.

9 A No.

10 Q Did you write down any of it while you were
11 driving?

12 A I believe possibly I wrote down 7:10 left
13 Vinnie's.

14 Q So you were able to write some things down as you
15 were driving, weren't you?

16 A I believe that's what I wrote when I was driving.

17 Q Whether you were driving or whether you weren't
18 driving, when you wrote whatever you wrote, did you include
19 any references to U turns?

20 A No, I didn't.

21 THE COURT: That's been asked and answered. It
22 is stricken.

23 Q Did you include any references to speed changes?

24 A No, I did not.

25 Q Did you include any references to going down

1 one-way streets?

2 A No, I did not.

3 Q There comes a time when you are no longer
4 driving, is that correct?

5 A Correct.

6 Q That is when you prepare Government Exhibit
7 35128-C, is that correct?

8 A Yes, sometimes after that time, 7:22.

9 Q It is fair to say that at the time that you
10 prepare your notes reflected in 35128-C, you are at a place
11 where you are able to write and you can actually do your
12 penmanship a little bit better, can you not, than you were
13 able to when you made your first set of notes?

14 A Of course.

15 Q When you prepared your second set of notes later
16 in the evening of June 23, did you include any information
17 which was not important?

18 A No, I don't believe so.

19 Q When you prepared those notes that are reflected
20 in 35128C, Detective, did you make any reference to evasive
21 U turns?

22 A I didn't use the word evasive, no.

23 Q Did you make any reference to speed changes?

24 A Stopping and going, or pulling to the curb.

25 Q But that is not what you meant by speed changes

1 when you described them yesterday, is it, Detective?

2 A No, I didn't.

3 Q What you described to us yesterday as speed
4 changes is in nowhere or no way reflected in the report that
5 you made literally minutes after these events occurred.

6 A No.

7 Q Detective, when that van, as you tell us, went
8 down that one-way street and had nowhere to go, did you take
9 that to be a sign of someone who was driving evasively?

10 A Being involved in a lot of vehicle surveillances,
11 it has happened in the past where someone has led me down a
12 one-way street where I had nowhere to turn and was
13 ultimately observed.

14 Q Did you ever get a chance to arrest anybody or
15 stop any cars as they tried to evade you by going down a
16 one-way street, Detective?

17 A In my veer?

18 Q Whatever.

19 A I have arrested people, yes.

20 Q And the one-way street business is reflected no
21 place, is it?

22 A I use the word blocks, I don't use street.

23 MR. LAVINE: Detective, thank you. I have no
24 further questions.

25 I do have one matter that I would like to take

1 up -- I would like to introduce Government's Exhibits
2 35128-E and 35128-C.

3 MR. KHUZAMI: No objection.

4 THE COURT: Those are received without objection.

5 (Government's Exhibits 35128-C and 35128-E were
6 received in evidence)

7 MR. LAVINE: Your Honor, at some point
8 convenient, or if it is convenient now I would ask that the
9 photos admitted pursuant to stipulation be published to the
10 jury.

11 THE COURT: The packages of photographs?

12 MR. LAVINE: There are a lot of them, so whenever
13 you think it wise.

14 THE COURT: No, not now.

15 MR. LAVINE: Thank you.

16 THE COURT: Anything else? Mr. Jacobs?

17 MS. AMSTERDAM: Your Honor, I have a brief cross.

18 THE COURT: I am sorry. Ms. Amsterdam,
19 representing Mr. Khallafalla.

20 MS. AMSTERDAM: I apologize, your Honor.

21 CROSS-EXAMINATION

22 BY MS. AMSTERDAM:

23 Q Good morning, sir. How long was your entire
24 surveillance that day, on June 23, 1993, approximately?

25 A My entire surveillance in Yonkers?

1 Q In Yonkers, sir.

2 A Approximately three hours and 22 minutes.

3 Q I am sorry, sir.

4 A Approximately three hours and 22 minutes.

5 Q During that entire period of time I would be
6 correct, would I not, in saying that you never saw my client
7 Fares Khallafalla?

8 A Correct.

9 MS. AMSTERDAM: Thank you, sir.

10 THE COURT: Mr. Jacobs.

11 CROSS-EXAMINATION

12 BY MR. JACOBS:

13 Q Detective, back in June of 1993, you were
14 assigned to an FBI surveillance squad, is that fair to say?

15 A Yes, sir.

16 Q A squad designated SO9, correct?

17 A Correct, sir.

18 Q Is that a squad assigned to the Joint Terrorist
19 Task Force or is that assigned to the FBI New York office
20 generally?

21 A It is assigned to the Joint Terrorist Task Force.

22 Q How long had you been assigned to the
23 surveillance unit of the task force?

24 A Prior to the date of these photos?

25 Q Yes. This surveillance is on June 23. How long

1 had you been working for this surveillance unit?

2 A Approximately six months.

3 Q Am I correct that in connection with this
4 investigation that is on trial here, you had been on
5 surveillance on numerous other dates, is that correct?

6 A Correct.

7 Q So this was a routine procedure for you to go out
8 and perform surveillance and take photographs, is that fair
9 to say?

10 A Correct.

11 Q On June 23, I assume that before you left your
12 office you had some communication with the other members of
13 the task force about what you would be doing, is that
14 correct?

15 A I was notified, yes, to go to this location.

16 Q I am not interested in where you were notified,
17 but you spoke to somebody in the task force, correct, on
18 that day?

19 A Yes, at work I speak to people in regards to.

20 Q Do you remember who you spoke to, who gave you
21 your assignment that day?

22 A No, I don't.

23 Q You were told to be to a particular location,
24 correct?

25 A Correct.

1 Q The Gulf station up in Yonkers, correct?

2 A Correct.

3 Q Were you told that this particular van would be
4 coming in?

5 A I was told to look for a red mini-van with Jersey
6 license plates.

7 Q Would I be correct in stating that you also were
8 told that this van would get some barrels and do something
9 with the barrels, correct?

10 A No, I don't recall that. I was told to go to
11 that location and look for that van.

12 Q Would I be correct in stating that when you saw
13 the van at about, I think 6:40, that triggered you to start
14 taking your photographs and doing the work that you have
15 testified to both on direct and cross, correct?

16 A Correct.

17 Q And your assignment that day concerned, I assume,
18 taking pictures of the van, the people who had some
19 connection with the van, and to follow that van for some
20 period of time, correct?

21 A Correct.

22 Q And I assume you were told under no circumstances
23 to arrest anybody, correct, without at least something to
24 anybody or other officers, is that fair to say? Do you
25 understand what I am saying?

1 A I don't think there came a point in time when I
2 was intending to arrest any individual.

3 Q The Gulf station in Yonkers, that is not the
4 first time you were there, is it?

5 A No, it is not.

6 Q How many times had you been there, I assume in
7 your official capacity, not to get gas, but how many times
8 had you been there over the last six months before that?

9 A From what I recall, one time before.

10 Q That was on June 4, 1993, correct?

11 A Correct.

12 Q At that time you had a similar assignment to take
13 photographs at the station, correct?

14 MR. KHUZAMI: Objection, scope.

15 MR. JACOBS: I withdraw similar.

16 Q You had an assignment to take photographs,
17 correct?

18 MR. KHUZAMI: Objection, scope.

19 THE COURT: Sustained.

20 Q You saw somebody on June 23 that you identified
21 as unknown male number three, correct?

22 A Correct.

23 MR. JACOBS: With the court's permission,
24 Mohammed, stand up.

25 Q That's the gentleman that you saw, correct?

1 A Correct.

2 Q And you had seen Mohammed on June 4, hadn't you
3 sir?

4 A Correct, sir.

5 Q And you had taken photographs of him on June 4,
6 correct?

7 A No, I did not.

8 Q Did not?

9 A Correct.

10 Q Sure about that?

11 A Positive. To the best of my knowledge I did not
12 photographs of the gentleman on June 4.

13 Q Were photographs taken on June 4?

14 A I believe so.

15 Q Were you with people who were taking photographs?

16 A In my capacity as a surveillance person, during
17 the course of the day you may work with three people, you
18 may be alone, you may work with as much as nine people, ten
19 people a day. During the course of that day, different
20 people take photographs if they have the opportunity. You
21 may have a better opportunity to take a photograph than I
22 do, so you will take it.

23 Q In any event, you had seen my client Mr. Saleh
24 Ali on June 23 and you saw him on June 4, correct?

25 A Correct.

1 Q Both times that you had seen him, that was at the
2 Gulf station, correct?

3 A Correct.

4 Q Would I be correct in stating that on June 23 in
5 the pictures that are in evidence, he is wearing work
6 clothes, correct?

7 A Correct.

8 Q Am I correct that he had a name tag on his shirt
9 over his pocket, correct?

10 A I couldn't tell from where I was.

11 Q And you knew he drove a 4-door Volvo, blue
12 license plate number Y2N-251, correct?

13 A Correct.

14 Q And you had seen him in that vehicle on June 4,
15 correct?

16 A Correct.

17 Q You had seen him in the vehicle with somebody
18 named Siddig Ali on June 4, 1993, correct?

19 A Correct.

20 Q You didn't see Siddig Ali on June 23, did you,
21 sir?

22 A No, I did not.

23 Q That is an individual you knew by name on June
24 23, correct?

25 A Correct.

1 Q And he was a target of this investigation, is
2 that fair to say?

3 A Correct.

4 Q When you saw my client that day, June 23, for the
5 first time, do you remember what time that was?

6 A I don't recall a time, but I had saw him earlier
7 that day before these shots were taken.

8 Q He had pulled into the gas station, driving that
9 vehicle, correct?

10 A I had noticed the vehicle in the station and for
11 a period of time it wasn't there. Just prior to the van
12 pulling in, the vehicle had pulled back into the station
13 with unknown male number three.

14 Q Unknown male number three is my client, correct?

15 A I am aware of that.

16 Q You can refer to him any way you want.

17 Did you ever see Mohammed Saleh Ali, unknown male
18 number three, talking to these two other fellows, one and
19 two?

20 A I saw them together by the station door, and
21 after the males had loaded the barrels into the van and got
22 back into the van, I saw the gentleman carry two boxes that
23 appeared to be 6 inches in depth and maybe 2 feet by 2 feet,
24 to the van, place them inside the van.

25 (Continued on next page)

1 Q That's my client, right? He took two boxes out
2 of the station, put them in the van?

3 A Correct.

4 Q You don't know what was in them, do you?

5 A No.

6 Q By the way, I will jump ahead a bit. Did you see
7 those boxes removed at Vinnie's?

8 A No, I didn't see nothing removed at Vinnie's.

9 Q So as far as you know, when the van left Vinnie's
10 they were in there, to your knowledge, or you don't know?

11 A To my knowledge, I never saw anyone unload
12 anything at Vinnie's.

13 Q So I'm saying to you, your knowledge is those two
14 boxes --

15 THE COURT: You've established he saw them go in,
16 and he didn't see them come out. Let's go.

17 Q You didn't have the vehicle at Vinnie's under
18 observation at all times, is that correct?

19 A I always had the vehicle in my eye, in my view,
20 yes, I did.

21 Q You did not see anybody remove them?

22 A I did not.

23 Q You didn't see a worker at Vinnie's remove the
24 boxes?

25 A No, I did not.

1 Q When you made these observations between 6:40 and
2 6:51, the gas station was open for business to the public,
3 am I correct?

4 A Yes, it was.

5 Q And when you arrived at Vinnie's and you made
6 your observations at Vinnie's, Vinnie's was open to the
7 public?

8 A Yes, it was.

9 Q Would I be correct in stating that at both
10 stations cars were coming in and out doing business,
11 correct?

12 A Cars did come in and out, but not as frequent
13 as -- not frequently, you know, not on a continuous basis.

14 Q Did cars come in and get gas at both stations
15 during your observations? Yes or no.

16 A I saw vehicles at the pumps, yes, I did.

17 Q Am I correct that my client did not enter the
18 vehicle and go into Vinnie's, Unidentified Male No. 3?

19 A Correct.

20 MR. JACOBS: Ms. Schwartz, can I have the next
21 number for identification.

22 THE DEPUTY CLERK: T.

23 MR. JACOBS: May I approach, your Honor.

24 THE COURT: Yes.

25 Q Detective, showing you that photograph for

1 identification, T, have you ever seen that photograph
2 before?

3 A Not to my knowledge.

4 Q Am I correct that it depicts my client?

5 A Yes.

6 Q Is that the way he appeared to look to you on
7 June 4, 1993?

8 A Yes.

9 Q Am I correct that that is the way he appeared to
10 look to you on June 23 as well? Correct?

11 A I don't recall the name tag.

12 Q Basically the same type of shirt and pants?

13 A Work outfit, yeah, work clothes.

14 Q When you saw him on June 4, was he pumping gas?

15 A When I observed him on June 4, he was operating
16 the blue Volvo.

17 Q Did you see him pump any gas on June 23?

18 A No, I did not.

19 THE COURT: I am told that Exhibit should be U
20 rather than T.

21 MR. JACOBS: OK. Thank you.

22 THE COURT: We will call it U.

23 MR. JACOBS: Can I just have one moment.

24 (Pause)

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

1 THE COURT: Anything else? Any other cross?

2 Anything else, Mr. Khuzami?

3 MR. KHUZAMI: Just briefly, your Honor.

4 MR. JACOBS: May I just get my photo.

5 Just so the record is clear, I did not offer that
6 photograph into evidence.

7 MR. KHUZAMI: Your Honor, the government offers
8 into evidence Government Exhibit 35128A, photo surveillance
9 log of Detective Calemene.

10 MR. LAVINE: I have an objection to that.

11 THE COURT: I will hear you at the side.

12 MR. JACOBS: Which number? A?

13 MR. KHUZAMI: A.

14 (Continued on next page)

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1 (At the side bar)

2 MR. LAVINE: Judge, I think -- I'm sorry. Go
3 ahead.

4 MR. KHUZAMI: The government offers this as a
5 surveillance log. Mr. Lavine questioned him repeatedly
6 about why there were omissions in the notes that he took
7 both during the surveillance and immediately afterwards.

8 This exhibit, while recorded on the 29th, a few
9 days later, speaks to the evasive driving of the van after
10 leaving the gas station. Mr. Lavine opened the door to it.

11 MR. LAVINE: I oppose it because it wasn't made
12 contemporaneously with the events in question. It was
13 prepared six days later at a time when he had a motive to
14 falsify after -- it was prepared after the arrests of all
15 the defendants were made.

16 (Continued on next page)

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1 MR. KHUZAMI: There is no evidence of any motive
2 to falsify. If Mr. Lavine would like to recross the witness
3 on the exhibit, that's fine. But I think it comes in.

4 MR. LAVINE: I'll do that -- no, I'm not going to
5 do that.

6 THE COURT: Which is it?

7 MR. LAVINE: I stand by my objection.

8 THE COURT: All right. I will let you examine
9 him about whether he had the notations in his log. I will
10 not permit the log to come in.

11 MR. LAVINE: Thank you.

12 (Continued on next page)

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1 (In open court)

2 REDIRECT EXAMINATION

3 BY MR. KHUZAMI:

4 Q Detective Calemine, do you recall that following
5 your surveillance on June 23, approximately six days later,
6 you created a photo surveillance log of the events of that
7 day?

8 A Yes.

9 Q At the time that you created that log, did you
10 make any reference to the evasive driving techniques of the
11 van following its departure from Vinnie's gas station?

12 MR. LAVINE: Objection.

13 THE COURT: Sustained as to form.

14 Q Did you make any references in that log to how
15 the van was operated following its departure from Vinnie's
16 gas station?

17 A Yes, I did.

18 Q Do you recall what you wrote in the log at that
19 time?

20 A If I could refresh my memory with the paper --

21 Q Do you have the item in front of you?

22 A No, I do not.

23 MR. KHUZAMI: Your Honor, may I approach?

24 THE COURT: Yes.

25 Q I show you what's been marked for identification

1 as 35128A. I ask you to take a look at the last page.

2 A At 7:22 p.m. I make an entry, and the entry --

3 THE COURT: He didn't ask you to read it aloud.

4 He just asked you to look at it.

5 (Pause)

6 A Yes.

7 Q Having read that, does that refresh your
8 recollection as to what notations you made regarding the
9 operation of the van after it left the gas station?

10 A Yes, it does.

11 Q Without looking at the log, what do you recall
12 writing?

13 A What do I recall writing? I recall writing
14 different changes in direction of travel that the van made.
15 I recall the van pulling to the curb, you know, in the
16 middle of a block, and then pulling away from the curb,
17 making U turns and turning off Bronx River Parkway, or Bronx
18 River Road, rather, up into blocks and then coming back on
19 to Bronx River Road.

20 Q Detective Calemene, Mr. Lavine asked you some
21 questions about whether or not the barrels were loaded into
22 the van in broad daylight. Do you recall those questions?

23 A Yes, I do.

24 Q Do you know where the barrels were unloaded?

25 A Do I know where the barrels were unloaded? In

1 Queens, I believe.

2 Q Do you know whether or not that was in broad
3 daylight?

4 MR. JACOBS: Objection, personal knowledge.

5 THE COURT: Sustained.

6 MR. KHUZAMI: Your Honor, at this time the
7 government would offer defendant Saleh Exhibit U, the
8 photograph shown to the witness.

9 MR. JACOBS: May I just speak to Mr. Khuzami.

10 THE COURT: Yes.

11 (Counsel conferred)

12 MR. JACOBS: Your Honor, with the additional
13 stipulation that this photograph, Defendant Saleh U was
14 taken on June 4, I have no objection obviously.

15 THE COURT: All right.

16 Saleh Exhibit U, which was taken on June 4, is
17 received without objection, noting that it was taken on June
18 4. Thank you.

19 (Defendant Saleh Exhibit U was received in
20 evidence)

21 THE COURT: Anything else?

22 MR. LAVINE: Yes, Judge.

23 THE COURT: Mr. Lavine?

24 RECROSS-EXAMINATION

25 BY MR. LAVINE:

1 Q Detective, six days after June the 23rd, that
2 being the day you took the photos at the gas station, you
3 prepared a surveillance log, didn't you?

4 A A photographic log.

5 Q I'm sorry. A photographic log.

6 In that photographic log, you didn't make any
7 entries, did you, about speed changes that the van you were
8 observing made?

9 A No, not about speed changes.

10 Q When you made your original notes that are in
11 evidence, that's the two sets that you made on the day of
12 the June the 23rd, and when you made the surveillance log,
13 did any agents of the Federal Bureau of Investigation tell
14 you what to include and what not to include in those
15 documents?

16 A No, I'm capable of doing that myself.

17 Q You wanted to include what you thought was, of
18 course, important, didn't you?

19 A Yes.

20 Q When you made your surveillance log, your photo
21 log and you described the van you were watching as making
22 U-turns, did you write that the van had turned up several
23 blocks that crossed the Bronx River Road from the west side
24 and made U-turns to return to the Bronx River Road?

25 A Yes, I did.

1 Q So the U-turns were made to return to the Bronx
2 River Road? That's what you wrote.

3 A U-turns were made on Bronx River Road and to
4 return to Bronx River Road, because, as my testimony earlier
5 reflected --

6 THE COURT: He didn't ask you what happened. He
7 asked you what you wrote.

8 Did you write that U-turns were made to return to
9 Bronx River Road?

10 THE WITNESS: Yes, I did.

11 MR. LAVINE: Thanks, Detective.

12 I have nothing further.

13 THE COURT: Anything else?

14 MR. KHUZAMI: Your Honor, the government would
15 reoffer Exhibit 35128A.

16 MR. LAVINE: If I could have just one second,
17 your Honor. I stand by my objection, your Honor.

18 THE COURT: That is overruled. 35128A is
19 received. Anyone else? You are excused. Thank you very
20 much.

21 (Government's Exhibit 35128A was received in
22 evidence)

23 (Witness excused)

24 THE COURT: Ladies and gentlemen, we are going to
25 take a break now. Please leave your notes and other

1 materials behind. Please don't discuss the case and we will
2 resume in a few minutes.

3 (Jury not present)

4 THE COURT: May I see Mr. Jacobs and Mr.
5 Stavis --

6 MS. STEWART: Judge, I wonder if you might follow
7 that by saying Mr. Ricco and Ms. Stewart with some
8 scheduling problems. Not problems, matters.

9 THE COURT: Well --

10 MR. STAVIS: Issues, your Honor.

11 THE COURT: Why don't I see Mr. Ricco and Ms.
12 Stewart first, and then I'll see Mr. Jacobs and Mr. Stavis.

13 MR. JACOBS: Your Honor --

14 THE COURT: In fact, I will see you all at the
15 same time. How's that?

16 MR. JACOBS: -- for the next witness I would ask
17 that you U be published to the jury.

18 MR. MCCARTHY: Not you, your Honor, U the --

19 THE COURT: OK.

20 (Pages 11969 through 11977 sealed)

21 (Recess)

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1 (In open court; jury not present)

2 MR. JACOBS: Your Honor, could we have that photo
3 shown to the jury, with your permission?

4 THE COURT: Yes.

5 MR. JACOBS: I need it for the next witness.

6 THE COURT: Yes.

7 MR. KHUZAMI: Your Honor, the next witness
8 following the reading of a FISA tape will be testifying with
9 the aid of a standby French translator. Secondly, the
10 materials submitted to the court in camera regarding the
11 payments to the witnesses, upon review of that material
12 again last night, I learned that some of the items were
13 signed by the witnesses in an alias. I have reproduced that
14 stuff and turned it over to Mr. Jacobs and the rest of
15 defense counsel.

16 (Jury present)

17 MR. FITZGERALD: Your Honor, the government would
18 next propose to read Government's Exhibit 793T --

19 THE COURT: Before you do that, may I see counsel
20 briefly at the side.

21 (At the side bar)

22 THE COURT: Sorry to bring you all up as
23 camouflage. Mr. Serra, I gather your client has been
24 looking and making faces at the jury again. Somebody
25 commented on it. That is, one of the jurors did. If you

1 could please tell him not to do it, it is not helpful.

2 MR. SERRA: I will certainly convey that message,
3 your Honor. I don't think it is helpful either.

4 (In open court)

5 MR. FITZGERALD: Your Honor, the government would
6 propose to read from Government's Exhibit 793T, which is a
7 phone interception on the Siddig Ali FISA on June 23, 1993,
8 at 6:40 p.m.

9 THE COURT: 793T?

10 MR. FITZGERALD: Yes. I will read the statements
11 attributed to Mr. Siddig Ali, Mr. McCarthy will read the
12 statements of Amir Abdelgani, and Mr. Khuzami will read the
13 statements attributed to Mohammed Saleh.

14 (Government's Exhibit 793T in evidence was read
15 to the jury)

16 THE COURT: Do you have Exhibit U?

17 The record should reflect that Exhibit U is being
18 published to the jury. That is the exhibit that was
19 received at the end of the examination of the last witness.

20 (Pause)

21 MR. KHUZAMI: Your Honor, the government calls
22 Sidi Boubekur Siddik Belhabri as its next witness. That is
23 S-I-D-I, B-O-U-B-E-K-E-U-R, Siddik, S-I-D-D-I-K, Belhabri,
24 B-E-L-H-A-B-R-I.

25 (Lucia Conti was duly sworn as the French

1 interpreter)

2 BELHABRI SIDI ABOUBEKER SEDDIK,

3 called as a witness by the government,

4 having been duly sworn, testified as follows:

5 A JUROR: We would like a repeat of the spelling.

6 THE COURT: You want a repeat of the spelling?

7 All right. Can you go through all of that again. Please
8 spell your name again.

9 THE WITNESS: B-E-L-H-A-B-R-I, S-I-D-I,
10 A-B-O-U-B-E-K-E-R, S-E-D-D-I-K.

11 THE COURT: Go ahead.

12 MR. KHUZAMI: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MR. KHUZAMI:

15 Q Mr. Belhabri, is Belhabri your last name?

16 A My last name, yes.

17 Q Is Boubekur the first name you were given at
18 birth?

19 A Yes, Sidi Aboubeker Seddik.

20 Q Is it Boubekur or Aboubeker?

21 A Aboubeker.

22 Q But you use the name Boubekur, is that correct?

23 A Yes.

24 Q Where were you born?

25 A Algeria.

1 MR. JACOBS: Having trouble hearing, your Honor.

2 Q If you could move forward a little and speak
3 directly into the microphone, if you could, so everyone can
4 hear you.

5 I am sorry, you were born where?

6 A Algeria.

7 Q How old are you?

8 A Thirty-three.

9 Q How far did you get in school?

10 A Twenty years.

11 Q Twenty years?

12 A Yes.

13 Q Are you married or single?

14 A Single.

15 Q Did you work when you were in Algeria?

16 A In Algeria company.

17 Q I am sorry.

18 A When I was in Algeria?

19 Q Yes.

20 A I worked in state company.

21 MR. JACOBS: Your Honor, I am sorry.

22 Q Try and move forward just a little bit more.

23 A OK. I was working in state company.

24 Q What was your job?

25 A Engineer.

1 Q What is your native language?

2 A My language, Arabic and French.

3 Q Do you understand that you have a French
4 translator available next to you if you should need her
5 assistance?

6 A OK.

7 Q When did you come to the United States?

8 A October '92.

9 Q What kind of visa did you have when you came?

10 A Tourist visa.

11 Q How long did that visa allow you to remain here?

12 A Six months.

13 Q Did you stay longer than six months?

14 A Yes.

15 Q How long have you stayed?

16 A Until when I get -- until October.

17 Q Have you been here continuously since you came in
18 October 1992?

19 A I don't understand.

20 Q Have you stayed in the United States since you
21 arrived in October of 1992?

22 A Yes. I would be staying in New York.

23 Q So you were here illegally in the United States
24 after your tourist visa ran out, is that correct?

25 A Yes.

1 Q Is it true that the government helped you with
2 your immigration status and allows you to remain in this
3 country after your visa ran out?

4 A Yes.

5 Q In addition to allowing you to remain here, they
6 got you authorization to work, is that correct?

7 A Yes.

8 Q The assistance that the government gave you to
9 remain here, is that to allow you to remain here temporarily
10 or permanently?

11 A Just work permit.

12 Q Has the government given you any green card or
13 anything to allow you to stay here permanently?

14 A No.

15 Q Under the assistance that the government gave
16 you, you are also entitled to leave the United States one
17 more time and return, is that correct?

18 A Yes.

19 Q What kind of job did you have when you first came
20 here?

21 A I do construction.

22 Q Did there come a time when you began to work at a
23 gas station in Yonkers?

24 A In November '92.

25 Q Who did you work for?

1 A I was working for Mohammed Saleh.

2 Q How many gas stations did Mohammed Saleh have
3 then?

4 A Two, a Gulf station and Shorco station.

5 Q I am sorry, what was the first one?

6 A Gulf station.

7 Q Do you remember where that was located?

8 A In Yonkers Avenue.

9 Q And the second one?

10 A Shorco station.

11 Q Does it have another name other than Shorco?

12 A No.

13 Q Is it referred to -- it does?

14 A Vinnie's station, you know.

15 Q How long did you work for Mohammed Saleh?

16 A Until when he was arrested, from November end
17 June.

18 Q From November to June?

19 A End of June, yes.

20 Q That is June of 1993?

21 A Yes.

22 Q Which of the two gas stations did you work at?

23 A Shorco gas station.

24 Q That is also known as Vinnie's, is that correct?

25 A Yes.

1 Q How many hours a day did you work during that
2 time?

3 A Twelve hours.

4 Q How many days a week?

5 A Six days.

6 Q How much did Mohammed Saleh pay you?

7 A \$300.

8 Q Was that by cash or by check?

9 A Cash.

10 Q Were any taxes taken out of your pay?

11 A No.

12 Q Did you pay any taxes on that money?

13 A No.

14 Q After you stopped working for Mohammed Saleh,
15 where did you next work?

16 A I stay with Vinnie.

17 Q You stayed with Vinnie?

18 A Yes, like almost two months.

19 Q So that was from approximately June of 1993 to
20 August of 1993?

21 A Yes.

22 Q What happened after that?

23 A I stop working because Vinnie close the gas
24 station.

25 Q Vinnie closed the gas station?

1 A Yes.

2 Q Where was your next job?

3 A Supermarket.

4 Q How long did you work at the supermarket?

5 A Almost four months.

6 Q How much did you make there?

7 A 250.

8 Q 250 a week?

9 A Yes.

10 Q After the supermarket, where did you next work?

11 A I stay like two months and I find other job, gas
12 station.

13 Q Another gas station?

14 A Yes.

15 Q How long did you work at the other gas station?

16 A I started working 21 February, end of February
17 1994.

18 Q End of February 1994?

19 A And I stop, end last month.

20 Q And you worked till May 1995?

21 A Yes.

22 Q How much did you earn at the gas station?

23 A What?

24 Q How much did you make at the gas station?

25 A Depend how many hour I work. Sometime I work

1 eight hours, sometime I work 12 hours. So almost sometime
2 300, sometimes more, sometime --

3 Q Around \$300 a week?

4 A Yes.

5 Q To be clear, this gas station that you worked at
6 from February 1994 till May of 1995, that was not Mohammed
7 Saleh's gas station, is that correct?

8 A No, no.

9 Q On the money that you earned at the supermarket
10 or at this other gas station, did you pay any taxes on that
11 money?

12 A For supermarket?

13 Q Yes.

14 A No, they pay me cash.

15 Q How about for the gas station? Did you pay taxes
16 on the money you earned there?

17 A For the last one?

18 Q Yes.

19 A From February '94 and --

20 Q Right.

21 A No, I don't pay taxes, just I start to pay taxes
22 in January '95.

23 Q I am sorry?

24 A I start to pay taxes in January '95.

25 Q They started to take money out of your pay in

1 January 1995?

2 A Yes.

3 Q Have you filed any tax returns on your own?

4 A No.

5 Q Have you received any money from the government
6 since approximately January of 1994?

7 A Yes.

8 Q How much money has the government given you?

9 A They give me one, two time \$400 twice.

10 Q \$400 twice?

11 A Yes.

12 Q When was that?

13 A In January and -- yes, in January.

14 Q Of what year?

15 A '94.

16 Q Were you working during that month?

17 A No.

18 Q In addition to the \$400 twice, has the government
19 paid you any other money?

20 A Yes. They pay me rent.

21 Q They pay your rent?

22 A Yes.

23 Q For how long a period of time has the government
24 paid your rent?

25 A From January '94 until last month, in May.

1 Q How much rent is that?

2 A 695.

3 Q Did you live alone or with someone else during
4 that period?

5 A With someone else.

6 Q Who was that?

7 A My friend Karim.

8 Q Your friend Karim?

9 A Yes.

10 Q Do you know his full name?

11 A Chenane Karim.

12 Q Chenane Karim?

13 A Yes.

14 Q Did the government also pay for your immigration
15 applications?

16 A Yes.

17 Q Do you recall how much that was?

18 A \$70.

19 Q Did you recently move into a hotel?

20 A Yes.

21 Q When was that?

22 A Just last week.

23 Q Is the government paying for your room there?

24 A Yes.

25 Q And paying for your meals as well?

1 A Yes.

2 Q That is until the end of the month, is that
3 correct?

4 A Yes.

5 Q Are you with Mr. Chenane Karim in the hotel as
6 well?

7 A Yes.

8 Q Do you recall, when you were working at Vinnie's
9 gas station, some men coming in a van with barrels?

10 A Yes.

11 Q How many times did men with barrels come to
12 Vinnie's gas station?

13 A Two time.

14 Q Do you recall the first date that they came?

15 A 22 June.

16 Q 22 June of what year?

17 A '93.

18 Q Do you recall the next time they came?

19 A 23 June.

20 Q 23 June?

21 A Yes.

22 Q Also of 1993?

23 A Yes.

24 Q The first day, June 22, did you know before they
25 came that they would be coming?

1 A Yes.

2 Q How did you know that?

3 A My boss call me.

4 Q Who was your boss at that time?

5 A Mohammed Saleh.

6 Q Did you say he told you or he called you?

7 A No, he called me.

8 Q Where were you when he called you?

9 A In Vinnie gas station.

10 Q Do you know where Mohammed was when he called?

11 A Gulf station.

12 Q To the best of your memory, what did he say to
13 you on the phone when he called you?

14 A He tell me two people going to coming, Arabic
15 people.

16 Q What kind of people?

17 A Arabic people.

18 Q Arab?

19 A Yes, and they going to take diesel, give them
20 diesel.

21 Q Did he describe what kind of vehicle they would
22 be in?

23 A Yes, he tell me they drive a red, blue van.

24 Q Did two men in fact come to the gas station in
25 the blue van?

1 A Yes.

2 Q How soon after the telephone call did they come?

3 A Five, 10 minutes.

4 Q Was there anything inside the van?

5 A Inside the van? You have drum.

6 Q Do you recall how many?

7 A Three or four.

8 Q Did you talk to them when they came?

9 A Yes.

10 Q What did they say to you and what did you say to
11 them?

12 A They tell me we coming for diesel --

13 MR. BERNSTEIN: Objection to the "they," your
14 Honor.

15 THE COURT: Can you get something more specific?

16 MR. KHUZAMI: Yes.

17 Q How many men were in the van that day?

18 A Two.

19 Q Did you speak to -- was it one person driving?

20 A Yes.

21 Q And there was one passenger, is that correct?

22 A Yes.

23 Q When you first spoke to them, did you speak to
24 the driver or the passenger, or both?

25 A Both, sir.

1 Q To the best of your recollection, what did you
2 say to them and what did they say to you, and if you can
3 remember which person you spoke to, please say so.

4 A I think speak with the guy who is my side.

5 MR. JACOBS: We can't hear.

6 Q If you could repeat that, please.

7 A I speak with the driver.

8 Q What did he say to you?

9 A He said Mohammed he call you, Mohammed call you
10 coming for diesel and I say yes, he just call me now.

11 Q Could you please repeat that. The driver said?

12 A You know we coming for diesel? I said yes,
13 Mohammed just call me now, I mean.

14 Q Did that person say anything else to you?

15 A Yes. He tell me we want full the drums.

16 Q We want to fill up the drums?

17 A Yes.

18 Q What did you say when he told you he wanted you
19 to fill up the drums?

20 A I start to fill up the drums, and when I see that
21 I take too much diesel, I said I got to call my boss for --
22 because I can't, you know, I can't fill all the drums.

23 Q You indicated you saw it would take too much
24 diesel?

25 A Yes.

1 Q Why did you think it was going to take too much
2 diesel?

3 A Because we don't have too much for other company,
4 in case company.

5 Q For other customers?

6 A Yes.

7 Q Did the driver or the other person indicate how
8 much diesel they wanted?

9 A They want all -- they want full up the drums and
10 especially they want 55 gallons.

11 Q They want to fill up all the drums?

12 A Yes.

13 Q Did you go back and call your boss?

14 A Yes.

15 Q What did you say to him and what did he say to
16 you?

17 A I tell him it's too much, we can't give him all,
18 we can't fill up all the diesel for all the drums, because
19 we don't have no more for other company. So he tell me OK,
20 just give him, just give him, don't give him too much, I
21 mean.

22 Q Did he tell you in dollars how much to give him?

23 A Yes, like 130, \$140.

24 MR. JACOBS: I am sorry.

25 A Between 130 and 140.

1 Q Did he give you a specific number or a range?

2 A A range between.

3 Q By the way, your boss, Mohammed Saleh, what name
4 did he use when he referred to you?

5 A He referred to my name, Aboubeker.

6 Q He called you Aboubeker or Boubekeur?

7 A Aboubeker, yes.

8 Q After you had the conversation with Mohammed
9 Saleh, what did you do next?

10 A I tell him, the driver, I can't full up all the
11 drums, I got to full up like two drums, and that's it.

12 Q Do you recall how much diesel you gave him that
13 day?

14 A Yes. Almost \$140.

15 Q What were the different ways that customers paid
16 for gas or diesel at Vinnie's gas station when you worked
17 there?

18 A Especially they pay cash, and when they don't
19 pay, they pay credit, we give them a receipt for credit.

20 Q It is either cash or credit, is that correct?

21 A Yes.

22 Q When someone pays by credit, what do you do?

23 A I fill out a receipt.

24 Q How do you know who can buy gas or diesel by
25 credit?

1 A We have list for the company, we have list for
2 all of the companies.

3 (Continued on next page)

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1 Q Is that a list that you had at Vinnie's?

2 A Yes.

3 Q Now, on June 22, did the two men who came in the
4 van pay for the diesel with cash?

5 MR. JACOBS: Objection to his knowledge. Object
6 to the form.

7 THE COURT: Sustained as to form. Go ahead.

8 Q Mr. Belhabri, did the two men who came in the van
9 that day give you cash --

10 A No.

11 Q -- for the diesel?

12 A No.

13 Q Did you fill out a receipt?

14 A Yes.

15 Q What information did you put on the receipt?

16 A Plate number.

17 Q Plate number?

18 A Yes, take the plate number, and quantity of gas,
19 gallons, and the price and the amount.

20 Q Did you put down the name of any company or
21 business?

22 A No. The first time, no.

23 Q Why didn't you put down that information?

24 A Because --

25 Q Withdrawn.

1 Let me ask you another question: Did you know
2 whether or not these individuals were with any company or
3 business?

4 A No, I don't.

5 Q Did they give you any company or business name?

6 A No.

7 Q Did either of the men sign the receipt?

8 A Yeah.

9 Q Do you recall whether or not it was the driver or
10 the passenger who signed the receipt?

11 A I can't remember.

12 MR. KHUZAMI: Your Honor, may I approach.

13 THE COURT: Yes.

14 Q Mr. Belhabri, let me show you what's been marked
15 for identification as Government Exhibit 289A. I ask you to
16 just take a look at that, please.

17 Do you recognize the one on the top, 289A?

18 A Yes.

19 Q What is it?

20 A It's the first receipt, the first day when they
21 come in.

22 MR. BERNSTEIN: I'm sorry, Judge. I'm having a
23 hard time hearing him.

24 THE COURT: It's a receipt for the first day.

25 Q Is that filled out in your handwriting?

1 A Yes.

2 Q While you were working for Mohammed Saleh, did
3 you sometimes fill out these receipts for companies that
4 bought on credit?

5 A Yes.

6 Q That was part of your job?

7 A Yes.

8 MR. KHUZAMI: Your Honor, the government would
9 move Government Exhibit 289A into evidence.

10 Can I have some voir dire, do I need the
11 microphone?

12 THE COURT: Yes, you do.

13 VOIR DIRE EXAMINATION

14 BY MR. JACOBS:

15 Q Mr. Aboubeker, my name is Jacobs. I represent
16 Mohammed. Your handwriting is on the document, correct?

17 A Yes.

18 Q With the exception of the person who signed,
19 correct?

20 A Yes.

21 MR. JACOBS: No objection.

22 THE COURT: All right. 289A is received.

23 (Government's Exhibit 289A for identification was
24 received in evidence)

25 MR. KHUZAMI: Your Honor, at this time I would

1 ask permission that the jury be permitted to refer to the
2 exhibit. It is located in their binders marked Exhibits 152
3 to 299.

4 THE COURT: OK. You are referring only to the
5 top one, which is 289A.

6 Q Mr. Belhabri, if you could just indicate first
7 the date of this receipt. Do you see the date?

8 A Yes.

9 Q What date is that?

10 A 6/22/93.

11 Q On the left side beneath the sticker, do you see
12 a license plate number there?

13 A Yes.

14 Q Did you write that?

15 A OL 6032.

16 Q Is that a "2" or an "R"?

17 A Yes, 603R.

18 Q What was the amount of diesel that you gave to
19 the two men?

20 A 139.62.

21 Q That's the dollar amount?

22 A The amount.

23 Q What is the quantity? How much did you give
24 them?

25 A 110 gallons.

1 Q The signature that you see in the middle at the
2 bottom, is that what one of the two men signed?

3 A Yes.

4 Q Do you know whether or not either of those two
5 men signed with their real name?

6 A No.

7 MR. KHUZAMI: Your Honor, may I approach?

8 THE COURT: Yes.

9 Q Mr. Belhabri, let me show you what has been
10 marked as Government Exhibit 295 for identification. I ask
11 you to take a look at that.

12 Mr. Belhabri, do you see on that exhibit a
13 picture of the man, one of the two men that was in the van
14 on June 22, 1993?

15 A Yes.

16 Q Which number is that?

17 A No. 2.

18 MR. KHUZAMI: Your Honor, pursuant to
19 stipulation, the person identified as No. 2 in that exhibit
20 is Siddig Ali.

21 THE COURT: All right.

22 Q Now, Mr. Belhabri, the two men came again on June
23 23 for diesel, is that correct?

24 A Yes.

25 Q Was it the same two men or was it different men?

1 A No, they have -- one of him's different. One
2 come in twice, and the other one is different.

3 Q The person you've identified as No. 2 in the
4 photo, did he come on the second day?

5 A No.

6 Q You can put those items down if you'd like.
7 Before the men came on June 23, did you know they
8 were coming before they showed up?

9 A Yes.

10 Q How did you know that?

11 A My boss called me, Mohammed, and he tell me he
12 got two men, are going to come in with a red van, and you're
13 going to give him like 150, between 150 and 160.

14 Q Give them 150 to 160 of what?

15 A Dollars.

16 Q Of what?

17 A Worth of diesel.

18 THE COURT: Could you come to a convenient break
19 point in the next five minutes or so.

20 Q Did in fact the two men come after Mr. Saleh
21 called you?

22 A Yes.

23 MR. KHUZAMI: Your Honor, may I approach.

24 THE COURT: Yes.

25 Q Mr. Belhabri, let me show you what's been

1 received into evidence as Government Exhibits 288K and 288L
2 and ask you to take a look at those.

3 MR. KHUZAMI: Your Honor, I would ask that the
4 jury be permitted to refer to those two exhibits in their
5 binders.

6 THE COURT: All right.

7 MR. KHUZAMI: That's 288K and 288L.

8 Q Mr. Belhabri, starting with 288K, do you
9 recognize the person shown in that picture?

10 A Yes.

11 Q Who is he?

12 A He's the same guy who come in the second day.

13 Q He came in --

14 A He came in twice.

15 Q -- on June 23?

16 A Yes.

17 Q And did he also come in on June 22?

18 A Yes.

19 Q On June 23 was he the driver or the passenger?

20 A I can't remember.

21 MR. LAVINE: Your Honor, may I speak to counsel
22 for one second.

23 (Counsel conferred)

24 MR. LAVINE: Thank you.

25 Q I'm sorry. Let me ask that question again.

1 The person whose face is turned to you in Exhibit

2 288K --

3 A OK.

4 Q -- do you recall whether or not he was the driver
5 or the passenger on June 23?

6 A I can't remember.

7 Q If you'd look at 288L, do you recognize that
8 person?

9 A Yes.

10 Q Who is he?

11 A He's the guy who come in twice.

12 Q 288L?

13 A Yes.

14 Q And the person in 288K came only on June 23, is
15 that correct?

16 A Yes.

17 (Continued on next page)

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1 MR. KHUZAMI: Your Honor, this would be a
2 convenient place.

3 THE COURT: All right.

4 Ladies and gentlemen, we are going to break for
5 lunch. Please leave your notes and other materials behind.
6 Please do not discuss the case and we will resume after
7 lunch.

8 (Jury not present)

9 THE COURT: You can step down.

10 (Witness excused)

11 (Luncheon recess)

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AFTERNOON SESSION

2:15 p.m.

(In open court; jury not present)

MS. AMSTERDAM: Your Honor, at sometime during
the break or at the end of the day Mr. Nooter and I have a
106 issue to address to the court.

BELHABRI SIDI ABOUBEKER SEDDIK, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: Mr. Khuzami.

(Continued on next page)

1 DIRECT EXAMINATION continued

2 BY MR. KHUZAMI:

3 Q Mr. Belhabri, before the break we were speaking
4 about the visit by the men in the van on June 23, the second
5 day?

6 A Yes.

7 Q What happened when they arrived at the gas
8 station?

9 A They come in and they said no, we will be --

10 MR. JACOBS: Objection to "they."

11 MR. KHUZAMI: I will rephrase, your Honor.

12 THE COURT: Go ahead.

13 Q Mr. Belhabri, to the extent that you can
14 distinguish between what the driver said and the passenger
15 said, please do so.

16 A What? I can't hear you.

17 Q When you answer the question, please try and
18 distinguish, if you can, between what the driver told you
19 and what the passenger told you when you spoke to them. OK?

20 A OK.

21 Q When they arrived at the gas station, did either
22 of them talk to you?

23 A I can't remember who, the driver or -- the guy?

24 Q The passenger?

25 A The passenger.

1 Q You spoke to one or the other of them?

2 A Yes.

3 Q What did one or the other of them say to you?

4 THE COURT: Wait a second. Can you find out
5 where they were, where the driver and passenger were when
6 the conversation took place, and specifically whether they
7 were both in the same place at the time it occurred.

8 MR. KHUZAMI: Certainly, your Honor.

9 Q Where were you when you first spoke to the men in
10 the van on June 23?

11 A When two men come in gas station?

12 Q Where in the gas station?

13 A In Vinnie gas station.

14 Q Were you by the pumps?

15 A Yes, behind the pumps, yes.

16 Q Were both of the men with you when you first
17 spoke to them?

18 A Yes.

19 Q To the best of your recollection, what did you
20 say to them and what did they say to you?

21 A They tell me we coming for diesel, and I said
22 yes, I know, but today I got to give you like \$150.

23 Q I am sorry. Could you repeat that, please.

24 A I said I tell him I got to give you \$150, between
25 150 and \$160 diesel.

1 MR. LAVINE: I still have the objection to the
2 "they."

3 THE COURT: That is overruled in view of his
4 testimony that he can't recall which one said it.

5 MR. LAVINE: Judge, may we approach just briefly
6 so I can bring one thing to your attention?

7 THE COURT: Sure.

8 (At the side bar)

9 MR. LAVINE: Instead of it being "they," can it
10 be one of them said unless they were both --

11 THE COURT: Obviously they were not talking in
12 unison. It wasn't a choral recitation. On the other hand,
13 this is not Lloyd Chesterfield.

14 MR. LAVINE: I understand.

15 THE COURT: It is clear that one of them is
16 speaking.

17 MR. LAVINE: Your Honor, I think you understand
18 what I am saying.

19 THE COURT: You do, but you understand what I am
20 saying, too.

21 MR. LAVINE: Of course.

22 THE COURT: Do you want me to try to make the
23 point with him or do you want to make the point?

24 MR. KHUZAMI: I will try and make the point with
25 him.

1 THE COURT: Fine.

2 (In open court)

3 BY MR. KHUZAMI:

4 Q Mr. Belhabri, when you were by the pumps when you
5 first spoke to the two gentlemen, what did -- let me first
6 ask you, what did they tell you that they wanted?

7 A They wanted --

8 THE COURT: Sustained. Was it both of them, one
9 of them? If it was only one speaking and he doesn't know
10 which one, let's at least not have you saying it. Thank
11 you.

12 Q When you first spoke with them, do you recall
13 which of the two men actually spoke to you when you were by
14 the pumps?

15 A I can't remember.

16 Q You can't remember. Do you remember what was
17 said?

18 A That they said you want diesel, you want fill up
19 the drum.

20 Q Fill up the drums?

21 A Yes.

22 Q Do you know how many drums they had with them?

23 A Three or four.

24 Q What did you say after that?

25 A I said I can give you, I got to give you like

1 \$150 for diesel, between 150 and 160.

2 Q That's what you said to them?

3 A Yes.

4 Q How did you know that that's how much diesel you
5 were going to give them?

6 A My boss tell me.

7 Q When did he tell you that?

8 A Second day. I mean, before when he come in, they
9 come in.

10 Q Best of your recollection, what did your boss say
11 about the amount of diesel that you were to give the two men
12 who were going to come?

13 A Before the people coming, they call me and he
14 tell me give me like 150, 160, because we don't have too
15 much diesel.

16 Q Did you in fact fill up drums that day?

17 A Yes, I fill up two, and the third just a little
18 bit.

19 Q Did you have a discussion with the two men about
20 their wanting more diesel than you wanted to give them?

21 A Yes, the guy with the -- he come in twice.

22 Q What did he say to you about the amount of
23 diesel?

24 A He want more.

25 Q What did you do when he told you that?

1 A I said I can't give you more.

2 Q After he told you that, did the man who came in
3 twice do anything?

4 A I can't remember.

5 Q Did he make any phone calls?

6 A Yes.

7 Q Where did he make a phone call from?

8 A Outside the gas station we have a phone cabin.

9 Q What happened after that man made a phone call?

10 A My boss called me again.

11 Q This is the second time you had spoken to your
12 boss that day about the diesel?

13 A Yes.

14 Q What did your boss say to you during the second
15 phone call?

16 A He tell me just give him just little bit, like
17 not too much, because I tell him we don't have too much
18 diesel for other company.

19 Q During that conversation with your boss, was
20 anyone else present?

21 A Me and the guy.

22 Q Which guy?

23 A Come in twice.

24 Q The guy who came in twice, did he talk to your
25 boss on the phone while you were there?

1 A Yes.

2 Q Did you hear part of their conversation?

3 A Yes.

4 Q What did you hear the guy who came in twice say
5 to your boss on the telephone?

6 A He want more diesel, and also, he don't want me
7 put the plate number of the car.

8 Q He didn't want you to put the plate number?

9 A Yes.

10 Q Didn't want you to put the plate number where?

11 A In receipt, because --

12 Q Did you have a conversation with Mohammed Saleh
13 about the license plate?

14 A Yes.

15 Q What did he say to you and what did you say to
16 him?

17 A He tell me just put the name, Sudanese name,
18 Sudanese company name.

19 Q Just put the name Sudanese?

20 A Yes.

21 Q Did you talk to Mohammed Saleh about the license
22 plate specifically?

23 MR. JACOBS: Objection, asked and answered, what
24 he told him to do.

25 THE COURT: Overruled.

1 A Yes.

2 Q What did Mohammed Saleh say about the license
3 plate?

4 A Said just put the Sudanese name, that's all.

5 Q Did you ask him if you should put the license
6 plate?

7 MR. JACOBS: Objection, asked and answered.

8 THE COURT: Overruled.

9 A Yes.

10 MR. KHUZAMI: Your Honor, may I approach?

11 THE COURT: Yes.

12 Q Mr. Belhabri, let me show you what has been
13 marked for identification as Government's Exhibit 289B, and
14 ask you to take a look at that. Do you recognize
15 Government's Exhibit 289B?

16 A Yes.

17 Q What is that?

18 A Is the receipt when I make it the second day.

19 Q Is that in your handwriting?

20 A Yes.

21 MR. KHUZAMI: Your Honor, I would move
22 Government's Exhibit 289B into evidence.

23 MR. JACOBS: One brief voir dire.

24 VOIR-DIRE EXAMINATION

25 BY MR. JACOBS:

1 Q Mr. Aboubeker, the signature that appears on that
2 exhibit on June 23, who signed that, if you know? Did one
3 of the two men or did you? If you know.

4 A No. Is the guy who come in twice.

5 Q The guy who came in twice signed that piece of
6 paper?

7 A Yes.

8 Q Not you?

9 A No, not me.

10 MR. JACOBS: Nothing further. No objection.

11 THE COURT: 289B is received.

12 (Government's Exhibit 289B was received in
13 evidence)

14 MR. KHUZAMI: I would ask that the jury be
15 permitted to examine that exhibit in the binders.

16 BY MR. KHUZAMI:

17 Q Mr. Belhabri, in the upper left-hand corner of
18 Exhibit 289B, do you see the word written S-O-U-D-A-N-I-S?

19 A Yes.

20 Q Did you write that?

21 A Yes.

22 Q What is that word?

23 A What?

24 Q What is that word?

25 A Soudanis.

1 Q And the date underneath that?

2 A Yes, 6 --

3 Q Did you write that?

4 A 6/23/93.

5 Q And the amount of diesel that you gave on that
6 day, can you read that?

7 A Yes, 151 dollars.

8 Q How about the quantity?

9 A 118.99.

10 Q That is 118?

11 A 118.

12 Q Point 91 or 99?

13 A Yes.

14 Q Before you spoke to Mohammed Saleh the second
15 time on that day, how much diesel had you given the two men
16 in the van?

17 A I fill up two drums.

18 Q After your conversation with Mohammed Saleh, did
19 you give them additional diesel?

20 A Yes.

21 Q The signature there, you indicated that it was
22 signed by the man who came in both days?

23 A Yes.

24 Q Do you know whether or not he used his real name
25 when he signed the receipt?

1 A No.

2 Q Did you ever --

3 THE COURT: Is that no, you don't know, or no, he
4 didn't use his real name? Do you know whether he did?

5 THE WITNESS: No.

6 Q On this second day, June 23, did you talk to
7 either of the two men about why they wanted the diesel?

8 A Yes.

9 Q Which man did you speak to?

10 A I can't remember which man.

11 Q When you asked the question, were they both
12 present?

13 A Yes.

14 Q What did you ask them?

15 A Ask him for what is diesel.

16 Q For what is the diesel?

17 A Yes, for what, I mean.

18 Q What did one of the two men say to you?

19 A He tell me we have machine business, something
20 like that.

21 Q A machine business?

22 A Yes.

23 Q Did they say where the machine business was?

24 A No.

25 Q On Government's Exhibit 289B, did you fill in the

1 license plate of the van anywhere on that receipt?

2 A No.

3 Q Why not?

4 MR. JACOBS: Objection.

5 THE COURT: Sustained.

6 Q Mr. Boubekur, after June 23, 1993, did you have
7 a discussion with anyone about those receipts? That is 289A
8 and B.

9 A Yes.

10 Q Who did you have that discussion with?

11 A With my friend.

12 Q What is your friend's name?

13 A Chenane Karim.

14 Q Did Mr. Chenane Karim also work for Mohammed
15 Saleh?

16 A Yes.

17 Q Where did he work?

18 A Gulf station.

19 Q When was this conversation with Mr. Karim?

20 A Two weeks later.

21 Q Two weeks after the men in the van came?

22 A Yes.

23 (Continued on next page)

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1 Q What did Mr. Karim tell you?

2 MR. JACOBS: Objection.

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

4 (At the side bar)

5 THE COURT: I guess I have two questions. One
6 is, where is this going? And two, on what theory is it
7 going there?

8 MR. KHUZAMI: As to the first question, your
9 Honor, Mr. Saleh, there is a recorded telephone conversation
10 which we will be reading into evidence after the next
11 witness, where Mr. Saleh tells Mr. Karim to tell this
12 witness to tear up the receipts. Mr. Karim conveyed that
13 message to this witness, and I think it is admissible
14 because it is an instruction, an imperative command and
15 therefore not hearsay. It is telling him to do an act.

16 THE COURT: Are you going to elicit that Mr.
17 Karim said where the instructions came from?

18 MR. KHUZAMI: Yes.

19 MR. JACOBS: I object. It is still hearsay. The
20 fact that the government may be entitled to on Karim's
21 testimony elicit the conversation with my client --

22 THE COURT: His point is that they have a tape
23 which shows your client telling Karim to to tell this guy --

24 MR. JACOBS: Right, but what he does is hearsay
25 at this point.

1 THE COURT: I will take your proffer that you
2 have the corroboration for it but it remains hearsay. I
3 will allow you, however, on your specific representation
4 that you have what you say you have, permit him to testify
5 that Karim told him to tear up the receipts, but not where
6 the orders came from.

7 MR. KHUZAMI: I think it is also relevant because
8 he did not in fact follow the instructions and did not tear
9 up the receipts, which explains why they are here.

10 THE COURT: That I understand. The part about
11 the order to tear up the receipts is in essence subject to
12 connection. The connection would be --

13 MR. JACOBS: I understand. If we keep it to
14 that, your Honor, I have less problem. I would certainly
15 object if the government is going to elicit some mental
16 state from this witness why he didn't tear up the receipts
17 and things like that. Did you tear up the receipts,
18 obviously the answer is no, but I don't think his mental
19 gymnastics --

20 THE COURT: Not at this point. They might be
21 relevant after cross.

22 MR. JACOBS: Couldn't agree with you more.

23 THE COURT: You could.

24 MR. SERRA: I discussed this testimony with Mr.
25 Khuzami on behalf of the other defendants. There is an

1 agreement that the testimony is only offered against
2 Mr. Saleh. If the court doesn't wish to phrase it that way.

3 THE COURT: I will phrase it only with respect to
4 Mr. Saleh.

5 MR. KHUZAMI: If I may lead the witness to make
6 sure he doesn't elicit where the order came from Mr. Karim
7 telling him to destroy the receipts.

8 THE COURT: Yes.

9 MR. SERRA: Your Honor, at this point we would
10 ask for a brief instruction in the court's usual form.

11 THE COURT: Fine.

12 (Continued on next page)

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1 (In open court)

2 THE COURT: All right. Ladies and gentlemen, the
3 testimony that you have heard and will hear from this
4 witness with respect to his conversations with Mr. Saleh or
5 anything else having to do specifically with Mr. Saleh is
6 admissible only with respect to Mr. Saleh, that is,
7 Mr. Mohammed Saleh, and not with respect to anybody else.

8 BY MR. KHUZAMI:

9 Q Mr. Belhabri, where were you when you had this
10 conversation with Chenane Karim about the receipts?

11 A Vinnie's station.

12 Q Vinnie's station.

13 And do you know where Mr. Karim was?

14 A He was in the other gas station, and he coming to
15 my gas station.

16 Q This was over the phone you had this
17 conversation?

18 A No. When he finish the job, he coming there, in
19 my gas station.

20 Q You were both at Vinnie's gas station?

21 A Yes.

22 Q And did Mr. Chenane Karim tell you that you were
23 to destroy these receipts?

24 A Yes.

25 Q And did you in fact destroy them?

1 A No.

2 MR. KHUZAMI: No further questions.

3 THE COURT: Cross. Mr. Jacobs?

4 CROSS-EXAMINATION

5 BY MR. JACOBS:

6 Q Mr. Belhabri, how did you meet Mohammed Saleh?

7 A From somebody who was working for him before.

8 Q You spoke to him and he hired you to work at the
9 gas station?

10 A Repeat again. I don't understand.

11 THE COURT: Mr. Jacobs, if you could move the
12 microphone. Good.

13 Q You spoke to Mohammed and he hired you to work at
14 the gas station?

15 A Yes.

16 Q And you were going to work at Vinnie's, is that
17 correct?

18 A Yes.

19 Q And am I correct that Mohammed owned the Gulf
20 station, is that correct, to your knowledge, when you
21 worked --

22 A Yes.

23 Q And he rented the pumps, including the diesel
24 pump, from Vinnie?

25 A Yes.

1 Q And you worked for Mohammed about seven months,
2 eight months, is that fair to say?

3 A I start working for him like end of November '92,
4 and I stop when he was arrested, like June, end of June '94.

5 Q Was that the first job you had when you came here
6 to the United States from Algeria?

7 A No, it was my second job.

8 Q What was your first job?

9 A My first job I do construction.

10 Q Construction?

11 A Yes.

12 Q How long did you work there?

13 A Two weeks.

14 Q Two weeks.

15 And during the months that you worked at the gas
16 station, would I be correct in stating that Mohammed was
17 your boss?

18 A Yes.

19 Q He set the hours that you worked, correct?

20 A I don't --

21 Q I'm sorry. He told you what hours you were going
22 to be working, is that correct?

23 A Yes.

24 Q You told you how much he was going to pay you,
25 correct?

1 A Yes.

2 Q And after you started work, you introduced your
3 friend Karim to him, correct, Chenane?

4 A Yes.

5 Q And he was someone who you came to the United
6 States with, is that fair to say?

7 A Yes.

8 Q And he's been a life-long friend of yours from
9 Algeria, correct?

10 A Yes.

11 Q Are you two related, you and Karim?

12 A What do you mean?

13 Q Are you related? Cousins? Relatives?

14 A No, we just friends coming from the same town.

15 Q As a result of your introduction, Mohammed hired
16 Karim to work at the Gulf station, correct?

17 A Sorry?

18 Q I'm sorry.

19 A Just --

20 Q That's quite all right. I'll slow it down.

21 You introduced Mohammed to Karim, am I correct?

22 A Chenane Karim?

23 Q Right.

24 A OK.

25 Q And he met Karim and hired Karim, correct?

1 A Yes.

2 Q So Karim worked at the Gulf, you worked over at
3 Vinnie's, correct?

4 A Yes.

5 Q And Mohammed was both of your boss, correct?

6 A Yes.

7 Q You two, Karim and you, lived together during
8 that period of time?

9 A Yes, we lived together.

10 Q Even after you and he stopped working at the Gulf
11 and at Vinnie's, you continued to live together, correct?

12 A Yes.

13 Q You're in the hotel together now, correct?

14 A Yes.

15 Q Now, would I be correct in stating that Mohammed
16 Saleh explained to you and taught you how to run the gas
17 station? Is that fair to say?

18 A How he owned the gas station?

19 Q How to operate in the gas station, what to do.

20 Do you understand? I will rephrase it.

21 THE COURT: All right. Did he teach you how to
22 conduct the business in the gas station?

23 THE WITNESS: Yes.

24 Q He taught you how to handle money, correct?

25 A Yes.

1 Q He taught you how to add up the receipts,
2 correct?

3 A Yes.

4 Q He taught you how to check the fuel pumps and
5 fuel levels, correct?

6 A Yes.

7 Q Would I be correct in stating that Mohammed Saleh
8 trusted you in taking money from customers, is that correct?

9 A What do you mean?

10 Q Well, you would get cash from the customers, you
11 would hold the cash and give it to Mohammed that day or the
12 next day or two days later, correct?

13 A Yes.

14 Q You would be left alone in the station to run it
15 sometimes, correct?

16 A After 6 o'clock.

17 Q After 6 o'clock?

18 A Yes.

19 Q You would be there after 6 p.m. pumping gas and
20 collecting money, correct?

21 A Yes.

22 Q Would I be correct in stating that -- and I'm
23 talking the period of time up until June 23 -- would I be
24 correct in stating that Mohammed basically stayed over at
25 the Gulf station? Is that fair to say? Most of the time?

1 A Yes.

2 Q And on occasion he would come over to Vinnie's
3 and collect money from you, is that correct?

4 A Repeat again?

5 Q Sure.

6 Did he on occasion come over and pick up money
7 from you, the day's money that you took in, cash?

8 A You mean coming every day and take the cash?

9 Q Did he come in on a daily basis or every other
10 day and take the cash that you had collected?

11 A No, not sometimes, no. Usually I pick up the
12 money and go to the other gas station, I give him the money
13 and I go.

14 Q So you would take the money at Vinnie's, drive
15 over to the Gulf, and give Mohammed the money there?

16 A The Gulf, yes.

17 Q Am I correct that there was no safe in the Gulf
18 station?

19 Do you know what I mean by a safe? A big box
20 where money is locked in?

21 A No.

22 Q And am I correct that there was no safe at
23 Vinnie's? Isn't that correct?

24 A Yes.

25 Q So the money would be kept on your person, in

1 your pocket, correct?

2 A Yes.

3 Q And if Mohammed didn't get the money from you on
4 a particular day, sometimes you would take the money home at
5 night and you would give it to him the next day, correct?

6 A Just one or two times.

7 Q One or two times.

8 But he trusted you in holding the money and
9 giving it to him, isn't that fair to say?

10 A Yes.

11 Q And would you agree with me that on any given day
12 there would be in excess of several thousand dollars
13 collected in money from the gas station, is that fair to
14 say, cash?

15 A How much?

16 Q 2,000, more than 2,000?

17 A No.

18 Q More than a thousand?

19 A Less than a thousand dollars.

20 Q More than \$500?

21 A Like \$500, \$600.

22 Q And that would be -- how about at the Gulf
23 station? Would more than \$500 be collected in cash at the
24 Gulf station?

25 A Yes.

1 Q More than a thousand?

2 A Gulf station?

3 Q At the Gulf station, if you know.

4 A Because I was working for Shorco gas station.

5 Q Sure. You would agree with me that on any given
6 day Mohammed Saleh would have several hundred dollars and
7 perhaps several thousand dollars in cash on his person,
8 isn't that correct?

9 A I don't know.

10 Q You don't know.

11 Now, am I correct that some people came in and
12 paid cash when they got gas or got their cars fixed,
13 correct?

14 A Some people come in for what?

15 Q Some people paid cash --

16 A Yes.

17 Q -- when they got gas or had their cars fixed,
18 correct?

19 A No cars fixed. I mean, the gas, just the gas.

20 Q And some people had what they call house accounts
21 or credit, is that correct?

22 A Yes.

23 Q OK. And those people that had credit didn't have
24 to pay cash at that time, isn't that correct?

25 A Yes.

1 Q And those people would sign receipts and the
2 money would be collected later, is that correct?

3 A Yes.

4 Q And would I be correct in stating that it was
5 Mohammed who would collect the money from the charge
6 accounts? Isn't that correct?

7 A What?

8 Q Mohammed would be the one to collect the money
9 from the people who had the credit accounts, isn't that
10 correct?

11 A Usually they bring like a check, because I was
12 making the receipt for every --

13 Q I'm sorry?

14 A I was -- every two weeks we make pay for the, the
15 bill for the company credit.

16 Q Right.

17 A And I give it to them. Usually I give it to
18 everybody, and they bring usually a check.

19 Q Did everybody pay cash that had accounts?

20 A No.

21 Q Nobody ever paid cash?

22 A No.

23 Q Who had house accounts?

24 A No, never. Just pay check.

25 Q Just by check?

1 A Yes.

2 Q You never got any cash from anyone on a house
3 account?

4 A Never.

5 Q How about Mohammed? Do you know if he got any
6 cash from anyone on a house account?

7 A What?

8 Q On a house account if know --

9 THE COURT: Don't call it a house account.

10 MR. JACOBS: OK.

11 THE COURT: Call it a credit account.

12 MR. JACOBS: On a credit account.

13 THE COURT: Thank you.

14 Q On a credit account, do you know if Mohammed ever
15 got cash?

16 A I don't know.

17 Q Who would make the decision on whether someone
18 would have a credit account, you or Mohammed?

19 A Mohammed.

20 Q And who was responsible for collecting the money,
21 you or Mohammed, on the credit accounts?

22 A What do you mean?

23 Q Who would go out and collect the money, get the
24 checks, get the cash, whatever it was, who would collect the
25 money?

1 MR. KHUZAMI: Objection to form.

2 THE COURT: Sustained as to form.

3 Q Did you send out the bills?

4 A Yes.

5 Q Who was responsible for collecting the bills, you
6 or Mohammed?

7 A It depended. They come in Shorco gas station,
8 they give me check, and later I give the check to Mohammed
9 or they go in the other gas station and they pay him.

10 Q Did Mohammed ever bring his wife and children to
11 the gas stations if you know?

12 A I think one time.

13 Q On Muslim holidays did he ever bring food to you
14 and Karim at your home?

15 A What do you mean? Bring food?

16 Q Yes. Did he ever bring food to your home on any
17 holiday?

18 A One time. One or two times.

19 Q Am I correct that for at least a month or so you
20 continued to work at Vinnie's service station after he was
21 arrested --

22 A Yes.

23 Q -- isn't that correct?

24 A Yes.

25 Q And I assume you know he was arrested on June 23

1 or June 24, 1993, am I correct?

2 A No, it was 24 hours later.

3 Q Pardon me?

4 A I mean, 24, 24 June.

5 Q The 24th?

6 A Yes.

7 Q I believe you told Mr. Khuzami that you stopped
8 working at Vinnie's because business was slow and Vinnie was
9 going to close the station, is that correct?

10 A Yes.

11 Q When Mohammed worked in the station he wore a
12 uniform, is that correct?

13 A Yes.

14 Q Have his name Ali on a little tag?

15 A Yes.

16 MR. JACOBS: Mr. Khuzami, I'm sorry, do you have
17 U in evidence?

18 THE DEPUTY CLERK: I have it.

19 MR. JACOBS: Thank you.

20 Q Mr. Aboubeker, take a look at that photograph
21 that was taken on June 4, 1993.

22 Is that Mohammed Saleh?

23 A Yes.

24 Q Is that how he usually looked when he worked?

25 A Yes.

1 THE COURT: Mr. Jacobs, may I see you at the side
2 briefly.

3 MR. JACOBS: I think --

4 THE COURT: Good. Thank you.

5 Q Is that how he looked?

6 A Yes.

7 Q On or about June 4, 1993?

8 A What?

9 Q Is that how he looked in June of 1993, to your
10 knowledge?

11 A That's the way he looked.

12 Q Yes. Am I correct that he sometimes pumped gas,
13 is that correct?

14 A You mean him?

15 Q Yes, him.

16 A Yes.

17 Q Did he ever do any mechanical work?

18 A Sometimes.

19 Q He dealt with customers, correct?

20 A What?

21 Q I'm sorry.

22 He used to deal with the customers, correct?

23 A What do you mean "customers"?

24 He talked to customers you mean?

25 THE COURT: Would he talk to the customers when

1 they came in?

2 THE WITNESS: Yes.

3 THE COURT: I would do business with them? He
4 did business with the customers?

5 THE WITNESS: Yeah.

6 Q Did he work there every day?

7 A Yes.

8 Q Six days a week, seven days a week?

9 A Yeah, I think seven days.

10 Q Same hours as you, a little shorter, a little
11 longer?

12 A Differently.

13 Q Pardon me?

14 A I said differently. I don't know. Sometimes.

15 Q Concerning the two transactions that you've
16 testified to, two individuals came to the station Vinnie's
17 on June 22, am I correct?

18 A Yes.

19 Q And Mohammed called you and told you they would
20 be coming over, correct?

21 A Yes.

22 Q They came to the gas station during working
23 hours, is that correct?

24 A Yes, they come in there.

25 Q To your knowledge, they had been over at the Gulf

1 station before they came to your station, is that correct?

2 A You mean --

3 Q The two fellows that came over on the 22nd.

4 A Yes.

5 Q And you don't know what was said between them and
6 Mohammed on the 22nd, do you, if anything? You don't know
7 the conversation?

8 I'm sorry. Let me see if I can make it simpler.

9 You don't know what they talked about if they
10 talked at all before they came to the station, is that
11 correct?

12 A I don't understand. What do you mean?

13 Q Sure.

14 THE COURT: You said a minute ago you thought
15 that they were at the Gulf station first before they came to
16 your station, right?

17 THE WITNESS: Yes.

18 THE COURT: He's asking you if you know what they
19 said to Mohammed or what he said to them when they were over
20 at the Gulf station. Do you know that?

21 THE WITNESS: No, I don't know.

22 Q And you don't know if Mohammed took any money
23 from them, do you?

24 A I don't know.

25 Q And you have no idea what they told Mohammed they

1 needed the fuel for, do you?

2 A No.

3 Q Do you know anything about an air conditioner
4 that these two fellows brought to your apartment on the
5 22nd?

6 A Yes.

7 Q What happened with this air conditioner on the
8 22nd? Tell the jury.

9 A We just take it from my home and we buy it, my
10 friend and me, we buy the air conditioner. We buy an air
11 conditioner. He was in Gulf station. So he tell me, these
12 people, they got to bring for you the air conditioner in
13 your home, so I take my air conditioner, you know, just
14 transportation. I mean --

15 Q So the two fellows on the 22nd took an air
16 conditioner that you and Karim had bought --

17 A Yes.

18 Q -- and they took the air conditioner to your
19 apartment, correct?

20 A Yes.

21 Q Like a favor that you had asked them to do, or
22 you and Karim?

23 A I'm not asking, but Karim, yeah, because I was
24 living behind the gas station.

25 Q OK. You were living behind the gas station?

1 A Yes.

2 Q And you needed to someone to carry this air
3 conditioner over to your apartment and these two fellows on
4 the 22nd took the air conditioner there for you, correct,
5 you and Karim, correct?

6 A What did you say the last time?

7 Q You asked them, or Karim asked them to drop the
8 air conditioner at your apartment, correct?

9 A Yes.

10 Q And they did it?

11 A Yes.

12 Q Now, when you spoke to Mohammed on the phone
13 before they came, did he tell you that they were two
14 Sudanese guys? How did he describe them to you?

15 MR. KHUZAMI: Objection to form, date.

16 MR. JACOBS: I'm sorry. I will withdraw it.

17 Q On the 22nd Mohammed called you and said the two
18 fellows were coming over to get some diesel, correct?

19 A Yes.

20 Q Did he tell you that they were Sudanese, if you
21 can remember?

22 A The first time?

23 Q Yes, sir.

24 A No. He just said Arabic people.

25 Q Just what?

1 A Arabic people.

2 Q Arabic people.

3 And he told you to pump diesel fuel for them,
4 correct?

5 A Yes.

6 Q OK. And at Vinnie's station you have a diesel
7 pump, correct?

8 A Yes.

9 Q And it is in the routine course of business that
10 you pump diesel fuel at Vinnie's, correct?

11 A Yes.

12 Q OK. And did you ever put diesel fuel in
13 55-gallon drums before?

14 A Never.

15 Q Never? I'm sorry?

16 A I said never.

17 Q Never happened?

18 A Never happened.

19 Q Do you know if it ever happened at the Gulf
20 station?

21 A No, I don't know.

22 Q You don't know? I'm sorry.

23 A I said I don't know.

24 Q You made out a receipt on June 22, correct?

25 A Yes.

1 Q And on that particular receipt you put the
2 license number and you put the amount of fuel and the amount
3 that it would cost, correct?

4 A Yes.

5 Q Now, when you spoke to Mohammed on that day, you
6 spoke to him twice, is that correct, or once on the 22nd?

7 That's the first day, the 22nd.

8 A The first day?

9 (Pause)

10 A Just once.

11 Q Just once.

12 And he didn't tell you, don't make out a receipt,
13 did he? He didn't give you that instruction, did he?

14 A On the first day?

15 Q On the first day, correct.

16 A I ask him, I said, I ask him we got to make a
17 receipt, they going to pay cash.

18 Q And what did he say. Make a receipt, right?

19 A Yes.

20 Q So on June 22 when these men filled up two
21 barrels worth of diesel fuel, Mohammed Saleh told you to
22 make a receipt, correct?

23 A I ask him.

24 Q And he told you to make one, correct?

25 A Yes, yes.

1 Q Am I correct that he told you in the conversation
2 to sell \$150 worth of fuel, correct?

3 MR. KHUZAMI: Objection to form.

4 MR. JACOBS: I will rephrase it.

5 Q On June 22 did he tell you how much fuel to give
6 the two fellows?

7 A Yeah, like between 130 -- 130 and 140.

8 Q And how much did you actually give them?

9 A Almost 140. Like 139.

10 Q Now, am I correct that there's a diesel pump at
11 the Gulf station as well?

12 A Yes.

13 Q And did he ever send people over to -- Mohammed
14 I'm talking about -- did he ever send people over to
15 Vinnie's to have diesel fuel pumped as opposed to the Gulf
16 station?

17 A Yes, sometimes when we don't have diesel in Gulf
18 station, they send, especially for credit company.

19 Q And am I correct that at the Gulf station the
20 tank is 950 gallons and the tank at Vinnie's is 2,000
21 gallons? Is that correct?

22 A I can't remember.

23 Q Would you agree with me that the tank at Vinnie's
24 is larger than the tank at the Gulf station?

25 A Yes.

1 Q Now, Mohammed didn't come with these men on the
2 22nd, did he?

3 A With these two guys?

4 Q Yes.

5 A No.

6 Q And he didn't come with the two guys on the 23rd,
7 am I correct?

8 A No.

9 Q The fuel oil that was sold, the diesel fuel, that
10 was owned by Mohammed, correct, the fuel at Vinnie's,
11 correct?

12 A Yes.

13 MR. KHUZAMI: Objection to form.

14 THE COURT: May I hear it again.

15 (Record read)

16 THE COURT: Sustained as to form.

17 Q The diesel fuel, Mohammed owned that, correct?

18 A Yes.

19 Q Now, on June 23 two men came and you sold them
20 diesel fuel, correct?

21 A Yes.

22 MR. KHUZAMI: Objection to form.

23 THE COURT: Sustained.

24 Q On June 23 did two men come and get diesel fuel,
25 two men in a van?

1 A Yes.

2 Q You spoke to Mohammed and he told you to sell him
3 or sell somebody \$160 worth of diesel fuel, correct?

4 MR. KHUZAMI: Objection to form.

5 THE COURT: Sustained.

6 Q What did he tell you to do when you spoke to him
7 the first time on June 23?

8 A You mean second day?

9 Q Second day.

10 A I tell him, "Mohammed, you don't have too much
11 diesel, so you can't give him all. We can't fill up the all
12 the drums for these people."

13 He said: "OK. Just give him like 150, like 160.
14 I mean, don't -- just fill up two and just a little bit for
15 the third, and that's all."

16 Q So am I correct that he told you to sell them not
17 more than \$160 worth of diesel fuel on the --

18 MR. KHUZAMI: Objection.

19 THE COURT: Sustained.

20 Q I'm asking you, did he tell you not to sell more
21 than \$160? Yes or no.

22 MR. KHUZAMI: Objection.

23 THE COURT: Sustained.

24 Q How much did he tell you to sell?

25 MR. KHUZAMI: Objection.

1 THE COURT: Sustained.

2 Q When you spoke to him for the first time, what
3 did he say?

4 THE COURT: Mr. Jacobs, do you want to come up?

5 MR. JACOBS: Sure.

6 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I just want to make sure you
3 understand what the reason is for the objections and for my
4 rulings, do you?

5 MR. JACOBS: No.

6 THE COURT: The magic word is "sell."

7 MR. JACOBS: I'm sorry.

8 THE COURT: All right. I assume that is the
9 objection.

10 MR. KHUZAMI: Yes.

11 MR. JACOBS: Thank you.

12 (Continued on next page)

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1 (In open court)

2 Q Before the individuals arrived on June 23, did
3 you have a conversation with Mohammed?

4 A Yes.

5 Q Did he in that conversation tell you to give them
6 no more than \$160 worth of diesel fuel?

7 A He tell me give him between 150 and 160.

8 Q Now, that's before the two men came, am I
9 correct?

10 A Yes.

11 Q When the men came, one of them requested more
12 than \$160 worth of fuel, is that correct?

13 A Yes.

14 Q And you spoke to Mohammed on the phone concerning
15 that, is that correct?

16 A Yes.

17 Q He told you just to give them a little bit more,
18 correct?

19 A Yes.

20 Q Am I correct that you filled up a third drum
21 about a quarter of the way, correct?

22 A Yes.

23 Q You did not give the men or the man what they
24 wanted, correct?

25 MR. LAVINE: Objection.

1 THE COURT: Well, if you change "wanted" to
2 "asked for."

3 MR. JACOBS: I'm sorry.

4 Q You did not give the person, the men, or the man
5 that you were talking to what he wanted, correct?

6 A Yes.

7 Q And am I correct that the second amount that was
8 sold was almost exactly, it was \$159, correct?

9 A Yes.

10 Q So that the van left with the third barrel only
11 one-quarter of the way full, correct?

12 A I'm sorry? I can't --

13 Q I'm sorry. So that the third barrel left only
14 one-quarter filled, correct?

15 A Yes.

16 Q And Mohammed told you not to fill it up, correct,
17 the third one, correct?

18 MR. KHUZAMI: Objection to form.

19 MR. JACOBS: I will withdraw it.

20 Q Now, there was a problem, according to your
21 testimony, with the receipt on the second day, is that
22 correct?

23 A Excuse me. I don't --

24 Q You were going to fill out the receipt the same
25 way you did it on the first day, correct?

1 A Yes.

2 Q And somebody had an objection, is that correct?

3 A Yes.

4 Q And you spoke to Mohammed about it, correct?

5 A Yes.

6 Q And he told you to make out a receipt but to put
7 Sudanese, correct?

8 A Yes.

9 Q Am I correct that, as you testified about June
10 22, you have no idea whether Mohammed got money on June 23,
11 do you?

12 A Yes, I have no idea.

13 Q Now, on June 23, were there several cases of
14 motor oil in the van that you took out?

15 A Repeat it, please?

16 Q Sure. Let me repeat it again.

17 On June 23, the second day, were there several
18 cases of motor oil, like to put in a car engine, small
19 little cans in boxes that you took out of the van?

20 A I can't remember.

21 Q When you say you can't remember, did you use
22 motor oil, little cans, quart cans of motor oil for engines
23 at Vinnie's?

24 A Yes, we sell.

25 Q On June 23 were there at least two cases of motor

1 oil in quart containers that you removed from the van and
2 brought into Vinnie's to use for customers? Do you recall
3 that?

4 A I can't remember. It's two years ago.

5 Q Now, am I correct that both on the 22nd and the
6 23rd these two transactions occurred during regular business
7 hours, is that correct? The gas station was open for
8 business, am I correct?

9 A Yes.

10 Q And customers were coming in and out of the store
11 to get gas, is that correct?

12 A Yes.

13 Q And am I correct that it was still daylight,
14 correct?

15 A Daylight?

16 Q Daylight. 7 o'clock at night, June 22 and June
17 23, it was still daylight, am I correct?

18 A Yes.

19 Q Did you ever pump gas for local police, the
20 Yonkers Police Department?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 Q Did Mohammed have the keys -- I will withdraw
24 that.

25 Did the diesel pump have a key that could be used

1 to lock the pump? If you don't understand, I will try it
2 again.

3 A No, I understand. But you mean for Shorco gas
4 station, right?

5 Q In other words, when you closed up for business
6 at 11 o'clock at night, did you lock the pumps at night so
7 that people couldn't come in at 2 in the morning and take
8 your gas and your diesel fuel?

9 A Yes, we lock inside the pump, turn off the pump.

10 Q Yes. I mean, was there some effort of locking or
11 securing the pumps so that when you went home somebody
12 couldn't steal the gas?

13 A Yes.

14 Q If you know?

15 A Yes.

16 Q And how did you lock it. What did you do?

17 A Inside we have electric pump that we turn off.
18 We make -- take off, I mean.

19 THE COURT: You mean to turn off the electricity?

20 THE WITNESS: Yes.

21 Q Were there keys to the pump, or you don't recall,
22 or there were no keys to the pump?

23 A Yeah, for the diesel pump, yes.

24 Q For the diesel pump, yes.

25 Now, am I correct that if Mohammed wanted, he

1 could have come at 2 o'clock in the morning, turned on the
2 diesel pump and given the fuel at 2 in the morning by
3 himself if he wanted to? Couldn't he have?

4 A No. He knows when I leave, he call me.

5 Q But he could have done it himself if he wanted
6 to, correct? He's the owner, the boss, right?

7 A Yes.

8 Q Am I correct, the station, Vinnie's is not open
9 24 hours a day for business?

10 A No, it's not open 24.

11 Q What were the hours that Vinnie's back in June of
12 1993 was open?

13 A 6 to 7, or sometimes 7 to 7.

14 (Continued on next page)

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1 Q When you worked at Mohammed's gas station, you
2 got paid in cash?

3 A Yes.

4 Q And you were working here illegally because your
5 visitor's visa had expired, correct?

6 A Yes.

7 Q You spoke to the FBI for the first time about
8 July 13, is that correct, if you can remember?

9 A I can't remember the date.

10 Q It was in July, end of June? What is your best
11 recollection?

12 A End of July, one month, maybe.

13 Q Was Detective Corrigan, who is back there, one of
14 the agents who you spoke to? Do you know who Detective
15 Corrigan is?

16 A Yes.

17 Q Back there. Did you speak to him several times?

18 A Yes.

19 Q You told Detective Corrigan everything you knew
20 about what happened, correct?

21 A Yes.

22 Q And you spoke to the FBI several times, is that
23 correct?

24 A What you mean several times?

25 Q Three or four times you spoke to the agents?

1 A Yes.

2 Q You went in and you testified before a grand
3 jury, is that correct?

4 A Yes.

5 Q And you have met Mr. Khuzami, the prosecutor
6 here, at least three or four times, is that correct?

7 A Yes.

8 Q After you met the FBI and the prosecutors, your
9 immigration status changed from being here illegally to your
10 getting a temporary permission to stay here in the United
11 States, is that correct?

12 A Yes.

13 Q In addition to getting permission to stay here in
14 the United States, you got permission to work as well, is
15 that correct?

16 A Yes.

17 Q And in addition to those two things you got
18 special permission, you and Karim, to go back to Algeria for
19 a couple of weeks, correct?

20 A Yes.

21 Q In fact, you and Karim went back together to
22 Algeria and then came back to the United States, correct?

23 A Yes.

24 Q And I think Mr. Khuzami said you are getting
25 permission to do that again as well, is that correct, make

1 another trip?

2 A Maybe.

3 Q And I think, am I correct, that when you went to
4 Algeria, you went for six weeks, is that correct?

5 A Yes.

6 Q And because you had special permission, you
7 didn't have any immigration problems coming back into the
8 United States, correct? You got permission from the United
9 States government to do that, correct?

10 A Yes.

11 Q The government made the arrangements for your
12 trip, is that correct?

13 A What do you mean arrangements?

14 Q They made the reservations for your flight, is
15 that correct?

16 A No.

17 Q Did you and Karim pay for your own tickets?

18 A Yes.

19 Q I think you told Mr. Khuzami that you had been
20 getting some money from the government, is that correct?

21 A Yes.

22 Q You got 400 bucks on a couple of occasions and
23 you got some rent money too, correct?

24 A Yes.

25 Q Would I be correct in stating you yourself have

1 gotten over \$7,000, is that correct?

2 A Repeat this question.

3 Q You yourself, whether it be expenses -- you have
4 gotten over \$7,000 from the United States government, is
5 that correct?

6 A I got rent and --

7 Q Pardon me?

8 A I got rent, and twice \$400.

9 Q What is your rent a month? What is your rent
10 bill?

11 A 695.

12 Q Is that the bill from the landlord? I don't want
13 to know where you live, but is that your rent?

14 A Yes.

15 Q Karim lives with you?

16 A Yes.

17 Q So he gets 695 and you get 695?

18 A No.

19 Q No?

20 A Just 695.

21 Q One 695?

22 A Yes.

23 Q Not separate?

24 A No.

25 Q This money you get, is it by check or by cash?

1 A Cash.

2 MR. JACOBS: If I could have a moment, your
3 Honor.

4 (Pause)

5 MR. JACOBS: I'm collecting questions.

6 Q Do you recall how much your ticket was to
7 Algeria? If you can remember.

8 A I think 820, last year.

9 Q Pardon me?

10 A You mean about the price of ticket for Algeria?

11 Q Yes.

12 A \$820.

13 Q Concerning your immigration status, have you
14 discussed with the government whether you could get a green
15 card?

16 A No.

17 MR. JACOBS: I have nothing further.

18 THE COURT: Anyone else? I assume since Mr.
19 Jacobs collected questions there is nobody else.

20 Sorry.

21 CROSS-EXAMINATION

22 BY MR. LAVINE:

23 Q Good afternoon, sir.

24 MR. LAVINE: Judge, can I approach?

25 THE COURT: Yes.

1 Q In this photo Government's Exhibit 288B1, do you
2 see the two men?

3 A Yes.

4 Q Are those the two men who were in the station on
5 June 23?

6 A Yes.

7 Q Not this guy, not the guy getting into the
8 driver's side, but I want to ask you about this guy, the guy
9 getting into the passenger side. Did you talk to him? Did
10 he talk to you?

11 A No.

12 MR. LAVINE: I have no further questions. Thank
13 you, sir.

14 THE COURT: Anything else?

15 MR. KHUZAMI: Just briefly, your Honor.

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MR. KHUZAMI:

19 Q Mr. Belhabri, on June 23, the second day, who was
20 it that told you to put the word Sudanese on the receipt?

21 A Mohammed.

22 Q Did you have a discussion with him about whether
23 or not to put a license plate on the receipt?

24 MR. JACOBS: Objection, asked and answered.

25 THE COURT: Sustained.

1 Q Was the word Sudanese on the list of companies
2 that you had that were approved for credit at the gas
3 station?

4 A Yes.

5 Q The word Sudanese?

6 A I ask him what kind of name for the question
7 company. He said just put the word Sudanese.

8 Q My question is, did the word Sudanese appear on
9 the list of companies that could purchase on credit at the
10 gas station?

11 A No.

12 Q Did you ever see the men who came on June 22 or
13 June 23 before those two days?

14 A No.

15 Q Had you ever given credit to anyone at the gas
16 station who didn't have a company name?

17 A No.

18 Q Prior to June 22, had Mohammed Saleh ever told
19 you not to put a license plate on a receipt?

20 MR. JACOBS: Objection as to the form of the
21 question.

22 THE COURT: Sustained as to form.

23 Q Did you and Mohammed Saleh ever discuss, prior to
24 June 22, whether or not to put -- withdrawn. Let me
25 rephrase it.

1 Prior to June 22, had you ever discussed with
2 Mohammed Saleh how to fill out a receipt for gas?

3 MR. JACOBS: Objection.

4 THE COURT: Overruled.

5 A Before when I talk to him, the guy who coming
6 twice, he tell him he don't want to put plate number.

7 THE COURT: He is asking whether before June 22,
8 before the incidents that you testified to, before that --

9 THE WITNESS: Before June 22?

10 THE COURT: Yes. Before June 22, did you ever
11 talk to Mr. Saleh about how to fill out a receipt for gas
12 when somebody was buying it on credit?

13 (Question interpreted)

14 A No.

15 MR. KHUZAMI: No further questions.

16 MR. JACOBS: One moment.

17 Nothing further.

18 THE COURT: You are excused. Thank you.

19 (Witness excused)

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

24 (Jury excused)

25 THE COURT: Is there something else that I have

1 to deal with in order to get through the rest of the day?

2 MS. AMSTERDAM: No.

3 MR. MCCARTHY: Judge, there are some driver's
4 license and identification cards. I am handing up Exhibits
5 166A and C through H. Your Honor, these items were seized
6 from the person of Mr. Saleh at the time of his arrest. The
7 government intends to offer them when we put on the agent
8 who seized them, later today.

9 MR. JACOBS: Your Honor, they were seized from my
10 client's wallet or around his person on the day of his
11 arrest. Let me address 166A. Does your Honor have 166A?

12 THE COURT: I do.

13 MR. JACOBS: It is a driver's license from the
14 United Arab Emirates issued in 1983, 10 years before the
15 conspiracy charged in this case.

16 THE COURT: What is the relevance of this?

17 MR. MCCARTHY: I think it directly addresses some
18 of the things that Mr. Jacobs said to the jury in the
19 opening and some of the way that Mr. Saleh has been
20 portrayed. I note from page 1760 of the transcript:

21 "Mohammed ran a gas station, he pumped gas, he did what he
22 had to do to run the gas station. That in a nutshell is his
23 life. It is not particularly exciting. It in fact is very
24 uneventful and commonplace." Continuing on, he did the
25 normal day to day things, and, I quote, "There was nothing

1 unique about his life."

2 I don't think that is quite true. I think the
3 things that he had in his pocket were highly unusual. It is
4 not a usual thing to have any number of driver's licenses
5 and identifications all of which are current, some of them
6 from out of state. The way this has been presented to the
7 jury is that he was turned to by the people in this case
8 because he was involved in an international terrorist
9 organization. He is a person who was mobile, he is a person
10 who did a whole lot more than run a gas station in Yonkers,
11 and I think that these items which were seized from him are
12 more consistent with that than the person that was painted
13 to the jury in the opening.

14 MR. JACOBS: Your Honor, I don't want to --

15 THE COURT: Are you objecting to A principally
16 because he is wearing a kafiyah?

17 MR. JACOBS: That is a start for my objection,
18 Judge. The point is, he was working as an engineer in the
19 early eighties. How the fact that he was an engineer in the
20 eighties in the United Arab Emirates has to do with a
21 conspiracy is beyond my imagination.

22 I have in the back of my mind that the government
23 would love to put this photo before the jury. If the
24 government is so interested where they want to have a
25 stipulation that he once had a driver's license in the

1 United Arab Emirates, I will give it to them. After both
2 sides rest if that is an issue, they can have the
3 stipulation.

4 THE COURT: As I understand it, they want a
5 stipulation that it is currently in force, I guess.

6 MR. JACOBS: I can't read it from here but if
7 that is part of the stipulation they want, I will give
8 them --

9 MR. MCCARTHY: That will satisfy the government.

10 THE COURT: He says that will satisfy them.

11 MR. STAVIS: Mr. Jacobs just mentioned what does
12 this have to do --

13 THE COURT: Excuse me, but you don't really have
14 a horse in this race.

15 MR. STAVIS: I hope I don't. That's my point,
16 your Honor. I hope these license plates are not being
17 introduced against the codefendants but are being introduced
18 specifically against Mr. Saleh. That is the only reason I
19 rise.

20 THE COURT: I would think that if that's the
21 reason you rise, you rise in vain, because the question is
22 what inference they can draw from his connections, I
23 suppose, insofar as he relates to other defendants. But I
24 am not going to give an instruction that says these exhibits
25 are offered with respect to anybody or everybody. That, it

1 seems to me, is argument for all of you. In any event,
2 let's get back -- A, it seems to me, will be the subject of
3 a stipulation which will not have a photograph on it, right?
4 Now let's talk about C through H.

5 MR. JACOBS: Two of them, G and H, are
6 identification cards as opposed to driver's licenses. I
7 have to tell your Honor, even assuming he had a phony New
8 York State driver's license or he had two driver's licenses,
9 Florida and from New York --

10 THE COURT: Yes, they have different birthdates
11 on them, Mr. Jacobs.

12 MR. JACOBS: What is the relevancy of the fact
13 that he has different birthdates on licenses have to do with
14 this case? I cannot believe the government needs that piece
15 of evidence to show that is in furtherance of some
16 conspiracy in this case. I am really hard pressed to
17 understand that the fact that he has different birthdates
18 with his own name on a couple different licenses has to do
19 with the charges in this case.

20 MR. McCARTHY: When last I looked, need was not
21 the basis of whether it comes in or not. The basis is that
22 this is something you made in your opening.

23 MR. JACOBS: If he doesn't own a gas station, I
24 will eat my words. But what are they going to tell the jury
25 in summation that two licenses and two birthdates means? In

1 403 --

2 THE COURT: Mr. Jacobs, you and I both know that
3 there are a variety of data bases that are checked among
4 other things by birthdate.

5 MR. JACOBS: Right.

6 THE COURT: That is one of the pieces of
7 information that invariably is asked for, what is his date
8 of birth, and yes, we have a Jacobs with a date of birth so
9 and so and no, we don't have a Jacobs with a date of birth
10 so and so. My case is not generally not a problem because
11 invariably they only have one Mukasey.

12 MR. JACOBS: Your Honor, while I see that as some
13 reach for the government to make that argument, if the
14 government is going to stand up here putting this piece of
15 evidence in, these licenses, and waste their time in
16 summation arguing that that has some relevance to this case,
17 I must have some good chance in summation.

18 THE COURT: Maybe they are trying to make you
19 overconfident.

20 MR. JACOBS: What does having two different New
21 York State driver's licenses -- one is expired, if you look
22 at it. 166F expired already. He is walking around with an
23 expired license -- I probably have one in my pocket -- and
24 the one on top seems to be in effect. You are saying the
25 birthdates are different. Let me look.

1 THE COURT: There is a holiday assortment of
2 birthdays, Mr. Jacobs. I think the objection goes
3 principally to weight.

4 MR. JACOBS: I would ask your Honor under 403 to
5 exclude -- in his own name -- that he has several -- one
6 expired license in his pocket and a Florida driver's
7 license, which I am not even sure is illegal. I think it is
8 going to cause needless speculation and confusion among the
9 jury and I would ask your Honor to do this. At the
10 conclusion of both sides resting the case, if the government
11 wants to press the issue I would not claim prejudice to
12 renewing the offer. I don't see why at this point we have
13 to have this in this case. If it becomes an issue of where
14 he traveled or what his dates of birth are --

15 THE COURT: No.

16 MR. McCARTHY: What is at issue in the case is
17 what he told the jury in the opening.

18 MR. JACOBS: That he worked in a gas station. I
19 apologize. I am not here to argue that. Your Honor, did I
20 misstate something? I said he worked in a gas station. I
21 didn't say that he had only one driver's license.

22 THE COURT: He is not seizing on whether or not
23 he worked in a gas station but rather whether in essence if
24 you walked into the gas station and you saw the man running
25 a gas station, that what you see is what you get. There is

1 no more to it than that. He is mundane, he has a mundane
2 life, everything about it is routine, and they are arguing
3 there is some stuff that is not.

4 MR. JACOBS: I must say, I am almost inclined to
5 let the government do it because I would love to hear what
6 they say in summation, and if they argue that he had
7 something to do with the World Trade Center -- you know
8 what, I am going to withdraw my objection. Let them put the
9 licenses in and I look forward to Mr. McCarthy's argument to
10 the jury. I withdraw my objection.

11 THE COURT: You are not withdrawing it on the
12 basis of a specific representation that they will deal with
13 it in summation, are you?

14 MR. JACOBS: If they want to let it go without
15 comment, they can let it go without comment.

16 THE COURT: I wish we would all let it go without
17 comment. A will be a stipulation. C through H -- yes, sir.

18 MR. PATEL: Your Honor, may I have a moment with
19 Mr. Jacobs?

20 THE COURT: Yes.

21 MR. JACOBS: Just so we are clear, it is UAR
22 license expired December 12, 1992.

23 THE COURT: It is UAE.

24 MR. JACOBS: UAE, sorry, Judge.

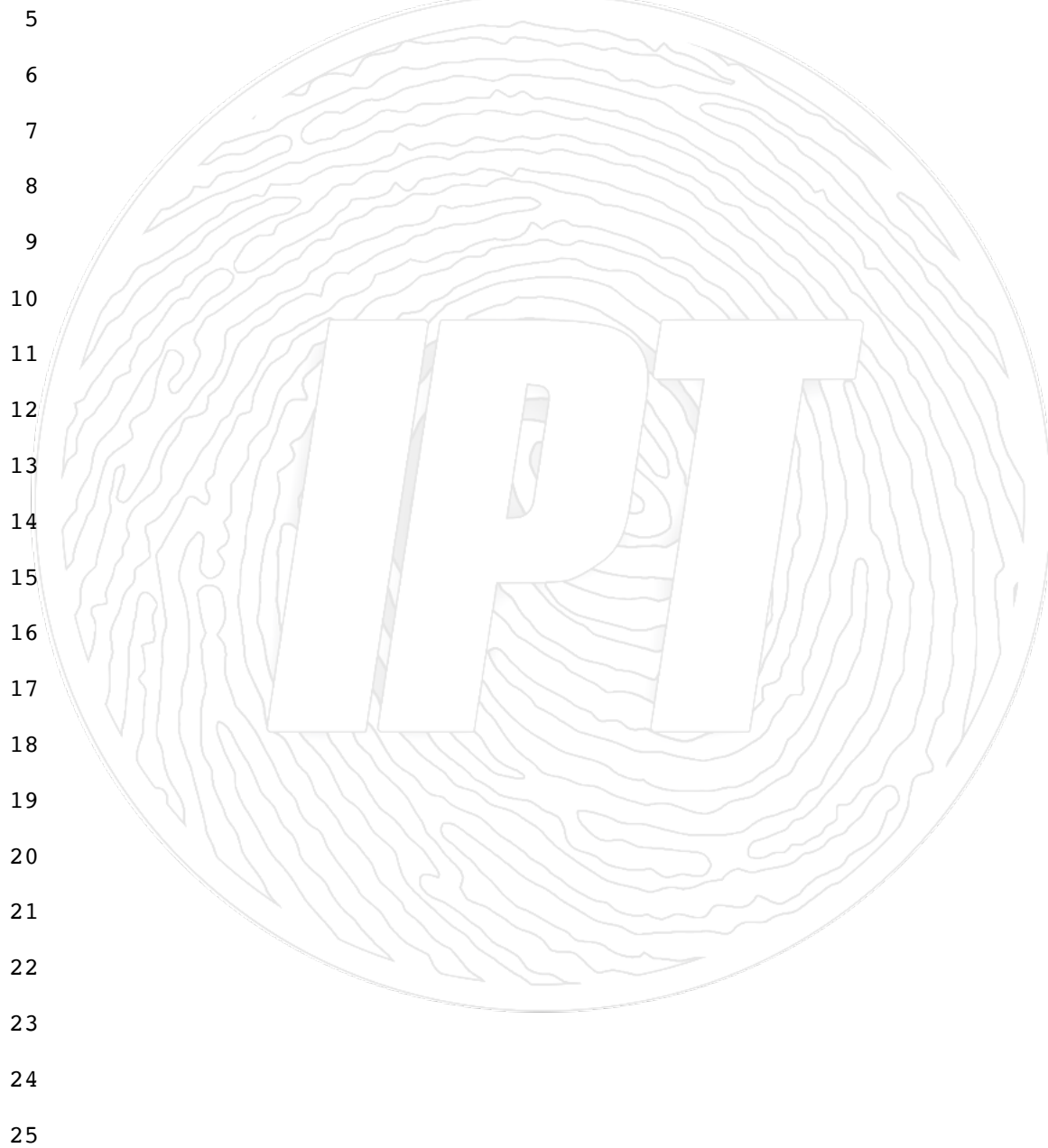
25 THE COURT: The UAR doesn't exist any more.

1 MR. SERRA: Neither does the license.

2 THE COURT: You will have to work that out.

3 (Recess)

4 (Continued on next page)



1 MR. KHUZAMI: Your Honor?

2 THE COURT: Yes.

3 MR. KHUZAMI: Before the jury comes out, I
4 reviewed with the reporter the instruction given to the jury
5 regarding the testimony of Mr. Belhabri and whether or not
6 that comes in against just Mr. Saleh or all defendants. I
7 think it was the parties' agreement that it was the
8 testimony relating to the destruction of the receipts and
9 the phone call that only comes in against Mr. Saleh. I
10 think the instruction as given refers to all conversations
11 between the witness and Mr. Saleh. I wonder if that might
12 be clarified.

13 MR. SERRA: Your Honor, Mr. Khuzami is correct,
14 and I think the court's instruction did go a little broader
15 than the parties agreed.

16 THE COURT: Mr. Jacobs?

17 MR. JACOBS: I think, your Honor, they are going
18 to get into this with the next witness, Mr. Karim, so you
19 can correct it at that point.

20 THE COURT: I can correct it. All right. Sorry.

21 (Jury present)

22 THE COURT: Mr. Khuzami?

23 MR. KHUZAMI: Your Honor, the government calls
24 Karim Chenane ,K-A-R-I-M, C-H-E-N-A-N-E, as its next
25 witness.

1 KARIM CHENANE,
2 called as a witness by the Government,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. KHUZAMI:

6 Q Mr. Chenane, if you could move your seat forward
7 and speak into the microphone so that everyone can hear you.

8 Thank you. Mr. Chenane, how old are you?

9 A 30 years.

10 MR. JACOBS: I'm having trouble, Judge.

11 THE COURT: It is difficult to hear. If you
12 could try to move a little bit closer to the microphone and
13 maybe lean forward toward it.

14 Q You're 38?

15 A No, 30 years.

16 Q 30?

17 A Yes.

18 Q Where were you born?

19 A In Algeria.

20 Q How far did you get in school?

21 A 13 years.

22 MR. JACOBS: Judge, I'm sorry.

23 THE COURT: You can't hear?

24 If you try to lean toward the microphone.

25 Q Mr. Chenane, you understand you have a French

1 translator next to you if you don't understand any of my
2 questions?

3 A OK.

4 Q When did you come to the United States?

5 A I come in October '92.

6 Q And did you come by yourself or with someone
7 else?

8 A With my friend.

9 Q Who is your friend?

10 THE COURT: If you could try to talk a little bit
11 louder, OK. Talk as loud as you can.

12 Q Mr. Chenane, if you could try to talk a little
13 bit louder and lean a little closer to the microphone.

14 A OK.

15 Q Thank you.

16 Who is the friend that you came with to the
17 United States?

18 A Aboubeker.

19 Q Aboubeker?

20 A Yes.

21 Q What is his last name?

22 A Belhabri.

23 Q And you had a tourist visa when you came?

24 A Yes.

25 Q And that was good for six months, is that

1 correct?

2 A Yes.

3 Q And you stayed longer than six months, is that
4 right?

5 A Yes.

6 Q You were here illegally for awhile, is that
7 correct?

8 A Illegally for six months, only for six months.

9 MR. JACOBS: Your Honor, I'm having trouble
10 hearing, and I am going to object to leading questions.

11 THE COURT: Use the translator.

12 (Through interpreter)

13 Q Mr. Chenane, I am going to speak to the
14 translator, the translator will translate my questions, OK?

15 A OK.

16 Q Now, how long was your visa good for?

17 A Six months.

18 Q And did you stay longer than six months?

19 A Yes.

20 Q How long -- withdrawn.

21 After your visa expired, did you get some
22 assistance from the government with your immigration?

23 A Yes.

24 Q What did the government do for you?

25 A They gave me a work permit.

1 Q Did they also allow you to remain here?

2 THE INTERPRETER: Could you please repeat?

3 Q And did they also allow you to remain in the
4 United States in addition to working?

5 A Since they gave me a work permit, that allowed me
6 to live here.

7 Q And did the government give you a temporary or
8 permanent work authorization?

9 A It was a temporary work permit.

10 Q Now, did you get a job when you came to the
11 United States in 1992?

12 A (In English) Yes. Yes.

13 MR. KHUZAMI: If you would translate the
14 question, please thank you.

15 A Yes.

16 Q What was your first job?

17 A I worked in a mini-market, mini-supermarket.

18 Q How long did you do that for?

19 A Seven months -- five months, correction.

20 Q What was your next job after that?

21 A I worked at a gas station.

22 Q And where was the gas station?

23 A In Yonkers.

24 Q Who was your boss?

25 A His name is Mohammed Saleh.

1 Q When did you start working for Mohammed Saleh?

2 A I think I started to work for Mr. Saleh in the
3 month of January.

4 Q What year?

5 A '92.

6 Q '92?

7 A '92 -- no, it was '93.

8 Q How long did you work for Mr. Saleh at the gas
9 station?

10 A I worked there between seven and eight months. I
11 don't recall exactly.

12 Q Do you recall the month that you stopped working
13 for him?

14 A I stopped working there at the end of July or the
15 beginning of August.

16 Q 1993?

17 A Yes.

18 Q What was your job there?

19 A I had to pump gas.

20 Q How many gas stations did Mr. Saleh have?

21 A He had two gas stations.

22 Q Which one did you work at?

23 A I worked at the Gulf station.

24 Q Did your friend Mr. Belhabri also work at the
25 Gulf station?

1 A No, he worked at the other gas station.

2 Q Was that Vinnie's?

3 A Right.

4 Q Now, approximately how much did you earn each
5 week when you worked for Mr. Saleh at the Gulf station?

6 A How much he was giving me?

7 Q Yes.

8 A He was giving me \$4.18 per hour.

9 Q Did he pay you in cash or by check?

10 A (In English) No, he paid me cash.

11 THE INTERPRETER: He paid me cash.

12 Q And did he take any taxes out of your pay?

13 A No.

14 Q Did you pay any taxes?

15 A No.

16 Q Now, after July or August of 1993, did you get
17 another job?

18 A Yes.

19 Q What was that job?

20 A (In English) In Manhattan, gas station.

21 Q How much were you making there?

22 A \$5.00 per hour.

23 Q How long did you work there?

24 A I think about two years.

25 Q Did you pay any taxes on the money you earned

1 there?

2 A No.

3 Q Now, have you also received money from the
4 government?

5 A (In English) Yes.

6 Q How much did you receive in cash from the
7 government?

8 A (In English) I remember one time \$400.

9 Q Do you remember if you received \$400 on more than
10 one occasion?

11 A (In English) Yeah, more.

12 Q Do you know how many times?

13 A Several times, many times.

14 Q Many times.

15 Has the government given you money for your rent?

16 A (In English) Yes.

17 Q How much is your rent?

18 A (In English) The first time \$700, and second time
19 \$695.

20 Q For how long has the government been paying your
21 rent?

22 A (In English) One year, four months.

23 Q Apart from the rent money, has the government
24 also given you money personally?

25 A The first time I received some money when I

1 stopped working. And then once I started to work, I did not
2 receive any more money.

3 Q Do you recall how much you received when you
4 weren't working?

5 A I received money many times, but I do not
6 remember the amount that I was given.

7 Q Talking only about the period of time when you
8 weren't working, do you recall how much you received?

9 A As I said, the government gave me money many
10 times, but I do not recall the amount of money that I was
11 given.

12 Q Now, recently did the government -- did you move
13 into a hotel?

14 A It's for my security.

15 MR. JACOBS: Objection.

16 THE COURT: That's stricken. The question had
17 nothing to do with the reason. The question was simply
18 whether you moved to a hotel.

19 A Yes.

20 Q Is the government paying for your room and your
21 meals there?

22 A (In English) Yes.

23 Q Now, do you recall when your boss, Mohammed
24 Saleh, was arrested?

25 A (In English) Yes.

1 Q Around that time, did some men come to the Gulf
2 station driving a van?

3 A Before Mohammed was arrested, two people came to
4 the gas station, driving the van.

5 Q How many times did two men come to the gas
6 station driving the van?

7 A (In English) Twice.

8 Q The first time they came, can you describe what
9 happened?

10 A When they came the first time, they came to the
11 gas station. I was working night, in the evening. They
12 asked me whether Mohammed was there. I said maybe he is at
13 home. After seven, 10 minutes, Mohammed came. He spoke
14 with them, the two people spoke together. I don't know what
15 they are saying between themselves. Then he opens the van.

16 Q Let me stop you there. Who is "they"?

17 A The two people who came with the van.

18 Q Who was it that was speaking to Mohammed when
19 Mohammed came to the station?

20 A I am not able to say which of the two persons
21 spoke to Mohammed. I saw both of them, both people speaking
22 to Mohammed.

23 Q What happened after they went to the van?

24 A Then they opened the door of the van. They had
25 five barrels -- correction -- couple of barrels. They bring

1 with him couple of barrels.

2 Q Let me interrupt you. I am sorry. Were the
3 barrels in the van at that time?

4 A Yes.

5 Q What happened after they opened the door to the
6 van?

7 A Once they opened the door of the van, they
8 unloaded some of these barrels, and they left some of the
9 barrels inside the van.

10 Q What happened next?

11 A He told me to help them to put them inside the
12 garage.

13 Q I am sorry. Who is "he"?

14 A My boss.

15 Q Go ahead. What happened next?

16 A Then they left, and I don't know where they went.

17 Q When the two men were speaking to Mohammed, your
18 boss, did you see either of the two men give Mohammed any
19 money?

20 A No.

21 Q Did you see two men in a van come on another
22 occasion after that day?

23 A (In English) Yes.

24 Q What day did they come, again?

25 A Second day, next day.

1 Q How many times after the first time?

2 A The day after.

3 Q Was it the same two men that came or different
4 men?

5 A (In English) No, different.

6 Q Were both of them different?

7 A No. The first time -- there is a man who came
8 twice.

9 Q What happened when they came on the second day?

10 A When they came the second time, they spoke to
11 Mohammed.

12 MR. LAVINE: Objection.

13 MR. KHUZAMI: Let me rephrase it.

14 Q When you say they spoke to Mohammed, do you know
15 which of the two men spoke to Mohammed or if both of them
16 spoke to Mohammed?

17 A Both of them spoke to Mohammed. I don't know.

18 Q What happened next?

19 A Then they left.

20 Q Did they take anything out of the garage?

21 A Yes. I remember that before they left, they took
22 those barrels from the garage. They took them and they
23 left.

24 Q When the two men were speaking to Mohammed, did
25 you see them give him any money?

1 A No.

2 Q Did there come a time after -- withdrawn.

3 MR. KHUZAMI: Your Honor, this may be an
4 appropriate time for the instruction.

5 THE COURT: I think it will be after the
6 testimony rather than before.

7 Q Did there come a time when you received a phone
8 call from Mr. Saleh?

9 A Yes. After Mohammed was arrested he spoke to me
10 on the phone.

11 Q Where were you when Mohammed spoke to you by
12 phone?

13 A I was at work, where I was working at that time.

14 Q Do you know where Mohammed was?

15 A He was in jail.

16 Q What did he say to you on the telephone?

17 A He asked me about the gas station, how the
18 business was doing, and then he asked me to speak to
19 Aboubeker. He told me, tell him to tear the receipts apart,
20 and he also said that it was dangerous for Aboubeker himself
21 also.

22 THE COURT: The testimony about what Mr. Saleh
23 said about the receipts, as well as Mr. Aboubeker's
24 testimony on the subject of destroying the receipts, is
25 admissible only with respect to Mr. Saleh. That is what I

1 meant to limit you to with regard to Mr. Aboubeker's
2 testimony and with regard to this witness' testimony as
3 well. So the testimony about any conversation that this
4 witness might have had with Mr. Saleh and any instruction
5 that might have been given to Aboubeker about the receipts
6 is admissible only with respect to Mr. Saleh and not with
7 respect to anybody else.

8 Go ahead.

9 MR. KHUZAMI: Thank you.

10 Q What did you do after you received this phone
11 call from Mr. Saleh?

12 A I started to work in the afternoon up to 10:30 at
13 night, so after I finished working I went home and there I
14 spoke to Aboubeker, because he lives with me in the same
15 house.

16 MR. JACOBS: Your Honor, I have an objection.
17 May I have a side bar at this point?

18 MR. KHUZAMI: Perhaps I can clarify it, your
19 Honor.

20 THE COURT: Go ahead.

21 Q Mr. Karim, did you pass along the message to
22 Mr. Aboubeker that you received from Mr. Saleh?

23 A Yes.

24 MR. KHUZAMI: Your Honor, may I approach?

25 THE COURT: Yes.

1 Q Mr. Chenane, let me show you what has been marked
2 Government Exhibit 289 for identification and ask if you
3 recognize that?

4 A (In English) Yes, I know this tape.

5 Q Have you listened to that tape?

6 A Yes.

7 Q What is it a tape of?

8 A This tape contains conversation between Mohammed
9 and me.

10 Q That is the conversation you had with him in
11 jail?

12 A Yes.

13 Q How do you recognize that tape?

14 A The first time I listened to this tape, and I put
15 down my initials, K.C.

16 Q Do you see your initials on that tape?

17 A Yes.

18 MR. KHUZAMI: Your Honor, I would move
19 Government's Exhibit 289 into evidence.

20 MR. JACOBS: No objection.

21 THE COURT: 289 is received only with respect to
22 Mr. Saleh.

23 (Government's Exhibit 289 was received in
24 evidence)

25 MR. KHUZAMI: No further questions, your Honor.

1 THE COURT: Cross, Mr. Jacobs?

2 THE WITNESS: May I drink?

3 THE COURT: Yes. Go ahead, Mr. Jacobs.

4 CROSS-EXAMINATION

5 BY MR. JACOBS:

6 Q Mr. Chenane, my name is John Jacobs, and I
7 represent Mohammed. Do you recognize him seated over there?

8 A May I step down to see?

9 MR. JACOBS: With the court's permission, may the
10 defendant stand up?

11 THE COURT: Yes.

12 THE WITNESS: No, myself, I would like to.

13 MR. JACOBS: Sure. It is up to your Honor.

14 THE COURT: Go ahead.

15 A Yes.

16 Q That is Mohammed seated over there?

17 A Yes.

18 Q He is the fellow that you worked for for several
19 months, is that correct?

20 A Yes.

21 Q And your roommate and friend Aboubeker got you
22 the job there?

23 A Yes.

24 Q You worked at the Gulf station for Mohammed,
25 correct?

1 A Yes.

2 Q He taught you how to work at a gas station?

3 A Yes.

4 Q He taught you how to handle the cash money?

5 A I beg your pardon.

6 Q How to handle cash, what to do with cash?

7 A Yes.

8 Q He taught you how to check the pumps, correct?

9 A To check, what do you mean?

10 Q How much fuel is in the pump?

11 A (In English) Check the tank, no pump.

12 Q Thank you.

13 A Yes.

14 Q Did you pump gas yourself?

15 A Yes.

16 Q Did Mohammed pump gas on occasion?

17 A (In English) Sometimes.

18 Q Did you at times take cash home and give it to

19 Mohammed the next day?

20 A No, never.

21 Q You would give the cash to Mohammed at the end of

22 each day?

23 A There was a place where we would put the money.

24 Q Where was the place?

25 A There is a shelf for the oil. That's where we

1 would put the money.

2 Q Was there a safe in the Gulf station?

3 A No.

4 Q How much money back in June in cash would you say
5 that you had at the end of the day, Mr. Chenane?

6 A Why especially in June?

7 THE COURT: The rule here is, he asks the
8 questions and you give the answers. If he asks you a
9 question about June, answer him about June, if you can. If
10 you can't, tell him you can't.

11 Q On an average day back in the springtime of 1993,
12 would there be more than \$2,000 in cash a day at the
13 station?

14 A In the month of June?

15 THE COURT: No, he is now asking you for the
16 period that you worked there.

17 MR. JACOBS: Thank you, Judge. I will accept
18 that.

19 THE COURT: During the period that you worked
20 there, did you --

21 A Since the time I have been working for Mohammed,
22 the money he would get would be about 700, \$800.

23 Q A day?

24 A (In English) No, my shift, only my shift.

25 Q How many shifts were there at the station?

1 A Two.

2 Q Would you agree with me that most of the
3 customers paid in cash at the station?

4 A There are customers who pay cash, there are other
5 customers who pay credit, who use the credit.

6 Q So would you agree with me that on an average day
7 Mohammed would have at the end of the day at least a
8 thousand dollars in cash in his pocket?

9 A That I don't know. You will have to ask him.

10 THE COURT: He is asking you, so if you know,
11 fine. If you don't know, tell him you don't know.

12 A I don't know.

13 Q But the money that you would get at the end of
14 the day on your shift, the 700 bucks, you would give that to
15 Mohammed, correct?

16 A No. I would leave it to the following shift, and
17 then Mohammed the following day would come and fetch it.

18 Q It was Mohammed's money, correct?

19 A Yes.

20 Q And the people that had credit accounts, they
21 would just sign receipts, correct?

22 A Yes.

23 MR. JACOBS: V for identification? Deem it
24 marked?

25 THE COURT: It is deemed marked V.

1 Q Mr. Chenane, let me show you that document we
2 have deemed marked for identification as defendant Saleh V
3 for identification. Have you looked at that?

4 A Yes.

5 Q Do you recognize that to be one of the credit
6 accounts for a customer at the station?

7 A I recognize this document but I do not recognize
8 this company.

9 Q You do not recognize -- I am sorry.

10 THE COURT: He doesn't recognize the company.

11 Q Do you recognize that as a document that was
12 generated at the station for a credit account?

13 A Yes.

14 MR. JACOBS: I would offer it into evidence, your
15 Honor.

16 MR. KHUZAMI: I would just like to take a look at
17 it.

18 MR. JACOBS: Sure.

19 MR. KHUZAMI: No objection.

20 THE COURT: V is received without objection.

21 Jack.

22 (Defendant Mohammed Saleh Exhibit V was received
23 in evidence)

24 MR. JACOBS: May I briefly publish it to the
25 jury? This is a Gulf receipt printed in the amount of

1 \$23.76. The initials, it says JRB, February 1, 1993. There
2 is a license plate in the state and it is signed by somebody
3 named Ricky Bronx.

4 Q Do you recognize this document to be one of the
5 credit accounts but you don't recognize the name, is that
6 correct, sir?

7 A Right.

8 Q And the decision on who to give credit to,
9 Mohammed made that, is that correct?

10 A Yes.

11 Q Were you ever present when members of the Muslim
12 community ever came to Mohammed and requested financial
13 assistance?

14 A No, I don't know.

15 Q Were you ever present when Mohammed gave any
16 money to people who needed money for food or rent, that he
17 would lend these people money?

18 A No.

19 Q The people that had credit accounts, how did they
20 pay? Cash or check or both?

21 A By check.

22 Q Was that given to Mohammed, those checks?

23 A The clients would come by the gas station. If
24 Mohammed was there they would give the check or checks to
25 him, or otherwise the person who was there.

1 Q Did any of the credit accounts pay by cash, to
2 your knowledge?

3 A No, I don't know about that.

4 Q You continued to work at the station for about a
5 month after Mohammed's arrest, is that correct?

6 A Yes.

7 Q And am I correct that you were interviewed by
8 Detective Corrigan back there for the first time on about
9 July 20, and you continued to work after your first
10 interview with the FBI? Is that correct?

11 A I was interviewed by a person, by someone. I do
12 not remember this person.

13 Q Do you remember if that first interview with law
14 enforcement was about July 20, 1993?

15 A I do not recall the date, the exact date, but
16 yes, I do recall that after Mohammed was arrested, I do
17 recall that I was interviewed.

18 Q Did you ever speak with a person by the name of
19 Emad Salem?

20 A That he would introduce himself by that name?

21 Q Yes.

22 A No, I do not know this man.

23 Q Did you ever get a phone call from somebody who
24 identified himself on the phone as Emad Salem?

25 A Many people used to call at the gas station. I

1 don't remember their names.

2 Q Did you ever get instructions from Mohammed in
3 June of 1993 that if Emad Salem calls, to tell him that he
4 was not here?

5 A No, he never told me that.

6 (Continued on next page)

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1 MR. JACOBS: Your Honor, I am going to get into
2 the transactions. Do you want me to continue the
3 examination? It is up to your Honor.

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

5 MR. JACOBS: Sure.

6 (At the side bar)

7 THE COURT: How much more?

8 MR. JACOBS: Fifteen, 20 minutes.

9 THE COURT: Do you feel up to it?

10 MR. JACOBS: Sure. It's up to you.

11 THE COURT: Do you have anything?

12 MR. KHUZAMI: Just the tape after that.

13 MR. JACOBS: I don't want the jury to think --

14 THE COURT: I am directing you to continue.

15 MR. JACOBS: I don't mind. Thanks.

16 (In open court)

17 THE COURT: I am going to direct counsel to
18 continue and finish up with this witness today.

19 (Continued on next page)

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1 BY MR. JACOBS:

2 Q Mr. Chenane, on June 22, two people came to the
3 gas station, and you have described the business with the
4 barrels, is that correct?

5 A Yes.

6 Q When they came, they spoke with Mohammed for
7 about 10 minutes, is that correct?

8 A When they came, they did not find Mohammed there,
9 but they waited for Mohammed there at the station.

10 Q When Mohammed came, did they speak to Mohammed
11 for about 10 minutes?

12 A More or less, yes.

13 Q Am I correct that during the 10 minutes that he
14 was speaking with these two people, you were attending your
15 business pumping gas and dealing with customers?

16 A That's right, normally.

17 Q In fact, you didn't pay much attention to their
18 conversation, did you, sir?

19 A I did not hear what they were saying, but I did
20 see them speaking, the three of them together.

21 Q Did you see them the entire 10 minutes or were
22 you dealing with other customers and attending to business?

23 A Of course, I wouldn't stay there standing
24 absolutely by my boss speaking to other people. As I said,
25 it was about 10 minutes, and I was doing my usual work

1 around the station.

2 Q And in fact when you were interviewed by the FBI
3 for the first time, you told the FBI that you did not pay
4 much attention when they were speaking, didn't you?

5 A If I said that, can you please show me the
6 record.

7 MR. JACOBS: May I approach the witness, your
8 Honor?

9 THE COURT: Yes.

10 MR. JACOBS: I am showing the witness 35127-A,
11 page 2, second full paragraph. Would you ask the witness to
12 read this. I don't know if he wants it in English or in
13 French.

14 THE INTERPRETER: The interpreter is going to
15 translate.

16 THE WITNESS: What do you mean by "attention"?

17 Q Mr. Chenane, after looking at that document does
18 it refresh your recollection whether you told the FBI that
19 during these 10 minutes that Mohammed was speaking to the
20 two fellows, that you did not pay them much attention? Does
21 it refresh your recollection?

22 A I don't understand. Could you repeat?

23 Q Sure. Did you tell the FBI when you first spoke
24 with them that during the 10 minutes that Mohammed was
25 speaking with the two men, that you didn't pay them much

1 attention? Did you tell them that?

2 THE COURT: Last time, Mr. Jacobs.

3 MR. JACOBS: He asked me to repeat it, Judge. I
4 am sorry.

5 THE COURT: Fine.

6 A Of course, that's normal. I had nothing to do
7 with them, but once they ask you to do something and you
8 know what you have --

9 THE COURT: He simply asked whether you told that
10 to the FBI. I gather your answer is yes, you did.

11 A (In English) I don't remember.

12 Q Did the two fellows that came on June 22, did
13 they take an air conditioner over to your apartment?

14 A Yes.

15 Q Am I correct that the diesel tank at the Gulf
16 station has a capacity of about 950 gallons?

17 A I do not remember the correct contents.

18 Q Do you know if the diesel tank at Vinnie's has a
19 larger capacity?

20 A That I don't know.

21 Q Mohammed sent the two men to Vinnie's, correct?

22 A He sent them to Aboubeker, not to Vinnie.

23 Q To Aboubeker?

24 A Yes.

25 Q And Aboubeker worked at Vinnie's, correct?

1 A He worked at the Vinnie gas station but he worked
2 for Mohammed.

3 Q And the diesel station at Vinnie's was owned by
4 Mohammed, correct, or rented from Vinnie by Mohammed,
5 correct?

6 A Rented, you said?

7 Q Rented. If you know.

8 MR. JACOBS: Is his answer it is rented?

9 A Mohammed rented the Vinnie gas station.

10 Q On the second day, do you know if Mohammed put
11 several cases of motor oil that were going to be delivered
12 over to Vinnie's and asked the two fellows that came on the
13 23rd to take them over?

14 THE INTERPRETER: Counsel, could you please.

15 MR. JACOBS: Slow it down, my apologies.

16 Q On the 23rd, the second day, in addition to the
17 barrels that you have described, did Mohammed put into the
18 van several cases of motor oil to be delivered to Aboubeker
19 over at Vinnie's, if you know?

20 A That I don't remember.

21 Q During the time you worked at Mohammed's station,
22 did you ever see anybody else fill up 55-gallon drums with
23 diesel fuel?

24 A You mean that they would get for their cars or
25 put inside something?

1 Q The question is, did you ever sell diesel fuel to
2 other customers in 55-gallon drums at any time when you were
3 there?

4 A In barrels, no, never.

5 Q Never happened?

6 A In barrels, never.

7 Q So you never saw anybody come into the station
8 with a 55-gallon drum and fill it with diesel fuel?

9 A Never.

10 Q Both days was the gas station open for business,
11 the 22nd and 23rd when these men came?

12 A Yes, it was.

13 Q What time did the station close, the Gulf
14 station, at night back in June of 1993?

15 A You see, there aren't fixed business hours.
16 Sometimes the boss would ask us to keep it open longer if
17 there was enough business. Could be as late as 11:30 at
18 night.

19 Q The diesel pump at the Gulf station, did it have
20 a lock and key or did it have a key to lock it?

21 A All the pumps, all the diesel pumps have a lock
22 that you put on once you finish your day.

23 Q I assume Mohammed had the key to the lock,
24 correct?

25 A No. The keys, we leave the keys in the station

1 for the morning shift.

2 (Continued on next page)

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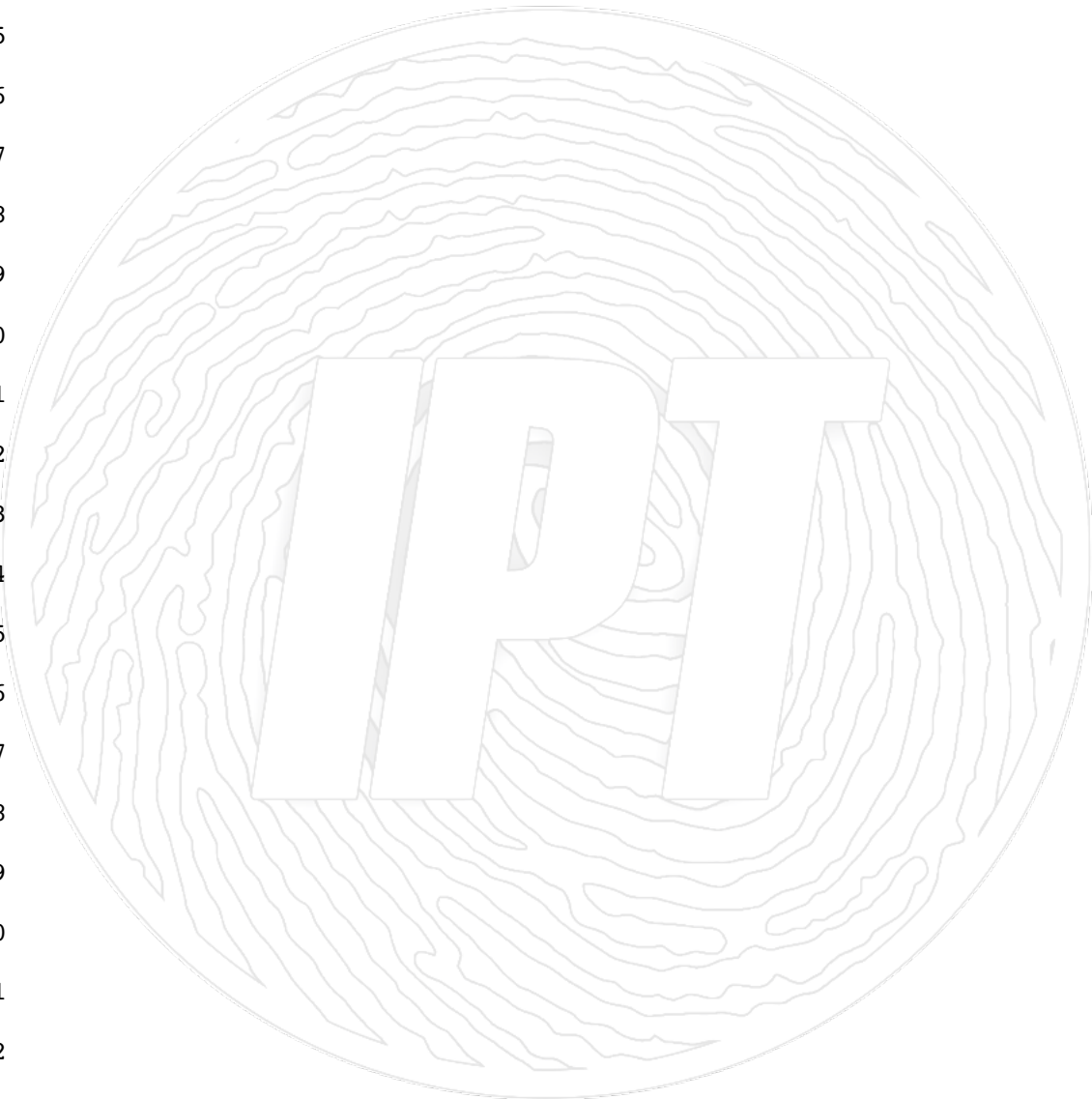
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1 Q So Mohammed could have gone to the station at two
2 o'clock in the morning, taken the key and turned on the
3 diesel pump, correct?

4 A No, he can't.

5 Q He couldn't do that? Why can't he do that? Why
6 can't he go and turn it on at 2 o'clock in the morning?

7 A Because at the end of your shift, you take the
8 reading and then the following shift, when they come, they
9 refer to that, so they would have known.

10 Q What happens if you set the pump back to zero or
11 told the people that it was none of their business?

12 The question was, I'm sorry, could Mohammed have
13 gone to the station at two in the morning -- yes or no --
14 and turned on the pump?

15 THE COURT: He's asking whether it's physically
16 possible.

17 MR. JACOBS: Correct. Thank you.

18 THE COURT: Not whether he could have done it
19 without anybody knowing.

20 MR. JACOBS: Thank you.

21 A Of course. It's his business. It's his own
22 place.

23 MR. JACOBS: Can I just have a moment, your
24 Honor.

25 (Pause)

1 Q Mr. Chenane, am I correct that the government has
2 paid you over \$7,000 in the last few months?

3 A The last month, no.

4 THE COURT: Do you mean in the last month?

5 MR. JACOBS: I am sorry. I will rephrase the
6 question.

7 THE COURT: Please.

8 Q How much money have you gotten in total from the
9 United States government?

10 A As I said previously to the prosecutor, the
11 government gave me money many times, but I do not recall, I
12 do not recall the amount.

13 MR. JACOBS: No further questions.

14 THE COURT: Anyone else?

15 Any other cross? Any redirect?

16 MR. KHUZAMI: No, your Honor.

17 MR. LAVINE: Your Honor --

18 THE COURT: I'm sorry. Mr. Lavine.

19 MR. LAVINE: Don't be sorry.

20 THE COURT: Representing Fadil Abdelgani.

21 CROSS-EXAMINATION

22 BY MR. LAVINE:

23 Q The second time when men came to the gas station
24 and spoke to Mohammed Saleh, where did the conversation take
25 place?

1 A They were speaking, they were talking inside the
2 office.

3 MR. LAVINE: Thank you. I have nothing further.

4 THE COURT: Anyone else? Anything else?

5 MR. KHUZAMI: No, your Honor.

6 THE COURT: Thank you very much. You're excused.

7 (Witness excused)

8 THE COURT: All right. Ladies and gentlemen, I
9 am sorry for the delay, but I really wanted to get at least
10 this out of the way. We are going to break now for the day
11 and for the week. Please leave your notes and other
12 materials behind. Please don't discuss the case. Have a
13 pleasant weekend, and we will see you on Monday.

14 (Proceedings adjourned to Monday, June 19, 1995
15 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)

June 19, 1995
10:00 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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and
SALVATORE S. RUSSO

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning.

4 MR. JACOBS: Your Honor, can we see you at the
5 side bar for one minute?

6 THE COURT: Wait for the jury.

7 (Jury present)

8 THE COURT: Good morning, ladies and gentlemen.

9 JURORS: Good morning.

10 THE COURT: Sorry for the delay, and I have to go
11 see the lawyers at the side about some last minute
12 inspiration. But we should be with you shortly.

13 (At the side bar)

14 THE COURT: It is 10:00, we get started a half
15 hour late, and when the jury comes in you want a side bar.

16 MR. JACOBS: My apologies, your Honor. This is
17 the MCC transcript --

18 THE COURT: You draw on your account.

19 MR. JACOBS: We agreed to put this in without
20 witnesses or anything but I did reserve the right to put in
21 the circumstances concerning how they made the call on my
22 case.

23 That is all.

24 THE COURT: This is the --

25 MR. JACOBS: MCC tapes, that's right.

1 (In open court)

2 THE COURT: Mr. Khuzami.

3 MR. KHUZAMI: Your Honor, at this time pursuant
4 to stipulation with Mr. Jacobs, counsel for Mohammed Saleh,
5 the government offers into evidence Government Exhibit 289T,
6 which is an English transcript of a telephone call dated
7 July 5, 1993, at 6:37 p.m., between Mr. Mohammed Saleh from
8 prison, and Mr. Chenane Karim, which was referred to during
9 testimony on Thursday. This is offered only against
10 Mr. Mohammed Saleh.

11 THE COURT: Only with respect to Mr. Saleh?

12 MR. KHUZAMI: That is right.

13 THE COURT: Thank you. 289T is received on
14 stipulation.

15 (Government's Exhibit 289T was received in
16 evidence)

17 THE COURT: Are you going to read it?

18 MR. KHUZAMI: That is correct, your Honor.

19 THE COURT: Go ahead.

20 MR. KHUZAMI: Mr. McCarthy will read the parts
21 spoken by Chenane Karim, Miss Chu will read the parts of
22 Laila Saleh, and I will read the parts of Mohammed Saleh.
23 The transcripts are in a binder marked 152 to 299.

24 THE COURT: One of your many binders should be
25 marked 152 to 299, and it has 289T in it.

1 THE COURT: Go ahead.

2 (Government's Exhibit 289F in evidence read to
3 the jury)

4 MR. McCARTHY: Your Honor, the government calls
5 Cheryl Fletcher.

6 (Continued on next page)

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1 CHERYL NAN FLETCHER,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. McCARTHY:

6 Q Good morning, Miss Fletcher.

7 A Good morning.

8 Q Can you explain to the ladies and gentlemen of
9 the jury what you do for a living.

10 A Yes. I am a special agent for the Federal Bureau
11 of Investigation.

12 Q How long have you been an FBI agent?

13 A Approximately six years.

14 Q Where are you assigned?

15 A I am assigned to the New York office.

16 Q Let me direct your attention to the evening of
17 June 23, 1993, into the early morning hours of June 24,
18 1993. Can you tell us whether you were on duty at that
19 time?

20 A Yes, I was.

21 Q What was your assignment?

22 A My assignment was to monitor activities that took
23 place in the safe house near which we were set up at.

24 Q When you mention the safe house, are you talking
25 about a garage location in Queens?

1 A That is correct.

2 Q When you say you were to monitor activities, can
3 you tell us what you mean by monitoring activities?

4 A We had surveillance equipment set up to monitor
5 the activities that took place in that safe house, mainly
6 television monitoring.

7 Q What kind of surveillance equipment?

8 A We had, again, monitors set up inside our
9 location that were tied in to cameras that were placed
10 inside the safe house so we could do realtime viewing of the
11 activities inside the safe house and taping of that
12 activity.

13 Q Were there will also microphones or some type of
14 audio feed?

15 A Yes, there was. We had audio and video.

16 Q Was the location where you were monitoring -- I
17 don't want to know exactly where it was but was it in the
18 same location as the safe house?

19 A Yes, it was.

20 Q That is, the building where you were sitting
21 doing the monitoring was the same building that the safe
22 house was located in?

23 A It was in the same block.

24 Q Can you tell us, please, exactly what it was that
25 you did and what your understanding was of how the

1 monitoring was set up?

2 A Whenever there was activity in the safe house, we
3 had the capability to activate equipment that would tape
4 those activities.

5 Q How many tapes did you have going at any one
6 time?

7 A We had the capability of having two tapes going
8 at any one time.

9 Q The two tapes that you had, was each of them
10 hooked up to one camera or more than one camera?

11 A No, more than one camera. Each television
12 monitor was hooked up to several cameras.

13 Q Were you able to hear what was going on in the
14 safe house?

15 A Yes, we were.

16 Q Did you do anything in the course of hearing that
17 to manipulate in any way or control the audio feed?

18 A No, we did not, just the video.

19 Q I am going to show you a number of items, the
20 numbers of which I will read into the record: Government's
21 Exhibits 381A1 and 381B1, Government's Exhibits 382A1,
22 3882B1, and Exhibits 383A1 and 383B1.

23 Q Agent Fletcher, did you take a look at those
24 videotapes prior to your testimony this morning in this
25 case?

1 A Yes, I did.

2 Q Are those videotapes that you took from the
3 activities that took place in the safe house on June 23 into
4 June 24, 1993?

5 A Yes, they are.

6 MR. McCARTHY: Your Honor, I have no further
7 questions.

8 THE COURT: Cross? Ms. London, representing
9 Mr. Elhassan.

10 CROSS-EXAMINATION

11 BY MS. LONDON:

12 Q Good morning, Miss Fletcher.

13 A Good morning.

14 Q On the evening of June 23, 1993, what time did
15 you begin your monitoring activities?

16 A That would be the time that the activities
17 started. I would not be able to tell you exactly without
18 referring back to the log for that night.

19 Q Do you have that log with you?

20 A No, I don't.

21 (Continued on next page)

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1 MS. LONDON: May we approach, your Honor?

2 THE COURT: Yes.

3 (At the side bar)

4 THE COURT: Was this part of anybody's 3500
5 material?

6 MR. McCARTHY: Yes.

7 MS. LONDON: I see. This is a different --

8 MR. McCARTHY: A different agent. If we had
9 gotten to it on Thursday, we would have called him.

10 MS. LONDON: Is she familiar with this?

11 MR. McCARTHY: It is her handwriting.

12 MS. LONDON: Thank you.

13 (In open court)

14 (Continued on next page)

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1 BY MS. LONDON:

2 Q Miss Fletcher, I am going to show you what has
3 been marked Government's Exhibit 35133-A. Do you recognize
4 this document?

5 A Yes, I do.

6 Q I would ask you to look at this document and see
7 if it refreshes your recollection as to what time you
8 started your monitoring activities?

9 A This shows at 20 --

10 Q No.

11 A Yes, it does refresh my memory.

12 Q What time did you start?

13 A 2000 hours.

14 THE COURT: Is that 8:00 at night?

15 Q In our laymen's terms 2000 hours is --

16 A 8:00, yes, in the evening.

17 Q P.m.

18 A P.m.

19 Q Did you continue your monitoring activities until
20 they ceased in the safe house that evening?

21 A Yes, we did.

22 Q I am asking if you did.

23 A Yes. If I personally did?

24 Q Yes.

25 A Yes.

1 Q So you were there until all activity ceases and
2 arrests were made, is that correct?

3 A That is correct.

4 Q Are you the agent who actually put tapes into the
5 video machine?

6 A Yes.

7 Q You have told us that there were two recording
8 devices, is that correct?

9 A Yes, to the best of my recollection, there were.

10 Q Are you familiar with how these recording devices
11 were set up in that garage?

12 A No, I was not.

13 Q Isn't it a fact that there were more than two
14 cameras set up there?

15 A Yes, I believe there were more than two.

16 Q In fact, would it be fair to say that there were
17 at least five cameras set up there, is that correct?

18 (Continued on next page)

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1 Q Each of those five cameras had a tape for itself,
2 isn't that correct?

3 A No, each camera -- like I said, several of the
4 monitors shared a couple of cameras apiece. There was not a
5 separate television monitor for each camera. We can
6 manipulate the television monitors to reflect different
7 camera angles at any given time.

8 Q But is it fair to say, for example, if you have
9 three cameras that feed, that you can observe from one
10 monitor -- was that one of the setups where there were three
11 cameras going into one monitor?

12 A Yes, I believe -- I don't remember the exact
13 numbers, but, yes, different cameras fed into the same
14 monitor.

15 Q So is it your testimony that the three cameras
16 feeding into one monitor were not all working
17 simultaneously?

18 MR. MCCARTHY: Objection.

19 A Yes --

20 THE COURT: If she can answer it.

21 Were you able to monitor three cameras
22 simultaneously, or only one camera at a time?

23 THE WITNESS: One camera at a time.

24 THE COURT: So you could monitor any one of, say,
25 three cameras on one monitor and two cameras on the other?

1 THE WITNESS: Yes.

2 THE COURT: But you could only monitor one at a
3 time on each monitor?

4 THE WITNESS: Yes.

5 THE COURT: All right. Go ahead.

6 Q So when you were monitoring one camera, the other
7 two cameras are not being used, are not filming, is that
8 correct?

9 A To the best of my knowledge, my recollection,
10 that was a setup that we had.

11 Q I am sorry. I didn't hear you.

12 A Yes.

13 Q So then it is a human decision as to which camera
14 of the three will be recording at any given instant, is that
15 correct?

16 A Yes.

17 Q So you or another agent with you has the ability
18 to switch from one camera to another, correct?

19 A That is correct.

20 Q When you make the switch from one camera to
21 another, the camera that you switch from no longer has an
22 image coming into a recorder, is that correct?

23 A That is correct.

24 Q Was the recording, if you know, done in real-time
25 recording?

1 A Yes.

2 Q To your knowledge, were there any time lapse
3 recordings made?

4 A You mean continuous recording?

5 Q Yes. But the recordings get recorded in a
6 speeded up version so that long time periods can be
7 compressed on to a three-hour tape.

8 A I don't recall any being done.

9 Q Now, each of the cameras also had a microphone
10 attached or the ability to record from a microphone,
11 correct?

12 A That is correct.

13 Q So is it fair to say that when you switched from
14 one camera to a second camera, the microphones also switched
15 at the same time from one camera to another, one microphone
16 to another?

17 A I really couldn't say, since I was not involved
18 with the actual setup.

19 Q So, in other words, your testimony is that you
20 just viewed on the monitor itself?

21 A Correct.

22 Q Did you have any responsibility for switching
23 from one camera to another camera?

24 A You mean other than to record the activities
25 inside?

1 Q No. In the recording of the activities, did you
2 make the decision, you personally?

3 A The person inside who was monitoring the
4 activities would do that.

5 Q Was that person you?

6 A At certain times, yes.

7 Q And at other times who was responsible?

8 A Are you talking about that particular night?

9 Q I am sorry?

10 A Are you talking about that particular night?

11 Q Yes.

12 A Yes. At other times either myself or the other
13 person inside the room was responsible for that.

14 Q Who was the other person inside the room?

15 A That night it was another agent with the FBI.

16 Q Who was that agent?

17 A James Ferriter.

18 Q I'm sorry?

19 A James Ferriter.

20 Q Were you the only two agents monitoring that
21 night?

22 A Up until a certain point. For the most part we
23 were. There were people in and out coming in to see what
24 was going on, but we were the main persons there who were
25 doing the monitoring.

1 Q When you say "up to a certain point," what point
2 was that?

3 A Up to the point where it looked like the arrests
4 were going to be made that night.

5 Q And then who took the over the monitoring at that
6 point?

7 A Oh, we were still responsible for the monitoring.

8 Q You mean you and Agent Ferriter, is that correct?

9 A That is correct.

10 Q I am going to show you Government Exhibit 300B,
11 and ask you if you have seen this diagram before.

12 MS. LONDON: First, may I have one moment,
13 please, your Honor, with Mr. McCarthy.

14 (Counsel conferred)

15 Q Agent, I would ask you to disregard the pink
16 pieces of paper, and tell me if you have seen this diagram
17 before, Government Exhibit --

18 THE COURT: The translators can't hear you.

19 MS. LONDON: I'm sorry.

20 Q I would ask you to disregard the pink pieces of
21 paper on this and ask you if you have seen this chart
22 before.

23 A No, I have not.

24 Q So, Agent, it is your testimony -- and I would
25 ask you are you sure of this -- that there were only two

1 cameras recording?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 A That is the best --

5 THE COURT: Sustained as to form.

6 MR. McCARTHY: May I have a moment with

7 Ms. London, your Honor?

8 THE COURT: Yes.

9 (Counsel conferred)

10 MR. McCARTHY: Thank you.

11 Q Ms. Fletcher, I am going to show you what has
12 been marked as Government Exhibit 35102A and ask you if you
13 have seen this chart before.

14 A Yes. I have seen it.

15 Q Now, would it be fair to say that there were a
16 number of cameras which were focused on the workbench area?

17 A Yes. That is correct.

18 Q How many cameras were focused on that area?

19 A This shows two, possibly, three.

20 Q Is it also fair to say that there was a camera
21 that was focused on the door area, on the back door area?

22 A Yes. That is correct.

23 Q Would it be fair to say that there was also a
24 camera focused on a rollup door?

25 A That is correct.

1 Q So would it be fair to say that there were five
2 cameras, five surveillance cameras, video cameras monitoring
3 that garage?

4 A This depicts five cameras that were monitoring
5 the garage, yes.

6 Q To your understanding, were there five cameras
7 monitoring the garage?

8 A Yes, to the best of my recollection there was.

9 Q So would it be fair to say that three of these
10 cameras were concentrated on the workbench area, correct?

11 A Yes.

12 Q It is these three cameras which you had the
13 ability to go from one to the other focusing on that
14 workbench area, is that correct?

15 A To the exclusion of the other cameras?

16 Q Let me clarify that.

17 If there are three cameras that are focused on
18 the work bench area, is it fair to say that you can cut
19 between any one of those three cameras focused on that
20 workbench area to the exclusion of the other two cameras on
21 that area?

22 A I can't recall whether it was those three cameras
23 that we could switch back and forth from. I can't say for
24 certainty that those three cameras, yes, we could switch
25 back and forth.

1 Q But you've already told us that you could
2 switch --

3 MR. MCCARTHY: Objection to form.

4 THE COURT: Sustained.

5 Q Is it your testimony that you had the ability to
6 switch back and forward between cameras?

7 A Yes, we did. But I can't recall if it was with
8 all cameras we had that ability, in other words, with all
9 five cameras. We did have it with some, and I can't recall
10 which ones we had it with and which ones we didn't.

11 Q So is it also your testimony that there were two
12 recorders running?

13 A Again, yes, to the best of my ability to recall
14 that.

15 Q Do you know which areas were being recorded by
16 those two cameras?

17 A The areas, again they were tied into these five
18 cameras, but I can't recall which monitor was tied into each
19 individual camera.

20 Q Well, Agent, as you were monitoring on the screen
21 that you were monitoring, were you able to switch from the
22 workbench to one of the doors, back to the workbench, or did
23 the monitor that you were looking at restrict you solely to
24 the work bench area?

25 A I cannot recall that.

1 MR. McCARTHY: Objection to form.

2 I withdraw the objection.

3 Q When you were doing the monitoring and when you
4 had the ability to make the switch, did you make the switch,
5 were you monitoring two monitors at one time or only one
6 monitor?

7 A I seem to recall that we had been monitoring two,
8 but, again, that is to the best of my recollection. I
9 couldn't say for any degree of certainty.

10 Q Can you recall if you were responsible for the
11 monitoring of both the monitors or only one?

12 A The individuals who were in that room were
13 responsible for monitoring both monitors.

14 Q And you were at times that evening one of the
15 individuals responsible for the monitoring, correct?

16 A That is correct.

17 Q And is it your testimony that you were
18 responsible for the monitoring of both cameras?

19 A That is correct.

20 THE COURT: You mean both monitors?

21 Q And both monitors?

22 A Both monitors, yes.

23 Q Were the two monitors placed close together?

24 A Yes, they were.

25 Q Were they side by side?

1 A They were in the same area.

2 Q When you say "the same area," could you clarify
3 that?

4 A You see --

5 THE COURT: If you were looking at one monitor,
6 could you also see the other?

7 THE WITNESS: Yes. Yes, you could.

8 Q Now, with respect to the audio recording that
9 evening, were the audiotapes recorded onto the actual
10 videotape or were they recorded onto a separate audiotape?

11 A There was audio on the videotape.

12 Q Were you inside the monitoring -- excuse me,
13 withdrawn.

14 Were you inside the monitoring room for the
15 entire evening?

16 A Yes, I was.

17 Q Did you leave the monitoring room at any time?

18 A I don't recall leaving the monitoring room at any
19 time.

20 Q Are you familiar with a piece of equipment called
21 an AG 7400?

22 A No, I am not.

23 Q In the course of your monitoring, is it fair to
24 say that all you had to do was move a switch?

25 A Push a button.

1 Q Push a button. And insert or take out a tape?

2 A Yes.

3 MS. LONDON: I have no further questions, your
4 Honor.

5 THE COURT: Anyone else?

6 MR. NOOTER: Yes, your Honor.

7 THE COURT: Mr. Nooter?

8 MR. NOOTER: If I could have one moment with
9 Mr. McCarthy.

10 (Counsel conferred)

11 THE COURT: Mr. Nooter, representing Mr. Wahid
12 Saleh. Go ahead.

13 Cross-examination

14 BY MR. NOOTER:

15 Q Good morning.

16 You were shown six videotapes this morning, and
17 they were identified for you with numbers that ran from 381A
18 and B up through 383A and B, is that correct, for six
19 separate cassettes, is that correct?

20 A I was shown six separate cassettes this morning,
21 that is correct.

22 Q And those cassettes had also been given numbers
23 with a V and a single or double digit number. Do you recall
24 that, V5, V6, V7?

25 A I believe we were calling it Audio 1, 2, 3. I'm

1 not sure which numbers you're referring to.

2 MR. NOOTER: OK.

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

4 (Counsel conferred)

5 MR. NOOTER: Your Honor, by agreement with
6 Mr. McCarthy, what we would do is just offer the portion of
7 the envelope which indicates the V number, which was a
8 separate numbering system that was given to these documents,
9 I mean to these cassettes.

10 THE COURT: Those will be designated as what?

11 MR. McCARTHY: Your Honor, I should clarify: The
12 numbers that I gave had either A1 or B1 after them.

13 THE COURT: Right.

14 MR. McCARTHY: What I should have clarified is
15 that the tape itself is A or B and the envelope is A1 or B1,
16 so I think the numbering system -- let me just clarify.

17 MR. NOOTER: I think I now understand this. The
18 cassette tapes themselves.

19 THE COURT: I'm glad one of us does.

20 MR. NOOTER: The cassette tapes themselves have a
21 number followed by a letter, either A or B. A separate set
22 of six exhibits would be the same number with the same
23 letter, but with a number 1 following it, which represents
24 that it's the envelope for a total of 12 exhibits.

25 MR. McCARTHY: Your Honor, perhaps I can read

1 into the record the numbers and clarify exactly what each is
2 since I'm the one who confused it in the first place.

3 THE COURT: Fine.

4 MR. McCARTHY: OK. The exhibits that I referred
5 to earlier were 381B1, which is an envelope containing 381B,
6 a tape.

7 THE COURT: OK.

8 MR. NOOTER: Which V number is that?

9 MR. McCARTHY: That is, for the record, V11,
10 which is what I think counsel will --

11 THE COURT: As I understand it, Mr. Nooter's
12 offer on stipulation is that each of the exhibits to which
13 you referred, or that portion of each of the exhibits to
14 which you referred that refers to the V number is offered
15 and received. Correct?

16 MR. NOOTER: Correct.

17 THE COURT: All right.

18 MR. McCARTHY: And what I would do is just read
19 the V number into the record now to allay any additional
20 confusion.

21 THE COURT: 381B1 is V11. Go ahead.

22 MR. McCARTHY: 381A1 is an envelope containing
23 381A, a tape, and that is V12.

24 382A1, an envelope, contains 382A, a tape, and
25 that is V5.

1 382B1, an envelope, contains 382B, a tape, and
2 that is V7.

3 383A1, an envelope, contains 383A, a tape, and
4 that is V6.

5 Finally, 383B1, an envelope, contains 383B, a
6 tape, and that is V8.

7 MR. NOOTER: Thank you.

8 BY MR. NOOTER:

9 Q Now, just to clarify, when the tape exhibit has
10 one number, such as 382, but there are two separate tapes
11 with that number, is it true those tapes were filmed
12 simultaneously, at the same time as each other, inside the
13 safe house?

14 In other words, if you would look at 382A1, and
15 382B1, which are V5 and V7, is it not true they were both
16 taped on June 23 for a two-hour period running from 10
17 o'clock to midnight?

18 A Again, I would have to look at the actual times
19 on the tape to be able to say that since I didn't assign the
20 numbers that you're referring to.

21 THE COURT: Do you want to open it up and look at
22 the tapes?

23 MR. NOOTER: I think Mr. McCarthy would agree
24 with me that that's what it is.

25 THE WITNESS: Which two is he referring to?

1 MR. McCARTHY: Let me just look at this.

2 (Counsel conferred)

3 MR. NOOTER: I think what we'll do is we'll just
4 make a stipulation later to indicate the time periods of
5 these.

6 MR. McCARTHY: That is agreeable to the
7 government.

8 THE COURT: OK. Go ahead.

9 Q If you recall, is it not true that the two
10 machines ran for two hours -- withdrawn.

11 Each cassette would run for about two hours, is
12 that correct?

13 A That sounds correct. I can't say if it was two
14 hours, four hours. I would have to look at the duration of
15 the tapes to see. But, yes, we did have to change tapes
16 every few hours.

17 Q You used the highest speed in VHS recording, is
18 that correct?

19 A I cannot recall.

20 Q OK. And if you recall, both machines would run
21 out of tape at about the same time as each other and both
22 tapes had to be changed at about the same time as each
23 other, is that correct?

24 A They were running out of tape. We did pay
25 attention -- have to pay attention to them running out of

1 tape, whether or not it was is at the same time, again, I
2 cannot recall.

3 Q Do you know whether, for example, at midnight
4 between June 23 and June 24 both machines ran out at about
5 the same time and the minute or two that it took to change
6 the tapes in both machines resulted in a gap of taping of
7 about a half a minute?

8 A No. I don't recall that.

9 Q OK. It could have happened?

10 A It could have.

11 Q You've already testified about being able to
12 switch camera views on one or both recording machines. Is
13 it not true that when you push the button to make that
14 switch it would cause a little bit of an audio blip, a
15 little bit of an audio gap as it switched from one camera to
16 another?

17 A I would not know. We were mainly concerned with
18 the video at the time. I mean, I wasn't paying attention to
19 the audio that was being done at the time.

20 Q Were you able to listen as you watched the
21 monitors?

22 A Yes.

23 Q And in listening, were you listening to the
24 recording as it came through the camera that was picking up
25 at the time or just through all the microphones, if you

1 understand the distinction.

2 A We were listening to what was coming through the
3 monitor at the time.

4 Q OK. So if you switched view, the monitor also
5 switched view for you, is that correct?

6 A Yes.

7 Q Despite the fact that there were some five
8 cameras there, there were some positions in the safe house
9 you could not see with any of those cameras, is that
10 correct?

11 A Yes. That is correct. Again, I wouldn't be able
12 to tell you which ones.

13 Q OK. Do you know whether there were any cameras
14 positioned to take film out on the street, in other words,
15 from the outside of the safe house?

16 A No.

17 Q There were not, or you don't know?

18 A If there were, I didn't know of it.

19 Q If you know, is it not true that one of the
20 cameras that was aimed at the main entrance, which was a
21 garage door with another smaller door in it, took its image
22 in mirror image as if, for example, it was focused on a
23 mirror that then picked up the image of the door?

24 A Do I know that?

25 Q Right.

1 A No, I didn't recall that.

2 Q You don't know how the camera --

3 A No.

4 Q Withdrawn.

5 You didn't participate in setting up the cameras,
6 is that right?

7 A That is correct.

8 Q The cameras had to be concealed, is that right?

9 A Yes.

10 Q And you don't know whether one of the ways of
11 concealing it might have been to aim the camera at a
12 reflecting device that would pick up the image, but switch
13 it around?

14 A No, I was not involved in that at all, so I
15 wouldn't know.

16 MR. NOOTER: I have no further questions.

17 THE COURT: Mr. Serra, representing Mr. Alvarez.
18 Go ahead.

19 CROSS-EXAMINATION

20 BY MR. SERRA:

21 Q Good morning, Agent Fletcher.

22 A Good morning.

23 Q Just following up, Agent, on a couple of things
24 that you were previously asked, you told Ms. London that
25 there was an audio track made on the videocassettes, is that

1 correct?

2 A That is correct.

3 Q There was also a separate audio recording system
4 as part of the wiring of this garage, though, wasn't there?

5 MR. McCARTHY: Objection, unless it's clarified
6 as to when he's speaking of.

7 THE COURT: Do you want to give a date?

8 Q At any point. Withdrawn.

9 There was recording going on in this garage from
10 the last few days of May through the early morning hours of
11 June 24, is that right, 1993?

12 A It was prior to June 23. I am not sure what date
13 it actually started, whether it was into the end of May.

14 Q But June 23 was the first day that you were
15 there?

16 A No, no, no. It was prior to that. Approximately
17 a month. I don't know when.

18 Q OK. You just don't know the exact date that it
19 started?

20 A Exactly, yes.

21 Q At any time during the time when the recording
22 system was set up in this garage, was there a separate audio
23 recording system separate from the videocassettes?

24 MR. McCARTHY: Objection, unless it's clarified
25 when Ms. Fletcher, when Agent Fletcher was there.

1 MR. SERRA: Your Honor, I'm asking whether she
2 knows as part of her duties.

3 THE COURT: At any time when you were there, was
4 there a separate audio system recording?

5 THE WITNESS: Yes. I believe there was.

6 Q In fact, Agent Fletcher, that separate audio
7 recording system was used from time to time, wasn't it?

8 A Yes, it was.

9 Q To make actual recordings?

10 A Yes.

11 Q Correct?

12 The night that you were there, the night of June
13 23, early morning June 24, that separate audio system was
14 not used, is that correct?

15 A I don't recall not using. We had separate audio
16 equipment set up that we would activate at the same time.

17 Q But your testimony is you don't recall whether it
18 was activated on this particular night?

19 A I don't recall it not being activated. There was
20 no reason why it wouldn't have been. We were doing it all
21 along. I mean, as far as I know, we did it that night also.

22 Q You testified on direct, and you just alluded to
23 it again, that you had the capability as the monitoring
24 agent to turn the equipment on and off, is that right?

25 A That is correct.

1 Q Not only to switch from camera to camera, but
2 also to turn the equipment on and off, correct?

3 A That is correct.

4 Q And that was also a decision made by the agent
5 who was doing the monitoring at the time, right?

6 A That is correct.

7 Q There were people arrested in this garage in the
8 early morning hours of June 24, is that right?

9 A That is correct.

10 Q The equipment was turned off before the arrests
11 were made, wasn't it?

12 A That is correct.

13 Q So the arrests are not actually on tape, isn't
14 that right?

15 A No, they are not.

16 Q The equipment was functioning, it was just turned
17 off before the arrests were made, correct?

18 A That is correct.

19 Q Agent Fletcher, you have previously testified
20 that, to the best of your knowledge, there were five cameras
21 in the garage?

22 A Yes.

23 Q All working simultaneously, is that correct?

24 A Yes.

25 Q Do you know if there was anything which prevented

1 each camera from being hooked to a separate monitor so you
2 would be able to see five images?

3 A No.

4 MR. SERRA: Thank you, your Honor.

5 I have nothing further.

6 MR. NOOTER: Your Honor, I failed to ask one or
7 two questions. May I just do that, please.

8 THE COURT: You want a second turn at bat?

9 Go ahead.

10 MR. NOOTER: I just need to clarify something
11 that was raised.

12 CROSS-EXAMINATION (Continued)

13 BY MR. NOOTER:

14 Q Agent, the video tapes that were made recorded
15 the time and date in a corner or sometimes at the bottom as
16 the tape was being made, is that correct?

17 A That is correct.

18 Q Is it not true that the timers for the two
19 recorders were not in fact set exactly the same as each
20 other, and one is about a minute and 18 seconds off the
21 other?

22 A I don't recall that.

23 MR. NOOTER: OK. Thank you.

24 THE COURT: Anyone else?

25 Any other cross? Any redirect?

1 MR. McCARTHY: Yes, your Honor.

2 THE COURT: Mr. McCarthy.

3 REDIRECT EXAMINATION

4 BY MR. McCARTHY:

5 Q Agent Fletcher, you were asked about monitoring
6 the audio feed. Do you speak Arabic?

7 A No, I do not.

8 Q 35102A is the diagram that Ms. London showed you.
9 Do you recall that?

10 A Yes.

11 Q That's the setup so far as you knew it at the
12 safe house of the cameras?

13 A That is correct.

14 MR. McCARTHY: Your Honor, the government offers
15 35102A.

16 MR. SERRA: Your Honor, may I see it, please.

17 THE COURT: Sure.

18 MS. LONDON: No objection.

19 MR. SERRA: No objection.

20 MR. NOOTER: No objection.

21 THE COURT: All right. 35102A is received.

22 (Government's Exhibit 35102A for identification
23 was received in evidence)

24 Q Agent, 35102A depicts a representation of five
25 different cameras?

1 A That is correct.

2 Q I believe you told us in your testimony that
3 three of the cameras fed into one recorder and two of the
4 cameras fed into another?

5 A Yes.

6 Q As you sit here today, do you know which of the
7 three were grouped together and which was the group
8 comprising the other two?

9 A No, I do not.

10 MR. McCARTHY: Thank you. I have nothing
11 further.

12 MR. NOOTER: Your Honor, one or two questions
13 based on that exhibit.

14 THE COURT: Based on the exhibit. Go ahead.

15 RE-CROSS-EXAMINATION

16 BY MR. NOOTER:

17 Q Agent Fletcher, looking at the exhibit, it not
18 only shows where the cameras are, but it shows approximately
19 what the view range of those cameras is, is that correct?

20 A Yes.

21 Q In other words, the width of the view that any
22 particular camera could take in at any one time, is that
23 correct?

24 A That is correct.

25 Q Is it fair to say that from where you were

1 monitoring you could not move the camera, you didn't have a
2 device that would move the camera, is that right?

3 A That is correct.

4 Q So these views were fixed, is that correct?

5 A Yes.

6 Q One of the notations on this exhibit says "hot
7 spot." Do you see that?

8 A Yes.

9 Q Did you write that yourself?

10 A No, I did not.

11 Q What is the "hot spot"?

12 A I did not write it. I don't know.

13 Q You don't know what it means.

14 A No.

15 Q It is fair to say, however, that with the lines
16 showing the views we can also tell what areas cannot be seen
17 by any camera, is that correct?

18 A Yes.

19 MR. NOOTER: OK. I have nothing further.

20 THE COURT: Anyone else. No?

21 All right. You are excused. Thank you.

22 (Witness excused)

23 MR. SERRA: Your Honor, may we approach the side
24 bar briefly before the next witness.

25

1 (At the side bar)

2 MR. SERRA: Your Honor, a personal request from
3 my client, who would appreciate an early break so that he
4 can use the facilities. I do have something to bring up
5 also, but I think it's probably quickly resolved.

6 THE COURT: How long is the direct likely for
7 this witness?

8 MR. McCARTHY: The next thing we are going to do,
9 Judge, is play a videotape.

10 THE COURT: For how long?

11 MR. McCARTHY: Let me find out exactly how long.
12 I think a few minutes.

13 THE COURT: The question was whether he could
14 last through that or not. You want to break now is what
15 you're telling me?

16 MR. SERRA: That's what he's asking now.

17 MR. McCARTHY: Nine minutes.

18 THE COURT: We will take a break now.

19 (In open court)

20 THE COURT: Ladies and gentlemen, we are going to
21 take a break now. Least believe your notes and other
22 materials behind. Please don't discuss the case, and we
23 will resume in a few minutes.

24 (Recess)

25

1 (Jury not present)

2 MR. SERRA: Your Honor, there is a situation that
3 the court ought to know about. We only found out about it
4 10 minutes ago. The court recalls I just cross-examined and
5 Ms. London cross-examined Agent Fletcher about a backup
6 audio system which was in use in the garage in Queens for
7 much of the tape. One of the most important tapes for Mr.
8 Alvarez is the night of June 19, which is the first night
9 that he is there. That was the one night -- my
10 understanding from the government was the one night that
11 system was used was June 19. That recording is CM 52. I
12 have worked personally on it for probably 100 hours.

13 That recording, which was made using the audio
14 system, is significantly superior to the audio track of the
15 videotapes that overlap with it, which are V3 and V4. I
16 found out 10 minutes ago from the government that in fact
17 the last night before the arrests, the night of June 23 to
18 June 24 -- it is not certain yet. Mr. McCarthy is going to
19 check into it over lunch. But it appears as though that
20 system was used again to make a series of audiotapes which
21 we don't have copies of and which I understand from Mr.
22 McCarthy he wasn't aware of. If they bear the same
23 relationship to V5 and V8 which CM 52 bears to V3 and V4,
24 they are much superior recordings than is possible to hear
25 on the videotape. There are large portions of transcript

1 that the government was going to introduce this week before
2 they were arrested, which is covered by these tapes which
3 the government just discovered. That transcript has been a
4 matter of dispute, more so with Mr. Matarawy Saleh's lawyers
5 than with anybody else, but with a lot of other people also.

6 I am not sure what to suggest, your Honor, except
7 we all need copies of these tapes as soon as we can get
8 them, to listen to them and see if the audio quality, if we
9 can hear things clearer that we couldn't hear before or hear
10 things that we never heard.

11 MR. NOOTER: Your Honor, my immediate concern is
12 that I understand the government is calling the translator
13 to authenticate the transcript that we have been struggling
14 a year over and on which I have planned extensive
15 cross-examination, much of which exists because there are
16 very difficult portions to hear, portions which have been
17 listed as inaudible or portions as to which we have
18 disputes, we think we hear one thing and the government
19 thinks another thing can be heard. These audiotapes are
20 vital to resolve some of these disputes before we play them
21 out to the jury. I have requested that the government make
22 a search for such an audiotape in letters to them, I hope
23 with copies to the court, going back over a year.

24 At one point there was a very early transcript
25 called Q27, which I made reference to in one of my

1 cross-examinations, which fills the gap between V5 and V8,
2 showing that there had to be some tape from which the
3 transcript was made.

4 THE COURT: Other than giving me the history,
5 what is it you want me to do?

6 MR. NOOTER: Time. We want copies of the tapes
7 and time to review them, before the translator is called or
8 the transcript is admitted into evidence. The tape itself
9 can be played. I am not sure what procedure the government
10 was going to follow, but playing the tape without subtitles,
11 the jury only sees Arabic. When we get to the issue of what
12 is in the transcript, I would like the opportunity to at
13 least be able to check the various transcripts against these
14 audiotapes, and that would be a matter of at least several
15 days. First we would have to duplicate the tapes and then I
16 have to have my translator review them.

17 MR. McCARTHY: Your Honor, I don't want to make a
18 representation about what happened until I have got to the
19 bottom of what happened, and I have not done that right now.

20 MR. SERRA: I am sorry, Mr. McCarthy. I can't
21 hear you.

22 MR. McCARTHY: I said, I don't want to make a
23 representation about what happened until I figure out what
24 happened, which I have not yet, although I will by the lunch
25 break. The tapes that we have, which affect only June 23

1 into 24, will be turned over to the defense within the hour.
2 As far as the rest of it goes, we are prepared to proceed
3 with other evidence. We will not attempt at this point to
4 get the videotape of June 23 in, and I don't think that it
5 makes sense to do anything more on this until we know
6 whether in fact the backup tape is actually from a quality
7 perspective superior to the audiotape --

8 THE COURT: The videotape?

9 MR. MCCARTHY: Yes, your Honor. We are prepared
10 to proceed with other evidence and move our proof around so
11 we can continue without delaying the trial.

12 MR. NOOTER: That is certainly acceptable. I
13 assume we are talking about until at least Thursday? We
14 have no trial on Wednesday.

15 MR. MCCARTHY: Yes, your Honor.

16 MR. NOOTER: Without prejudice to ask for more
17 time, that will give us some time.

18 THE COURT: Let's see what is there.

19 Mr. Jacobs.

20 MR. JACOBS: Your Honor, with respect to this, I
21 think at some point, obviously not this moment, the
22 government should put on the record what happened with
23 respect to this Rule 16 material, and that counsel be given,
24 obviously, their right to make any mistrial motions or
25 anything else whether --

1 THE COURT: Mr. Jacobs, before you start tossing
2 glossy bombs about an issue that has nothing directly to do
3 your client --

4 MR. JACOBS: As a matter of fact, that is not
5 correct, your Honor. There are statements about whether he
6 knew about the fuel oil. That is not correct, your Honor.

7 THE COURT: Why don't we wait and see what
8 happened.

9 Mr. Serra, between now and the time the jury
10 comes in, tell your client to be quiet. Yes? If I can hear
11 him they can hear him. He better have it under control by
12 the time they come in.

13 (Jury present)

14 MR. KHUZAMI: Your Honor, at this time the
15 government would offer into evidence nine minutes of
16 videotape marked Government's Exhibit 381B, contained in
17 Government's Exhibit 381B1, the envelope, which is B11, the
18 particular portion of the videotape running from 8:39 and 5
19 seconds p.m. until 9:42 and 19 seconds p.m., and then going
20 ahead from 8:48 and 50 seconds to 8:53 and 29 seconds p.m.,
21 approximately nine minutes. There will be no audio, so we
22 don't need the headsets.

23 THE COURT: That is received.

24 (Government's Exhibit 381B11 received in
25 evidence)

1 (Videotape played)

2 MR. McCARTHY: Your Honor, the government calls

3 Brian Parr.

4 BRIAN G. PARR,

5 called as a witness by the government,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. McCARTHY:

9 Q Good morning, sir.

10 A Good morning.

11 Q Can you tell us how you are employed?

12 A I am a special agent with the United States
13 Secret Service.

14 Q How long have you been a Secret Service agent?

15 A For approximately six years.

16 Q What did you do before you became a Secret
17 Service agent?

18 A I was a deputy United States marshal.

19 Q How long were you a deputy marshal?

20 A Slightly over two years.

21 Q Are you currently working for a task force made
22 up of federal and state agents?

23 A I am.

24 Q Is that here in the New York area?

25 A It is.

1 Q Were you working for the same task force during
2 1993?

3 A Yes, I was.

4 Q Let me direct your attention to the evening of
5 June 23, 1993. Do you recall that day?

6 A Yes, I do.

7 Q Did you have a particular assignment during the
8 evening hours on June 23?

9 A Yes, I did.

10 Q Can you tell us what that was?

11 A I was assigned to an arrest team to effect the
12 arrest of Mohammed Ali Saleh.

13 Q Where were you to effect the arrest of
14 Mr. Mohammed Saleh?

15 A At his residence.

16 Q Do you recall where that was?

17 A It was 39 Burtis Avenue in Yonkers, New York.

18 Q On June 23, 1993, at about 10:30 in the evening,
19 where were you?

20 A I was at Mr. Saleh's residence.

21 Q Were you alone or with other agents?

22 A I was with other agents.

23 Q Tell us what happened at 10:30.

24 A We arrived at Mr. Saleh's residence, and had
25 observed his vehicle outside the residence and approached

1 many his residence.

2 Q That was 39 Burtis?

3 A Yes, it was.

4 Q What happened when you approached the residence?

5 A We knocked on the door and announced our
6 presence.

7 Q When you say you knocked on the door and
8 announced your presence, what did you announce?

9 A Police.

10 Q Did you do it in the sort of soft voice that you
11 mentioned to us in now?

12 A No. It was very loud.

13 Q What happened when you approached the residence
14 and loudly announced yourselves as police?

15 A We announced ourselves several times. We did not
16 gain a response at the door.

17 Q Did you hear anything?

18 A I did.

19 Q What did you hear?

20 A I could hear movement inside of the house.

21 Q Did there come a time that the door was opened?

22 A Yes, it was.

23 Q About how much time elapsed from the moment you
24 first announced yourselves as police and the time the door
25 opened?

1 A I would say approximately one minute or possibly
2 longer.

3 Q Who opened the door?

4 A Mrs. Saleh.

5 Q What happened when Mrs. Saleh opened the door?

6 A She allowed us to enter the residence.

7 Q Can you tell us what you did when you got inside
8 the residence?

9 A I believe about four or five of us went into the
10 residence. I had gone through a small kitchen area to a
11 hallway in the back of the apartment.

12 Q Let me interrupt you for just a moment. Can you
13 give us some idea of how big the residence was at 39 Burtis?

14 A I would describe it as a small, one-bedroom
15 apartment. As you enter the front door you walk directly
16 into a small kitchen and dining room area. Off to your
17 right was a small living room area. Then to the left of the
18 kitchen area was a very short hallway with one bedroom, and
19 I believe there was a bathroom at the end of the hallway.

20 Q Agent Parr, do you recall if anyone was up and
21 about at the time you first intend entered the residence?

22 A When we entered the residence, Mrs. Saleh was at
23 the door and I believe there was possibly one or two
24 children in the living room to my right.

25 Q Are you familiar with the term security sweep?

1 A I am.

2 Q What is a security sweep?

3 A It is a protective measure we take when we effect
4 an arrest, to make sure there are no other persons or
5 weapons in the proximity where we effect the arrest.

6 Q So you search the area where you are seeking to
7 effect the arrest?

8 A Yes.

9 Q What are you searching for when you do a security
10 sweep?

11 A Persons or weapons.

12 Q Can you tell us what happened as you moved
13 through the apartment?

14 A Myself and another agent proceeded into this
15 short hallway. We noticed that there was a door slightly
16 ajar. I pushed the door open, and it was a bedroom, fairly
17 dimly lit, and I could see what appeared to be a person
18 underneath the covers of the bed.

19 Q What did you do when you saw a person or what you
20 believed to be a person underneath the covers of the bed?

21 A From the doorway of the bedroom, I was giving
22 verbal commands for the individual to come out of the bed.

23 Q What do you mean by verbal command?

24 A Police, let me see your hands, trying to get some
25 reaction. The covers were pulled entirely over the

1 individual. I could not see any part of the body.

2 Q Could you give us some idea of how loud you were
3 making your announcement?

4 A It was very loud.

5 THE COURT: I was going to say if he did it, he
6 should push the microphone away before he did it.

7 MR. McCARTHY: Thank you, your Honor.

8 Q Did what appeared to be the person underneath the
9 covers respond when you announced yourself?

10 A No, there was no response.

11 Q What happened then?

12 A After a few seconds, myself and the other agent
13 entered the bedroom and pulled the covers back from the bed.

14 Q What did you find when you pulled the covers
15 back?

16 A Mr. Saleh was laying on the bed fully clothed.

17 Q Fully clothed in what?

18 A He was wearing what appeared to be a gas station
19 attendant's uniform. I believe it was blue in color.

20 Q I am going to show you what is in evidence as
21 Mohammed Saleh Exhibit U. Do you see Mohammed Saleh Exhibit
22 U?

23 A Yes, I do.

24 Q Do you see the clothes that Mr. Saleh is wearing
25 in that exhibit in evidence?

1 A I do.

2 Q Agent Parr, would you compare the way Mr. Saleh
3 looks, that is, the way he is clothed in that exhibit, with
4 the way you observed him on the evening of June 23 when you
5 pulled the blankets down?

6 A He was dressed in this type of uniform.

7 Q Once you pulled the covers back, what happened
8 then?

9 A Mr. Saleh still did not respond and I physically
10 removed him from the bed.

11 Q What did you do at that point?

12 A I placed him against the wall in the hallway and
13 proceeded to handcuff him.

14 Q Was Mr. Saleh searched incident to his arrest?

15 A He was.

16 Q Did you remove some items from him?

17 A I did.

18 Q I am going to place before you for identification
19 Government's Exhibits 166, 167, 166B, 166C, 166D, 166E,
20 166F, 166G, 166H, and 166I.

21 Agent Parr, do you recognize those items?

22 A I do.

23 Q Are they items that you removed from Mr. Saleh at
24 the time of his arrest?

25 A Yes, they are.

1 MR. McCARTHY: Your Honor, the government
2 offers -- not 166 -- 166B through I and 167.

3 MR. JACOBS: Subject to your Honor's prior
4 rulings, no objection.

5 THE COURT: Those are received in accordance with
6 prior rulings.

7 (Government's Exhibits 166B through I and 167
8 were received in evidence)

9 Q Can you just describe what 166 for identification
10 is?

11 A It is a leather wallet.

12 Q Is that the wallet that contained the items 166B
13 through I?

14 A Yes, it is.

15 Q Please just describe briefly 167.

16 A 167 is a small, green-colored notebook.

17 MS. AMSTERDAM: I am sorry.

18 A 166 is a small, green-colored address book.

19 THE COURT: 167, right?

20 THE WITNESS: I am sorry, 167.

21 MR. McCARTHY: Your Honor, I believe 166B through
22 I are in the jury's box books, and I would ask that they be
23 able to refer to them at this time.

24 THE COURT: These do not include the exhibit that
25 is going to be received on stipulation, do they?

1 MR. McCARTHY: May I have one moment?

2 It has been removed.

3 MR. McCARTHY: Your Honor, if I may refer briefly
4 to those exhibits.

5 THE COURT: Go ahead.

6 MR. McCARTHY: 166B is a business card which says
7 Abubaker Al-Shingieti, counselor, in the bottom left-hand
8 corner, Sudan Embassy, 2210 Massachusetts Avenue N.W.,
9 Washington, D.C.

10 THE COURT: Do you want to spell the name for the
11 reporter.

12 MR. McCARTHY: Yes, your Honor. A-B-U-B-A-K-E-R,
13 Al-Shingieti, A-L dash S-H-I-N-G-I-E-T-I, Counselor,
14 C-O-U-N-S-E-L-O-R. The telephone number in the right-hand
15 corner, phone, office, 202-338-8565.

16 166C is a state of Florida driver's license with
17 a photograph. The name on the license is Mohammed Saleh,
18 651 Northeast Sixth Street, number 1, Del Ray Beach,
19 Florida, giving a date of birth of June 29, 1956.

20 I stand corrected on 166C. It is a state of
21 Florida identification card, not a driver's license.

22 166D is a Commonwealth of Massachusetts driver's
23 license. There is a photograph, and the person described is
24 Saleh, Mohammed A, 57 Laurel Street, L-A-U-R-E-L, Worcester,
25 Massachusetts. That is W-O-R-C-E-S-T-E-R. 01605. Giving a

1 date of birth of July 29, 1956.

2 166E is a New York State driver's license with a
3 photograph. The person listed is Saleh, Mohammed, 2040
4 Bronxdale Avenue, 6J, Bronx, New York, 10462-3323. It lists
5 date of birth June 29, 1956.

6 166F is a State of New York driver's license
7 listed to Ali, Mohammed A, 1238 Yonkers Avenue, Yonkers, New
8 York, 10704. It gives a birthdate of August 1, 1956. That
9 license expires, according to the document, in 1995.

10 166G is a New York State identification card
11 expiring in 1996. It lists Mohammed Saleh, 2040 Bronxdale
12 Avenue, 6J, Bronx, New York, giving a date of birth June 29,
13 1956.

14 166H is a New York State identification card
15 expiring in 1994. It is listed to Saleh, Mohammed A, 2040
16 Bronxdale Avenue, 5G, Bronx, New York, 10462, giving a date
17 of birth July 29, 1956.

18 166I is a business card for Ebru, E-B-R-U, Gulf
19 Service Station, listing a phone number in the bottom
20 corner, 914-237-6052, and address in the bottom right-hand
21 corner, 1238 Yonkers Avenue, Yonkers, New York, 10704. On
22 the reverse side --

23 THE COURT: That exhibit may not be in all the
24 books.

25 JURORS: No.

1 MR. McCARTHY: I apologize for that. May I just
2 read from it, your Honor, briefly?

3 THE COURT: Go ahead.

4 MR. McCARTHY: On the flip side of the business
5 card there appears a phone number, 011-971-428-8770, with
6 Arabic writing underneath.

7 (Continued on next page)

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1 Q Agent Parr, after you placed Mr. Saleh under
2 arrest, what did you do with him?

3 A I searched his person.

4 Q After searching his person, did you secure him
5 someplace in the residence?

6 A Yes, we did.

7 Q Where was that?

8 A We moved him to the kitchen area, and he was
9 seated at the kitchen table.

10 Q Did you keep him at his residence for a certain
11 period of time?

12 A Yes, we did.

13 Q For about how long?

14 A Approximately three hours.

15 Q What were you and the other agents doing while
16 you were keeping Mr. Saleh at his residence?

17 A We had been maintaining contact with the FBI's
18 command post.

19 Q Why was it that you kept him at the residence for
20 so long?

21 A There were a number of arrests that were being
22 effected that evening, and those arrests had not occurred
23 yet.

24 Q Did there come a time that you learned that the
25 arrest had occurred?

1 A Yes.

2 Q After you learned that they had occurred, can you
3 tell us what you did.

4 A Mr. Saleh was then transported down to the FBI's
5 New York office.

6 Q Is that at 26 Federal Plaza?

7 A Yes, it is.

8 Q Let me back up to the time that you arrested
9 Mr. Saleh and you still had him in his home. Did there come
10 a time that he was given Miranda warnings?

11 A Yes, he was.

12 Q Was he questioned at his home?

13 A No, he was not.

14 Q On the car ride down from his home in Yonkers
15 down to the FBI headquarters in New York, in Manhattan, was
16 he questioned?

17 A No, he was not.

18 Q Did there come a time that you got him to the FBI
19 headquarters in the Manhattan?

20 A Yes.

21 Q Did there come a time he was questioned?

22 A Yes.

23 Q Prior to being questioned, was he given Miranda
24 warnings in your presence?

25 A Yes, he was.

1 Q Did Mr. Saleh make statements to you?

2 A He did.

3 Q What, if anything, did Mr. Saleh say about a man
4 named Emad?

5 A Mr. Saleh had said he was familiar with a man
6 named Emad. He believed that he was in the jewelry business
7 and had done some service on his car at a gas station which
8 he was managing.

9 Q That Mr. Saleh had done service on Emad's car?

10 A That's correct.

11 Q Did Mr. Saleh make statements about June 22,
12 1993?

13 A Yes, he did.

14 Q Can you tell us what he said in that regard.

15 A Mr. Saleh said that on June 22 two individuals
16 had come into a gas station which he was managing in Yonkers
17 and had attempted to purchase diesel fuel.

18 Q What, if anything, did Mr. Saleh say about any
19 suspicions he had about those gentlemen?

20 A Mr. Saleh said that they had arrived at the gas
21 station operating a van and that he had observed three, what
22 he believed to be three 50-gallon drums in the back of that
23 van. He said that he had not sold them any diesel fuel
24 because he was suspicious of these individuals since they
25 were from New Jersey.

1 Q Did Mr. Saleh mention whether there was any
2 connection between the men he saw on June 22 and the person
3 he described to you as Emad?

4 A Yes, he did.

5 Q What did he say in that regard?

6 A He said that one of the two individuals he
7 recognized as a friend of Emad's. He had seen them together
8 before.

9 Q Did Mr. Saleh make statements to you about June
10 23, 1993?

11 A Yes, he did.

12 Q Can you tell us what he said about that day.

13 A He told us that on June 23, two individuals again
14 had come to his gas station, two different individuals, also
15 operating a van, a different van. He said he observed one
16 or two 50-gallon drums in the back of that van and, again,
17 these two individuals attempted to buy diesel fuel.

18 Q Did Mr. Saleh mention whether he had sold them or
19 given them diesel fuel?

20 A He said that he did not.

21 Q Did Mr. Saleh make any reference to a telephone
22 call on June 23?

23 A Yes, he did.

24 Q Can you tell us what he said about that.

25 A Mr. Saleh said after refusing to sell the diesel

1 fuel one of the two individuals entered his gas station and
2 placed a telephone call from a pay phone inside.

3 Q Did he mention who that call had been made to?

4 A No, he did not.

5 Q All right. Did he say whether he participated in
6 that phone call at all?

7 A No, he did not.

8 Q Did Mr. Saleh mention speaking with Emad on June
9 23, 1993?

10 A Yes, he did.

11 Q Can you tell us what he said in that regard?

12 A He said that after this individual placed the
13 phone call, he had received a phone call from Emad, and Emad
14 questioned him as to why he would not sell these individuals
15 diesel fuel.

16 Q Did Mr. Saleh say what he had said, that is, he,
17 Mr. Saleh, had said to Emad?

18 A He told us that he explained to Emad that he was
19 very busy, and could not stay on the phone and he hung up.

20 Q Did Mr. Saleh mention whether after the telephone
21 conversation with Emad he had given fuel oil to the two men
22 who came to the station that day?

23 A He said that he refused to sell them the fuel
24 oil, and suggested that they purchase it someplace else.

25 MR. MCCARTHY: I have no further questions, your

1 Honor.

2 THE COURT: Cross. Mr. Jacobs?

3 CROSS-EXAMINATION

4 BY MR. JACOBS:

5 Q Agent Parr, before June 23, would I be correct in
6 stating that you didn't participate in the investigation?

7 A That's correct.

8 Q They sort of lent you out to assist the law
9 enforcement authorities that evening?

10 A That's correct.

11 Q So you had no familiarity with what had taken
12 place over the previous months, is that correct?

13 A Very little.

14 Q OK. And I would be correct in stating that there
15 were agents with you that evening that had participated in
16 the investigation, correct?

17 A Not to my knowledge, no.

18 Q Let me withdraw that.

19 Talking about at Mohammed Saleh's home, there
20 were no agents that had participated in the investigation,
21 isn't that correct?

22 A That's correct.

23 Q OK. Back when you got to 26 Federal Plaza, I
24 assume that there were agents around who had participated in
25 the investigation over those several hours, is that correct?

1 A Yes, there were.

2 Q Agent Voss around?

3 A Yes, he was.

4 Q Detective Corrigan around?

5 A I don't recall.

6 Q But Voss certainly was around, correct?

7 A Yes, he was.

8 Q And you were speaking to Voss during the evening,
9 is that correct?

10 A I spoke to him briefly, yes.

11 Q Now, getting back to the arrest, I assume you
12 came armed with an arrest warrant signed by, I think, a
13 United States Magistrate, is that correct?

14 A I did not have an arrest warrant, no.

15 Q Did anybody have an arrest warrant with them that
16 evening?

17 A At Mr. Saleh's residence not to my knowledge, no.

18 Q Am I correct that you had no search warrant,
19 correct?

20 A That's correct.

21 Q And you had been told that that's where Mr. Saleh
22 lived, correct?

23 A Yes.

24 Q And you said that you had or someone had
25 recognized his car out in front of the location, correct?

1 A That's correct.

2 Q Is that a blue Volvo?

3 A I don't recall. I believe it was blue.

4 Q You had reason to believe he was in the home at
5 that time, correct?

6 A That's correct.

7 Q I'm not asking you how you learned, but law
8 enforcement had informed you and the other agents that he
9 was in the home, to your knowledge, correct, or you believed
10 he was in the home, correct?

11 A We believed he was in the home, correct.

12 Q And were there more than half a dozen agents
13 there to execute this arrest?

14 A I believe when we first arrived, I believe there
15 were five of us.

16 Q Did you and the other agents have on, what they
17 call on TV raid jackets on?

18 A We had raid jackets on, yes.

19 Q You had, from the various agencies, police, FBI,
20 things like that, the vinyl jackets that we all see,
21 correct?

22 A That's correct.

23 Q You knocked on the door, you announced who you
24 were, and within a minute or so the defendant's wife opened
25 the door and let you come in, correct?

1 A Yes, she did.

2 Q You didn't have to force an entry, you didn't
3 have to kick down any doors, correct?

4 A No, we did not.

5 Q Were there at least one or two agents that had
6 firearms out at the time?

7 A Yes.

8 Q That's a routine procedure in effecting an
9 arrest, to have firearms drawn, correct?

10 A Yes, it is.

11 Q I think you told Mr. McCarthy that over the next
12 few minutes you did, you and the other agents did a security
13 sweep, correct?

14 A Yes, we did.

15 Q That's a standard operating procedure, to make
16 sure there are no weapons or other persons hiding in the
17 home, correct?

18 A That's correct.

19 Q And I trust that in the security sweep that you
20 performed you didn't find any weapons, correct?

21 A No, I did not.

22 Q And I trust, other than the defendant, who was in
23 bed, you didn't find anybody hiding out in the home,
24 correct?

25 A No, I did not.

1 Q You placed him under arrest, correct?

2 A Yes.

3 Q OK. And you proceeded to search his person,
4 correct?

5 A Yes, I did.

6 Q And I think you removed a little book, correct?

7 A Correct.

8 Q You took his wallet, correct?

9 A Correct.

10 Q And there was a beeper, correct?

11 A Yes, there was.

12 Q The beeper was taken by the agents, correct?

13 A Yes, it was.

14 Q And was anything else seized that you can
15 remember, Agent Parr?

16 A As I recall, the wallet was in a pants packet,
17 there were some miscellaneous papers in a shirt pocket, and
18 the notebooks that you described were in a pants pocket
19 also.

20 Q And I trust some of the writings were in Arabic,
21 correct?

22 A I believe so, yes.

23 Q And it would be fair to say that 10:30 in the
24 evening you and the other agents did not take the time to
25 start looking through the wallet or trying to read documents

1 in Arabic, am I correct?

2 A We looked through the wallet for identification,
3 but we weren't trying to read Arabic.

4 Q But you took everything and you turned it over
5 later that evening or the early morning hours to the agents
6 who were involved in the case, correct?

7 A Yes, we did.

8 Q I assume that names in the book would have meant
9 very little to you because you were not working on the
10 investigation, correct?

11 A That's correct.

12 Q You left that to other agents to examine in the
13 future, correct?

14 A Yes.

15 Q OK. Now, in the wallet, you described some of
16 the forms of identification, correct?

17 A Yes.

18 Q Would I be correct in stating that my client had
19 a number of credit cards in the wallet?

20 A I don't recall if there were credit cards.

21 (Counsel conferred)

22 Q May I show you 166 for identification.

23 Agent Parr, am I correct, looking at 166 for
24 identification, that that's the wallet that my client had in
25 his pocket?

1 A Yes, it is.

2 Q And am I correct that in the wallet there are a
3 number of credit cards, over a half dozen?

4 A Yes.

5 Q American Express, Visa, Mastercard, credit cards
6 like that?

7 A That's correct.

8 Q Just so the record is clear, would you read
9 off -- I don't need them in evidence, your Honor -- could
10 you just read them off, the names on the credit cards that
11 you had.

12 MR. JACOBS: With your Honor's permission and
13 with Mr. McCarthy's permission.

14 MR. MCCARTHY: I have no objection.

15 THE COURT: Go ahead.

16 MR. JACOBS: Thank you, your Honor.

17 A On a Citibank Classic credit card, the name of
18 Mohammed A. Saleh.

19 Another Citibank card, Mohammed A. Saleh.

20 New York Telephone calling card with no name.

21 A U.S. Sprint phone card with the name of
22 Mohammed Saleh.

23 The Bank of New York with a business name of Ebru
24 Trading Corporation.

25 Bank of New York with an account number with no

1 name.

2 Natwest Bank card with the name of Mohammed
3 Saleh.

4 And MCI card in the name of Mohammed Saleh.

5 An MCI card with the business name of Ebru
6 Trading Company.

7 An MCI card with no name.

8 A Sears card with the name Laila Saleh.

9 A Sears card in the name of Mohammed Saleh.

10 A Gulf credit card in the name of Mohammed Saleh.

11 An American Express card in the name of Mohammed
12 Saleh.

13 A G. Fox credit card in the name of Mohammed
14 Saleh.

15 And a Filene's credit card in the name of
16 Mohammed Saleh.

17 MR. JACOBS: Your Honor, rather than show the
18 agent, the government and I agreed, in addition in the
19 wallet was a Gulf credit slip which I previously published
20 to the jury, but that was in the wallet additionally.
21 That's Defendant Mohammed Saleh V in evidence.

22 THE COURT: OK.

23 Q Now, he was advised of his rights in the
24 apartment, correct?

25 A Yes, he was.

1 Q You and the other agents kept a log of the
2 activities that night into the morning, through the next
3 morning, correct?

4 A That's correct.

5 Q OK. And you and the other agents even noted on
6 your log the specific time he took a glass of water and the
7 specific time he went to the bathroom, things like that,
8 correct?

9 A That's correct.

10 Q In other words, you and the agents allowed him to
11 have a drink, you and the agents allowed him to go to the
12 bathroom. Did he make a phone call in the apartment or did
13 he make a phone call back at headquarters, if you know, or
14 did he make a phone call?

15 A Not that I am aware of, no.

16 Q And am I correct he got to the FBI office after 2
17 o'clock in the morning, correct?

18 A That's correct.

19 Q And he had been in your custody in handcuffs
20 since about 10:30, correct?

21 A That's correct.

22 Q And as routine procedure he was strip-searched,
23 correct?

24 A He was at the FBI office, yes.

25 Q That's a routine procedure, am I correct, Agent,

1 with people who have been arrested, is that fair to say?

2 A Yes, it is.

3 Q He wasn't being singled out in strip-searching
4 him, correct?

5 A That's correct, yes.

6 Q And later, at about 2:40, he was asked to give a
7 pedigree, which is his background information, correct?

8 A Correct.

9 Q Then he was advised of his rights for a second
10 time, correct?

11 A That's correct.

12 Q In advising him of his rights, am I correct,
13 Agent Parr, that in addition to the oral advice of his
14 rights, a written form was given to him called an advice of
15 rights form, is that correct?

16 A Yes, it was.

17 Q And that's a standard, I guess, either FBI
18 document or Department of Justice document basically
19 repeating the Miranda warnings in formal fashion with an
20 opportunity for a person to sign his name if he waives his
21 rights, correct?

22 A Yes.

23 Q Am I correct that upon reading this document and
24 orally being told his rights, my client refused to sign the
25 document, is that correct?

1 A That's correct.

2 Q Now, at his home -- I'm sorry to back up on you,
3 my apologies -- but when you arrested him at 10:30, do you
4 remember if he had over a thousand dollars in cash around
5 his person?

6 A I don't recall, no.

7 Q Do you remember, if you know, if any agent found
8 \$1200 in cash and gave it to his wife? If you can recall?

9 A That's possible. But I don't recall, no.

10 Q How about when you got down to the FBI
11 headquarters, did you find \$700 in cash in his pockets at
12 that time?

13 A There may have been cash in his pockets, but I
14 don't know that that was discovered in the FBI office. It
15 may have been discovered at the apartment.

16 MR. JACOBS: May I just approach the witness.

17 THE COURT: Yes.

18 Q Let me show you 3511G. Am I correct, Agent Parr,
19 that my client had \$700 or \$710 which was returned to either
20 his wife or lawyer, correct?

21 A Yes, that's correct.

22 Q And he had a Rolex watch that was turned over to
23 his wife or lawyer, correct?

24 A Correct.

25 Q In other words, the FBI didn't -- or law

1 enforcement didn't voucher the money, that money was
2 returned, correct?

3 A That's correct.

4 Q My question to you: Was there an additional
5 \$1200 or you just don't recall?

6 A I don't recall, no, if there was additional
7 money. It was not with us at the FBI office.

8 Q OK. Now, you presented this advice of rights
9 form and he declined to sign it, correct?

10 A That's correct.

11 Q And then he answered the questions or made the
12 statements that you've testified to in direct examination,
13 correct?

14 A Yes.

15 Q And these were statements -- who was present when
16 these statements were taken?

17 A I'm not certain how many agents were in the room,
18 but myself and FBI Agent Pellegrino were doing the
19 questioning.

20 Q Would you know, and could you tell the jury
21 whether Pellegrino had been part of the investigation, if
22 you know?

23 A To my knowledge, he was not.

24 Q So, in other words, the two agents questioning
25 him, you and Pellegrino, were not familiar with the facts

1 that had taken place over the past few months, correct?

2 A For the most part, that's correct.

3 Q Now, were you aware of the fact that earlier
4 Agent Voss had spoken to my client?

5 A I recall that he spoke to him briefly, but I'm
6 not certain of the sequence.

7 Q Were you informed that Agent Voss had told
8 Mohammed that he was on videotape selling the diesel fuel?

9 A I'm sorry. Could you repeat that?

10 Q Sure. I would be happy to.

11 Were you aware of the fact -- let's break it
12 down -- before you questioned my client, that Agent Voss had
13 told him earlier that he was on videotape selling the diesel
14 fuel?

15 MR. McCARTHY: Objection to form. "The fact."

16 THE COURT: Sustained.

17 Q Were you aware of the fact that some agent had
18 told my client that he was on videotape?

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 Q Did you ever hear anybody use the word "you're on
22 videotape"?

23 A I don't recall hearing that, no.

24 Q Did anybody tell you that they had said that?

25 A I recall being told that he had provided diesel

1 fuel for the making of the bomb, but I don't recall whether
2 or not they had told me he was on videotape.

3 Q The question was, did any agent tell him that
4 before you took the statement?

5 A I don't know if they did or not, no.

6 Q Have you come to learn that Agent Voss told him
7 that before you took the statement?

8 A I'm not certain exactly what he told him, but he
9 had a brief conversation with him, and I don't know if it
10 was mentioned about a videotape or not.

11 THE COURT: Mr. Jacobs, could you come to a
12 convenient break point sometime in the next five or ten
13 minutes.

14 Q Were you speaking to him in English?

15 A Yes, I was.

16 Q And, to your knowledge, he seemed like he
17 understood English pretty well?

18 A Yes, he did.

19 Q Did you ask him to write out anything, to write
20 out the statement that you had taken from him?

21 A No, I did not.

22 Q Did you attempt to reduce your notes to writing
23 and ask him to sign it?

24 A I was not taking notes.

25 Q Do you know who was taking notes?

1 A Agent Pellegrino.

2 Q Did you see Agent Pellegrino attempt to ask my
3 client to sign any statement?

4 A No, I did not.

5 MR. JACOBS: This might be a convenient time,
6 your Honor.

7 THE COURT: Ladies and gentlemen, we are going to
8 break for lunch. This afternoon we are going to break at
9 about quarter to four or ten to four because I have to go to
10 a memorial service for a late former judge of this court.
11 It starts at 4. It's likely to take at least 45 minutes.
12 To come back for 15 minutes of testimony does not seem worth
13 your time.

14 So we will break at about 10 to 4. We will sit
15 straight through until then. See you this afternoon.
16 Please don't discuss the case.

17 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:10 p.m.

3 (In open court; jury not present)

4 MR. SERRA: Your Honor, I am not sure if we will
5 get to this witness this afternoon or not, but the
6 government has reshuffled some of their witnesses in view of
7 the tapes, and when we get to the witness who will describe
8 the search of Mr. Alvarez's house, there are a couple of
9 items that the government seeks to introduce which I have an
10 objection to, which I would like to take up with the court.
11 Mr. Fitzgerald was kind enough to tell me that they may be
12 copied in the jury's books already.

13 THE COURT: Are you likely to get to this
14 witness?

15 MR. FITZGERALD: Not likely. It is the fifth
16 witness, I believe.

17 MR. SERRA: I am just alerting the court.

18 MR. LAVINE: Judge, would you at some point
19 advise the jurors that Mr. Mohammed Saleh' postarrest
20 statements are admissible as against him alone?

21 THE COURT: Yes.

22 BRIAN G. PARR, resumed.

23 (Jury present)

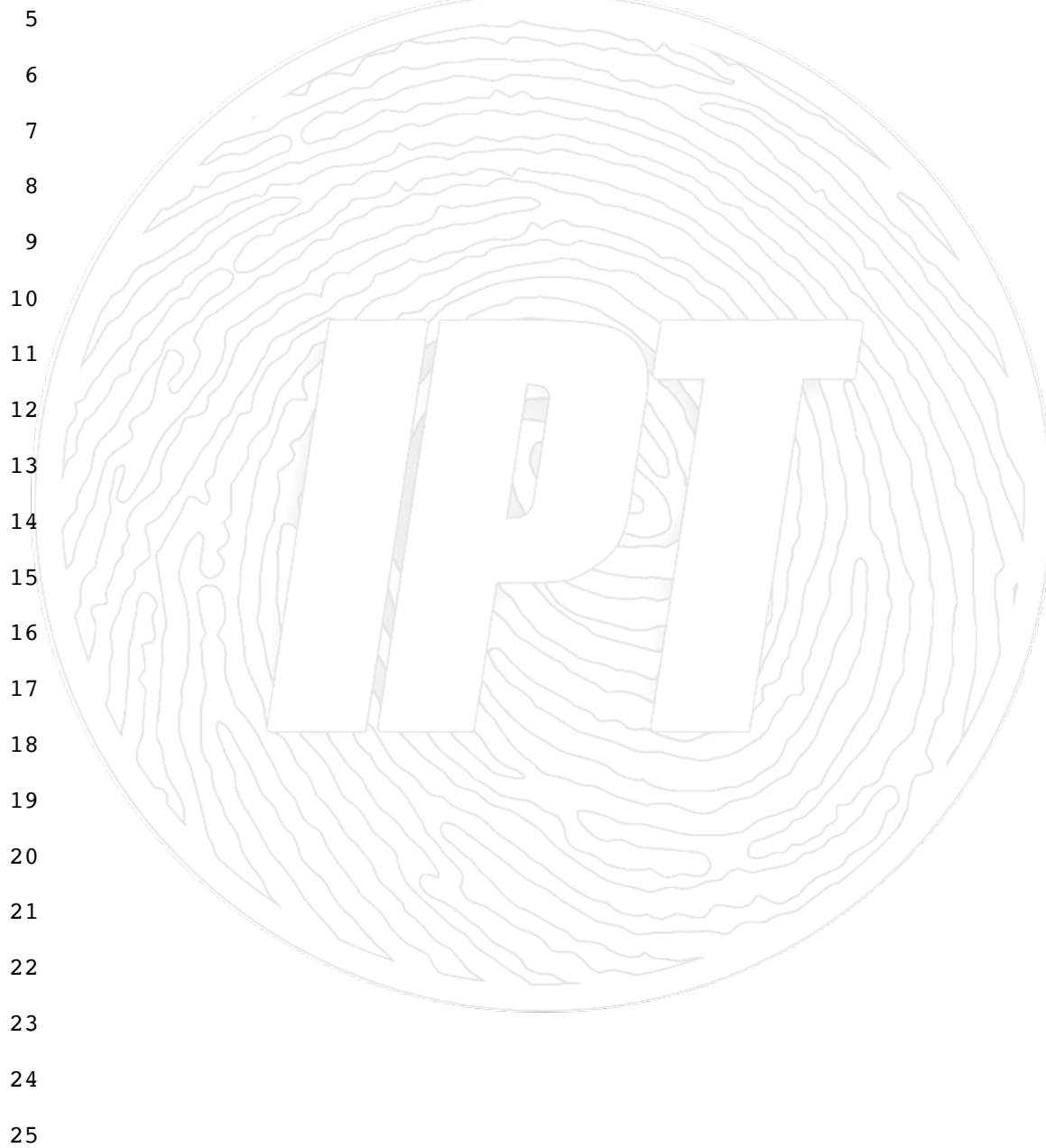
24 THE COURT: Good afternoon, ladies and gentlemen.

25 JURORS: Good afternoon.

1 THE COURT: When you get done cross-examining Mr.
2 McCarthy, you can resume the cross of the witness.

3 MR. JACOBS: I am sorry.

4 (Continued on next page)



1 CROSS-EXAMINATION continued

2 BY MR. JACOBS:

3 Q Agent Parr, coming back to the search of his
4 person --

5 THE COURT: You are not coming through the
6 microphone.

7 Q Getting back to the search of his person, we
8 discussed, I think, the wallet and the information in the
9 wallet. There was also a green address book, is that
10 correct?

11 A That is correct.

12 Q In addition to the green address book, there were
13 some, I think you described them as miscellaneous papers or
14 loose papers that he had on his person?

15 A In a shirt pocket, that is correct.

16 Q In a shirt pocket. And there was also a small
17 black notebook and a small brown notebook with various
18 writings in Arabic, correct?

19 A Yes.

20 Q And you also described the beeper as well,
21 correct?

22 A I did not describe it.

23 Q I am sorry. There was also a beeper, correct?

24 A Correct.

25 Q The beeper had a particular call number, is that

1 correct?

2 A I am not familiar with it, no.

3 Q Let me show you 3511F, and ask you whether that
4 document, taking a look at it, refreshes your recollection
5 that you and Agent Pellegrino made a note of the beeper
6 number?

7 A Yes, we did.

8 Q Would you just read it into the record, please,
9 with the government's permission.

10 MR. McCARTHY: No objection.

11 Q Please, Agent, would you read the number into the
12 record, please.

13 A Under description of property, item number 5 says
14 one, and in quotes, "All Call Communications" end quote beep
15 telephone number 1-800-654-72 -- and I believe that is 43.
16 Then it says serial number V as in Victor, 52609.

17 Q Agent Parr, with respect to the various notebooks
18 and the miscellaneous papers, am I correct that after you
19 finished processing and the taking of the statement, all
20 these items were turned over to agents in the task force
21 responsible for the investigation for further examination,
22 to your knowledge?

23 A At some point, yes.

24 Q I didn't say that morning. Am I correct?

25 A Correct.

1 Q Basically your role as of later that morning,
2 with the arrests and the processing, concluded for all
3 practical purposes, is that fair to say?

4 A Yes, it did.

5 Q Getting back to the questioning of my client,
6 would you agree with me that he was being cooperative with
7 you in answering the questions? I am not talking about the
8 substance of what he said, but his manner, you asked
9 questions, he answered questions, is that correct?

10 A He was, that is correct.

11 Q Would you agree with me that there wasn't
12 anything that you said where he refused to answer; is that
13 fair to say?

14 A As I recall, that is correct.

15 Q In other words, you never asked him did you do
16 this or did you do that, where he said I can't answer your
17 question, correct?

18 A That is correct.

19 Q Would you describe his manner as being
20 cooperative with you and responsive to your questioning?

21 A I would say he was somewhat responsive, yes.

22 Q He didn't display a hostile or belligerent
23 attitude, is that fair to say?

24 A For the most part, no.

25 Q He had been in custody for seven or eight hours,

1 correct, at the time he was questioned?

2 A I would have to look at the arrest log, but I
3 believe so, yes.

4 Q And he had been in handcuffs off and on for a
5 great part of the evening, correct?

6 A That is correct.

7 Q He had not had an opportunity to speak with an
8 attorney, is that correct?

9 A That is --

10 MR. McCARTHY: Objection.

11 MR. JACOBS: I will withdraw it.

12 Q He didn't speak with an attorney, correct?

13 A He did not.

14 Q There was a great deal of detail about this
15 investigation that you had no knowledge of, correct?

16 A That is correct.

17 Q You were not familiar with the tapes and the
18 transcripts that had been made over the past few months,
19 correct?

20 A The substance, I was not aware of, no.

21 Q There were agents available, like Agent Voss, who
22 were at 26 Federal Plaza who had far more detailed
23 information about the case than you, is that correct?

24 A That is correct.

25 Q Would I be correct in stating that with respect

1 to the statement that you put in through Mr. McCarthy, that
2 you took directly from my client, no agent was present who
3 was familiar with the case to ask further questions,
4 correct?

5 A Not when I took that statement, no.

6 Q Would you agree with me, Agent Parr, to your
7 knowledge there is no other statement that he made that
8 night, or that morning? Is that fair to say?

9 A To my knowledge, that is a fair statement,
10 correct.

11 Q In other words, Agent Voss -- I will withdraw it.
12 Did you go to Voss and say to Voss, you know,
13 Mohammed is talking with us, maybe you ought to sit down and
14 ask him some questions? Did you do that with Agent Voss?

15 A I myself did not, no.

16 Q To your knowledge, other than I think you said
17 Voss spoke with him briefly, he wasn't questioned in any
18 detail other than by yourself, and I think Pellegrino might
19 have been with you, correct?

20 A Not in my presence, no.

21 Q Pardon me.

22 A Not in my presence, no.

23 Q Do you know, Agent Parr, whether he was shown any
24 of the photographs or videos in the case?

25 A He was not, in my presence.

1 Q Was he told about time he was facing in jail by
2 you, sir?

3 A No, he was not.

4 Q Was he told about cooperating by you, sir, with
5 law enforcement?

6 A I don't recall specifically, but we may have said
7 that if there was any cooperation we would bring it to the
8 attention of the U.S. Attorneys.

9 Q Did you discuss with him some of the evidence
10 that law enforcement had against him, in your questioning of
11 him?

12 A I was not familiar with any of the specific
13 evidence.

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

15 MR. NOOTER: Your Honor, I have a couple of
16 questions.

17 THE COURT: Mr. Nooter.

18 CROSS-EXAMINATION

19 BY MR. NOOTER:

20 Q Sir, I would just like to direct your attention
21 to the point that evening at which Mr. Mohammed Saleh was
22 taken into the kitchen and you sat down to wait. Do you
23 recall that?

24 A Yes, I do.

25 Q About what time did that occur?

1 A That was around 10:45 p.m.

2 Q How long did you wait?

3 A We stayed there for approximately three hours, I
4 believe till -- I would have to look at the arrest log. I
5 think 1:30, 1:40 in the morning.

6 Q And the purpose of waiting was to wait until
7 others were arrested, is that correct?

8 A That is correct.

9 Q And you knew ahead of time that others were going
10 to be arrested that night, is that right?

11 A That is correct.

12 Q In fact, a decision had been made by somebody to,
13 quote, take the case down that night, is that correct?

14 A That is correct.

15 Q You are familiar with that term?

16 A I am not familiar with that term but I knew that
17 they were going to effect several arrests that evening.

18 Q And it would basically be the arrests of
19 everybody they thought was involved other than people who
20 might already be in jail or something like that, is that
21 correct?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Q You were not part of the decision-making in that,
25 I take it, is that correct?

1 A No, I was not.

2 Q How were you informed of it? Was it announced at
3 a meeting?

4 MR. McCARTHY: Objection, relevance.

5 THE COURT: Sustained.

6 Q It would be fair, would it not, to say that you
7 kept Mr. Saleh there in his kitchen so that word would not
8 get out to anybody on the street that an arrest had already
9 occurred; is that correct?

10 A That is correct.

11 (Continued on next page)

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1 MR. NOOTER: I have nothing further.

2 MR. LAVINE: Your Honor, at some point can I
3 bring something to your attention?

4 THE COURT: With regard to this witness?

5 MR. LAVINE: Yes.

6 THE COURT: Come on up now.

7 (At the side bar)

8 MR. LAVINE: I am just going to ask you to advise
9 the jurors that his postarrest statements shouldn't be -- I
10 didn't know.

11 THE COURT: That is fine.

12 MR. McCARTHY: Do you want me to do redirect
13 first?

14 THE COURT: Yes.

15 (In open court)

16 THE COURT: Any other cross of this witness?

17 Any redirect, Mr. McCarthy?

18 MR. McCARTHY: Yes, thank you.

19 REDIRECT EXAMINATION

20 BY MR. McCARTHY:

21 Q Agent Parr, Mr. Jacobs asked you whether you had,
22 you or any member of the team that you were with that
23 evening had an arrest warrant. Do you recall that?

24 A Yes, he did.

25 Q Were you or any member of your team, to your

1 knowledge, advised that an arrest warrant had been issued
2 before you entered the premises?

3 A I had been advised by a fellow agent, yes.

4 Q Mr. Jacobs also asked you whether Mr. Saleh was
5 in custody for seven or eight hours at the time you were
6 questioning him. Do you recall that?

7 A I do.

8 Q I am going to show you Exhibits 3511B and 3511D
9 for identification. Without reading the contents, 3511B, do
10 you recall what that is?

11 A Yes, I do.

12 Q What is that?

13 A It is an arrest log.

14 Q 3511D, as in David, do you recognize that item?

15 A Yes, I do.

16 Q What is that, Agent Parr?

17 A It is an FBI standard form for interrogation and
18 advice of rights.

19 Q I am going to ask you, looking yourself, without
20 reading it aloud, at 3511B and the bottom handwritten
21 portion of 3511D, I would ask you to take a look at them and
22 tell us after looking at them if you recall how long
23 Mr. Saleh was in custody at the time he gave the statement?

24 A It was approximately, approximately four and a
25 half hours.

1 Q You were also asked if Agent Voss was around at
2 26 Federal Plaza that evening when you brought Mr. Saleh in?

3 A Yes, I was.

4 Q Do you know how many other people were arrested
5 that night?

6 A I don't recall specifically. It was a fairly
7 large number.

8 Q Finally, Mr. Jacobs asked you some questions
9 about whether you had participated in the investigation and
10 what you knew about the investigation at the time that you
11 spoke to Mr. Saleh. Do you recall that?

12 A Yes.

13 Q Did you have to question Mr. Saleh thoroughly in
14 order to obtain the statements he gave you?

15 A No, I did not.

16 Q Can you give us some idea how it is that you
17 obtained the statements?

18 A After advising him of his rights, Agent
19 Pellegrino advised him of his rights, he refused to sign the
20 form but agreed to talk to us and just began making a
21 statement.

22 Q Was the statement that he made, the statement
23 that he began to make, was that responsive to direct
24 questions that you put to him about what he was speaking of?

25 A No, it was not. I believe he made the comment to

1 the effect that he had not been involved in any sort of a
2 conspiracy and that if we had any evidence against him he
3 should go to jail, and then began to speak.

4 MR. McCARTHY: Thank you. I have nothing
5 further, your Honor.

6 THE COURT: Recross, Mr. Jacobs?

7 RECROSS-EXAMINATION

8 BY MR. JACOBS:

9 Q Agent Parr, when you questioned him at around
10 3:00 in the morning, had anybody, to your knowledge, told
11 him what he was charged with?

12 A I would have to look at the arrest log to see a
13 sequence.

14 At the time of his arrest in the house, and I am
15 not certain who actually said it, but he had been advised
16 that he had been arrested for conspiracy to bomb several
17 buildings in New York City.

18 Q And you weren't present when Voss spoke to
19 Mohammed Saleh before he was questioned, however brief,
20 correct?

21 A We were telling Mr. Saleh --

22 THE COURT: The question was whether you were
23 present. Were you, at that conversation?

24 THE WITNESS: I was present but I was unable to
25 hear what he was saying.

1 Q So you are not prepared to tell this jury what
2 Voss told him about the charge or what evidence they had,
3 you are not prepared because you weren't present, correct?

4 A I was present, but not in earshot of him. I
5 couldn't hear what he was saying.

6 Q But Voss spoke to him, correct?

7 A He spoke to him briefly in the hallway, that's
8 correct.

9 MR. JACOBS: I have nothing further.

10 THE COURT: Anything else?

11 FURTHER REDIRECT EXAMINATION

12 BY MR. McCARTHY:

13 Q Are you prepared to tell this jury about how long
14 it was that Agent Voss spoke to Mr. Saleh?

15 A It was very brief. I would say a matter of
16 seconds.

17 MR. McCARTHY: Thank you.

18 THE COURT: Anything else, Mr. Jacobs?

19 MR. JACOBS: I need one moment, your Honor.

20 (Pause)

21 MR. JACOBS: Your Honor, may I approach the
22 witness and ask him to read --

23 (Counsel conferred)

24 FURTHER RECROSS-EXAMINATION

25 BY MR. JACOBS:

1 Q Would you read 52, 53 and 54 to yourself, Agent,
2 starting there.

3 (Pause)

4 Q Thank you, Agent. Did you read that?

5 A Yes.

6 Q Having read that, does that refresh your
7 recollection whether, to your knowledge, Voss told my client
8 that he was on videotape with the diesel fuel?

9 MR. McCARTHY: Objection, scope.

10 THE COURT: I will allow it.

11 A No, it does not.

12 MR. JACOBS: I have nothing further.

13 THE COURT: Anything else, Mr. McCarthy?

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

15 THE COURT: You are excused. Thank you.

16 (Witness excused)

17 MR. FITZGERALD: Your Honor, the government would
18 propose to next read from Government Exhibit 368T.

19 THE COURT: I'm sorry. Before you put your notes
20 down, I should point out that any statements that this
21 witness testified to that you find to have been made by
22 Mr. Saleh at or after the time of his arrest are admissible
23 only with respect to him and not with respect to anybody
24 else. So when it comes time for to you consider anything
25 that you find that Mr. Saleh said at the time of his arrest,

1 you may consider it only when you are deciding whether he is
2 guilty or not guilty, and not when you're considering
3 whether anybody else is.

4 MR. FITZGERALD: Thank you, Judge. The next
5 exhibit is Government Exhibit 368T, which for counsel's
6 benefit is also known as CM62.

7 THE COURT: You should have a volume marked 349
8 to 370, and that would include 368T.

9 MR. FITZGERALD: Government Exhibit 368T was
10 recorded on June 23, 1993 at 7 p.m. Mr. Khuzami will read
11 the statements attributed to Mr. Salem and I will read the
12 statements attributed to Mr. Siddig Ali.

13 (Government Exhibit 368T was read to the jury)

14 MR. McCARTHY: Your Honor, the government calls
15 Robert Calabria.

16 ROBERT J. CALABRIA,
17 called as a witness by the Government,
18 having been duly sworn, testified as follows:

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

20 THE COURT: Go ahead.

21 DIRECT EXAMINATION

22 BY MR. McCARTHY:

23 Q Good afternoon, sir.

24 A Good afternoon.

25 Q Would you tell us, please, how you are employed.

1 A I am a special agent with the FBI.

2 Q All right. What office are you assigned to?

3 A New York City.

4 Q Were you assigned to the New York office in 1993?

5 A Yes, I was.

6 Q Let me direct your attention -- let me stop
7 myself for a moment.

8 If you want to sit up a little closer, you may
9 not have to hunch down like that, and just try to speak
10 directly into the microphone and keep your voice up, OK?

11 A OK.

12 Q Let me direct your attention to the evening of
13 June 23, 1993, into the early morning hours of June 24.

14 Do you recall that day?

15 A Yes, I do.

16 Q All right. Were you on duty?

17 A Yes, I was.

18 Q What assignment did you have that evening?

19 A I was on one of the arrest teams.

20 Q What arrest team were you on, sir?

21 A Amir Abdelgani.

22 Q Did there come a time on June 24, 1993 in the
23 early morning hours that you took Mr. Amir Abdelgani into
24 custody?

25 A Yes, I did.

1 Q Where did you take him into custody?

2 A We arrested him in Jamaica, Queens and
3 transported him back to 26 Federal Plaza in Manhattan.

4 Q Do you recall from where in particular in
5 Jamaica, Queens you placed him under arrest?

6 A I believe it was 190th Street at a garage-type
7 building.

8 Q Had other agents entered the garage before you
9 entered it?

10 A Yes, a SWAT team had entered it prior to our
11 arrival.

12 Q How many agents were with you on the team that
13 was to arrest Mr. Abdelgani?

14 A There was one other agent and one New York City
15 detective.

16 Q So was Mr. Abdelgani already in custody at the
17 time that you took him and transported him?

18 A Yes, he was.

19 Q Did you search Mr. Abdelgani incident to his
20 arrest?

21 A Yes, we did.

22 Q Agent Calabria, I'm placing before you what is
23 marked for identification as Government's Exhibit 165 for
24 identification. Do you recognize that item?

25 A Yes, I do.

1 Q What do you recognize it as?

2 A The wallet of the person that we arrested.

3 Q I am now showing you Exhibits 165A, 165B, 165C,
4 165D and 165E for identification.

5 Do you recognize those items, Agent Calabria?

6 A Yes, I do.

7 Q What do you recognize them to be?

8 A I recognize them to be the contents of the wallet
9 and/or the pocket of the defendant.

10 Q Were they seized from him at the time of his
11 arrest in the early morning hours of June 24, 1993?

12 A Yes, they were.

13 MR. McCARTHY: Your Honor, the government offers
14 165A through E.

15 MR. BERNSTEIN: May I have a brief voir dire,
16 your Honor.

17 THE COURT: Mr. Bernstein, representing Amir
18 Abdelgani.

19 VOIR DIRE EXAMINATION

20 BY MR. BERNSTEIN:

21 Q Agent Calabria, you said that the items 165A
22 through E either came from Mr. Abdelgani's wallet or his
23 pocket. Which pocket, sir, are you referring to?

24 A I'm not certain which pocket. It might have been
25 his shirt pocket. We had searched him and removed the

1 contents of his wallet.

2 Q With respect to 165A through E, can you tell me
3 which came from his wallet and which came from his pocket,
4 sir?

5 A No, I can't.

6 MR. BERNSTEIN: No further questions, your Honor.

7 I have no objection.

8 THE COURT: All right. 165A through E are
9 received without objection.

10 (Government's Exhibits 165A through E were
11 received in evidence)

12 MR. MCCARTHY: Thank you, your Honor.

13 Your Honor, may I ask that the jury be permitted
14 to turn briefly to those exhibits, which I believe are now
15 all in the jurors' books.

16 THE COURT: In the volume marked 152 to 299 under
17 tab 165.

18 MR. MCCARTHY: Your Honor, may I refer briefly to
19 those items in evidence?

20 THE COURT: Yes, you may.

21 Q 165A is a business card which says on the front A
22 & A Auto Repair.

23 On the flip side in red is written, "139 Street,
24 Jamaica Avenue," with the number 6724742, and other numbers
25 are also written on the back.

1 165B is a slip of paper on which is printed on
2 one side "Cousins Medical Livery" at the top.

3 On the reverse side of that item, is written the
4 following: Three letters and the word "north" then"
5 Thruway, Deegan," something after "Deegan," and then on the
6 next line, "up, Exit 14, Yonkers Avenue."

7 There is then a line, and written underneath the
8 line is what appears to be the number 9 and then "2376052"
9 and "9694831."

10 165C is a business card for Thomas T. Hecht. On
11 the reverse side of that are two telephone numbers,
12 212-319-6714, a line under that, some Arabic writing, and
13 another phone number, 212-319-6574, with additional Arabic
14 writing.

15 165D on one side is a printed form for Boys
16 Harbor Junior Committee, Salute to Spring 1993.

17 On the reverse side of that item, which is folded
18 in half, are two columns with Arabic writing and telephone
19 numbers.

20 165E is a sheet of paper, the original is
21 crumpled up and folded out straight. On one side it is a
22 form for Cousins Medical Livery, Incorporated, with
23 additional writing. On the other side there is the
24 following writing, in writing, "ABE 4586," and under the
25 numbers "4586," "8456."

1 Then under that, "C" or "O," with a "2" appearing
2 to be written over the "N, W, 456." On the next line what
3 appears to be "UTF370." The numbers continue down the page.

4 Q Agent Calabria, after you took Mr. Abdelgani,
5 that is, Mr. Amir Abdelgani into custody, you say you
6 transported him to Manhattan?

7 A Yes, we did.

8 Q Did you notice anything unusual about him?

9 A Well, during the trip back, it was in the early
10 morning hours, and there wasn't a great deal of traffic, but
11 the smell of gasoline, or it smelled to us like gasoline,
12 was so strong, we had all four windows down and even then it
13 was still present in the car to a great extent.

14 MR. McCARTHY: Thank you.

15 Your Honor, I have no further questions.

16 THE COURT: Cross, Mr. Bernstein?

17 MR. BERNSTEIN: Yes, Judge.

18 CROSS-EXAMINATION

19 BY MR. BERNSTEIN:

20 Q Agent Calabria, 165A through E, 165 was the
21 wallet that you found on Mr. Abdelgani, correct?

22 A I believe so, yes.

23 (Continued on next page)

24

25

1 Q 165A through E were documents that you found in
2 his possession, correct?

3 A Yes.

4 Q Would it be fair to say that those weren't the
5 only documents that you found in Mr. Abdelgani's possession?

6 A No, there were other items.

7 Q Did you basically take all items of personal
8 property from him at that time?

9 A Yes, we did.

10 Q Did you voucher them the same way you voucher any
11 other materials that you have already seen there?

12 A Yes.

13 Q Agent Calabria, I am showing you a series of
14 items marked Amir Abdelgani Exhibits G1 through 8. Can you
15 identify those as items you found in Mr. Abdelgani's
16 possession on the night of the arrest?

17 A They appear to be, yes.

18 MR. BERNSTEIN: Your Honor, I would offer G1
19 through 8, if there is no objection.

20 MR. McCARTHY: No objection.

21 THE COURT: G1 through G8 are received without
22 objection.

23 (Defendant Amir Abdelgani Exhibits G1 through G8
24 received in evidence)

25 Q With respect to item G1, could you describe to

1 the jury what item G1 is?

2 A It appears to be a New York State driver's
3 license.

4 Q If you could -- we will make it easier because I
5 think I am not sure you have them in the order. Could you
6 pick up the next one -- if you can find G2 that would be
7 fine.

8 A G2 is a MAC bank card. It looks like the
9 Provident Bank, MAC, automatic teller card.

10 Q Are both the license G1 and G2 issued through to
11 Mr. Abdelgani?

12 A His name is on them, yes.

13 Q Could you find G3, 4 and 5, which are Citibank
14 items.

15 A G3 is a Citibank Visa card, G4 is a Citibank
16 MasterCard, and this is the Citibank card itself, is G5.

17 Q Are all of those issued to Mr. Abdelgani?

18 A Yes, they are.

19 Q Would you pick up what appears to be a blue card,
20 G6, and would you describe that as a patient pay, some form
21 of clinic card issued to Mr. Abdelgani?

22 A It says Jersey City patients pay.

23 Q Is that number G6?

24 A G6.

25 Q Would you pick up G7, which I believe is a

1 resident alien card, sir. Is that a permanent resident
2 alien card issued to Mr. Abdelgani from the Immigration and
3 Naturalization Service?

4 A That is what it appears to be.

5 Q Can you tell by looking at the back of that in
6 what year it was issued? I think there may be something
7 called an adjustment date.

8 A There is a date here, 8/7/87.

9 Q Which means 1987 to you, sir?

10 A Yes, it does.

11 Q Based upon your background and experience and the
12 work you have done, is it fair to say that a resident alien
13 card is issued to someone who has the right to stay in the
14 United States forever?

15 A I don't know the exact scope of the immigration
16 laws. This would be a step toward citizenship in some
17 cases.

18 Q With respect to number 8, would you pick that up.
19 That is a Social Security card. Is that issued to Mr. Amir
20 Abdelgani?

21 A Yes, it is.

22 Q All those items, G1 through 8, were found in Mr.
23 Abdelgani's possession the night of his arrest, correct?

24 A Correct.

25 MR. BERNSTEIN: May I approach, your Honor?

1 THE COURT: Yes.

2 Q Agent Calabria, I am showing you -- why don't we
3 take the isolated items separately. There is an envelope, I
4 think there is a set of keys next to it. Can you identify
5 those keys? They have been previously marked defendant Amir
6 Abdelgani G16. Do you recognize those keys?

7 A Yes.

8 Q Were those seized from Amir Abdelgani the night
9 that you processed him, June 23, and the morning of June 24?

10 A Yes, they were.

11 MR. BERNSTEIN: Your Honor, I would offer G16.

12 MR. MCCARTHY: No objection.

13 THE COURT: G16 is received without objection.

14 (Defendant Amir Abdelgani Exhibit G16 received in
15 evidence)

16 Q There is a bunch of documents in front of you
17 previously marked G9 through G15. Do you recognize those to
18 be items that Mr. Amir Abdelgani had in his possession on
19 the night or the morning of June 23 into June 24 when you
20 processed him?

21 A Yes, they do.

22 MR. BERNSTEIN: Your Honor, I would offer G9
23 through G15.

24 MR. MCCARTHY: No objection.

25 THE COURT: G9 through G15 received without

1 objection.

2 (Defendant Amir Abdelgani Exhibits G9 through G15
3 received in evidence)

4 Q With respect to G9, G10 and G13, would you take
5 those out, please.

6 A Yes, I did.

7 Q Do those appear to be Amir Abdelgani credit card
8 receipts for businesses conducted with a firm called GG Auto
9 Sales during the period of May of 1993?

10 A Yes, they do.

11 Q Do those receipts -- does G9 appear to be \$600?

12 A Yes, sir.

13 Q G10, \$1650?

14 A Correct.

15 Q And G13, \$3,000?

16 A Yes, it is.

17 Q Would you go to G11. Does G11 appear to be a
18 payment or deposit ticket to Mr. Abdelgani's account?

19 A \$1,100.

20 Q On what date was that deposited by Mr. Abdelgani,
21 or whoever on his behalf, into that account?

22 A June 7, '93.

23 Q With respect to G12, would you pick up G12,
24 please. Does that appear to be a small New York State tax
25 refund check made out to Mr. Abdelgani and another person?

1 A Yes, it does.

2 Q Would you pick up G14, please. Does that appear
3 to be a check made out to Mr. Abdelgani for Cousins Medical
4 Livery in the amount of approximately \$300?

5 A Yes, it does.

6 Q What is the date of that check, sir?

7 A June 9, '93.

8 Q Lastly, with respect to G15, does that appear to
9 be a deposit ticket for sometime in June, I believe?

10 A June 7.

11 Q How much is the total amount of that deposit to
12 Mr. Abdelgani's account?

13 A \$2,802.19.

14 Q Would it be fair to say that all the items, the
15 paper items 9 through 15 that you have just reviewed, were
16 all in Mr. Abdelgani's possession at that time, at the time
17 of his arrest?

18 A Yes.

19 (Continued on next page)

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1 MR. BERNSTEIN: Thank you. I have no further
2 questions of the witness, your Honor. I would just ask that
3 the items that I have put in evidence be published to the
4 jury at some appropriate time before or after the witness
5 leaves the stand.

6 THE COURT: Anyone have any other cross? Any
7 redirect?

8 MR. McCARTHY: No, thank you, your Honor.

9 THE COURT: All right, do you want to pass out
10 the exhibits.

11 (Pause)

12 MR. McCARTHY: Your Honor, shall we excuse Agent
13 Calabria?

14 THE COURT: You are excused.

15 (Witness excused)

16 (Pause)

17 MR. FITZGERALD: Judge, can we approach on
18 another matter while the jury is examining the exhibits?

19 (At the side bar)

20 MR. STAVIS: Your Honor, I was provided with a
21 copy of your order --

22 THE COURT: I was told this was agreed to.

23 MR. STAVIS: Yes. There was a point of
24 disagreement which is that the defense attorneys' position
25 was that we should be permitted to take not verbatim notes

1 but some notes that may occur to us while they are viewing
2 the Ramzi Yousef material. I believe the government has
3 agreed to amend the order accordingly.

4 THE COURT: You want to change the order?

5 MR. FITZGERALD: We can change it. I can reprint
6 the new one but I want to know that we can do it at a later
7 time. I don't want to change your Honor's order.

8 (In open court)

9 (Pause)

10 MR. McCARTHY: Your Honor, the government calls
11 Gary Fitzgerald.

12 (Continued on next page)

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1 GARY J. FITZGERALD,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 THE COURT: Go ahead.

5 MR. McCARTHY: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. McCARTHY:

8 Q Good afternoon, sir.

9 A Good afternoon, sir.

10 Q Do you want to raise that microphone that is in
11 front of you up towards your mouth.

12 Can you tell us, please, what it is that you do
13 for a living.

14 A I am a detective with the New York City Police
15 Department.

16 Q Are you assigned to a task force made up of
17 federal and local agents?

18 A Yes, sir, I am.

19 Q Were you so assigned in 1993?

20 A Yes, sir, I was.

21 Q Detective Fitzgerald, let me direct your
22 attention to the early morning hours of June 4, 1993, and
23 ask you, were you on duty at that time?

24 A Yes, sir, I was.

25 Q What was your assignment?

1 A I was assigned as a team leader to an arrest team
2 of an investigation.

3 Q You are going to have to try to keep your voice
4 up, if you would.

5 THE COURT: Did you say June 4 or 24?

6 MR. McCARTHY: I should have said 24. If I said
7 4th, I am in error.

8 Q Do you understand that the date we are talking
9 about is June 24, 1993, in the early morning hours?

10 A Yes, sir, I do.

11 Q What was your assignment at that time?

12 A I was assigned as a team leader for an arrest
13 team pertinent to this investigation.

14 Q Was there a particular subject who you were the
15 team leader of the arrest team on?

16 A Yes, sir, there was.

17 Q Who was that, Detective?

18 A His name was Fadil Mahmoud and his last name
19 begins with the letter A. I don't want to mispronounce it.

20 Q What is your best recollection of the last name?
21 Even mispronouncing it I am sure we will understand.

22 A I don't want to even give it a shot. It is a
23 very long last name with the letter A.

24 Q Do you record any place your understanding of
25 what his last name was?

1 A Yes, sir, I did.

2 Q On what did you do that, sir?

3 A That would be on a 302. That would be on a
4 property invoice. That would be on a witness statement
5 invoice.

6 Q I have placed before you 35141-B. Do you
7 recognize that item?

8 A Yes, sir, I do.

9 Q Can you tell us what it is, briefly?

10 A This is a standard form 302 to record an action
11 or event.

12 Q Did you try to put to the best of your ability
13 what the last name was as you understood it, on that form?

14 A Yes, sir, I did.

15 Q Can you, using that form, speaking the last name
16 as you understood it for us?

17 A A-B-D-E-L-G-H-A-N-I.

18 Q We are going to refer to that as Abdelgani, OK?

19 A Yes, sir.

20 Q Was Mr. Abdelgani already in custody at the time
21 that you transferred him from Queens to Manhattan?

22 A Yes, sir, he was.

23 Q Detective Fitzgerald, I have placed before you
24 Government's Exhibits 169A and B for identification. Do you
25 recognize those items?

1 A Yes, sir, I do.

2 Q What do you recognize them to be?

3 A Both these items are part of the property that I
4 removed from the person of Mr. Abdelgani.

5 MR. McCARTHY: Your Honor, the government offers
6 169A and B.

7 MR. LAVINE: No objection.

8 THE COURT: 169A and B are received without
9 objection.

10 (Government's Exhibits 169A and B received in
11 evidence)

12 MR. McCARTHY: Your Honor, I believe those items
13 are in the jury's books, if we could briefly refer to them.

14 Your Honor, I think some of the jurors may be
15 having a problem with the books. 169A and B. May I refer
16 to those items briefly, your Honor?

17 THE COURT: Go ahead.

18 MR. McCARTHY: 169A is a vehicle registration
19 from Motor Vehicle Services from the state of New Jersey for
20 a Plymouth '87 wagon, blue, plate OL603R. 169B is a
21 temporary state of New Jersey insurance identification card.
22 It is listed to Cousin Medical Livery, Nasir Abdalla, 7-11
23 Tonnelle Avenue --

24 THE COURT: Would you spell the names.

25 MR. McCARTHY: Yes, I will, your Honor. Cousin,

1 C-O-U-S-I-N, Medical Livery, Nasir Abdalla, NASIR, last name
2 A-B-D-A-L-L-A. 7-11 Tonnelle, T-O-N-N-E-L-L-E, Avenue,
3 Jersey City, New Jersey, 07306. That is for an '87 Plymouth
4 with a vehicle identification number that is the same
5 vehicle identification number as the one that appears on
6 169A. I should have said that 169A is also listed to
7 Cousins Medical Livery, 7-11 Tonnelle Avenue, 3C, Jersey
8 City, New Jersey.

9 Your Honor, I have no further questions at this
10 time for Detective Fitzgerald.

11 THE COURT: Cross, Mr. Lavine?

12 MR. LAVINE: Thank you, Judge.

13 THE COURT: Representing Fadil Abdelgani.

14 MR. LAVINE: Judge, I need just one quick second.

15 CROSS-EXAMINATION

16 BY MR. LAVINE:

17 Q Good afternoon, Mr. Fitzgerald.

18 A Good afternoon, sir.

19 Q You mentioned that you were a team leader
20 assigned to arrest or to transport, I am not sure which,
21 Fadil Abdelgani, is that correct?

22 A Yes, sir.

23 Q Before that morning, had you ever seen him?

24 A Not to my knowledge.

25 Q Before you went out to Queens from wherever it

1 was that you left, were you aware or had you been made aware
2 that it was a person named Fadil Abdelgani whom you were to
3 either arrest or transport back to Manhattan?

4 A I became aware that day at the briefing.

5 Q Pardon me?

6 A I was made aware that day at a briefing.

7 Q Where was that briefing?

8 A Initially at 26 Federal Plaza and then at a
9 jump-off point out in Queens, New York.

10 Q Where was it that you first heard the name Fadil
11 Abdelgani?

12 A 26 Federal Plaza.

13 Q Do you have any notes or records that -- let me
14 withdraw that. Did you make any notes or records or
15 memoranda of the meeting at 26 Federal Plaza?

16 A No, sir, I did not.

17 Q Do you have any documents that would indicate
18 that it was at 26 Federal Plaza that you first were made
19 aware of the name Fadil Abdelgani?

20 A No, sir, I do not.

21 Q When you tell us it was at 26 Federal Plaza, you
22 seemed to move about in your chair a little bit. Are you
23 sure it was at 26 Federal Plaza that you were made aware of
24 the name Fadil Abdelgani as opposed to when you arrived out
25 at Queens?

1 MR. McCARTHY: Objection to form.

2 A Yes, sir, I am.

3 THE COURT: Sustained as to form.

4 MR. McCARTHY: Move to strike.

5 THE COURT: Stricken. Do you want to ask it
6 again?

7 MR. LAVINE: Yes, sir.

8 Q So the first time you had ever seen Mr. Fadil
9 Abdelgani was when you were about to take him back to
10 Manhattan?

11 A Yes, sir.

12 Q In connection with processing him, did you take
13 any information from him with respect to pedigree?

14 A Yes, sir, I did.

15 Q Do you recall asking him what his address was?

16 MR. McCARTHY: Objection. May I have a moment
17 with Mr. Lavine?

18 (Pause)

19 MR. LAVINE: Thank you.

20 Q Mr. Fitzgerald, did he tell you that his current
21 address was 117 Ogden Avenue, apartment 2B, in Jersey City,
22 New Jersey?

23 MR. McCARTHY: Objection, scope.

24 THE COURT: I will allow it. Did he tell you
25 that?

1 A I don't honestly remember what he told me. It
2 was two years ago. But I made paper notation as to his
3 pedigree, sir.

4 MR. LAVINE: May I approach the witness briefly,
5 your Honor?

6 THE COURT: Yes.

7 Q Mr. Fitzgerald, will you take a look at this and
8 see if this helps to refresh your recollection as to --

9 THE COURT: This is Exhibit what?

10 MR. LAVINE: This is a portion, your Honor, of
11 Exhibit 35141B. This is page 3 of 35141B.

12 Q Will you take a look at this and see if this
13 helps to refresh your recollection as to whether Mr.
14 Abdelgani advised you that his current address was 117 Ogden
15 Avenue, apartment 2B, in Jersey City, New Jersey?

16 A Yes, sir, it does.

17 Q Did he so advise you?

18 A According to my report, yes, sir, he did.

19 Q Did he advise you that his prior address had been
20 120 Ocean Parkway, apartment 1F, in Brooklyn, New York?

21 A Yes, sir, he did.

22 Q Did he advise you that the vehicle that he drove
23 was license plate New Jersey OL603R, '87 Plymouth wagon,
24 blue?

25 A Yes, sir, he did.

1 MR. LAVINE: I have nothing further. Thank you.

2 THE COURT: Any other cross?

3 MR. LAVINE: Your Honor, there is one last
4 matter. Thank you.

5 Your Honor, I believe I have a stipulation with
6 the government that amongst the items seized from Mr.
7 Abdelgani was what is marked defendant's A, which I offer
8 into evidence.

9 MR. MCCARTHY: Your Honor, I will stipulate to
10 authentication. It is an Arabic document and it is not
11 clear what is in it at this point.

12 THE COURT: I will pass on the admissibility of
13 that at a later time.

14 MR. LAVINE: Thank you, your Honor. I have
15 nothing further. Thank you.

16 THE COURT: Mr. Russo, representing Mr. Wahid
17 Saleh.

18 CROSS-EXAMINATION

19 BY MR. RUSSO:

20 Q Good afternoon, Detective. Just a few questions.
21 What time did you arrive at the location where the arrest
22 was made?

23 A Approximately 1:00 in the morning.

24 MR. RUSSO: Nothing further, your Honor.

25 THE COURT: Any other cross? Any redirect?

1 MR. McCARTHY: Yes, your Honor.

2 Detective Fitzgerald, I am going to approach you
3 with Government's Exhibit 169C for identification.

4 Your Honor, I believe we have a stipulation on
5 169C for identification, so I offer that item now.

6 MR. LAVINE: Yes, we do.

7 THE COURT: 169C is received on stipulation.

8 (Government's Exhibit 169C was received in
9 evidence)

10 MR. McCARTHY: 169C is not in the jurors' books,
11 so I would just ask to read from it briefly.

12 THE COURT: Go ahead.

13 MR. McCARTHY: 169C is a New York State driver's
14 license for Abdelgani, Fadil, 120 Ocean Parkway, apartment
15 1F, Brooklyn, New York, 11218-2458. It is issued December
16 16, 1992, and expires November 11, 1996.

17 Thank you. I have no further questions for
18 Detective Fitzgerald.

19 MR. LAVINE: I have no recross.

20 THE COURT: You are excused. Thank you.

21 THE WITNESS: Thank you, Judge.

22 MR. McCARTHY: Mark Donohue is the next witness,
23 your Honor. I can do his direct in five minutes, or I could
24 do it tomorrow morning.

25 THE COURT: Why don't we wait. Ladies and

1 gentlemen, we are going to break now for the day. Please
2 leave your notes and other materials behind. Please don't
3 discuss the case, and we will resume tomorrow morning at or
4 about 9:30. Remember that we are not sitting on Wednesday.

5 (Jury excused)

6 MS. AMSTERDAM: Your Honor, could I place one
7 thing on the record? I don't know where we are in the
8 context of moving ahead on the V5 through 8 new audiotape.
9 However, I just want your Honor to be aware and the record
10 to reflect that even though my client is not a participant
11 in that tape, if in fact there should be any references to
12 him, I am going to take the position that it is untimely. I
13 just want you to be aware.

14 THE COURT: Understand that anybody whose ox is
15 gored potentially or actually by anything that is disclosed
16 on there has a good argument. I think there is a simple
17 solution to whatever problem may be posed by this tape but I
18 would like to see first if there is a problem.

19 MS. AMSTERDAM: I am aware of that, but there was
20 so much of a race this morning to get the tape that I didn't
21 want your Honor not to be aware or not be given a heads up
22 that it is not far down the road.

23 THE COURT: My head is not way up but that is
24 fine.

25 Two small things before we go. One, Bermeister's

1 testimony is out, is it?

2 MR. KHUZAMI: That is correct, your Honor. The
3 government stipulated to his testimony being stricken, and
4 the exhibits also.

5 THE COURT: Have they been advised about it?

6 MR. KHUZAMI: They have not.

7 THE COURT: I have to advise them about it at
8 some point.

9 Secondly, on a rather obscure point, with respect
10 to Count 14, which I believe is the weapons count with
11 respect to Mr. Nosair, do you have any proof in the record
12 with respect to interstate commerce?

13 MR. KHUZAMI: That witness is scheduled for
14 tomorrow, your Honor.

15 THE COURT: Thank you.

16 (Proceedings adjourned until 9:30 a.m., Tuesday,
17 June 20, 1995)

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

UNITED STATES OF AMERICA,

3 v.

OMAR AHMAD ALI ABDEL RAHMAN,
4 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,"

EL SAYYID NOSAIR,
7 a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

IBRAHIM A. EL-GABROWNY,
9 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

CLEMENT HAMPTON-EL,
11 a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

AMIR ABDELGANI,
13 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

FADIL ABDELGANI,
17 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

June 20, 1995
9:35 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge
25

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and
SALVATORE S. RUSSO

1 (Trial resumed)

2 (In open court; jury not present)

3 MR. JACOBS: Your Honor, relative to the sealed
4 matters that have been reviewed last night, we are asking to
5 see your Honor relatively as soon as possible -- it's not an
6 emergency this morning, obviously -- with the defendants
7 present to discuss the matters that were reviewed last
8 evening.

9 THE COURT: We can do it tomorrow.

10 MS. AMSTERDAM: No, we can't do it tomorrow. A
11 number of us have --

12 THE COURT: You will do it tomorrow.

13 MS. AMSTERDAM: I am sorry, your Honor. I cannot
14 be here tomorrow. I have done everything to accommodate the
15 court. I cannot be here tomorrow. I will stay late
16 tonight, I will come in early Thursday, but I cannot do it
17 tomorrow.

18 THE COURT: What about Friday?

19 MS. STEWART: I cannot do it on Friday, Judge.

20 MR. LAVINE: Your Honor, for what it is worth,
21 not that it is all important, what I am going to say, but
22 the issues have been narrowed down --

23 THE COURT: We will do it at the end of business
24 today. Get the jury.

25 MR. BERNSTEIN: Regarding the end of business

1 today, I have to leave at 4:30 today, and I am sure under
2 the circumstances that cocounsel can cover.

3 THE COURT: Fine. Thank you very much.

4 MR. KHUZAMI: Your Honor, may I speak with Mr.
5 Nooter for a moment?

6 MS. STEWART: Judge, may I approach with Mr.
7 Fitzgerald for a moment?

8 (At the side bar)

9 MS. STEWART: Under the order, are we permitted
10 to use the interpreter to talk about what we saw, or not?

11 MR. FITZGERALD: If we used the court
12 interpreter, I would not object.

13 (In open court; jury present)

14 THE COURT: Good morning, ladie and gentlemen.

15 JURORS: Good morning.

16 THE COURT: Mr. McCarthy.

17 MR. McCARTHY: Your Honor, the government calls
18 Mark Donohue.

19 MARK G. DONOHUE,

20 called as a witness by the government,

21 having been duly sworn, testified as follows:

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

23 THE COURT: Yes.

24 (Continued on next page)

25

1 DIRECT EXAMINATION

2 BY MR. MCCARTHY:

3 Q Good morning, sir.

4 A Good morning.

5 Q Can you tell us how you are employed?

6 A I am a special agent with the Federal Bureau of
7 Investigation.

8 Q How long have you been with the FBI?

9 A Nearly 11 years.

10 Q Are you assigned to the New York office?

11 A Yes, sir, I am.

12 Q Let me direct your attention to the early morning
13 hours of June 24, 1993. Were you on duty at that time?

14 A Yes, I was.

15 Q Would you briefly explain to the ladies and
16 gentlemen of the jury what your assignment was that morning.

17 A At that time I was a member of the evidence
18 response team of the New York office of the Federal Bureau
19 of Investigation.

20 Q Did you have a particular assignment that night?

21 A Yes, to search a location in Queens.

22 Q Do you recall what the location was?

23 A It was 139-01 90th Avenue, in Queens.

24 Q What was located at that address?

25 A We were given an assignment to search a warehouse

1 location.

2 Q A garage type area?

3 A Yes, roll-up type.

4 Q Did you and other agents conduct a search that
5 evening?

6 A Yes, sir, I did.

7 Q Did there come a time that you recovered a bag?

8 A Yes, sir.

9 Q Would you briefly explain what kind of bag it
10 was.

11 A It was a garment-type gym bag located within the
12 premise.

13 Q Were there a number of items in the bag?

14 A Yes, sir, there was.

15 Q Did those items include a wallet?

16 A Yes, sir, they did.

17 Q Did you search the wallet?

18 A Yes, sir, I did.

19 Q Was there personal identification relating to one
20 person that you found in there?

21 A Yes, sir.

22 Q Who was that person?

23 A Tarig Elhassan.

24 Q Agent Donohue, I am showing you what is marked
25 for identification as Government's Exhibit 168. Do you

1 recognize that item?

2 A Yes, sir, I do.

3 Q What do you recognize it to be? Speaking into
4 the microphone.

5 A It is a black wallet that I found in the search.

6 Q Is this the wallet of Mr. Elhassan that you were
7 just referring to?

8 A Yes, sir.

9 Q I am now showing you what are marked for
10 identification as 168A, B, C, D, and E, and I ask you if you
11 recognize those items, sir?

12 A Yes, I do.

13 Q What do you recognize them to be?

14 A They are items found within the wallet.

15 Q Did the wallet have other contents?

16 A Yes, sir.

17 Q Did the bag in which you found the wallet also
18 contain other things?

19 A Yes, sir.

20 MR. McCARTHY: Your Honor, the government offers
21 168A through E.

22 MS. LONDON: No objection.

23 THE COURT: 168A through E are received.

24 (Government's Exhibits 168A through E received in
25 evidence)

1 Q Am I correct that 168E is a business card for
2 Cousins Medical Livery Incorporated?

3 A Yes, sir.

4 Q The other documents contain Arabic writing?

5 A Yes.

6 MR. McCARTHY: Your Honor, I have no further
7 questions at this time for Agent Donohue.

8 THE COURT: Any cross?

9 MS. LONDON: Yes, your Honor.

10 CROSS-EXAMINATION

11 BY MS. LONDON:

12 Q Good morning, Agent.

13 A Good morning.

14 Q Would it be fair to say that you did not
15 participate in the investigation of this case during the
16 months prior to your search of the warehouse garage in
17 Queens?

18 A That is fair to say, yes.

19 THE COURT: Excuse me. If you want to be heard,
20 you will have to talk into the microphone, and a little
21 louder, please. You can move it around and point it
22 directly at your mouth. Thank you.

23 Q And you have testified about evidence that you
24 recovered from a sports bag or a gym bag. Could you tell us
25 again -- I didn't hear you before -- where that bag was

1 located?

2 A It was located within the premise. It was
3 actually under a workbench type of table, located within the
4 building.

5 Q And you have told us that a number of the items
6 in that bag had cards that contained Arabic writing on them,
7 is that correct?

8 A Wherein the wallet, yes.

9 Q Do you speak Arabic?

10 A No, I don't.

11 Q So you did not understand what was written on
12 those cards, correct?

13 A Not at all.

14 Q You didn't try and have it translated at that
15 time, correct?

16 A No.

17 Q In fact, it would be fair to say that you don't
18 even know who wrote what is on those cards, is that right?

19 A No, not at all.

20 Q And is it fair to say that you don't know when it
21 was written?

22 A Not at all.

23 Q I believe you have also testified that in
24 addition to the items that the government just showed you,
25 there were other items in the wallet, correct?

1 A Yes, ma'am.

2 Q It would be fair to say that there were various
3 business cards?

4 A I seem to recall business cards, yes, ma'am.

5 Q And a few various pieces of paper, like receipts
6 or a bill?

7 A I think I recall those types of items.

8 Q Agent Donohue, I am going to show you what has
9 been marked as Elhassan Defendant's Exhibits D1 through D5
10 and ask you if you recognize these items? Do you recognize
11 those items, sir?

12 A Yes.

13 Q Do you recognize those as items seized from
14 the -- withdrawn. Do you recognize items D1 through D3 as
15 items seized from the wallet of Mr. Elhassan?

16 A I recall items such as these being there, yes.

17 Q Would it be fair to say that items D4 and D5, the
18 two larger items, obviously, were not in the wallet but were
19 recovered from the gym bag, correct?

20 A Yes.

21 MS. LONDON: Your Honor, at this time I would
22 offer these items into evidence.

23 MR. MCCARTHY: No objection.

24 THE COURT: D1 through D5 are received without
25 objection. May I see counsel at the side.

1 (Defendant Elhassan Exhibits D1 through D5
2 received in evidence)

3 (At the side bar)

4 THE COURT: Obviously I haven't seen the items.
5 What is it that they show?

6 MS. LONDON: They are Mr. Elhassan's alien
7 registration card, a Social Security card, a credit union
8 card, his Koran and his prayer book. Those are the items.

9 THE COURT: What do they show?

10 MS. LONDON: They show to the jury that
11 Mr. Elhassan was legally in the country. I think his alien
12 registration card shows that.

13 THE COURT: I don't think there is any charge
14 that he wasn't. They don't object, you are entitled to put
15 them in. Yesterday we had some items shown to the jury that
16 took 10 minutes and all it shows that there were some
17 unremarkable things seized along with things that were
18 remarkable.

19 MS. LONDON: I would like them received.

20 THE COURT: They are in evidence.

21 MS. LONDON: I do not want to take up the jury's
22 time at this time, if that is the court's concern.

23 (In open court)

24 (Continued on next page)

25

1 BY MS. LONDON:

2 Q Agent Donohue, directing your attention to
3 Defendant's Exhibit D1, would you tell us what that is?

4 A I am sorry. Which item would it be, ma'am?

5 Q D1. I will withdraw that question. Would it be
6 many fair to say that Defendant's Exhibit Elhassan D1 is an
7 alien registration card?

8 A Yes.

9 Q Would I also be correct in saying that is issued
10 in the name of Tarig Elhassan?

11 A Yes.

12 Q Defendant's Exhibit D2, am I correct in saying
13 that that is a Social Security card issued in the name of
14 Tarig Elhassan?

15 A Yes.

16 Q And directing your attention to the third card,
17 defendant Elhassan D3, could you tell us what that card is.

18 A Appears to be a member identification card to
19 Lower East Side People's Federal Credit Union.

20 Q That is issued also in the name of Tarig
21 Elhassan, is that correct?

22 A Yes.

23 Q Directing your attention to defendant Elhassan
24 Exhibits D4, which is the black zippered book there, would
25 it be fair to say that that is, if you unzip it that is a

1 book containing Arabic writing, is that correct?

2 A Yes, ma'am, it is.

3 Q Do you of your knowledge know if that is a Koran?

4 A No, I do not know that.

5 Q Directing your attention to defendant Elhassan
6 D5, would it be fair to say that that is also a book written
7 in Arabic?

8 A Yes.

9 Q As you sit there, are you aware what that book
10 is?

11 A No, not at all.

12 Q Am I correct in saying that in the search of the
13 gym bag and Mr. Elhassan's wallet, that no driver's license
14 was found, is that correct?

15 A I don't recall, ma'am.

16 Q It would be also fair to say that no credit cards
17 were found, correct?

18 A I don't recall.

19 MS. LONDON: Your Honor, I have no further
20 questions.

21 THE COURT: Any other cross? Any redirect?

22 MR. MCCARTHY: No, thank you, your Honor.

23 THE COURT: You are excused.

24 (Witness excused)

25 MR. MCCARTHY: The government calls Michael

1 Feghali.

2 MIKE FEGHALI,

3 called as a witness by the government,

4 having been duly sworn, testified as follows:

5 MR. McCARTHY: May I proceed?

6 THE COURT: Go ahead.

7 DIRECT EXAMINATION

8 BY MR. McCARTHY:

9 Q Good morning, Mr. Feghali?

10 A Good morning, sir.

11 Q Are you still a translator with the FBI?

12 A Yes, sir.

13 Q Mr. Feghali, were you shown some documentary
14 items to make translations or approve translations on in the
15 last day or two?

16 A Yes, sir.

17 Q Let me show you first Government's Exhibits
18 168AT, BT and DT. Again, that is 168AT, BT, and DT. I am
19 also showing you what is in evidence as Government's
20 Exhibits 168A, 168B and 168D.

21 Mr. Feghali, are 168AT, BT and DT translations of
22 some of the Arabic that is written on 168A, B and D?

23 A Yes, sir, they are.

24 (Continued on next page)

25

1 MR. McCARTHY: Your Honor, the government offers
2 168AT, BT, and DT.

3 MS. LONDON: May I have a moment, please.

4 THE COURT: Yes, you may.

5 MS. LONDON: No objection, your Honor.

6 THE COURT: 168AF, BT, and DT are received
7 without objection.

8 (Government's Exhibits 168AF, 168BT, and 168DT
9 for identification were received in evidence)

10 Q Mr. Feghali, let me next, if I may, direct your
11 attention to 166IT and Exhibit 166I in evidence.

12 Is 166IT a translation of the Arabic that appears
13 on the back of the business card that is 161I in evidence?

14 THE COURT: 166 you mean?

15 MR. McCARTHY: I'm sorry, your Honor.

16 Q 166 I should say, I, in evidence.

17 I put the question again.

18 A Yes, sir, it is.

19 MR. McCARTHY: Your Honor, the government offers
20 166IT.

21 May I approach with Ms. Amsterdam?

22 THE COURT: Yes, you may.

23 (Continued on next page)

24

25

1 (At the side bar)

2 MS. AMSTERDAM: Your Honor, I'm sorry. I'm so
3 embarrassed. I was half asleep.

4 THE COURT: You are here, Ms. Amsterdam, in your
5 capacity as Mr. Jacobs' keeper.

6 MR. McCARTHY: She looked to me like she knew the
7 gist of what was going on.

8 MS. AMSTERDAM: I was like, "Oh, my God."
9 I can get him in one second or I can do it.

10 MR. McCARTHY: I showed Mr. Jacobs each of
11 exhibits individually this morning, my very strong
12 impression was that there was no problem with them in.

13 THE COURT: My strong impression is I am going to
14 have words with him when he gets back. Why don't you offer
15 them subject to connection.

16 MS. AMSTERDAM: And I'll go get him immediately.

17 THE COURT: Pending Mr. Jacobs' arrival.

18 MR. McCARTHY: Yes, your Honor.

19 (Continued on next page)

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25

1 (In open court)

2 THE COURT: 166IT is received subject to
3 connection.

4 (Government's Exhibit 166IT for identification
5 was received in evidence)

6 MR. McCARTHY: I will leave 167 to the side for a
7 moment.

8 Q Mr. Feghali, I am next showing you exhibits
9 166 -- I'm sorry, someday I'll get this right.
10 165D and 165DT. 165D is in evidence, 165DT is
11 for identification. Is 165DT an accurate translation of the
12 Arabic that appears in 165D?

13 A Yes, sir, it is.

14 Q All right. Moving to 165C, I'm showing you a
15 business card which is 165C in evidence and a document that
16 is 165CT for identification.

17 Is 165CT an accurate translation of the Arabic
18 that is on the reverse side of the business card that is
19 165C in evidence?

20 A Yes, it is.

21 MR. McCARTHY: Your Honor, the government offers
22 165CT and 165DT.

23 THE COURT: Mr. Bernstein?

24 MR. BERNSTEIN: Let me just see them.

25 (Pause)

1 MR. BERNSTEIN: No objection.

2 THE COURT: 165CT is received without objection.

3 (Government's Exhibit 165CT for identification
4 was received in evidence)

5 Q Let me move again, just to be clear, 166I, a
6 business card --

7 THE COURT: Did you offer DT as well?

8 MR. McCARTHY: I did, your Honor.

9 THE COURT: All right. That is received without
10 objection as well.

11 (Government's Exhibit 166I for identification was
12 received in evidence)

13 Q Moving you back for a moment to the business card
14 in evidence, 166I, and the translation, 166IT, I believe you
15 said that 166IT is an accurate translation of the Arabic
16 that appears on the reverse side of the business card?

17 A Yes, sir, I do.

18 MR. McCARTHY: Your Honor, the government offers
19 166IT.

20 THE COURT: For all purposes?

21 MR. JACOBS: No objection.

22 THE COURT: 166IT will be received without
23 objection.

24 (Government's Exhibit 166IT for identification
25 was received in evidence)

1 Q Next let me direct your attention to a telephone
2 address book in evidence as Government's Exhibit 167. Were
3 you asked to review the Arabic on three different pages of
4 that?

5 A Yes, sir, I was.

6 Q That is some of the --

7 THE COURT: Excuse me, Mr. Feghali, you are going
8 to have to talk into the microphone. The translator needs
9 to hear you.

10 THE WITNESS: I'm sorry.

11 THE COURT: Thank you.

12 Q I should have asked, were you asked to review
13 some of the Arabic writing on three of the pages of that
14 address book?

15 A Yes, I was.

16 Q Let me show you for identification Government's
17 Exhibits 167A, B, and C.

18 Are those photocopies of the three pages of the
19 notebook 167 in evidence that you were asked to review some
20 of the Arabic on? This is 167A, 167B, and 167C.

21 A Yes, they were.

22 Q Now I'm directing your attention to 167AT, 167BT,
23 and finally 167CT. Is that an English translation of the
24 Arabic that you were asked to review on those three pages?

25 A Yes, they are.

1 MR. McCARTHY: Your Honor, the government offers
2 167A, B and C, and 167AT, BT, and CT.

3 MR. JACOBS: No objection with the understanding
4 he was only asked to translate those and there are others
5 that weren't offered.

6 MR. McCARTHY: Stipulated.

7 THE COURT: 167A, B and C and the corresponding T
8 numbers are received without objection subject to that
9 stipulation. Thank you.

10 (Government Exhibits 167A, 167AT, 167B, 167BT,
11 167C, and 167CT for identification were received in
12 evidence)

13 MR. McCARTHY: Your Honor, may I ask that the
14 jury be directed to turn to the 165 -- I guess 165, the
15 first series of exhibits.

16 THE COURT: Those are in the book marked 152 to
17 299.

18 MR. McCARTHY: Your Honor, I will be turning
19 first to 165C. I believe 165CT is also in the jury's books.

20 Q Mr. Feghali, directing your attention first to
21 165CT, which is the translation for the back of the business
22 card 165C, 165C, the front of the business card says "Thomas
23 C. Hecht" and then there is an address.

24 On the reverse side, there appears the number in
25 English 212-3196 and then dash 714, and underneath that

1 Arabic writing.

2 Directing your attention to 165T in evidence, you
3 translated that as "Ahmed Yousef," and there is a notation
4 in your translation that said "corrected from Youssef."

5 The first time "Ahmed Yousef" appears, it is
6 spelled A-H-M-E-D and then Y-O-U-S-E-F, and then in your
7 bracketed correction it says, corrected from Youssef,
8 Y-O-U-S-S-E-F. Can you explain what you mean by "corrected
9 from Youssef"?

10 A Yes. It looks like the person who wrote that
11 name took the S, there is an Arabic word for SS, which is
12 "ssef" kind of, so he must have written it "Youssef" first.
13 Then he was corrected, and with his own pen, the same pen
14 had made it one S rather than double S from Youssef to
15 Yousef.

16 Q Then there is a number on the back of the card
17 underneath the Ahmed Yousef that you have just referred to
18 in Arabic. The number says 212-319-6574, and you've
19 translated that in Arabic as "Ahmed Yousef," is that
20 correct?

21 A Yes, I did.

22 Q And that's spelled correctly from the Arabic?

23 A Yes, it's spelled correctly.

24 Q OK. Thank you.

25 Turning next to 165D. 165D in evidence is a card

1 the front side of which at the top says "Boys Harbor Junior
2 Committee Salute to Spring '93."

3 On the back there is a series of names and
4 telephone numbers, is that correct?

5 A Yes, it is.

6 Q Am I correct that your Exhibit 165DT in evidence,
7 the translation, there is a block of names and phone numbers
8 on the top which coordinates or corresponds to the left side
9 of 165D in evidence?

10 A Yes.

11 Q And the block at the bottom corresponds to the
12 right side?

13 A Yes, sir.

14 Q About midway down on the left side of 165D you
15 have the translation for Isam Gilgal?

16 A Yes.

17 Q At the number 434-4364, is that correct?

18 A Yes, sir.

19 Q And several entries down from there, next to a
20 notation with the number 212, you have "Tarig Mohammed
21 Elhassan"?

22 A Yes, I do.

23 Q That was written in Arabic, and you've translated
24 it into English?

25 A Yes, sir, I did.

1 Q Let me next direct everyone's attention to 166I,
2 which I believe is also in the same book. That's 166I.

3 166I is a business card which on the front says
4 "Ebru Gulf Service Station, Complete Auto Repair, Foreign
5 and Domestic," with a telephone number "914-237-6052" in the
6 bottom left corner, and the entry or notation, "1238 Yonkers
7 Avenue, Yonkers, New York, 10704," in the right, is that
8 correct?

9 A Yes, sir, it does.

10 Q On the reverse side appears the number -- and
11 this is referring to 166IT, the translation as well as the
12 back of 166I in evidence -- the number 011-971-428-8770, and
13 you have translated underneath that the notation, "Yousef,"
14 that is Y-O-U-S-E-F, "the engineer"?

15 A Yes, sir, I did.

16 Q Turning next to 167A, B, and C.

17 These are the pages from the notebook?

18 A Yes, they are.

19 Q On 167A, the Xerox copy on the left side in the
20 bottom half of the left side of that part of the notebook,
21 appears in English the notation, "112 Brunswick Street,
22 Jersey City, New Jersey, 07802, (201) 222-7804."

23 A Yes, sir.

24 Q And there is Arabic writing atop that?

25 A Yes, sir.

1 Q And you've translated the Arabic as "Siddig
2 Ibrahim Ali," is that correct?

3 A Yes, I did.

4 Q And that's on 167AT?

5 A Yes, sir.

6 Q Turning next to 167B --

7 MR. McCARTHY: Your Honor, may I first read from
8 166B, which is in evidence, briefly?

9 THE COURT: Yes.

10 MR. McCARTHY: 166B is a business card which says
11 "Abubaker Al-Shingietti, counselor." In the bottom left
12 corner it says, "Sudan Embassy, 2210 Massachusetts Avenue,
13 NW, Washington, D.C., 20008." And in the right, "Phone,
14 office, 202-338-8565."

15 Q Turning back to 167B, the page from the phone
16 book, am I correct that on the left side of 167B there are
17 entries that you can read in English that have the telephone
18 number 703-356-0722 and then underneath that, 202-667-2033,
19 with the 667-2033 appearing to be crossed out?

20 A Yes.

21 Q Am I correct that you've translated next to the
22 number 703-356-0722 an Arabic notation Abubaker
23 Al-Shingeiti?

24 A Yes, I did.

25 Q Turning to the last Xeroxed page from the phone

1 book, which is 167C, again, on the left side about halfway
2 down there are a series of phone numbers in a row going down
3 beginning with 212-319-6574, and then underneath that there
4 is a phone number 573-6033 and a notation that says "Fax,
5 573-6160"?

6 A Yes, sir.

7 Q All right. Am I correct that across from the
8 first of those numbers that I read you, 212-319-6574, you've
9 translated from the Arabic the words "Home, Ahmed Yousef,
10 Siraj El-Din"?

11 A Yes, I did.

12 Q Next to 573-6033, am I correct that you've
13 translated the notation for "work" next to the phone number
14 212-754-6518.

15 A Yes, I did.

16 Q Let me finally turn your attention to the 168
17 series of exhibits. Directing your attention first to 168A
18 in evidence, am I correct that that is a tattered scrap of
19 paper with Arabic printed writing at the top?

20 A Yes, it is.

21 Q And do you see a handwritten notation at the
22 bottom "201-451-1046," with some Arabic writing after it?

23 A Yes, I do.

24 Q Am I correct that you've translated the Arabic
25 writing as, "Dr. Omar Abdel Rahman"?

1 A Yes, sir, I did.

2 Q Turning next to 168B, which is also a scrap of
3 paper, I'm directing your attention first to what is called
4 the front side, which is the side that has the exhibit
5 sticker GX 168B on it, do you see that?

6 A Yes, I do.

7 Q All right. At the top of that there are
8 telephone numbers which say, "718-941-0226" with the English
9 word "home"? Do you see that?

10 A Yes, sir, I do.

11 Q There is an Arabic notation next to that that you
12 have translated as "Abdul Rashid"?

13 A Yes, I did.

14 Q The next line says "917-290-3612," with the
15 English word "beeper" next to it?

16 A Yes, I did.

17 Q Underneath that there is an Arabic notation which
18 you have translated on 168BT as "Abu Ubaidah"?

19 A Yes, I did.

20 Q Underneath there are numbers which are written in
21 Arabic, is that correct?

22 A Yes, sir.

23 Q You have an Arabic number "201-578-6168," with
24 the English word "beeper" next to it?

25 A Yes, sir.

1 Q And underneath that the Arabic number,
2 "201-621-9195"?

3 A Yes, I do.

4 Q On the reverse side of that piece of paper, there
5 is at the top a telephone number 979-2243, with the Arabic
6 notation "Habib, H-A-B-I-B, Falaq, F-A-L-A-Q?

7 A Yes, sir.

8 Q Underneath that in English is written, "the
9 laundromat, Rogers Avenue"?

10 A Yes, sir.

11 Q And a phone number 773-9478?

12 A Yes, sir, I do.

13 Q Finally, I'm directing your attention to 168D in
14 evidence and the translation which is 168DT. 168D is a card
15 which says "Brut," B-R-U-T at the bottom, and at the top,
16 "most needed numbers," with a column for name and address
17 and a column for telephone.

18 A Yes, sir.

19 Q You've told us that 168DT reflects your
20 translation of the Arabic on that card?

21 A Yes, it does.

22 Q Am I correct that the third entry that you've
23 translated is, "Dr. Omar Abdel Rahman, phone number
24 201-451-1046"?

25 A Yes, sir, I did.

1 MR. McCARTHY: Thank you, your Honor. I have no
2 further questions.

3 THE COURT: Cross?

4 Mr. Jacobs, representing Mohammed Saleh.

5 CROSS-EXAMINATION

6 BY MR. JACOBS:

7 Q Mr. Feghali, you translated --

8 THE COURT: Mr. Jacobs, if you could pull the
9 microphone closer.

10 MR. JACOBS: Sure.

11 THE COURT: Thank you.

12 Q You translated a couple of entries from this
13 green notebook, correct?

14 A Yes, sir, I did.

15 Q Now, in doing it, did you --

16 THE COURT: You're still not coming through.

17 MR. JACOBS: I am not on.

18 THE COURT: Tap it a couple of times.

19 It is not on.

20 (Pause)

21 Q Mr. Feghali, I was asking you about 167.

22 A Yes, sir.

23 Q You translated a couple of entries from this
24 book?

25 A Yes, sir, I did.

1 Q I think with respect to some of the other items
2 you did similar translations, correct?

3 A Yes, sir, I did.

4 Q Now, did you translate everything in this book or
5 just the three entries or the two entries that the
6 government showed you?

7 A Just the entries that I was shown.

8 Q OK. So there came a time within the past month
9 or so when somebody sat with you, took out this exhibit and
10 said, "Mr. Feghali, would you please translate these
11 specific entries from Arabic to English," is that correct?

12 A Yes, sir.

13 Q Can you tell us who that was that told you to do
14 that?

15 A Yes, the Assistant U.S. Attorney, Mr --

16 Q Mr. McCarthy?

17 A Yes, sir.

18 Q OK. So there came a time when you had a
19 conversation with Mr. McCarthy and he asked you to translate
20 from 167, one, two, basically three separate entries, that's
21 167AT, 167BT, and 167CT?

22 A Yes, sir.

23 Q OK. You did not translate the other entries in
24 this book, correct?

25 A No, sir.

1 Q I believe you also testified that you were asked
2 to translate the back of a business card and you translated
3 the Arabic, "Yousef, the engineer," correct?

4 That's 167IT, correct?

5 A Yes, sir, I did.

6 Q Would I be correct in stating the name Siddig
7 Ibrahim Ali that is on 167AT you don't know whose
8 handwriting that is, is that correct?

9 A No, sir, I don't.

10 MR. JACOBS: I have nothing further.

11 THE COURT: Any other cross?

12 Ms. London, representing Mr. Elhassan.

13 CROSS-EXAMINATION

14 BY MS. LONDON:

15 Q Sir, directing your attention to Government
16 Exhibit 168B --

17 A Yes, ma'am.

18 Q -- on the reverse side, the backside of that
19 document --

20 A Yes, ma'am.

21 Q -- there is a telephone number there, correct.
22 That's 979-2243?

23 A Yes, ma'am.

24 Q With an Arabic notation after it, correct?

25 A Right.

1 Q How did you translate that Arabic notation?

2 A I think it says Habib Falaq.

3 Q What is the meaning of "Falaq"?

4 A Falaq?

5 Q Yes.

6 A F-A-L-A-Q? Is that --

7 Q Yes. What does that mean in English?

8 A I don't know. There's no meaning to it, I don't
9 think.

10 Q OK. Now, directing your attention to Government
11 Exhibit 168D, which is a small card with a preprinted number
12 on top that says "most needed numbers," do you have that?

13 A Yes, ma'am, I do.

14 Q Would you read for us, the first number, No. 1 on
15 that card, the telephone number?

16 A You mean 979-2243?

17 Q Would it be fair to say that that is the same
18 telephone number you read to us from Government Exhibit 168B
19 on the reverse side, correct?

20 A I'm not sure I follow. I'm sorry.

21 Q Directing your attention to 168B, the reverse
22 side, the number that I asked you about first.

23 A Yes.

24 Q And the first line of the most needed numbers,
25 those telephone numbers are identical, isn't that correct?

1 A Yes, ma'am.

2 Q And looking at 168, Government Exhibit 168D, what
3 is the Arabic notation next to the telephone number we've
4 been discussing, 979-2243?

5 A It says "El-Habib."

6 Q And is it possible that F-A-L-A, could be -- the
7 word you said has no meaning, could be an abbreviated form
8 for "Habib's Falafel"?

9 A I wouldn't know. I don't think so.

10 Q But F-A-L-A has no meaning in and of itself?

11 A Well, it has like "the," as we use in English
12 "the," "the Smith" or the family name. Usually, Arabs put
13 that sometimes to their names.

14 Q And what are the first four letters of falafel?
15 How would you spell falafel in English?

16 A Falafel?

17 Q Yes.

18 A F-A-L-F-A-L.

19 Q F-A-L-F-A-L?

20 A Yes. Or F-L-A-F-L, I suppose.

21 Q F-L-A would be "flah" in English, isn't that
22 correct?

23 A How's that?

24 Q I am asking you how you would spell in falafel in
25 English.

1 A What we eat?

2 Q Yes. Falafel, the food.

3 A F-A-L-A-F-A-L.

4 Q OK. So I am correct in saying that the first

5 four letters of falafel are F-A-L-A, correct?

6 A I don't think so.

7 Q Directing your attention still to Government

8 Exhibit 168D, on the second line of that card, sir, the

9 number is 627-4033, is that correct?

10 A Yes, ma'am.

11 Q And there is an Arabic notation next to that,

12 correct?

13 A Yes, ma'am.

14 Q And it would be fair to say that that translates

15 as "The Muslim world league"?

16 A Are we on the same page here? I am on 168D.

17 Q 168D for David.

18 A Yes, ma'am.

19 Q Second line.

20 A Yes.

21 Q The Arabic on line 2, would you translate that?

22 A On line 2?

23 Q Line 2.

24 A Yes, ma'am. It says that Nader Wehba office.

25 Q And on line 4?

1 A Line 4 it says, "Issam Latif."

2 Q And on line 5?

3 A Line 5 says, "Abdel Hameed."

4 Q And line 6?

5 A "Mohsen and Hassan El-Magribe."

6 Q Line 7?

7 A "Osama Ali Alijad."

8 MS. LONDON: I have no further questions.

9 THE COURT: Mr. Bernstein, representing Mr. Amir
10 Abdelgani.

11 CROSS-EXAMINATION

12 BY MR. BERNSTEIN:

13 Q Good morning, Mr. Feghali.

14 A Good morning, sir.

15 Q Do you have a copy of 165 before you or can I
16 have that from the government, D and DT. Thank you.

17 I promise I won't ask you any questions that will
18 make us hungry. 165 is a list of phone numbers, correct,
19 phone numbers and names?

20 A Yes, sir.

21 Q Would it be fair to say that you translated
22 approximately 45 items or all 45 items that you could
23 isolate on that page?

24 A Yes, sir.

25 Q Would it be fair to say that most of them reflect

1 phone numbers for people both with Arabic names and in some
2 cases people with non-Arabic, or what we might call English
3 names?

4 A Yes, sir.

5 Q Would it also be fair to say that on that list
6 there were also listed some bank account numbers and noted
7 as bank account numbers?

8 A Yes, sir.

9 Q As if somebody was trying to remind himself or
10 herself that these are their bank account numbers in case
11 they needed them?

12 A Well, I don't know what they thought. But this
13 is what I am translating, yes, sir.

14 Q You were asked by the government to translate all
15 the numbers on that list, correct?

16 A Yes, sir, I did.

17 MR. BERNSTEIN: Thank you, sir. I have no
18 further questions.

19 THE COURT: Any other cross?

20 Any redirect?

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

22 THE COURT: Thank you, Mr. Feghali, you are
23 excused.

24 (Witness excused)

25 MR. KHUZAMI: Your Honor, the government calls

1 Cochi Ho, C-O-C-H-I, H-O as its next witness.

2 MR. RUSSO: In connection with this witness,
3 there are several issues involved. Can we approach briefly?

4 THE COURT: Yes.

5 (At the side bar)

6 MR. RUSSO: Your Honor, it is my understanding
7 that the government is going to be proposing to offer
8 several documents that were allegedly seized from
9 Mr. Saleh's residence, and we have several grounds for
10 objecting to the introduction of these documents.

11 THE COURT: Why weren't they raised earlier?

12 MR. NOOTER: This actually snuck up on us a
13 little bit faster because we were preparing for the
14 translator business which then got postponed.

15 THE COURT: What are the objections?

16 MR. RUSSO: There is a relevance objection with
17 regard to these documents. Some of them have nothing to do
18 with this case.

19 THE COURT: What is the prejudice?

20 MR. NOOTER: Basically, Judge, they are flyers
21 that contain --

22 THE COURT: I will hear from one lawyer on this
23 issue.

24 MR. RUSSO: Your Honor, they are flyers that talk
25 about different events in the Mid East. They are drafted,

1 some of them, during the time when the Gulf War was going
2 on. To that extent they can be prejudicial because they
3 take an Iraqi point of view. But they have nothing do with
4 jihad in America.

5 THE COURT: What is this going to go to?

6 MR. KHUZAMI: Your Honor, first of all, Mr.
7 Nooter opened expressing the grounds that he was not a
8 follower of Sheik Rahman, he was not a fundamentalist, he
9 married a Jewish woman, he was unreliable, he was a
10 businessman distancing himself, or attempting to, from his
11 co-defendants and their beliefs. These documents contain
12 references to jihad anti-American activity, and other
13 matters.

14 THE COURT: I am not going to do this at the
15 side. We are just going to send them out for a break, and
16 we'll deal with it.

17 (In open court)

18 THE COURT: Ladies and gentlemen, this is going
19 to take a little longer than can be done at the side bar.
20 So rather than have you sit there, we are going to let you
21 take a break. Please leave your notes and other materials
22 behind. Please don't discuss the case, and we will resume
23 in a few minutes.

24 (Jury not present)

25 THE COURT: Just so that I can follow along,

1 which exhibits are they?

2 MR. RUSSO: Your Honor, we are talking about
3 Government proposed Exhibits 171, 172, 174, 176, and 178 and
4 179.

5 THE COURT: I haven't got 178 or 180.

6 MR. KHUZAMI: Your Honor, let me hand up
7 Government Exhibit 178 which I believe other counsel,
8 including Mr. Stavis and Ms. Stewart, may have objections to
9 as well.

10 THE COURT: And 180? What is 180?

11 MR. KHUZAMI: I don't believe you have an
12 objection to 180.

13 (Counsel conferred)

14 THE COURT: All right.

15 MR. KHUZAMI: Your Honor, 180 referred to by
16 Mr. Russo is actually 176, which I'm handing up.

17 THE COURT: Which I have.

18 MR. KHUZAMI: OK.

19 THE COURT: Do we have to deal with these
20 individually, or can we deal with them categorically?

21 MR. RUSSO: I think we can deal with them
22 categorically, your Honor.

23 THE COURT: We probably can.

24 MR. RUSSO: They appear to be preprinted
25 pamphlets of some type which appear to be handed out

1 occasionally or regularly at the mosques. One of the
2 documents that I'm referring to, what I knew to be marked as
3 172, is not such a pamphlet. It is a newspaper article from
4 the Egyptian newspaper "Al She'ab." I apologize if I'm
5 mispronouncing that. 172 is an article from the Egyptian
6 newspaper, and I would question whether or not just the
7 article was seized or the entire newspaper.

8 THE COURT: Do you know whether the entire
9 newspaper was seized, or whether it was only the article?

10 MR. RUSSO: I don't know that, your Honor.

11 MR. KHUZAMI: Only the article was seized, and
12 this is it, your Honor.

13 THE COURT: In other words, what he had was the
14 article?

15 MR. KHUZAMI: That's correct.

16 THE COURT: Right. The record should reflect
17 that the form in which the article was produced is
18 apparently as a reprint of what had been an original of a
19 newspaper article.

20 MR. RUSSO: I would withdraw that objection. My
21 other objection still stands. These pamphlets are hearsay,
22 your Honor. They seem to lack relevance.

23 THE COURT: They are not being offered for the
24 truth.

25 MR. RUSSO: Then, your Honor, some of these talk

1 about the war in Iraq. They are inflammatory articles with
2 regard to the war.

3 THE COURT: That, I gather, is the point of
4 offering it.

5 MR. RUSSO: What does that have to do with jihad
6 in America? These do not talk about jihad in America or the
7 conspiracy that is charged here.

8 THE COURT: I will hear from Mr. Khuzami.

9 MR. RUSSO: Just let me finish.

10 It would seem to me that their prejudicial impact
11 would far outweigh the probative value. These are highly
12 inflammatory subject matters and they have nothing to do
13 with this case, which could prejudice the jury against my
14 client. Even the finding of these at my client's home when
15 put in perspective with what else was found, there were an
16 awful lot of newspapers and an awful lot of articles and
17 miscellaneous types of papers. Certainly it would seem to
18 me it distorts the impact of these articles or the
19 possession of these articles in my client's home.

20 It is like the government invading a home,
21 searching a home, and taking a portion of a person's library
22 and then offering that portion of the library to suggest
23 that that represents the point of view of an individual.

24 It is as if the government searches my home and
25 takes a copy of my book off the shelf and tries to suggest

1 that I am associated with neo-Nazism, when I also have books
2 about the life and times of Robert Kennedy, which would seem
3 to suggest that I am a liberal democrat.

4 THE COURT: I understand your point.

5 MR. KHUZAMI: I think the library analogy falls
6 apart when you look at the opening of Mr. Nooter. It was
7 that he was not a radical fundamentalist; he's not bearded;
8 he doesn't wear the traditional dress; he never attended
9 Sheik Rahman's sermons; he went to peace demonstrations,
10 which is not something that the terrorists like; he drives a
11 Mercedes -- all of which was to drive home the point and to
12 distance himself from the other defendants.

13 THE COURT: He presented him as a sort of
14 all-American boy, and you're seeking to counteract that with
15 this?

16 MR. KHUZAMI: That's correct, your Honor.

17 MR. RUSSO: May I respond to that, your Honor?

18 THE COURT: Go ahead.

19 MR. RUSSO: The fact that the defendant might
20 drive a Mercedes has nothing to do with these pamphlets.
21 Mr. Khuzami's argument is really not --

22 THE COURT: You, Mr. Russo, were not hear for the
23 opening.

24 MR. RUSSO: I read the opening, Judge. I'm aware
25 of Mr. Nooter's opening statement.

1 THE COURT: You are also aware of what his real
2 argument was, aren't you?

3 MR. RUSSO: I understand what his real argument
4 was. I understand.

5 THE COURT: It doesn't focus simply on the type
6 of car he drove. Come on.

7 MR. RUSSO: I understand that, Judge, but the
8 other side of that is the remainder of what was in the home.
9 Without that, it is misleading and prejudicial.

10 THE COURT: What else was in the home that you
11 think --

12 MR. RUSSO: There were a thousand business cards
13 which the government has. There were newspapers articles.
14 There was another newspaper called, "The Voice of Peace."
15 There were "New York Times" newspapers. There were other
16 books. This is not representative of what the defendant
17 had, so it's misleading.

18 THE COURT: Yes, Mr. Khuzami?

19 MR. KHUZAMI: Your Honor, I had extensive
20 discussions with Mr. Russo about this that he neglects to
21 mention. First of all, those matters go to cross. If they
22 want to cross about what else was in the home, they are
23 entitled to. I also offered, if they want on the defense
24 case to put in some of those items, I would stipulate to
25 authenticity, and I would reserve relevance objections.

1 So no one is prohibiting him from putting in part
2 of his library. He just can't do it on the government's
3 case.

4 MR. RUSSO: The problem with that, Judge, is you
5 are talking about so much material that it is an unnecessary
6 diversion from the essential issues in this case. The
7 important evidence is not these flyers or Mr. Saleh's
8 library, the important evidence really is the video and the
9 testimony we have heard from Mr. Salem as far as my client.

10 This is going to waste the jury's time. It is
11 prejudicial, and it has very little probative value. And
12 while it's not being offered for the truth of the matter,
13 the fact is the jury is probably going to look at it, and
14 it's probably going to have an undue and inappropriate
15 influence on their deliberations.

16 It is just a waste of time, and it's very
17 prejudicial. If you're ruling that this should come in,
18 then we are going to have to seek to put in the other
19 material. But on the other side, if it doesn't come in, we
20 might not want to offer that material. Because it would
21 serve no evidentiary purpose.

22 THE COURT: Veiled threats about what you're
23 going to offer or not offer are not persuasive.

24 MR. RUSSO: I understand.

25 THE COURT: Good.

1 MR. RUSSO: I am suggesting that there would
2 certainly be no reason to offer the remainder of the
3 evidence.

4 THE COURT: Obviously there wouldn't. But that
5 is not going to decide it. Part of the problem is I don't
6 know what else he had. Are you representing to me that he
7 had a survey of materials expressing various points of view
8 with regard to --

9 MR. RUSSO: Your Honor, I saw the article, or the
10 newspaper "The Voice of Peace" as one of the documents that
11 was seized by the government. There were two other Islamic
12 books that were seized by the government. There is a
13 videotape at his house which shows stacks of newspapers like
14 this on top of a tank behind his toilet.

15 I don't know what every one of those newspapers
16 is, but it's about six inches thick, and there is a room on
17 the video which shows a whole bunch of stuff in the corner
18 of the weight room --

19 THE COURT: In the corner of what? I'm sorry.

20 MR. RUSSO: A weight room, a workout room. I
21 don't believe the government took all of that. I think they
22 didn't.

23 In fact, your Honor, there were scores of
24 videotapes in his house, none of which have anything to do
25 with jihad. If they are not being offered by the

1 government, do I offer them on rebuttal? Is that what we're
2 being reduced to? I don't think that a belly dancing
3 videotape is particularly appropriate in this federal trial.
4 But if the government is going to offer this, then I think I
5 may be able to show that my client's religious purview would
6 not extend to sex apparently. I don't think that's what
7 this argument should be reduced to. That is why I don't
8 believe it should come in.

9 MR. KHUZAMI: Your Honor, I don't understand what
10 the possibility of other items that Mr. Russo may seek to
11 introduce has to do with the admissibility of these items.
12 If he wants to put in these items on his case, they can be
13 decided on an item-by-item basis, but there is no grounds to
14 keep to those out. In that case a consensually-monitored
15 conversation by the defendant couldn't be introduced into
16 evidence because he has an innocuous conversation with his
17 wife in it. The fact of the matter is that a trial does
18 involved selected pieces of evidence.

19 THE COURT: What is 173T?

20 MR. KHUZAMI: 173T, your Honor, is a list of
21 books that, in fact, included, in part, out of an
22 accommodation to Mr. Russo because it is a list of books
23 which I understand he will argue that the items he has in
24 his house were not his for own use, but because he sold them
25 at his flea market. To the extent that this reflects an

1 effort to accommodate by the government that is what it is.

2 MR. RUSSO: Your Honor, I did not mention 173
3 when you asked me to list the documents. 173 is an
4 inventory of books being ordered. It has prices; it has
5 numbers; titles. Again, I don't know that it is relevant,
6 but within the context of the other material, I asked the
7 government to include it, because if we are going to include
8 these pamphlets, we might as well include the inventory to
9 show what my client was doing, which was, among other
10 things, buying and selling books in his flea market.

11 THE COURT: OK. And the book that I have in
12 front of me to which you said other people would have
13 objections?

14 MR. KHUZAMI: Yes, your Honor. The book was also
15 seized from Mr. Saleh's home. I have spoken to Mr. Nooter.
16 What the government intended to offer was simply
17 the book and the draft translation of the cover and not the
18 text. Mr. Nooter indicated to me that he might want the
19 entire thing translated and introduced because he wanted to
20 show what the book wasn't about.

21 I suggested he speak to Ms. Stewart and Mr.
22 Stavis, who also had some objections, and come to a
23 consensus among defense counsel as to how they wanted to
24 offer it. The government was just going to offer the book
25 and a translation of the title.

1 THE COURT: Do you want to speak to that?

2 MR. STAVIS: Yes, your Honor. The reason I rise
3 is because I have conferred with Mr. Khuzami, who's
4 indicated to me that the book is introduced, or is
5 anticipated to be introduced into evidence for all purposes
6 against all defendants.

7 When I say "the book" I refer to Government's
8 Exhibit 178, which your Honor has in front of you. The
9 original portion that the government intended to introduce
10 gives the title as, "Bombs and Korans, the Tale of the Jihad
11 Organization." The book is dated December 1985 and is the
12 tale of the jihad organization.

13 The indictment in this case, your Honor, on page
14 2 says that from at least as early as 1989 and up until the
15 date of the filing of this indictment, a jihad organization
16 arose in the United States. I think that we would be
17 prejudiced and it would be tremendously confusing to the
18 jury to show them a book about the jihad organization dated
19 from 1985 when the indictment here alleges the jihad
20 organization arose in 1989. Is it the same jihad
21 organization? Is it a different jihad organization? Is it
22 a jihad organization at all? I don't believe that the jury
23 should hear this evidence as to all the other defendants who
24 are accused of being conspirators in the jihad organization,
25 your Honor.

1 MR. RUSSO: In addition to that, your Honor, with
2 regard to the book, the gist of the book actually is the
3 tale of the assassination of Anwar Sadat. It is the
4 equivalent of a JFK conspiracy book.

5 THE COURT: It is the equivalent of what?

6 MR. RUSSO: The equivalent of a JFK conspiracy
7 book.

8 MS. STEWART: May I be heard on this?

9 THE COURT: Yes.

10 MS. STEWART: Apparently, Judge, this is a book
11 that was published in Egypt with the approval of the
12 government. It deals with the Sadat assassination and the
13 trial thereafter.

14 The government has translated the entire book,
15 and, if your Honor is inclined to put it in, we would ask
16 that the entire book go in with the translation. To put in
17 the cover, which shows a Koran with hand grenades and
18 bullets and a bullet-riddled picture of Sadat coupled with a
19 picture of the sheik -- which I tried to introduce through
20 Emad Salem and the government objected to -- the sheik
21 advising a group of young men from within the cages of
22 Egypt. I could almost give the government's summation:
23 "This case is about bombs and the Koran, and here is the man
24 and advising the young men." Without the context of the
25 book, it's totally meaningless.

1 But then, Judge, I would remind you that we
2 objected under 404 to any of theses past acts coming in.
3 They said they were going to introduce the Sadat
4 assassination as a past bad act of the sheik. I believe you
5 reserved on that, but indicated that they should not
6 introduce it without giving us proper notice.

7 This is a backhanded way of trying to put it in.
8 I would object to the entire book coming in for that reason,
9 and then secondarily, if you are inclined to put it in, I
10 would say that the entire thing must come in.

11 THE COURT: Mr. Jacobs?

12 MR. JACOBS: Just to add, your Honor, some of
13 these documents, like 171T, contain language such as the
14 following, this is a flyer, "One of the people and places he
15 said we will overcome of the Jews, we will kill them until
16 the stones in the trees call upon us saying, oh, Muslim
17 servant of God" --

18 THE COURT: I have seen that, Mr. Jacobs.

19 MR. JACOBS: Those are the kinds of things that
20 are in some of these flyers. If they are not being offered
21 for the truth and they are offered to show something in
22 connection with Wahid Saleh, I don't see how they come in
23 against the other defendants in any event. I think 403
24 enters the whole equation beyond just the argument of
25 Mr. Wahid Saleh to the other defendants as well.

1 THE COURT: Let me deal with it one at a time.

2 Do you want to be heard?

3 MR. McCARTHY: Just on the point that Ms. Stewart
4 made. I mean, there is a very selective sort of ping pong
5 ball about what's in and what's not in as far as subject
6 matter in the case. Ms. Stewart talks about the government
7 being precluded under 404(b) grounds, which I don't
8 understand any order ever to have been entered about that
9 with respect to Sadat. Then when she's perceiving advantage
10 in it, she has liberally questioned witnesses about whether
11 Dr. Abdel Rahman was tried and acquitted in Egypt when she
12 got in front of the jury with respect to the assassination
13 of Sadat.

14 So I don't think it is a very persuasive argument
15 that this is 404(b). The government is willing, with
16 respect to this particular piece of evidence, to limit the
17 offer to Mr. Wahid Saleh. But I just want to point out that
18 with respect to this argument about whether this is
19 representative of what his library is or is not is really
20 beside the point.

21 We sat here for a good period of time during
22 Salem's cross-examination when Mr. Nooter and Mr. Salem had
23 a discussion about whether a word describing Mr. Saleh in a
24 transcript was accurately translated as "rambler" or "bum."

25 The upshot of that point, and the upshot of the

1 entire Wahid Saleh defense case at this trial has been not
2 that he's one kind of political person as opposed to another
3 kind of political person, but that he is a totally
4 apolitical person.

5 If Mr. Russo and Mr. Nooter want to put in a
6 bunch of other stuff from the Wahid Saleh library, we would
7 be delighted, because we would like to see how that stacks
8 up with the way they've portrayed this defendant in front of
9 this jury.

10 THE COURT: Let me deal with the exhibits in two
11 groups. One is the book, and the other is everything else.

12 The book, in my estimation, is out on 403
13 grounds. The title of it certainly isn't going to come in,
14 if the description of what is inside of it is at all
15 accurate, and I gather it is. The fact that he had the
16 book, whatever it may prove, is far outweighed by the
17 prejudicial impact that this could have. So the book is
18 out. That takes care of your issue, doesn't it, Mr. Stavis?

19 MR. STAVIS: My colleagues are telling me to sit
20 down. I didn't understand if Mr. McCarthy was limiting that
21 as to Mr. Saleh or not.

22 THE COURT: I believe that he is, and if he
23 isn't, I am.

24 MR. STAVIS: Then I will heed to my colleagues'
25 advice.

1 THE COURT: However, with regard to the
2 remainder, the point of the opening and the point of the
3 examination of Salem was that precisely that your client is
4 apolitical, that he is not a person who involves himself in
5 matters political.

6 The fact that he's got this material indicates
7 precisely the opposite. How much, if anything, it proves it
8 seems to me is up to you to argue. However, I don't know
9 who this is being offered with respect to, but it will not
10 be received with respect to anybody other than Mr. Saleh,
11 whatever the offer is, since it's he who had it, and there's
12 no indication that he was passing it on to anybody else.

13 MR. RUSSO: Your Honor, just in connection with
14 that, the government had provided us with a copy of a video
15 which was seized from Mr. Saleh's home. The video is
16 recorded literally a couple of days before the June 24 safe
17 house arrests and it shows Mr. Saleh's home, the rooms of
18 the house. And I just want to take care of this evidentiary
19 problem now.

20 I would like to offer this as an aid to the jury
21 in terms of the search that was being conducted in the house
22 where items were seized and where they were found, and also
23 to assist them in putting in context the material that was
24 taken.

25 MR. KHUZAMI: Your Honor, the tape was shot

1 sometime before June 24, 1993. The searches occurred from
2 June 30 to July 15, 1993.

3 THE COURT: I'm sorry. I thought the tape
4 depicted the search?

5 MR. KHUZAMI: No.

6 MR. RUSSO: I didn't say that, Judge.

7 MR. KHUZAMI: It shows the home where the search
8 was done from one to three weeks before the search was done.
9 But, even more importantly, the tape shows the
10 home only secondarily to the gurgling baby and the wife and
11 the baby's toys as the main subject of this tape. The agent
12 will be available to be cross-examined about where he found
13 this stuff.

14 MR. RUSSO: First of all, I think Mr. Khuzami's
15 characterization of the tape is inaccurate. I watched it
16 last night and this morning. It is five minutes long. Most
17 of it is the rooms of the house. Yes, the baby is in there
18 at some point for about 30 seconds. But we can skip that.

19 THE COURT: Since I haven't seen the tape, I
20 don't think a debate about what's in it is going to help me.

21 MR. RUSSO: Your Honor, I would be glad to give
22 it to the court to see.

23 THE COURT: Would you, thank you.

24 MR. PATEL: Your Honor?

25 THE COURT: Yes.

1 MR. RUSSO: I rise on a very narrow point, one
2 word in fact. On Exhibit 174T, the third paragraph from the
3 bottom, the second line, it says "Polytheists," and then in
4 brackets it says Christians.

5 My understanding is that's not a translation.
6 It's not in the original document, but rather a piece of
7 translator commentary. I understand this is only going in
8 against Mr. Saleh, but this is a word we've heard, and this
9 is essentially a piece of commentary that I would ask be
10 stricken.

11 THE COURT: If that bracketed word is simply
12 somebody's suggestion as to what he thinks was on the mind
13 of the person who wrote the pamphlet, then it's out. But if
14 the word that the pamphleteer used was polytheists and it
15 was a metaphoric reference to Christians, then the metaphor
16 is going to have to stand, and you can argue it. But the
17 word "Christians" is out.

18 MR. KHUZAMI: That's fine. We'll speak to the
19 translator.

20 THE COURT: All right.

21 MR. RUSSO: Your Honor, I was going to say that
22 right now we're not dealing with the translations. We are
23 dealing with the original documents that were seized, and
24 the translations being used as a guide. But before those
25 translations can come in, the translator is going to have to

1 testify, at which point we are going to have an opportunity
2 to cross-examine him.

3 THE COURT: That will happen in the normal
4 course.

5 MR. RUSSO: Yes. I am just suggesting that we're
6 not waiving any objection with regard to translation.

7 THE COURT: Understood.

8 MR. KHUZAMI: Your Honor, just with respect to
9 the book, would the court consider the possibility of
10 allowing the government, without the book and the pictures,
11 to put in a document indicating that Mr. Wahid Saleh had a
12 book containing the picture of Sheik Rahman on it, since he
13 specifically opened on the fact that he was not a follower
14 of his, and had never heard one of his sermons.

15 THE COURT: That the book happens to have his
16 photograph in it is unremarkable in view of the fact that
17 the book deals with the Sadat assassination, which was
18 something for which he was tried.

19 MR. KHUZAMI: The picture is on the back cover of
20 the book.

21 MS. STEWART: They have a flyer for a
22 demonstration at the immigration hearing of Sheik Abdel
23 Rahman. I haven't objected to it. I am not objecting to
24 it. If they are seeking to make a connection it seems to
25 me --

1 THE COURT: That is the way you make the
2 connection. The book is out.

3 OK. Let's get the jury.

4 As far as the videotape, I am not going to stop
5 now. I will watch it at some convenient point.

6 MR. NOOTER: It is only literally five minutes.

7 THE COURT: Given the fact that it is 11:05, we
8 will take as short a break as you can all manage, please.

9 (Recess)

10 (Jury present)

11 THE COURT: OK. We are back on track.

12 MR. KHUZAMI: The government calls Cochi Ho.

13 COCHI HO,
14 called as a witness by the Government,
15 having been duly sworn, testified as follows:

16 THE COURT: Go ahead.

17 DIRECT EXAMINATION

18 BY MR. KHUZAMI:

19 Q Mr. Ho, how are you employed?

20 A I am a special agent assigned to the New York
21 field office of the FBI.

22 Q How long have you been an FBI agent?

23 A Four years.

24 Q Where were you assigned in June and July of 1993?

25 A I was assigned to the Terrorist Task Force in

1 Newark, New Jersey.

2 Q Now, were you involved at all in an effort to
3 locate a man named Wahid Saleh?

4 A Yes, I was.

5 Q Were there arrest warrants issued for Mr. Wahid
6 Saleh?

7 A Yes.

8 Q If you would pick up what I've placed on the
9 witness stand and marked for identification as Government
10 Exhibits 181A and 181B for identification, I ask you if you
11 recognize those documents.

12 A Yes, I do.

13 Q What are they?

14 A The first one, 181A, is a warrant for the arrest
15 of Wahid, last name unknown.

16 Q And the second one?

17 A The second one is for Matarawy Mohammed Said
18 Saleh.

19 MR. KHUZAMI: Your Honor, I would move Government
20 Exhibits 181A and 181B into evidence.

21 MR. RUSSO: No objection.

22 THE COURT: 181A and B are received without
23 objection.

24 (Government's Exhibits 181A and 181B for
25 identification were received in evidence)

1 Q Special Agent Ho, can you indicate the date for
2 the issuance of 181A, the arrest warrant in the name of
3 Wahid last name unknown?

4 A Yes. June 25, 1993.

5 Q Can you read the date of the issuance of the
6 second warrant, Government Exhibit 181B, in the name of
7 Matawary Mohammed Said Saleh?

8 A 7/16/93.

9 Q That is July 16, 1993?

10 A Correct.

11 Q OK. Now, Special Agent Ho, in addition to
12 yourself, were there other agents from the Newark FBI office
13 involved in efforts to locate Wahid Saleh?

14 A Yes, there were.

15 Q Do you know whether or not there were agents from
16 any other offices that were involved?

17 A Yes, the New York office was also involved.

18 Q Were there any other offices in New Jersey that
19 were involved beside Newark?

20 A Yes. Immigration & Naturalization Service and
21 Secret Service.

22 Q Now, when did you personally begin your efforts
23 to attempt to locate Wahid Saleh?

24 A On June 25, we received word --

25 Q I'm sorry. Just for now, the date was June 25?

1 A Correct.

2 Q OK, 1993.

3 At that point what name did you know Wahid Saleh
4 by?

5 A We knew him as Wahid. And when we went searching
6 for him at his residence, we found out that he was using the
7 last name Saleh, so we were looking for Wahid Saleh at that
8 time.

9 Q And when you first started on June 25, 1993, were
10 you aware of his address where he lived?

11 A Yes, we were. His residence was 7 Alan Street,
12 in Jersey City.

13 Q How did you find that out?

14 A I believe we received that from the New York
15 office, that information.

16 Q Can you describe for the jury what efforts you
17 made at the end of June and early July to locate Wahid
18 Saleh.

19 A We went to his residence to serve his arrest
20 warrant. At that time there was no one at the residence.
21 We inquired with a neighbor, and we found out that the
22 neighbor was also taking care of the apartment at that time.
23 The neighbor provided some mail in which --

24 MR. RUSSO: Objection, your Honor.

25 THE COURT: Sustained.

1 Q Did you find anyone at that residence?

2 A No, it was empty.

3 Q All right. What was the address of that
4 residence?

5 A 7 Alan Street in Jersey City.

6 Q Aside from going there, did you make other
7 efforts to locate Wahid Saleh?

8 A Yes, we did. We set up surveillances in his
9 place of business at the flea market in North Bergen. We
10 also --

11 Q Let me stop you there. Did you personally go in
12 and examine the flea market area?

13 A Yes, I did. I did a pretext walking, and I
14 attempted to locate the subject who we had a picture of from
15 the surveillance cameras. It was negative. Then I asked
16 for him to some of the salespeople in there and they said --

17 MR. RUSSO: Objection, your Honor.

18 THE COURT: Sustained.

19 Q Without indicating what others said, did you find
20 out where the area was that Wahid Saleh did business from?

21 A Yes, I did.

22 Q Did you examine that area?

23 A Yes.

24 Q What did you see?

25 A It was empty.

1 Q Now, in addition to going to the flea market, did
2 you make other efforts to locate Wahid Saleh?

3 A Yes. We knew that he used to hang around the
4 Port Said Fish Market, I believe, around Kennedy Boulevard
5 or the Journal Square area of Jersey City. So we started
6 surveillance for a couple of days in the area looking for
7 him, which proved negative.

8 Q In addition to that surveillance, did you make
9 other efforts to locate him?

10 A Yes, we set up -- we had agents from the Atlantic
11 City office, Atlantic City resident agency go canvass
12 hotels. We started canvassing hotels and different friends
13 or known associates of Wahid. We went to the residences in
14 Paterson and in the Jersey City area and inquired about
15 Wahid's whereabouts. They were all negative.

16 Q Approximately how long were you personally
17 involved in the efforts to locate Wahid Saleh?

18 A Approximately about two weeks.

19 Q At the end of that two-week time, had you found
20 him?

21 A Yes. We were able to identify him. Shortly --

22 Q I'm sorry. Let me rephrase the question.

23 Were you able to actually find him at the end of
24 that two-week period?

25 A Yes. We had received information that Wahid --

1 MR. RUSSO: Objection, your Honor.

2 THE COURT: Sustained.

3 Q Let me rephrase the question.

4 At the end of that two-week period, had you
5 arrested Wahid Saleh?

6 A No, I did not.

7 Q Now, in connection with your attempts to locate
8 him, did you obtain any of Mr. Wahid Saleh's possessions?

9 A Yes, we did.

10 Q Who did you obtain them from?

11 A We obtained them from his wife, Stephanie
12 Singley.

13 Q On how many different occasions did you obtain
14 Wahid Saleh's items from Stephanie Singley?

15 A I personally was involved in three of them, three
16 occasions.

17 Q And do you know how many occasions there were in
18 total?

19 A Four.

20 Q Do you recall the dates of the three occasions
21 when you personally obtained items from Stephanie Singley?

22 A Yes. 6/30/93, 7/2/93, and I forgot the third
23 date. I believe it's seven -- 7/4? No. 7/8 or 7/14. I
24 don't remember.

25 Q Is there anything that would help refresh your

1 recollection as to the dates?

2 A Yes.

3 Q What would that be?

4 A It would be the copies of the receipts for
5 property.

6 MR. KHUZAMI: Your Honor, may I approach.

7 THE COURT: Yes.

8 Q Let me show you what's been marked for
9 identification as Government Exhibit 35135A through E, and
10 ask you to just take a quick look at those, please. Having
11 looked at that, does that exhibit refresh your recollection
12 of the date that you obtained items from Stephanie Singley?

13 A Yes, it was June 30, July 2 and July 6, 1993.

14 Q Did you obtain those items with the permission of
15 Stephanie Singley?

16 A Yes, I did.

17 Q OK. I've placed before you a number of items. I
18 wonder if you might pick up what's been marked for
19 identification as Government Exhibit 170. I ask you if you
20 recognize it.

21 A It's a torn -- a piece of paper torn from a
22 newspaper. And it's written in Spanish, and in the back
23 there's Arabic writing.

24 Q Did you get that from Stephanie Singley?

25 A Yes.

1 Q How do you recognize it as one of the items that
2 you obtained from her?

3 A The paper being in Spanish and the Arabic writing
4 in the back was very particular, it was different.

5 MR. KHUZAMI: Your Honor, I would move Government
6 Exhibit 170 into evidence.

7 MR. RUSSO: No objection.

8 THE COURT: 170 is received without objection.

9 (Government Exhibit 170 for identification was
10 received in evidence)

11 Q Special Agent Ho, on the dates that you obtained
12 these items from Stephanie Singley, did you personally
13 conduct the search for these items, or were they given to
14 you by her or someone else?

15 A No, I obtained the items in the search.

16 Q You physically examined the residence and
17 obtained them?

18 A Yes, I did.

19 Q If you would pick up what's been marked as
20 Government Exhibit 171. Let me ask you if you recognize
21 that item?

22 A Yes, I do.

23 Q Is that one of the items you obtained from
24 Ms. Singley?

25 A No. This one I obtained on the 30th in the

1 search.

2 Q From Stephanie Singley --

3 A Yes.

4 Q -- is that correct?

5 A Correct.

6 Q How do you recognize Government Exhibit 171 as
7 one of the items you obtained?

8 A The Arabic writing on the top, the title, and the
9 signing of the back. It is a document in Arabic.

10 Q Did you obtain a number of Arabic printed
11 documents during your searches?

12 A Yes, I did.

13 Q Did you take all of those items that you saw?

14 A Yes, I did.

15 MR. KHUZAMI: Your Honor, I would move Government
16 Exhibit 171 into evidence.

17 MR. STAVIS: Your Honor, perhaps with the
18 instruction that we discussed earlier.

19 MR. RUSSO: Your Honor, may I proceed to take a
20 look at that exhibit, please.

21 THE COURT: Yes.

22 MR. RUSSO: No objection, your Honor.

23 THE COURT: 171 is received without objection.

24 (Government's Exhibit 171 for identification was
25 received in evidence)

1 MR. RUSSO: Just for the record, that's subject
2 to a prior objection.

3 THE COURT: Right.

4 MR. RUSSO: Which was ruled on.

5 THE COURT: Which was ruled on.

6 No objection in addition to the one previously
7 made.

8 MR. RUSSO: Exactly, just for the record.

9 Q Special Agent Ho, would you please pick up what's
10 been marked as Government Exhibit 172, and let me ask you if
11 you recognize that.

12 A Yes, I do.

13 Q What is it?

14 A It is a two-page document, Arabic writing, this
15 one part being different tones, one gray, one part light. I
16 do recognize it.

17 Q You recognize that as one of the items you
18 obtained from Ms. Singley?

19 A Yes, I do.

20 MR. KHUZAMI: Your Honor, I would move Government
21 Exhibit 172 in evidence.

22 THE COURT: Same ruling as the last one.

23 (Government's Exhibit 172 for identification was
24 received in evidence)

25 Q Special Agent Ho, I wonder if you might pick up

1 the remainder of the items, Government Exhibits 173, 74, 75,
2 76, 77, and 79, that's a 1 preceding all of those numbers,
3 and take a look at all of those together and see whether or
4 not you recognize those as items you obtained from Stephanie
5 Singley on the occasions when you searched the residence?

6 A Yes. These are all items I obtained from
7 Ms. Singley.

8 Q Do you recognize them as items you obtained on
9 the dates of your search?

10 A Yes, I do.

11 MR. KHUZAMI: Your Honor, I would move those all
12 into evidence.

13 MR. RUSSO: Again, your Honor, same objection.

14 THE COURT: Same ruling. Those exhibits are all
15 received.

16
17 (Government Exhibits 173, 174, 175, 176, 177, and
18 179 for identification were received in evidence)

19 MR. KHUZAMI: No further questions.

20 THE COURT: I can tell the jury now, although I
21 will repeat it at the time that any translation is received,
22 that Exhibits 171, 172, 173, 174, 176, and actually 175 as
23 well, 176, 177, and 179 are received only with respect to
24 Mr. Wahid Saleh, and you may consider them only with respect
25 to him and not with respect to any other defendant.

1 MR. KHUZAMI: Thank you. No further questions,
2 your Honor.

3 MR. RUSSO: May I, your Honor?

4 THE COURT: Cross, Mr. Russo.

5 MR. RUSSO: Thank you.

6 CROSS-EXAMINATION

7 BY MR. RUSSO:

8 Q Good morning, Agent.

9 A Good morning.

10 Q Now, Agent, did you obtain a search warrant to
11 search the residence of Mr. Saleh?

12 A No. We did it with the permission of Stephanie
13 Singley.

14 Q When was the first search conducted of
15 Mr. Saleh's home?

16 A June 30, '93.

17 Q You testified on direct examination that on June
18 25 you had obtained an arrest warrant for Mr. Saleh?

19 A On June 25 an arrest warrant was forwarded to us
20 from the New York office for Mr. Saleh.

21 Q Between the time of June 25 when you received the
22 arrest warrant and June 30, which was when the first
23 searched occurred, did you attempt to obtain a search
24 warrant?

25 A No, we did not.

1 Q Thank you.

2 A At the time --

3 THE COURT: He didn't ask you why. He just asked
4 you whether or not you did. The answer is no?

5 THE WITNESS: No.

6 Q Now, the first search you said was June 30th of
7 1994?

8 THE COURT: 1993.

9 A June 30, 1993.

10 MR. RUSSO: I'm sorry?

11 THE COURT: '93.

12 MR. RUSSO: '93. Excuse me. It has been a long
13 time.

14 Q June 30 of 1993?

15 A Yes.

16 Q You proceeded to Mr. Saleh's residence.
17 What time did you proceed to Mr. Saleh's
18 residence?

19 A I believe we met Stephanie Singley at the
20 residence in the afternoon, sometime in the afternoon.

21 Q Did you call Ms. Singley to announce that you
22 were coming to search the home?

23 A Ms. Singley --

24 Q I asked you just simply --

25 THE COURT: The question is, did you call to tell

1 her you were coming to look at the house?

2 THE WITNESS: Another agent did. I didn't.

3 Q Another agent made a phone call?

4 A Correct.

5 Q How many agents arrived at the Singley location,
6 at the Saleh residence on June 30?

7 A Two agents.

8 Q Two?

9 Who was the other agent, it was yourself, I
10 assume?

11 A Yes.

12 Q And who was the other agent that accompanied you?

13 A Special Agent John Allison.

14 Q And when you arrived at the Saleh residence, you
15 rang the doorbell?

16 A Yes, I did.

17 Q And Ms. Singley answered the door?

18 A Correct.

19 Q And did you advise her at that point that you
20 wished to search the residence of Mr. Saleh?

21 A No, I did not.

22 Q Did the agent who accompanied you advise her at
23 that point that you wished to search the residence of
24 Mr. Saleh?

25 A No, he didn't.

1 Q Did you have any conversation with Ms. Singley
2 before you entered the home?

3 A Yes, we did.

4 Q Did you ask her whether or not you could go
5 through the home at that particular point in time?

6 A You mean during the phone conversation?

7 Q No, when you arrived at the residence.

8 A Yes, we did.

9 Q And let me ask you this: How old, to the best of
10 your estimation, is Ms. Singley?

11 A Twenty-one.

12 Q Was anyone else present in the house at the time
13 you arrived in the afternoon of June 30?

14 A I'm not sure. I don't remember.

15 Q Well, was there a child present that afternoon?

16 A I do not recall if there was a child present.
17 The child was present in some of the searches, on the three
18 times that we did it, but I don't recall if that specific
19 date she had the child with her.

20 Q To the best of your estimation, about how old was
21 the child?

22 A The child was about four months old, I believe,
23 four or five months.

24 MR. RUSSO: May I approach the witness, your
25 Honor.

1 THE COURT: Yes.

2 MR. KHUZAMI: Objection, may we approach.

3 THE COURT: Yes.

4 (At the side bar)

5 THE COURT: This is offered to show what?

6 MR. RUSSO: I just wanted to identify the people
7 who were --

8 THE COURT: Do you intend to offer the exhibit?

9 MR. RUSSO: Yes.

10 THE COURT: What do you intend to offer it to
11 show?

12 MR. RUSSO: That these are the individuals who
13 were present.

14 THE COURT: Which proves what?

15 MR. RUSSO: Only that they were the persons who
16 were there.

17 THE COURT: What is the relevance of that?

18 MR. RUSSO: He's testified --

19 THE COURT: Other than to get in some family
20 pictures of your client.

21 MR. RUSSO: Your Honor, I don't think it is
22 inappropriate to --

23 THE COURT: I do.

24 MR. RUSSO: Very well.

25 THE COURT: Objection sustained.

1 (In open court)

2 Q On the occasion of the first search, did you
3 enter each room in the house?

4 A Yes, I did.

5 Q And did there come a point in time when you
6 decided to take certain items from the house?

7 A After she signed the consent to search, she
8 allowed us to go through the house, and she said, "Take
9 whatever items" --

10 Q Excuse me, sir. It --

11 A I don't understand the time frame.

12 Q I'm asking you whether or not there came a point
13 in time when you were in the house when you began to take
14 certain items?

15 A Yes, I did.

16 Q Do you recall what room you were in when you
17 first made a decision to remove an item from the house?

18 A The living room.

19 Q And can you tell us what it was in the living
20 room that you decided to remove?

21 A There were Arabic papers, different books in
22 Arabic with pictures in them, and drawings of weapons or
23 grenades or ammo.

24 Q Let me ask you this: Do you read Arabic?

25 A No, I do not.

1 Q The agent who accompanied you at the time of the
2 search, did he read Arabic?

3 A No, he doesn't.

4 Q So essentially you made a determination to remove
5 whatever was in the Arabic language at that point in time?

6 A Basically, yes --

7 Q Yes or no.

8 A Yes.

9 Q Did you also make a -- withdrawn.

10 So from the living room you're saying he removed
11 certain literature that was written in Arabic?

12 A Yes.

13 Q Did you remove any other papers or tangible
14 objects from the living room on that first search?

15 A Yes, we did.

16 Q What was that?

17 A Shoes.

18 Q Where did you find the shoes?

19 A The shoes were scattered over the apartment.
20 Some of them were in the living room, others were in the
21 storage room on the right-hand side as you entered and
22 others were in the bedroom.

23 Q How many pairs of shoes did you seize on June 30?

24 A I don't recall.

25 Q Was it more than two pairs of shoes?

1 A I don't recall.

2 Q After you searched in the living room, what was
3 the next room that you looked into?

4 A The bedroom.

5 Q And can you tell us what, if anything, you
6 decided to seize from the bedroom?

7 A I believe the only items that we took from the
8 bedroom were shoes.

9 Q Did you remove any cosmetics from the bedroom?

10 A No.

11 Q After you searched the bedroom, what was the next
12 room that you searched?

13 A They had a storage room on the right-hand side, a
14 smaller bedroom.

15 Q Was that a room that also contained some
16 weight-lifting equipment?

17 A Correct.

18 Q What did you seize from that particular room?

19 A I believe I took some business cards and some
20 papers that he had on the side.

21 Q Were any of the papers which you removed items
22 which the government has moved into evidence here this
23 morning?

24 A No.

25 Q You say you removed some business cards, can you

1 tell the jury about how many business cards you removed from
2 the residence that day.

3 A I don't know.

4 Q Would it be fair to say that it was more than
5 500?

6 A I couldn't tell how many we removed.

7 Q Would it be fair to describe it as a very large
8 quantity of business cards?

9 A No, I wouldn't say that.

10 Q Well, can you approximate the number?

11 A I myself have a lot of business cards so I
12 don't --

13 Q I'm sorry. I didn't understand you.

14 A I don't know what is how many business cards a
15 person will have. I just --

16 Q I am just asking you to the best of your ability
17 can you approximate the number of business cards you removed
18 from the residence on June the 30th?

19 A I don't know.

20 Q More than a hundred?

21 A I don't know.

22 Q Was it more than ten?

23 A Yes. It was more than ten.

24 Q More than 20?

25 A Yes.

1 Q More than 30?

2 A I couldn't tell you. I don't remember.

3 Q There were a lot of business cards --

4 A I remember it was more than 20, but I cannot tell
5 you exactly the amount of cards we took.

6 Q Would it be fair to say that it was a large pile
7 of business cards?

8 MR. KHUZAMI: Objection.

9 THE COURT: Sustained.

10 Q Did you remove all of the documents, all of the
11 papers which were in the Arabic language?

12 A No, I didn't take all of them.

13 Q And since you didn't speak Arabic and the other
14 agent who was with you didn't speak Arabic, you just made an
15 arbitrarily selection of what was in the house?

16 A No.

17 MR. KHUZAMI: Objection.

18 THE COURT: I will allow it. Did you have a
19 basis in making your selection?

20 THE WITNESS: Yes, I did not take papers like the
21 Koran. I didn't take it or obvious papers I recognized.

22 Q Office papers you recognized?

23 A The Koran I recognized, sir. Papers that were
24 preprinted like this I took. Papers that were written by
25 him, as this one, I took. Because obviously it was written

1 by someone. It wasn't printed. But I didn't take every
2 single paper that was preprinted. He had a lot of books,
3 but I didn't take books that didn't have -- how can I say
4 it? I took books that had the picture of Sadat, had like
5 blood splattered over them.

6 Q So you made a determination not based on -- you
7 couldn't make a determination on what was written in Arabic,
8 you made a determination on some other visual aid?

9 A Correct.

10 Q But clearly there were other documents written in
11 Arabic which you didn't take?

12 A There was other material that was written in
13 Arabic, right.

14 Q Now, after you searched the bedroom, you searched
15 the weight room or the study area, is that correct?

16 A Yes.

17 Q In that area did you remove any items -- I may
18 have asked this, but I forgot -- did you remove items from
19 that area?

20 A Shoes, I believe. Shoes and business cards.

21 Q And business cards?

22 A Correct.

23 Q Were there any other documents in that location
24 that you did not remove?

25 A I cannot recall. He had a lot of things in there

1 that I didn't take.

2 Q Were there a couple of boxes of material in that
3 room?

4 A He had many boxes in that room.

5 Q Did you go through each of the boxes?

6 A Yes, I did.

7 Q And some of the boxes contained papers?

8 A I don't recall.

9 Q Now, after you searched that study area, that
10 weight-lifting room, did you search any other room?

11 A I searched the kitchen and the bathroom.

12 Q Did you remove anything from the kitchen?

13 A No.

14 Q And after the kitchen you searched the bathroom?

15 A Correct.

16 Q And did you remove anything from the bathroom?

17 A No.

18 Q Do you recall seeing any papers in the bathroom?

19 A No, there were no papers in the bathroom.

20 Q Do you recall seeing any newspapers in the
21 bathroom?

22 A I don't recall. I don't believe I saw any papers
23 in the bathroom.

24 Q And was that the last room that you searched on
25 the afternoon of June 30, the bathroom?

1 A That was the last room I went through.

2 Q And the agent who accompanied you, what was his
3 name again?

4 A John Allison.

5 Q Mr. Allison. Did Mr. Allison complete his search
6 at the same time that you had completed your search?

7 A Mr. Allison was at the time interviewing
8 Stephanie Singley as I was searching.

9 Q OK. Mr. Allison didn't participate at all in the
10 search on June 30?

11 A He assisted with paper, but he didn't do the
12 search at the time.

13 Q About how long were you in the house on the
14 afternoon of June 30?

15 A I believe five to six hours.

16 Q And would it be fair to describe this location as
17 a two-bedroom apartment?

18 A Correct.

19 Q And it took how many hours, five hours?

20 A Yes.

21 Q Now, you made a determination to go back to that
22 home again to do a second search.

23 A At the time we were contacted by Ms. Singley that
24 she had other papers.

25 Q I just asked you whether or not a determination

1 was --

2 MR. KHUZAMI: Objection.

3 THE COURT: The objection is sustained.

4 The answer is responsive.

5 MR. RUSSO: I'm sorry.

6 THE COURT: You can go ahead.

7 THE WITNESS: I'm sorry.

8 THE COURT: He said Ms. Singley contacted you?

9 THE WITNESS: Yes. She contacted us. We went
10 back to the apartment. She provided some items to us that
11 belonged to Wahid.

12 Q I'm sorry. What did she give you?

13 A She gave us other papers that he had in the
14 house.

15 Q And can you tell us what kind of papers those
16 were?

17 A They were papers in Arabic. And I believe she
18 gave us some business cards, some more business cards, and I
19 believe his phone book.

20 Q A phone book?

21 A Correct.

22 Q When was it that this second seizure of items
23 occurred?

24 A That would be July 2.

25 Q Did Ms. Singley give you some batteries at that

1 time?

2 A No. The batteries were taken on the -- actually,
3 I don't recall.

4 MR. RUSSO: If I may approach the witness.

5 Q Let me show you what's been marked as 35135-C and
6 see if that can refresh your recollection as to what you
7 took on July 2.

8 Agent, do you have a copy of this exhibit,
9 35135-C, do you have it in front of you?

10 A Let me get it.

11 Yes, I do.

12 Q Does that refresh your recollection as to what
13 you took on July 2, 1993?

14 A Yes, it does.

15 Q At that point you took or received some
16 batteries?

17 A I took batteries. She didn't give me the
18 batteries.

19 Q After she gave you whatever it was she called you
20 down for, you then conducted a second search of the house
21 independently?

22 A No. She provided a box in which the batteries
23 were in the box.

24 Q And what else was in the box?

25 A I'm sorry, what?

1 Q What else was in the box?

2 A There were batteries, assorted papers, business
3 cards. The stuff that is written on here.

4 Q Independently of seizing what was in the box, did
5 you conduct another search of the house?

6 A No. She also gave us all the shoes that Wahid
7 had.

8 Q I didn't ask you that. I asked you whether or
9 not you conducted another search of the house.

10 A No, we didn't search the house itself.

11 Q You stated that on the first search that you
12 observed a book that appeared to have a gun or a bomb or a
13 weapon or something on the cover?

14 A There were a few books that he had.

15 Q Was one of those books a book that had a picture
16 of Sadat on it, the former president --

17 A I'm sorry?

18 Q Was one of those books a book that had a picture
19 of president Anwar Sadat, the former president of the Egypt,
20 on the cover?

21 A Correct.

22 Q And you couldn't read the words to that book,
23 correct, they were in Arabic?

24 A Correct.

25 Q Now, also in the box on July the 2nd were some

1 videotapes?

2 A Yes.

3 Q And did you have an opportunity to view those
4 videotapes?

5 A No.

6 Q Yes or no, do you know whether or not anyone had
7 an opportunity, any agent had an opportunity to view those
8 tapes?

9 A I really don't know.

10 Q You saw the tapes in the box before you removed
11 the box from the house?

12 A I don't recall.

13 Q Well, let me ask you, when you searched the house
14 initially on June 30, the afternoon of June the 30th, did
15 you observe numerous videotapes in the living room of
16 Mr. Saleh's house?

17 A Yes, we did.

18 Q Did you seize any videotapes at that particular
19 time?

20 A I don't recall.

21 Q Well, do you have something in front of you that
22 might refresh your recollection with regard to the seizure
23 of those items if it occurred?

24 A No, I did not take any tapes.

25 Q Now, you returned to the house a third time?

1 A I'm sorry?

2 Q You returned to the Saleh residence a third time?

3 A Correct.

4 Q And when was that?

5 A That was July the 6th.

6 Q And was that again precipitated by a call from
7 Ms. Singley?

8 A I'm sorry. I didn't hear you.

9 Q Did Ms. Singley call you before you went down to
10 the residence on July 6?

11 A Correct.

12 Q What did you receive from Ms. Singley on the 6th?

13 A As listed: One pair of white tennis shoes, a
14 pair of brown shoes and a bag containing miscellaneous
15 papers and documents.

16 Q Do you recall what kind of papers and documents
17 you received on July 6?

18 A I recall that we received more business cards
19 from her, I believe, and papers in Arabic.

20 Q I beg your pardon?

21 A And papers in Arabic. That's all I recall.

22 Q Did there come a point in time during your
23 various searches and receipt of property that you received a
24 passport?

25 A No.

1 Q Did another agent seize a passport from the Saleh
2 residence?

3 A No.

4 Q Did Ms. Singley give you a passport?

5 A No.

6 Q Did you conduct a fourth search of the Saleh
7 residence?

8 A No, I did not.

9 Q Did another agent conduct a fourth search of the
10 Saleh residence?

11 A No. The fourth occasion was Ms. Singley provided
12 some papers, a bag with miscellaneous papers and photos to
13 another agent on the 15th.

14 Q Agent Ho, let me refer you to Government Exhibit
15 35135-A, page 3. I will withdraw that question.

16 Agent Ho, do you have any recollection of ever
17 having seen a passport of Mr. Saleh?

18 A No.

19 MR. RUSSO: May I have a moment, please, your
20 Honor.

21 (Counsel conferred)

22 THE COURT: Mr. Russo, Mr. Nooter may have some
23 information for you.

24 MR. RUSSO: Yes.

25 (Counsel conferred)

1 Q Agent Ho, did you participate in the search on
2 July 2 or July 3 of '93?

3 A July 2, '93.

4 Q Who accompanied you for that particular search,
5 if you recall?

6 A I believe John Allison, and I'm not sure if we
7 had a third agent. At the time we didn't bring any other
8 agents because we weren't going to search the apartment. We
9 were just picking up items.

10 Q Does the name Salmiri ring a bell?

11 A Salamiri?

12 Q Or Salmiri?

13 A No.

14 Q Agent Ho, just for clarification, the only time
15 that you actually physically searched each of the rooms of
16 the Saleh residence was on June the 30th?

17 A Correct.

18 Q During the course of that search, did you find
19 any guns?

20 A No.

21 Q Did you find any bombs?

22 A No.

23 Q Did you find some firecrackers?

24 A No.

25 Q Did you see a newspaper entitled "The Voice of

1 Peace"?

2 A I found numerous newspapers. I don't remember
3 the titles.

4 Q Agent, did there come a point in time when you
5 learned whether or not any videotapes that you had seized
6 were reviewed?

7 MR. KHUZAMI: Objection. Asked and answered.

8 THE COURT: Sustained.

9 Q Did you see a videotape entitled "Seduction"?
10 Do you recall?

11 A No.

12 Q Did you see any videotapes that were in the
13 Arabic language?

14 A No, I didn't review any tapes.

15 Q I'm sorry?

16 A I did not review tapes.

17 THE COURT: Do you mean with the titles? Since
18 he didn't look at the tapes, are you asking him about the
19 titles, or are you asking him about the tapes?

20 Q Did you observe any tapes in the Saleh residence
21 that had Arabic titles?

22 A I didn't look at the tapes.

23 Q You didn't look at the tapes?

24 A No, not at the time, no.

25 Q Did there come a point in time when you looked at

1 the titles of any videotapes in the Saleh house?

2 A No.

3 Q You didn't --

4 A I don't recall looking at the tapes itself. I
5 just recall taking the tapes and taking the items and just
6 signing for them.

7 Q You didn't take all the videotapes, though, did
8 you?

9 A I don't remember.

10 Q Well, did you pick and choose items that you
11 observed in the living room?

12 A No, the tapes were provided to us by Ms. Singley.
13 It is not that we went and took it.

14 Q When you searched the house on June 30, and you
15 looked in the living room --

16 A Yes.

17 Q -- did you observe any videocassettes in the
18 house?

19 A Yes, I believe they had two videotape players.

20 Q There were two videotapes?

21 A Players.

22 Q Two players. Did you observe any cassettes?

23 A Yes, I did. I saw cassettes on the side.

24 Q Did you seize any of the cassettes?

25 A No, I did not.

1 MR. RUSSO: If I could have a moment, your Honor.

2 (Pause)

3 Q Agent Ho, did you also search a vehicle that
4 belonged to or was used by Mr. Saleh?

5 A Yes, we did.

6 Q And did you seize any items from the vehicle?

7 A On June 30?

8 Q Well, I don't -- when did you conduct the search
9 of the vehicle.

10 A No.

11 Q Pardon?

12 A No.

13 Q Did you conduct the search of Mr. Saleh's
14 vehicle?

15 A Yes, I did.

16 Q When was that?

17 A I believe the 30th.

18 Q June 30 of '93.

19 Did you seize anything from the vehicle of
20 Mr. Saleh?

21 A No, nothing.

22 Q On July 2, though, when you went over to the
23 Saleh household, you did receive two videotapes, is that
24 correct?

25 A Yes.

1 Q At the time that you took the tapes, did you know
2 the contents of the tapes?

3 A No, I didn't.

4 Q Agent Ho, in the course of the search, did you
5 ascertain whether or not the home also contained a dining
6 room?

7 A Yes. There was a dining room.

8 Q Did you conduct a search of that room on June the
9 30th of '94?

10 A Yes.

11 Q Did you seize any items from that room on that
12 date?

13 A Yes, I did.

14 Q And what was removed from the dining room on the
15 30th?

16 A We took assorted papers and books. That was
17 about it that I remember that we took from the dining room.

18 Q OK. Did you take all the papers that were in the
19 dining room?

20 A No, I did not.

21 Q And did you only remove papers that were in
22 Arabic?

23 A No.

24 Q And do you have any specific recollection of the
25 papers that were not in Arabic that were removed from the

1 dining room?

2 A This one was in Spanish.

3 Q That was in the dining room?

4 A Yes.

5 Q Can you tell us where in the dining room that
6 exhibit was located? I believe the witness is referring to
7 Government Exhibit 170.

8 A I don't recall exactly in the dining room. We
9 had a pile of papers, very high.

10 Q About how high?

11 A I would say it was about this high.

12 Q About 14 inches high?

13 A I couldn't -- I just remember it was a pile of
14 papers, and we had to go through them.

15 Q Well, you've placed your two hands a certain
16 distant apart.

17 A Yeah, I just think --

18 Q Would you say that would be approximately 14
19 inches or so, approximately? Just for the record so we can
20 establish it.

21 A A stack of papers. A stack of papers.

22 Q Were all those papers personal papers?

23 A No.

24 Q Did they include newspapers?

25 A Yes.

1 Q And you didn't take those newspapers, or you did?

2 A No, I did not.

3 MR. RUSSO: Nothing further, your Honor.

4 THE COURT: Any redirect?

5 MR. KHUZAMI: May I approach briefly with

6 Mr. Russo?

7 THE COURT: Yes.

8 (Continued on next page)

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1 (At the side bar)

2 MR. KHUZAMI: Your Honor, I am a little bit at a
3 loss here, but I think as a result of the
4 cross-examination --

5 THE COURT: I think I know what you want. The
6 answer is no. You want the book.

7 MR. KHUZAMI: I am not seeking to reintroduce the
8 book. The fact of the matter is that the jury now has the
9 impression that there was a book with bombs and bullets and
10 grenades, and it was there --

11 THE COURT: And they are not going to get to see
12 it.

13 MR. RUSSO: Just while we are here, I think
14 the --

15 THE COURT: That certainly doesn't hurt you.

16 MR. KHUZAMI: Except the impression is why wasn't
17 it seized. The jury has seen material like that that was
18 seized from other defendants.

19 THE COURT: They will get over it.

20 MR. RUSSO: Your Honor, we can do this after the
21 break, but I would like to be able to play the video of the
22 rooms of the house.

23 THE COURT: I bet you would. You are not going
24 to play it until I see it.

25 MR. NOOTER: He misremembered things about it,

1 and we would like to refresh his recollection.

2 THE COURT: Oh, cut it out.

3 MR. NOOTER: It's true.

4 THE COURT: I will watch the video. I will tell
5 you whether you can play it. Not before then. OK.

6 MR. RUSSO: All right.

7 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, we are going to
3 break now for lunch.

4 MR. RUSSO: Your Honor --

5 THE COURT: Yes.

6 MR. RUSSO: Just for the record, the government
7 and the defense have stipulated that a group of exhibits
8 numbered 01 is through 08 were seized from the Saleh home.

9 THE COURT: And are offered?

10 MR. RUSSO: They are being offered, yes, your
11 Honor.

12 MR. KHUZAMI: So stipulated, no objection.

13 THE COURT: All right. 01 through 08 are
14 received on stipulation.

15 (Government Exhibits 01 through 08 for
16 identification were received in evidence)

17 THE COURT: With that, ladies and gentlemen, we
18 are going to break for lunch. Please leave your notes and
19 other materials behind. Please don't discuss the case, and
20 we will resume after lunch.

21 (Jury not present)

22 THE COURT: You can step down.

23 (Witness excused)

24 THE COURT: I want to be clear in my own mind why
25 it is that you want to play the videotape because I thought

1 I heard Mr. Nooter say at the side that he wanted to play it
2 to refresh the witness's recollection. In that event, it is
3 the witness who should watch it, not me.

4 MR. NOOTER: We provided the tape to the
5 government ten days or two weeks ago so the witness could
6 see it and see whether it refreshes his recollection of the
7 house, and whether he --

8 THE COURT: You mean you refreshed his
9 recollection before he got on the witness stand?

10 MR. NOOTER: No, we provided it so it would not
11 be a surprise to him. If he looked at that tape and he knew
12 that it wasn't a fair and accurate representation of the
13 house, of course, we wouldn't use it. We believe it is.

14 THE COURT: Your statement at the side --

15 MR. NOOTER: For example, that there is no dining
16 room. The man testified there is one, and there isn't one.
17 We think what he testified to about where books and papers
18 came from is wrong, and the locations are important for
19 arguments we want to make.

20 It takes five minutes, and we weren't planning to
21 stop it, just to play it through and ask him to identify the
22 places that he took these documents from. He can look at
23 it, and say that it is a fair representation of what the
24 house looked liked when he came.

25 THE COURT: As I said, I am going to look at it

1 first. If you want it to refresh his recollection, then
2 he's the only one who is going to look at it. You do
3 understand that?

4 MR. NOOTER: I understand what you are saying.
5 We actually wanted more than that. We wanted him to point
6 out places where things came from. For example, as
7 Mr. Russo mentioned, the stack of papers on the toilet,
8 things like that.

9 THE COURT: All right.

10 MR. NOOTER: I made it from a longer tape, and
11 there is a piece with the baby at the front, which, of
12 course, we would move past that point and start it after the
13 baby.

14 THE COURT: All right. I will look at the tape.
15 What else do I have to deal with?

16 MS. AMSTERDAM: Your Honor, I just need at some
17 point that is convenient to your Honor to see you in
18 chambers regarding my client's health issues.

19 THE COURT: I can tell you that if this is the
20 letter of yesterday, I got it. I made a telephone call and
21 I can tell you what I was told.

22 MS. AMSTERDAM: At some time that is convenient
23 to you.

24 THE COURT: We will do it right now.

25 MR. RUSSO: Just one final thing, your Honor,

1 with regard to exhibits.

2 The government is aware of the fact that there
3 was a valid passport seized from the Saleh residence. This
4 witness has no independent recollection. We are going to
5 work out the details of that. Since it was clear that this
6 was in his residence, I would like to be able to admit this
7 into evidence.

8 MR. KHUZAMI: I will discuss that with Mr. Russo.

9 THE COURT: Fine.

10 With regard to the Burmeister testimony, it is
11 his testimony on April 17, correct? He testified twice I
12 believe.

13 MR. KHUZAMI: Yes. That was my mistake
14 yesterday. It's only his testimony related to the smokeless
15 powder.

16 THE COURT: That is what I thought.

17 Now, the corresponding exhibits are?

18 MR. KHUZAMI: I have them in my letter, your
19 Honor. I don't have them at the tip of my -- I believe
20 there are three of them in the 70s.

21 THE COURT: One second. So it's F1, F2 and F3,
22 something like that?

23 MR. KHUZAMI: One moment.

24 THE COURT: I have it. 74F1, 74F2 and 74F3.

25 MR. KHUZAMI: I think those were the -- let me

1 check.

2 THE COURT: As photos of the particles. Are
3 those the only three exhibits?

4 MR. KHUZAMI: No, it would include the three
5 exhibits that contained the debris, the duct tape, and the
6 newspaper that were actually taken from the locker. Since
7 their only relevance was that they were vehicles in which
8 the smokeless powder was contained --

9 THE COURT: Were they offered through him?

10 MR. KHUZAMI: They were admitted. That is I
11 believe 74A, 74B and 74C. And 74G, the slides of the actual
12 smokeless powder, were just identified. They were not
13 introduced.

14 THE COURT: All right. So it is 74A, B, and C --

15 MR. KHUZAMI: Correct.

16 THE COURT: -- F1, F2 and F3?

17 MR. KHUZAMI: Correct.

18 THE COURT: And what else?

19 MR. KHUZAMI: The slides were not introduced into
20 evidence, so I don't think we need to do anything with them.

21 THE COURT: OK.

22 Is that accurate?

23 MR. PATEL: Your Honor, that's correct, to the
24 best of my knowledge. The next step --

25 THE COURT: Yes, the question is what I tell

1 them, I suppose.

2 MR. PATEL: Before we get to that, your Honor, we
3 had left open my original objection to the ring, the M60
4 fuse lighter ring.

5 THE COURT: I thought I ruled on that.

6 MR. PATEL: Your Honor had, and you asked me if I
7 wanted to raise that issue again, and I --

8 THE COURT: I did?

9 MR. PATEL: You left the door open, your Honor.

10 THE COURT: It doesn't sound like me.

11 MR. PATEL: You left the door open. I would like
12 to step through it very briefly. Your Honor, there was
13 testimony, as you know, about the ring of the M60 fuse
14 lighter, a metal ring. I moved, I think even in advance of
15 the testimony coming in, to preclude it. I moved to strike
16 it, and I would now renew my motion to strike it. There is
17 no testimony connecting Mr. Nosair with the use of that kind
18 of device. Accordingly, I would move to strike it, your
19 Honor.

20 MR. KHUZAMI: Your Honor, I think the government
21 addressed this in the same letter which spoke about Mr.
22 Burmeister's testimony. The fact is the testimony was from
23 Emad Salem that Nosair spoke about using fuses that work in
24 damp or wet conditions. The testimony from Special Agent
25 Heckman --

1 THE COURT: I remember that. I thought I ruled
2 on that.

3 MR. PATEL: Your Honor, you had. You left it
4 open. One should never leave an opportunity unavailable.

5 THE COURT: Understood.

6 MR. PATEL: I am availing myself.

7 Your Honor, what Mr. Khuzami says is accurate,
8 however, the only igniting system that Mr. Salem ever talked
9 about was not an M60 fuse lighter, but rather a modified
10 beeper.

11 MR. KHUZAMI: I think Rule 401 simply says that
12 the piece of evidence must make the fact more likely than
13 not.

14 THE COURT: The ruling is clear.

15 The question in my mind is what I tell them with
16 regard to Burmeister. I suppose I can simply tell them that
17 he testified on April 17 with respect to certain items in
18 Mr. Nosair's locker, and that that testimony is stricken and
19 the following exhibits are stricken, and they are to make a
20 notation in their books that that testimony on April 17 and
21 the enumerated exhibits are to play no part in their
22 decision in the case.

23 MR. STAVIS: I just suggested the Emily Litella
24 charge from "Saturday Night Live."

25 THE COURT: I'm sorry. I'm not familiar with

1 that.

2 MR. STAVIS: Which would be something to the
3 effect of: "The testimony on April 17 -- never mind."

4 THE COURT: I can't do it as well as they do it
5 in the program, so I am not going to do it.

6 OK. I will see you this afternoon.

7 (Pages 12326 through 12327 sealed)

8 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:10 p.m.

3 (Trial resumed; jury not present)

4 THE COURT: Yes?

5 MR. NOOTER: Two matters. First, on the video,
6 did your Honor get a chance to look at it?

7 THE COURT: The short answer to your question is
8 yes, I got a chance, but I didn't take it because I didn't
9 have the machine, so I haven't seen it.

10 MR. NOOTER: Will Mr. Ho be available at some
11 future time?

12 MR. KHUZAMI: Absolutely.

13 MR. NOOTER: The second matter is somewhat more
14 substantive.

15 THE COURT: That is not a hard standard to meet.
16 Sorry. It is just the weather. Go ahead.

17 MR. NOOTER: I understand that the government is
18 going to call witnesses this afternoon with respect to the
19 alleged evidence of flight of my client as to Wildwood, New
20 Jersey. I would remind the Court that prior to trial I made
21 a motion in limine, with a legal brief of sorts attached to
22 it.

23 THE COURT: And I thought I denied it.

24 MR. NOOTER: And your Honor ruled. I had asked
25 you to reconsider that ruling at this time, in light of the

1 evidence as you have now seen it, presented in the trial.
2 Of course, if your Honor maintains the same ruling, I don't
3 want to have to object every time a witness takes the stand,
4 because I would just like to have a standing objection to
5 all of the testimony related to flight.

6 MR. McCARTHY: I think that point is preserved.

7 THE COURT: In amber. But you have an objection.

8 MR. NOOTER: The other thing, your Honor, is that
9 I did submit a request to charge on flight, which I was
10 expecting to have done at the end of the case. However, it
11 might be appropriate to give it sometime today after these
12 witnesses testify, so that the jury understands the limited
13 role of the flight evidence in the case. The instruction
14 was based on the Sand --

15 MR. McCARTHY: Your Honor, I don't really think
16 it is that difficult a concept. Your Honor is undoubtedly
17 going to have to charge on it later. We haven't, in the
18 long period of the trial, instructed on every discrete legal
19 issue that came up. I think it is adequate if your Honor
20 does the instruction in the normal course at the end.

21 THE COURT: Yes. That instruction, I think, is
22 designed really to deal principally with arguments based on
23 flight, and in essence to confine them. I don't think that
24 that is one of those things that has to come in along with
25 an instruction.

1 MR. NOOTER: If I could just step back one moment
2 to my initial application, which is to preclude the flight
3 evidence, I think a difference now from what I presented
4 before is that your Honor, having now seen the evidence,
5 particularly even though we haven't finished the whole
6 videotape as presented during the course, the other
7 references to my client, the CM's and all of those things,
8 suggest certainly to me that the evidence in this case is
9 far from overwhelming against my client, and therefore the
10 prejudice of flight evidence -- and I think there is no
11 disagreement that there is some prejudice apart from its
12 probative value -- the prejudice has all that greater an
13 impact. Therefore, in view of the evidence as it stands in
14 this case, I would earnestly ask you to reconsider allowing
15 this evidence at all. It is a diversion from the true issue
16 of the case, and the prejudicial value is that much --

17 THE COURT: Actually, it is not a diversion at
18 all from the true issue in the case. The true issue in the
19 case is your client's state of mind. That is the issue in
20 the case. So, to the extent that is your argument, it is an
21 argument in favor of receiving the evidence rather than
22 against it.

23 MR. NOOTER: But the state of mind can only be
24 arrived at through that evidence by taking certain
25 inferential steps.

1 THE COURT: Or others. That is really up to the
2 jury, to take that evidence, compare it to the other
3 evidence in the case, and decide whether flight had this
4 meaning or that meaning. That is really their job. I
5 understand your position and I understand the earnestness
6 with which it is made.

7 MR. NOOTER: It is the prejudicial aspect now, in
8 view of the evidence as has been presented in the trial now,
9 which is what I am asking your Honor to review, because that
10 was not available at the time that I made the original
11 motion in limine.

12 THE COURT: I think it is inherently more
13 prejudicial in a thin case than it is in a case that is not
14 a thin case, other than that I guess it might have more
15 significance.

16 MR. NOOTER: That is exactly my point.

17 THE COURT: That is not the kind of prejudice
18 that the rule is designed to get around.

19 MR. McCARTHY: That is my point. I don't agree
20 with Mr. Nooter's characterization that nobody would
21 disagree that there is prejudice.

22 THE COURT: Of course there is prejudice. That
23 is why you want to introduce it.

24 MR. McCARTHY: Right. Prejudice in the sense
25 that all inculpatory evidence prejudices a defendant.

1 THE COURT: If it is inculpatory. His argument
2 is that the tapes suggest it may not be, and it may not be.
3 But I am going to let the jury decide whether it is or it
4 isn't, compared to all the other evidence in the case.

5 Before we bring in the jury, this video is how
6 long? Five minutes?

7 MR. NOOTER: I believe it is literally five
8 minutes long.

9 THE COURT: Why don't I look at it now. Do you
10 have a machine set up?

11 MR. NOOTER: Can we do that?

12 MR. BERNSTEIN: Judge, while they are cueing up,
13 as I indicated before, I am leaving at 4:30. Mr. Serra has
14 agreed to cover for me in my absence. If we get to
15 safe-house evidence that is coming, and I share similar
16 views on what issues may come up with the safe-house
17 evidence coming in --

18 THE COURT: I didn't understand that we would be
19 dealing with that.

20 MR. BERNSTEIN: I don't think it is this
21 afternoon, but if we do, Mr. Serra will stand in for me in
22 whatever issues may come up.

23 THE COURT: Thank you.

24 (Videotape played)

25 MR. NOOTER: Apparently we have run it back to

1 see what the baby shot is. But our offer is not to show the
2 baby.

3 (Pause)

4 MR. NOOTER: Judge, this film was not taken in
5 anticipation of this case or anything else, but I think that
6 those scenes of that group of rooms goes directly to what
7 the agent talked about in terms of where he claims to have
8 found some of the items.

9 THE COURT: Do you want to wait until the video
10 stops or should I rule now?

11 MR. NOOTER: No, no.

12 (Pause)

13 MR. NOOTER: That is the end of the house part.
14 Now it shows his car. I would not propose to show the car.

15 THE COURT: All right. The record should reflect
16 that the part of the tape that I saw, the interior of the
17 house -- you can stop it if you want -- now, focused
18 principally, if not exclusively, on furnishings, notably
19 items of statuary, family photographs, and child's
20 accoutrements of various kinds, including toys, a rocker, a
21 swing, and so forth, not to mention the child himself. I
22 can't see any probative value in this. If you want the
23 witness to look at the tape and determine whether it changes
24 his view of what it is that he saw the day that he went to
25 search the house, I suppose we can do that. Or if you want

1 to show him a diagram of the apartment and ask whether it
2 changes his view, which might be more to the point, you can
3 ask him that. It doesn't show the location of any
4 particular areas of the house in relationship to other
5 areas. It focuses principally on what it was obviously
6 intended to focus us on, namely, the occasion, I would
7 assume, of the child's birthday or some event of that sort.

8 MR. NOOTER: I don't know if there was any
9 particular event. It was before my client was arrested, as
10 you can see.

11 THE COURT: Yes, I can see that.

12 MR. NOOTER: So it was not in anticipation of
13 litigation. It was just a home video.

14 THE COURT: No, I understand that.

15 MR. NOOTER: I would ask, then, to take up the
16 first suggestion, that the witness be allowed to see it and
17 see if it changes his recollection as to any of the things
18 he testified about. That doesn't have to be done in the
19 courtroom.

20 THE COURT: Fine.

21 MR. KHUZAMI: Fine.

22 THE COURT: Do you want to do that now?

23 MR. NOOTER: No, we could do it at any convenient
24 time.

25 Bring in the jury.

1 (Jury present)

2 THE COURT: Good afternoon, ladies and gentlemen.

3 JURORS: Good afternoon.

4 THE COURT: Mr. Khuzami.

5 MR. KHUZAMI: The government calls Catherine
6 Stefankiewicz.

7

8 CATHERINE STEFANKIEWICZ, called as a witness by the
9 government, having been duly sworn, testified as
10 follows:

11 THE COURT: Go ahead, Mr. Khuzami.

12 MR. KHUZAMI: Thank you.

13 DIRECT EXAMINATION

14 BY MR. KHUZAMI:

15 Q Ms. Stefankiewicz, how are you employed?

16 A I own and operate a motel together with my
17 husband in North Wildwood, New Jersey.

18 THE COURT: Excuse me, is Catherine spelled with
19 a "K" or a "C"?

20 THE WITNESS: A "C."

21 Q What is the name of the motel that you own?

22 A The Sea Rose Motel.

23 Q That is in North Wildwood, did you say?

24 A Yes.

25 Q What is the nearest larger city that North

1 Wildwood is near?

2 A Wildwood proper. Is there a bigger city than
3 that?

4 A Stone Harbor, but you have to go over the bridge.

5 Q How far from Atlantic City is it?

6 A About 45 miles.

7 Q What jobs do you do at the Sea Rose Motel?

8 A Everything. I work the desk, chambermaid, do the
9 laundry, maintenance, and baby-sit.

10 Q Directing your attention to July 16 of 1993, do
11 you recall a man and a woman who rented a room from you on
12 that day?

13 A Yes.

14 Q Do you recall the period of time that they rented
15 the room for?

16 A For a week.

17 Q Do you recall the specific days when they signed
18 up to take the room and when they were scheduled to depart
19 from the room?

20 A Yes. It was Friday morning through the following
21 Friday, planning to leave on Saturday.

22 Q Did they pay for the room?

23 A Yes.

24 Q Did they pay that entire period of time?

25 A They paid for one week, yes. The lady was in the

1 office, the man stayed outside, and she paid me.

2 Q Do you recall what the total bill was for that
3 period of time?

4 A I think it was 269.

5 Q Did they fill out a registration form at that
6 time?

7 A Yes. The lady did.

8 Q Do you recall the name that the lady used?

9 A Yes.

10 Q What was that?

11 A It was Monica Edwards.

12 MR. KHUZAMI: Your Honor, may I approach?

13 THE COURT: Yes.

14 Q Ms. Stefankiewicz, let me show you what has been
15 marked as Government Exhibit 180D for identification and ask
16 you to take a look at that photo.

17 A Yes. Yes, that was the picture I saw before.

18 Q Do you recognize that person in 180D?

19 A Yes.

20 Q Who is it?

21 A It is the girl who signed in as Monica Edwards,
22 but she had long curly hair. When she showed me the picture
23 with the veil, I didn't recognize it.

24 MR. KHUZAMI: Your Honor, I move Government
25 Exhibit 180D in evidence.

1 MR. NOOTER: May I see it, your Honor?

2 THE COURT: Show it to counsel.

3 MR. BERNSTEIN: May we approach briefly, your
4 Honor.

5 (At the sidebar)

6 MR. NOOTER: I will stipulate that it is. This
7 woman never saw the person in the picture looking like this.

8 MR. KHUZAMI: She recognized the face. She just
9 said that the woman didn't have the veil on.

10 THE COURT: Let's understand that she recognized
11 her. Let's also understand that the woman in the photograph
12 is clad in traditional Muslim garb, and --

13 MR. KHUZAMI: Just so you understand, this is the
14 photo that has traveled with this case. We didn't pick it
15 for this purpose. It was used in the trials at Camden. It
16 is a photograph that was shown in the past. That is the
17 reason it was used. If you want to stipulate that the woman
18 was Mona Awad, I don't need the picture.

19 MR. NOOTER: That is exactly what I will do.

20 MR. KHUZAMI: I will show it to other witnesses
21 but not show it to the jury.

22 THE COURT: Then you have a stipulation.

23 MR. STAVIS: The only reason I am up here is that
24 I assume this is consciousness of guilt evidence with
25 respect to Mr. Saleh and I would request an instruction to

1 that effect. I think witnesses following it are also
2 consciousness of guilt witnesses.

3 THE COURT: I will not tell them that. I will
4 tell them this testimony relates only to this witness.

5 MR. STAVIS: I mean, instead of telling them as
6 to each witness.

7 (In open court)

8 MR. KHUZAMI: Your Honor, the government will
9 withdraw the offer of the photograph, but will advise the
10 Court of a stipulation: that the woman referred to by the
11 witness is named Mona Awad, A-w-a-d, and that Monica Edwards
12 is not her true name.

13 THE COURT: Both of those facts will be treated
14 as proved, and you can give it whatever weight you think it
15 deserves. Go ahead.

16 MR. KHUZAMI: May I approach again, your Honor?

17 THE COURT: Yes.

18 Q Let me show you now what has been marked as
19 Government Exhibit 180A for identification and ask you if
20 you recognize that.

21 A Yes. It is my registration card.

22 Q Is that the registration card that you filled out
23 for Mona --

24 A She filled it out.

25 Q She filled it out?

1 A Yes.

2 Q Is some of that in your handwriting?

3 A Yes. The writing inside, the X's and the place.

4 Q Did you fill out one of these cards for all of
5 your guests?

6 A Yes.

7 Q And you keep them in the ordinary course of your
8 business?

9 A Yes.

10 Q And it is your regular practice to fill these out
11 for guests at the hotel?

12 A Yes. Well, sometimes I fill them out; sometimes,
13 if they are on the desk, they fill them out, and then I just
14 take it and fill in the rest.

15 MR. KHUZAMI: Your Honor, I move Government
16 Exhibit 180A into evidence.

17 MR. NOOTER: No objection.

18 THE COURT: 180A is received without objection.

19 (Government Exhibit 180A was received in
20 evidence.)

21 Q Ms. Stgefankiewicz, I wonder if you might read
22 from that document the name and the address.

23 A I will have to get my glasses: It says Monica
24 Edwards, 107 to 111, 84th Street, Ozone Park, New York
25 11417.

1 Q Do you recall what room these two people were
2 assigned when they checked into the motel?

3 A Yes. I put them in a small room with a
4 queen-sized bed next to the office, 109.

5 Q Did they change their rooms?

6 A Yes, the man came and told me he didn't like the
7 location of the room, it was too much traffic, and then a
8 little raunchy, kept running back and forth making noise, he
9 has to be moved upstairs. And I did move him the next
10 morning.

11 Q Do you recall the room that they moved to
12 upstairs?

13 A Yes. They moved to 208.

14 Q Did there come a time when the man talked to you
15 about renting additional rooms or renting the current room
16 for an additional period of time?

17 A Yes. For Tuesday of that of the coming week he
18 came in and he said he needed additional rooms: one room
19 for a family with cooking facilities because there were
20 children, and one room in my back building for two people.
21 And he said that they would be arriving Wednesday, and he
22 would pay me for both rooms.

23 Q Did he indicate how long that he wanted these
24 rooms?

25 A He said maybe another week or two.

1 Q Let me ask you: The man that was with Mona Awad,
2 do you think you would recognize him if you saw him again
3 today?

4 A I think so.

5 Q Can you look around the courtroom and see if you
6 can recognize the man who was with her on that day?

7 A I see him.

8 Q Please point him out.

9 MR. NOOTER: I will stipulate that it is Mr.
10 Saleh.

11 A The gentleman that is next to the man with
12 glasses. The only difference is, he has a mustache.

13 THE COURT: Indicating Mr. Wahid Saleh. Go
14 ahead.

15 Q Was it Mr. Wahid Saleh who spoke to you about
16 renting the rooms for the additional period of time and the
17 additional room?

18 A Yes.

19 Q Did there come a time that you were visited by
20 FBI agents?

21 A Yes.

22 Q Do you recall what date that was?

23 A Yes. It was Wednesday, I guess it would be the
24 21st or 22nd, Wednesday of the following week. We were
25 having dinner and I heard the bell in the office, so when I

1 went in it was a man who identified himself as an FBI agent,
2 and he asked me about people who were staying there, and he
3 checked the cars in the parking lot.

4 Q Going further with that, the conversation you had
5 with Wahid Saleh about the extra rooms, did that occur the
6 day before the FBI visited?

7 A Yes. He told me the people would be arriving
8 late Wednesday, and he asked me where the supermarket was,
9 and he went to the supermarket because he said the children
10 would need food.

11 Q When the FBI spoke to you, did they show you
12 pictures?

13 A Yes, they did.

14 Q Did they ask you if you could identify people in
15 the picture?

16 A Yes, they did, and I couldn't.

17 Q You were not able to.

18 A No.

19 Q Did you tell your husband about the visit by the
20 FBI agent?

21 A Yes, I went back into the kitchen because I left
22 him with the babies, and I told him what happened, and
23 packed them up and took a walk up the boardwalk.

24 Q After your conversation with Wahid Saleh that
25 Tuesday, did you ever see him again after that day?

1 A No, I never saw him again.

2 Q Had Mr. Saleh and Mona Awad paid for their rooms
3 on that Wednesday night?

4 A No, no, because he asked me for the keys and I
5 said, "Well, when you pay me, the people arrive, I will give
6 them the keys."

7 Q I am referring now to the reservation of rooms
8 when they initially arrived.

9 A Monica paid me. And then it wasn't until the
10 following Tuesday when he said he would need additional
11 rooms.

12 Q Did they ever give you any money for these
13 additional rooms?

14 A No. No. He said he would pay for everything.

15 Q Did Mr. Saleh and Mona Awad stay in your hotel on
16 that Wednesday night, the 21st?

17 A I don't know, because I never saw him again. I
18 only saw her the next day.

19 Q Did they stay in your hotel on Thursday night,
20 July 22?

21 A She was by the pool all day with the lady with
22 three children. And then around 4:30, I guess, they all
23 came out of the pool area, walked down the street and around
24 the corner. That was the last I saw her.

25 Q Do you know if they stayed in your hotel that

1 Thursday night?

2 A No.

3 Q No, they did not?

4 A They did not.

5 Q And they were paid for that night?

6 A Yes, they were paid up until Saturday morning.

7 Q How about the next day, Friday, the 23rd? Did
8 Mr. Wahid Saleh and Mona Awad stay in your hotel for that?

9 A No.

10 Q And were they paid for that?

11 A Yes.

12 Q Did they ever check out of the hotel?

13 A No.

14 Q Did they ever return the room to you?

15 A No.

16 Q Did they ever inform you that they would leave?

17 A No

18 MR. KHUZAMI: No further questions.

19 THE COURT: Cross, Mr. Nooter.

20 CROSS-EXAMINATION

21 BY MR. NOOTER:

22 Q How are you this afternoon?

23 A Fine, thanks.

24 Q The motel is in North Wildwood, correct?

25 A Yes.

1 Q North Wildwood is a resort community for
2 vacationers, is that correct?

3 A Yes.

4 Q And it basically is connected to Wildwood itself,
5 is that right?

6 A Yes.

7 Q It is sort of one continuous long town, is that
8 correct?

9 A Yes. Three towns. One in a row -- I mean three
10 in a row.

11 Q And there are lots of motels, is that correct?

12 A Yes.

13 Q And there is a boardwalk along the beach?

14 A Yes.

15 Q And farther down in Wildwood there are amusement
16 centers and things like that, is that correct?

17 A Yes.

18 Q And a lot of people in the summertime come and
19 vacation, is that correct?

20 A Yes.

21 Q In the summer in July it is very crowded, is that
22 right?

23 A Yes. Some parts of the island.

24 Q The motel -- the Sea Rose Motel is very close to
25 the beach, is that correct?

1 A A block and a half.

2 Q One block and a half?

3 A Yes.

4 Q It also has a swimming pool, you said, is that
5 correct?

6 A Yes.

7 Q I would just like to show you, if I can approach,
8 two exhibits (handing).

9 Q I have just handed you two exhibits marked -- I
10 forgot what the marking is. 1 and 2, is that correct?

11 A Right.

12 Q Do those appear to be photographs of the motel?

13 A Yes.

14 Q Would you say they are accurate in what they show
15 of the motel?

16 A Yes. All except the back building. It doesn't
17 show the building behind these buildings.

18 Q But of what it does show, it is accurate, is that
19 right?

20 A Yes.

21 MR. NOOTER: I would move those into evidence.

22 MR. KHUZAMI: No objection.

23 THE COURT: R-1 and R-2 are received without
24 objection.

25 (Defendant Wahid Saleh Exhibits R-1 and R-2 were

1 received in evidence.

2 Q The photographs show that the swimming pool is in
3 the front of the motel, is that correct?

4 A Yes.

5 Q And the motel is actually on the corner of an
6 intersection of two streets is that right?

7 A Yes. Well, set back, maybe, 80 feet from the
8 corner.

9 Q And one of the streets is Surf Avenue, is that
10 right?

11 A Yes.

12 Q And Surf Avenue is a main thoroughfare on North
13 Wildwood, is that right?

14 A Yes.

15 Q The other street is a smaller cross street that
16 goes down to the beach, is that right?

17 A Right, yes.

18 Q But anybody passing on the street would see
19 anybody sitting at the pool, is that correct?

20 A Yes.

21 Q There is a fence around the pool but you can see
22 through the fence, is that right?

23 A Yes.

24 Q You can put the photographs down. By the way,
25 did the motel have a restaurant in it?

1 A No.

2 Q In order to eat meals, you would have to go some
3 place else, is that right?

4 A Yes. Or in your room.

5 Q A kitchen was in the room? Some rooms?

6 A Yes.

7 Q Do you know whether Room 109 or 208 had kitchens?

8 A No, neither of them. But the other room, 105,
9 that he said he wanted to rent, did have a kitchen.

10 Q So that is the one he would have rented but never
11 did?

12 A Right.

13 Q Did you see Mr. Saleh approximately every day
14 during the time he was there?

15 A Yes, I did.

16 Q Where would he be?

17 A He would be sitting -- do you want me to show you
18 on here?

19 Q Yes.

20 A The pool goes back about 50 feet, and there is a
21 table here, I don't have an umbrella on it in this picture,
22 but there is a table here with chairs, and he would be
23 sitting there. Or out in front of the Room 208. He would
24 be coming out of the office and walking straight by to go to
25 the back building or to the right or left.

1 Q Let me stop you a minute. When he was at the
2 pool, he would be in sort of one of the corners of the pool,
3 is that right?

4 A Yes, yes.

5 Q And 208 is on the second floor?

6 A Yes.

7 Q And there were chairs on the outside walkway, is
8 that right?

9 A Yes.

10 MR. NOOTER: I wonder if I could have the picture
11 passed at this point so the jury could just see it.

12 THE COURT: Yes.

13 (Handed to jury)

14 Q Did you see Mr. Saleh coming or going from the
15 beach or from a restaurant or anything like that?

16 A Well, I would see them walking by, leaving, then
17 coming back. I never asked where they were headed.

18 Q Were they always together, he and the woman?

19 A The times I saw them, yes, they were together.

20 Q Did they talk to you from time to time?

21 A He did, but she never did.

22 Q What kinds of things did he talk about?

23 A Just ordinary: beautiful day, you work too hard,
24 nice place. Just conversation like that.

25 Q Would it be fair to say he struck you as a

1 friendly person, friendly conversation?

2 A Well, we, like, just questions and answers, like
3 no emotions or anything. "Where is the supermarket?"

4 Q Just normal conversation.

5 A Yes.

6 Q Do you know whether he ever went to go up to
7 Atlantic City from there while he stayed there?

8 A No. I don't know.

9 Q You don't know?

10 A No.

11 Q Did the rooms, either 109 or 208, have a
12 telephone?

13 A No. There's no phones in the rooms. There is
14 the pay phone outside.

15 Q So if someone wanted to make phone calls or
16 receive them -- to make them they would have to go to the
17 pay phone, is that correct?

18 A Yes.

19 Q To receive them what would they do?

20 A Well, if someone calls in to the office, I would
21 go get the people.

22 Q Did you ever receive any calls for him during the
23 time he stayed there?

24 A No. No.

25 Q Did the rooms have television?

1 A Yes.

2 Q Did the television have cable hookup?

3 A Yes.

4 Q At any time while Mr. Saleh was there, did he
5 ever receive any telegrams that you noticed?

6 A No.

7 Q Any Federal Express deliveries or anything like
8 that?

9 A No.

10 Q At the time that the two FBI agents came -- it
11 was two, is that correct?

12 A One was outside and one down by the corner. One
13 came into the office.

14 Q So you actually only spoke to one?

15 A Yes.

16 Q Do you remember who that is, his name?

17 A No. I don't remember his name. He had light
18 white hair, silvery hair.

19 Q Silvery hair?

20 A Yes.

21 Q And he showed you some photographs but you did
22 not recognize those, is that correct?

23 A Correct.

24 Q Did he tell you why he was looking for his
25 something?

1 A No.

2 Q Were you concerned?

3 A Not really. In a small town, like often the
4 police come around with a picture, they are looking for
5 somebody. So I didn't think it was, you know, highly
6 unusual.

7 Q Almost normal or something that has happened
8 before?

9 A Right. He checked my register cards, the names
10 on them, and then went out and checked all the vehicles.
11 And didn't tell me anything else.

12 Q After that, you mentioned that to your husband
13 almost right away, is that correct?

14 A Right. I just walked right back into the
15 kitchen, and told him what happened, and then I gathered up
16 the babies and just took a walk.

17 Q How many babies is it?

18 A Three.

19 Q How old were they at that time?

20 A Well, then they were, two were under 2 and one
21 was a year old.

22 Q After that point, you never saw Mr. Saleh again,
23 is that correct?

24 A Correct.

25 Q You did, however, see the young lady?

1 A Yes, I did.

2 Q And she was out by the pool?

3 A Yes.

4 Q And you saw her in the company of another woman
5 and some children is that right?

6 A Yes.

7 Q Were they there a long time or how long would you
8 estimate?

9 A Well, I'd say maybe three, three and a half
10 hours. Like the course of the afternoon.

11 Q Up till sometime in the late afternoon?

12 A I guess about 4:30.

13 Q During that time they were just doing the normal
14 things you do by the pool?

15 A Yes. They were sitting in one of the wells of
16 the pool, and they had two bigger children and the baby and
17 a carry thing.

18 Q You have met me before, is that correct?

19 A Yes.

20 Q Just about two weeks ago or so?

21 A Yes.

22 Q At that time, if you remember, I told you that I
23 represent one of the defendants in this case, is that
24 correct?

25 A Yes, right.

1 Q Is it true that you told me that you had been
2 instructed by somebody not to talk to anybody on the defense
3 side? Is that correct?

4 A But nobody told me that. I think it was too much
5 TV. I didn't think it was ethical, like, to talk to both
6 parties.

7 Q Didn't I tell you that it was ethical?

8 A Yes, you did. I find out afterwards it was too.
9 But we just didn't feel at that time that we should, you
10 know, be talking to anybody.

11 MR. NOOTER: I have no further questions. Thank
12 you.

13 THE COURT: Anything else? Any other cross?
14 Mr. Khuzami, any redirect?

15 MR. KHUZAMI: No, your Honor.

16 THE COURT: Thank you, Ms. Stefankiewicz. You
17 are excused.

18 (Witness excused)

19 MR. KHUZAMI: Your Honor, the government calls
20 Stanley Stefaniewicz as its next witness.

21

22 STANLEY STEFANKIEWICZ,

23 called as a witness by the government,

24 having been duly sworn, testified as follows:

25 THE COURT: Go ahead.

1 DIRECT EXAMINATION

2 BY MR. KHUZAMI:

3 Q Mr. Stefankiewicz, how are you employed?

4 A I am self-employed.

5 Q Do you own a motel?

6 A Yes.

7 Q What is the name of the motel?

8 A Sea Rose Motel.

9 Q And you own that with your wife?

10 A Yes.

11 Q That is in Wildwood, New Jersey?

12 A It is in Wildwood, New Jersey, North Wildwood.

13 Q What sort of jobs do you perform around the
14 motel?

15 A Well, I guess I do everything.

16 Q Anything in particular?

17 A You name it, I can do it: carpentry,
18 electrician, plumber, whatever.

19 Q Directing your attention to around July 21, 1993,
20 did you learn on that day about a visit by FBI agents to
21 your motel?

22 A Yes.

23 Q Who was it that told you about that visit?

24 A My wife.

25 Q After she told you about that, what did you say

1 to her?

2 A I really didn't say nothing.

3 Q Did there come a time shortly after that where
4 someone asked about the FBI agents?

5 A Yes.

6 Q Who was that?

7 A It was a girl, a woman.

8 MR. KHUZAMI: Your Honor, may I approach?

9 THE COURT: Yes.

10 MR. NOOTER: I will stipulate that it was Mona
11 Awad.

12 MR. KHUZAMI: Pursuant to stipulation, the woman
13 referred to by the witness was Mona Awad.

14 THE COURT: So it is Mona Awad who asked him
15 about the FBI agents. That is accepted as proved, and you
16 can give it whatever weight you believe it deserves. Go
17 ahead.

18 Q Mr. Stefankiewicz, what did Ms. Awad say to you
19 about the FBI agent visit?

20 A When I come out of my office door and I was
21 standing there, this woman was right against the fence
22 toward the pool. And she said, "I see two well-dressed men
23 in your office today. Were they salesmen?" And I says,
24 "No," I said, "they were the FBI. They were probably after
25 somebody that robbed some bank." And that was it.

1 Q Let me just stop you there. Why did you tell her
2 that they were after somebody who robbed a bank?

3 A Well, I didn't see why they would be in a motel.
4 Wildwood is a quiet town, we don't have much crime down
5 there, and I figured maybe some nut robbed a bank somewhere
6 and he would just come down to the resort to hide out.

7 Q You made that up, is that correct?

8 A Yes. I was assuming that.

9 Q After you told the woman that, what happened
10 next?

11 A Well, this guy turned the corner with two kids,
12 and she said to the man that there was two FBI's men here
13 today. So he looked at me and he said that, "Is there any
14 bad men in this town? Bad men staying at this motel?"
15 Well, I looked at him and I sized him up and I said, "I'll
16 protect you if there is." And I was taking it as a prank.
17 I laughed at it myself.

18 Q Mr. Stefankiewicz, do you think you could
19 recognize that man again if you saw him today?

20 A It's a possibility.

21 Q Could you take a moment and just look around the
22 courtroom and see if you see the man that was with the woman
23 that you spoke to? Well, I got bad peepers. Let me step
24 down and look.

25 Can I walk around?

1 It's tough. It's two years now. I really can't
2 say, not really.

3 Q That is fine. Take your seat.

4 A Two years. I see so many people. I don't only
5 run a motel; I run a bar, too. (Laughter)

6 Q Mr. Stefankiewicz, the woman, after she told the
7 man that there were two FBI agents visiting, did the man's
8 expression or manner change at all?

9 A Well, he looked a little scared, and he said to
10 me, like I said, "Is there any bad men?" And I thought this
11 guy is kidding me. So I went along. I said, "I'll protect
12 you," like I said. And that was it as far as it went. And
13 then he went down -- he walked by me with the two kids and
14 her and they went to their room and that was it.

15 Q Did you ever see the man or the woman again?

16 A No, I don't believe so.

17 MR. KHUZAMI: No further questions.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. NOOTER:

21 Q Good afternoon. The fellow we are talking about,
22 he struck you as a very friendly guy, right?

23 A Did he strike me as a funny guy?

24 Q Friendly, friendly.

25 A I don't know how you take -- I don't accept

1 anybody as friendly, myself, I mean really I don't. I don't
2 like people. (Laughter)

3 Q Let me ask you this: Does the motel have any
4 outside barbecues?

5 A I have barbecues.

6 Q So do you recall whether the gentleman you
7 mentioned ever used it to cook some steaks?

8 A I have no idea. If he did, it was without me
9 knowing it.

10 Q You don't recall his asking for help in lighting
11 it or something like that?

12 A No.

13 Q You mentioned that the person you are talking
14 about had sort of looked frightened a minute, is that
15 correct?

16 A Yes, he looked a little startled, like.

17 Q A little startled. And then he made a joke,
18 right?

19 A He didn't make no joke.

20 Q Well, he said --

21 A I was the one. I just said, "I'll protect you,"
22 but I was laughing inside. I was saying to myself, look at
23 this clown. (Laughter)

24 Q After you finished laughing inside, what
25 happened? Did you continue having a conversation?

1 A Like I said, he walked down toward the steps to
2 go to his room, him and the two kids and a woman.

3 Q He had been coming up Surf Avenue, is that right?

4 A He was coming -- he was heading north on Surf
5 Avenue and I was standing -- see, my motel is like this
6 (indicating) and I was standing inside, and he made the turn
7 to come up two steps.

8 Q When you told the young lady about the FBI
9 people, you said they were looking for bank robbers, is that
10 right?

11 A That's right.

12 Q It wasn't really true, though?

13 A No. I assumed that. I mean, what the hell would
14 they want in Wildwood?

15 Q Did you say the same thing to the gentleman about
16 the bank robbery, bank robber?

17 A I don't think so. She did all the talking. She
18 said there was two FBI men. They robbed a bank.

19 MR. NOOTER: Thank you very much. No further
20 questions.

21 THE COURT: Any other cross? Any redirect?

22 MR. KHUZAMI: No, your Honor.

23 THE COURT: Thank you very much.

24 THE WITNESS: That's it?

25 THE COURT: That's it?

1 THE WITNESS: OK.

2 (Witness excused)

3 MR. KHUZAMI: Your Honor, the government calls
4 it -- a day (laughter) -- the government calls Concetta
5 Martino.

6
7 CONCETTA MARTINO,

8 called as a witness by the government,
9 having been duly sworn, testified as follows:

10 THE COURT: You may proceed.

11 MR. KHUZAMI: Thank you.

12 DIRECT EXAMINATION

13 BY MR. KHUZAMI:

14 Q Ms. Martino, how are you employed?

15 A Chambermaid at the Sea Rose.

16 Q That is the Sea Rose Motel?

17 A Yes, right.

18 Q How long have you been working there?

19 A About three, four years.

20 Q Who is your boss there?

21 A Cath and Stanley Stefankiewicz.

22 Q Directing your attention back to July of 1993,
23 were you working at the Sea Rose Motel then?

24 A Yes, I was.

25 Q What hours did you work?

1 A From 10 to 3.

2 Q How many days a week is that?

3 A Six.

4 Q How many rooms are located at the Sea Rose Motel?

5 A 33 units.

6 MR. KHUZAMI: Your Honor, may I approach?

7 THE COURT: Yes.

8 MR. KHUZAMI: Or a stipulation?

9 MR. NOOTER: Yes, a stipulation.

10 Q Let me ask a question first. Ms. Martino, did
11 you come to know a woman who had rented Room 208 at the Sea
12 Rose Motel during July 1993?

13 A Yes.

14 MS. KHUZAMI: Pursuant to stipulation, your
15 Honor.

16 THE COURT: Stipulation that the woman depicted
17 in that photograph is Mona Awad.

18 MR. KHUZAMI: Very well.

19 THE COURT: I will accept that fact as proved.

20 Go ahead.

21 Q In addition to the woman, was there any other
22 person who occupied that room?

23 A A man.

24 Q Do you recall how long a period of time they were
25 in that room?

1 A About four or five days.

2 Q Was Room 208 one of the rooms that you were
3 supposed to be servicing during July 1993?

4 A Right.

5 Q Did you ever get into Room 208?

6 A One time.

7 Q Did you attempt to get in on other occasions?

8 A I would knock on the door and just ask them if
9 they needed anything for the day. They would just open the
10 door a little bit, and I would I give them whatever they
11 needed and that was it.

12 Q Move the microphone a little closer to you so
13 everyone can hear. I am sorry, you knocked on the door and?

14 A And asked them if they needed anything for the
15 day, and they opened the door a little bit, and I would give
16 them whatever they needed, and that was it. And then one
17 day, on a Tuesday, they asked me to change their linen, and
18 that was the only day I went into the room. And they sat
19 outside.

20 Q What did you see in the room on the Tuesday that
21 you got inside?

22 A Nothing. Just normal. Things that people take
23 away on vacation.

24 Q Two days later, on Thursday, did you have an
25 opportunity to go into the room on that day?

1 A Yes, I did.

2 Q Do you recall what time?

3 A 10:30, 11 o'clock.

4 Q And did you knock first?

5 A Yes.

6 Q Did anyone answer?

7 A No.

8 Q Did you eventually get inside?

9 A Yes. I opened the door with a key. There was
10 nobody in there. Everything was gone.

11 Q Was there any luggage in there?

12 A No.

13 Q No people were in there?

14 A No.

15 Q Did you ever see either of those two people back
16 at the Sea Rose again after that Thursday?

17 A No.

18 MR. KHUZAMI: No further questions.

19 THE COURT: Cross, Mr. Nooter.

20 CROSS-EXAMINATION

21 BY MR. NOOTER:

22 Q How are you?

23 A Fine, thanks.

24 Q You testified that on some occasions the people
25 just asked you to change the towels for them, is that right?

1 A Yes.

2 Q And the trash, take out the trash, get new bags,
3 is that right?

4 A Right.

5 Q On one occasion they asked you to come change the
6 linens and then they went out and sat out on the balcony, is
7 that right?

8 A Right.

9 Q And you changed the sheets, is that correct?

10 A Right.

11 Q And in the room you noticed they had luggage
12 there, is that right?

13 A Right.

14 Q Did they have any food?

15 A Yes. Pickings, like, you know, snack foods.

16 Q Snack foods?

17 A Yes.

18 Q Was there anything out of the ordinary about what
19 you saw in the room?

20 A No.

21 Q Would it be fair to say they acted like
22 newlyweds?

23 A Yes, sort of.

24 Q Kept to themselves a little bit?

25 A Yes, they were. They never came out. Drapes

1 were --

2 Q You know that other people saw them outside,
3 though, is that right?

4 A I guess. I never asked anybody.

5 Q I see.

6 A I asked my co. -- me and my coworker never saw,
7 you know, they were --

8 Q You never saw them go out but --

9 A No, I never saw them go out. Just when I used to
10 go to the door.

11 Q Did you ever see the young lady out by the pool?

12 A No, I did not.

13 Q Your hours were from 10 to 3, is that correct?

14 A Right.

15 MR. NOOTER: I have no further questions.

16 THE COURT: Anything else, Mr. Khuzami?

17 MR. KHUZAMI: No, your Honor.

18 THE COURT: Thank you, Ms. Martino. You are
19 excused.

20 THE WITNESS: Thank you.

21 (Witness excused)

22 MR. KHUZAMI: Your Honor, the government calls
23 Shirley Kanas, K-a-n-a-s, as the next witness.

24

25 SHIRLEY KANAS,

1 called as a witness by the government,
2 having been duly sworn, testified as follows:

3 THE COURT: Go ahead, Mr. Khuzami.

4 MR. KHUZAMI: Thank you.

5 Q Ms. Kanas, if you can just lean a little closer
6 forward and speak into the microphone so everybody can hear
7 you.

8 A OK.

9 Q Thank you. Ms. Kanas, how are you employed?

10 A I am a photographer at Harbor View Photo in Cape
11 May.

12 Q You own that business?

13 A Yes, I do.

14 Q How long have you owned that business?

15 A Eight years.

16 Q Where is it located?

17 A Right now it is in Cape May, but at the time it
18 was also in Cape May, 1426 Texas Avenue.

19 Q The time you are referring to is the summer of
20 1993?

21 A Yes.

22 Q Where is Cape May in relation to Wildwood?

23 A About five miles south of Wildwood.

24 Q What business, what kind of business is the
25 store?

1 A I have a photo, portrait studio and video store.

2 Q In July of 1993, did your business advertise the
3 sale of photographs for passports?

4 A Yes. In the Yellow Pages we advertised three
5 times: once under photo-one-hour service, once under
6 portrait studio, and once in the video section.

7 Q In addition, does the store itself have any signs
8 or posters advertising passport photos?

9 A My front window has the blue passport sign that
10 Polaroid gives us and it is a lighted sign.

11 Q Was that true in July of 1993?

12 A Yes, it was.

13 MR. KHUZAMI: Your Honor, same stipulation. The
14 woman who visited the shop was Mona Awad.

15 MR. NOOTER: Yes, your Honor.

16 THE COURT: That fact is to be taken as proof by
17 the jury, and you can give it whatever weight you believe it
18 deserves.

19 Q Directing your attention to July of 1993, do you
20 recall a woman and a man entering your shop and asking about
21 passport photos?

22 A Yes, I do.

23 Q When they entered your business, which of the two
24 spoke to you?

25 A I believe the gentleman did.

1 Q What did he say?

2 A He asked me if we do passport photos. I said
3 yes, we do. And I proceeded to do a passport photo of him.

4 Q When you say "do a passport photo," what does
5 that mean?

6 A They sit, you note the distance from the nose to
7 the camera, set the light, and snap the camera, and pull the
8 film out because it is instant.

9 Q Did you take any passport photos for the woman?

10 A No, I did not.

11 Q What happened after you completed taking them of
12 the man?

13 A They conversed for a couple of minutes, and then
14 he asked me to take a second set, one with his glasses and
15 one without his glasses.

16 Q What did you say to him?

17 A That this isn't normal, because passports are
18 done in the most natural form and you can't use either or
19 you can only use one set.

20 Q Did he respond to you?

21 A Yes. He said he would respond at that time which
22 set he was going to use.

23 Q Did you in fact take the second set?

24 A No, I did not. He wanted to pay for both of
25 them. I did take, yes, I did take the second set.

1 Q Did he pay for --

2 A Both sets.

3 Q -- both sets?

4 A Yes.

5 MR. KHUZAMI: No further questions.

6 CROSS-EXAMINATION

7 BY MR. NOOTER:

8 Q Did this gentleman take the photos with him?

9 A Yes, he did.

10 Q Did you keep a set or negative or anything?

11 A There are no negatives with passports. They are
12 instant and that is why they are passports.

13 Q Like Polaroid?

14 A Yes, they are Polaroids.

15 Q Passport-size photos can be used for various
16 kinds of purposes besides passports, is that correct?

17 A Right, but I do ask what the purpose of the photo
18 is for.

19 THE COURT: He just asked whether they can be
20 used for other things. He didn't ask you for the purpose.

21 Q So the answer is yes?

22 A Yes.

23 Q He did specifically say passports?

24 A Well, I asked what it is going to be used for,
25 because a passport has to be cut down to a 2 by 2, and I

1 have a marking to cut them down.

2 Q Did you cut them down?

3 A Yes, I did.

4 Q Is there a passport office in Cape May?

5 A No. In Cape May courthouse there is a passport
6 office.

7 Q But you don't send the pictures over there?

8 A No. The person takes them himself.

9 Q And that passport office is a United States
10 passport office is that right?

11 A Yes, it is in the courthouse.

12 Q It is for getting a U.S. passport, is that right?

13 A Correct.

14 MR. NOOTER: No further questions.

15 THE COURT: Anything else, Mr. Khuzami?

16 MR. KHUZAMI: Yes, one question, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. KHUZAMI:

19 Q You indicated you asked the man what these
20 pictures were to be used for, is that correct?

21 A Yes.

22 Q Did he respond to you?

23 A Yes, he did.

24 Q What did he say?

25 A They are for passport -- my question is, is this

1 a standard passport, and he said yes, it is a passport.

2 MR. KHUZAMI: No further questions.

3 THE COURT: Anything else? You are excused.

4 MR. KHUZAMI: Your Honor, the government calls
5 John Reemmer as its next witness.

6

7 JOHN W. REEMMER,

8 called as a witness by the government,

9 having been duly sworn, testified as follows:

10 Q Mr. Reemmer, how are you employed?

11 A I am an FBI agent.

12 A How long have you been --

13 THE COURT: Excuse me, if you could pull that
14 microphone in front of you and point it towards you.

15 THE WITNESS: Yes, your Honor.

16 Q How long have you been with the FBI?

17 A Over 22 years.

18 Q Where are you currently assigned?

19 A The Atlantic City resident agency in New York
20 City.

21 Q What is a resident agency?

22 A It is a satellite office. Our main office is in
23 Newark, New Jersey, covering the State of New Jersey.

24 Q Where were you assigned in July of 1993?

25 A The same office, Atlantic City.

1 Q During July of 1993, were you involved in an
2 effort to locate a man by the name of Matarawy Mohammed Said
3 Saleh?

4 A Yes, I was.

5 Q When did you first become involved?

6 A Approximately a week before the arrest of July
7 22, I'd say sometime during the week of July 17.

8 Q How is it that you first became involved?

9 A An agent from our Newark office telephoned me and
10 asked me to cover a lead, because they had reason to believe
11 that the fugitive Saleh and his girlfriend were in the
12 Southern New Jersey, specifically the Atlantic City area.

13 Q What kind of lead was this?

14 A It had to do with the casinos; and, serving as
15 the casino liaison in my office, the lead was assigned to
16 me.

17 Q Did you in fact investigate whether or not Mr.
18 Saleh had been in the casino?

19 A I did make inquiry, but unfortunately we weren't
20 able to come up with anything that day.

21 Q Did you follow any additional leads after the
22 casino lead in an effort to locate him?

23 A Yes. Approximately a week later, on July 22.

24 Q What happened?

25 A Well, actually I guess it was July 21, again I

1 was contacted by the agent in Newark, Agent Allison. Again
2 he had received information that the fugitive and his
3 girlfriend were in the Wildwood area of New Jersey. So,
4 along with two other agents, we went down to Wildwood and
5 covered those leads on Wednesday, the 21st.

6 Q When you say "covered those leads," what exactly
7 did you do?

8 A We went to physically located a couple of public
9 telephone booths. And then we branched out into two teams
10 and did a survey door-to-door of motels in close proximity
11 to those public pay phones.

12 Q Your inquiry was focused on public pay phones?

13 A That's correct.

14 Q Why was that?

15 A Again I received information that a call was
16 either placed to or from that phone.

17 Q When you say you spread out in the area of the
18 phones, what exactly did you do?

19 A I teamed up with the local North Wildwood
20 detective and we covered the motels to the south of the
21 particular phone, and then two other agents that I work with
22 cover the motels to the north.

23 Q When you say "cover the motels," what exactly did
24 you do?

25 A We would go to the registration, to the office,

1 and ask to speak with the manager. And then we showed them
2 some photographs of the fugitive and his girlfriend and
3 asked if they had anyone matching that description
4 registered there.

5 MR. KHUZAMI: Your Honor, may I approach?

6 THE COURT: Yes.

7 Q Did you have photographs with you of the person
8 you referred to as the fugitive and his girlfriend?

9 A Yes, I did.

10 MR. KHUZAMI: Your Honor, pursuant to
11 stipulation, the government and Mr. Nooter have agreed that
12 the picture of the female that Special Agent Reemmer had was
13 of Mona Awad.

14 THE COURT: Go ahead.

15 Q On July 21, were you successful in locating him
16 on that day?

17 A Not on the 21st, no.

18 Q Approximately how many motels did you visit on
19 that day?

20 A I visited about six to ten hotels and I believe
21 the other team of agents visited approximately the same
22 number.

23 Q Did you continue your search the following day,
24 the 22nd?

25 A Yes, we did. We continued again on that early

1 afternoon on the 22nd.

2 Q What exactly did you do in continuing the search?

3 A Essentially the same thing. We just spread out
4 more. We had some additional manpower. And we just spread
5 out more and concentrated a little more on the North
6 Wildwood area.

7 Q Approximately how many motels did you visit on
8 the 22nd?

9 A I personally visited, on the 22nd, again with
10 another six to ten, I would say.

11 Q Did there come a time when you located Mr. Saleh
12 and his girlfriend?

13 A Yes. At approximately 9:30 p.m., together with
14 Agent Allison, we went to the Sea Wolf Motel in North
15 Wildwood and found out from the owners there that in fact
16 the fugitive and his girlfriend were staying there with
17 another couple, the other couple had registered, and they
18 were staying with them and were in fact there at that
19 moment.

20 Q What did you do after you learned that?

21 A I left Agent Allison in the office with the
22 owners, and I went outside to alert the rest of the team
23 that we had located the fugitive. And I made preliminary
24 assignments for everyone to cover the motel.

25 Q Did you personally see Mr. Saleh and the other

1 people at the Sea Wolf Motel?

2 A Yes, I did.

3 Q Would you describe the scene that you saw?

4 A I went around to the rear of the motel. The
5 motel is on 14th Street. I went one block south on 15th
6 Street. And from the motel behind the Sea Wolf, I was able
7 to see two males. One appeared to be Mr. Saleh from the
8 photograph that I had. I observed a woman who appeared to
9 be Mona Awad, and I saw one, possibly two children. I
10 strolled in and out of the hotel pretending to be a tourist
11 and got fairly close at one point and was satisfied that
12 indeed the taller of the two slides was Mr. Saleh.

13 Q Do you think you could identify Mr. Saleh if you
14 saw him again today?

15 A Perhaps. It has been two years.

16 Q Would you take a look in the courtroom and see if
17 you recognize the man you know as Mr. Saleh?

18 A Yes, I believe it is the second gentleman from
19 the end, looks like a gray suit.

20 THE COURT: Indicating Mr. Saleh. That is
21 Mr. Wahid Saleh. Go ahead.

22 Q After you got close to them at the Sea Wolf Motel
23 and observed Mr. Saleh and the others, what did you do next?

24 A I took a position, a kind of a covert position
25 around the corner of the motel, and I could still see the

1 individuals from there. I was relieved briefly by another
2 agent and told that the primary arrest team was on its way.
3 When the primary arrest team was ready to move into
4 position, I walked across the street to retrieve my rain
5 jacket, and at that moment the vehicle carrying the primary
6 arrest team arrived, and I followed up behind them along
7 with other agents.

8 Q Approximately how many persons were part of this
9 primary arrest team?

10 A I'd say about a dozen.

11 Q Were they identified by their clothing or
12 otherwise that they were members of the FBI?

13 A Yes, on the front and rear of their clothing
14 there were large letters, "FBI."

15 Q What happened when they made the arrest?

16 A Well, they moved in first. Our job as the
17 secondary team is to follow up behind and also to be
18 concerned about crowd control, since it was the summer at
19 the beach, there were quite a number of people around, and
20 that was a prime concern. So we were kind of keeping the
21 crowds back while the primary team managed to effect the
22 arrest and secure the area.

23 Q Who was arrested first, do you know?

24 A Ashraf Mohammed was arrested first, because the
25 fugitive Saleh had apparently run along the left side of the

1 building when the primary arrest team arrived.

2 Q Do you know whether or not he was eventually
3 caught?

4 A Yes. Soon afterward he was caught in a lot
5 across the street from the front of the motel.

6 Q Approximately how much distance between where you
7 observed them and where he was eventually caught?

8 A Well, I would say the distance from the rear of
9 the motel to the front of the motel was about 50 to 70 feet.
10 It is a rather narrow street, and it is just the other side
11 of the street. Not very far at all.

12 MR. KHUZAMI: No further questions.

13 THE COURT: Cross, Mr. Nooter.

14 CROSS-EXAMINATION

15 BY MR. NOOTER:

16 Q Agent Reemmer, you kept testifying that Mr. Saleh
17 was a fugitive. Is that correct?

18 A That's correct, sir.

19 Q An arrest warrant had been issued for him, is
20 that right?

21 A That's right.

22 Q Had that arrest warrant ever actually been given
23 to him as far as you know?

24 A As far as I know, no.

25 Q Was that arrest warrant published in the

1 newspaper, as far as you know?

2 A Not to my knowledge in southern New Jersey
3 anyway.

4 Q The arrest was effectuated at a motel or hotel
5 called the Sea Wolf, is that correct?

6 A That's correct.

7 Q It is actually like a house that has been
8 converted into a rooming house, is that correct?

9 A Correct.

10 Q No swimming pool, is that right?

11 A Correct, no swimming pool.

12 Q But there is a patio in the back?

13 A Yes.

14 Q Am I right?

15 A Yes.

16 MR. NOOTER: I would like to approach with a
17 group of photographs and ask if you can recognize them.

18 I think I may have misspoken on the last two
19 photographs and called them R-1 and R-2.

20 THE COURT: You did.

21 MR. NOOTER: They should have been Q-1 and Q-2,
22 and these are R-1 through -5.

23 THE COURT: Excuse me. You were up to R,
24 according to my tabulation. I think you already --

25 MR. NOOTER: I can renumber the photographs. It

1 doesn't matter.

2 THE COURT: Since there are more of these than
3 there were of those, we will call these R.

4 MR. NOOTER: All right.

5 Q If you would just look at those and tell me if
6 they look like fair and accurate depictions of different
7 views of the Sea Wolf.

8 A Yes, it's the Sea Wolf.

9 Q Is it fair to say the first one is a front view
10 showing more or less the whole building?

11 A Correct.

12 Q The second view is of part of the back of the
13 building, is that right?

14 A That's correct.

15 Q The third one, which is R-3, shows a view of the
16 passage between two buildings, between the Sea Wolf and the
17 adjacent building; is that correct?

18 A Yes, that would be the west side of the building.

19 Q The west side, all right.

20 R-4 shows the same view but from the other end,
21 is that right?

22 A Yes.

23 Q And R-5 shows the patio itself, is that right?

24 A That's correct.

25 MR. NOOTER: I would move those in evidence, your

1 Honor.

2 MR. KHUZAMI: No objection.

3 THE COURT: R-1 through R-5 received without
4 objection.

5 (Defendant Wahid Saleh Exhibits R-1 through R-5
6 were received in evidence.)

7 Q Before we go to the photographs again, let me ask
8 you a few questions.

9 At the time that you found Mr. Saleh at the Sea
10 Wolf, you said he was with a girlfriend or something, a
11 woman companion, and another family; is that right?

12 A I was with another male, identified later as
13 Mohammed Ashraf, a female subsequently identified as Mona
14 Awad, and there were two children, a little boy and, I
15 believe, a young girl.

16 Q Those were the people out on the patio, is that
17 correct?

18 A That's correct.

19 Q In addition to those people, there was a woman
20 upstairs at the time the arrest was made, is that right?

21 A I believe, yes.

22 Q Her name was Evelyn Cortez?

23 A Yes, and she was with an infant.

24 Q And that was the total number of people in that
25 party, so to speak, is that correct?

1 A That's right.

2 Q Did you know at that time or have you come to
3 know that Evelyn Cortez is a former wife of Mr. Saleh?

4 A I believe I learned that that evening.

5 Q But at that time she was the wife of Mohammed
6 Ashraf -- or Ashraf Mohammed, is that correct?

7 A That was my understanding, yes.

8 Q Did you come to learn that the two children who
9 were out on the patio were a boy and a girl, is that
10 correct?

11 A Yes.

12 Q The boy was about 5, 6 years old, is that right?

13 A Yes. I believe his name is Tony.

14 Q All right. And Tony is in fact Wahid Saleh's son
15 with Evelyn Cortez as the mother, is that correct?

16 A Correct.

17 Q The girl is named Becky, is that right?

18 A I don't recall the girl's name.

19 Q She was maybe 12 years old?

20 A About that.

21 Q In the course of effecting your investigation and
22 the arrest, did you discover whether Mr. Saleh had any
23 vehicle?

24 A We had no knowledge that he had a vehicle. They
25 were entitled to a parking spot at the motel and they did

1 not have a vehicle, did not use the parking spot.

2 Q So you never located a vehicle, is that correct?

3 A That's right.

4 Q Did you yourself go into the Sea Wolf Motel
5 during the investigation?

6 A Not on that date.

7 Q But you have been inside?

8 A Yes.

9 Q Is it fair to say that there are no telephones in
10 the rooms?

11 A I don't recall. Probably not, because there are
12 pay phones right outside.

13 Q And there are no televisions in those rooms?

14 A I don't recall.

15 Q It is very much a boarding-house type of place,
16 though, rather than a motel as we typically know it, is that
17 correct?

18 A Yes, yes.

19 Q You described a primary and a secondary arrest
20 team, is that correct?

21 A Right.

22 Q Those were what we call Swat teams, is that
23 right?

24 A Correct.

25 Q And when you learned that the person you were

1 looking for was there, you instructed the owners of the
2 motel to stay inside their office, is that correct?

3 A For a brief time they stayed with Agent Allison
4 until another agent was sent in, and then they were
5 subsequently asked to leave the motel as we evacuated -- I
6 believe maybe one or two other rooms needed to be evacuated.

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8 (Continued on next page)

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1 Q That as all done very quietly, is that right?

2 A Yes.

3 Q But at the point where the agents moved in to
4 make the arrest, it was a surprise arrest, is that right?

5 A That was the plan, yes.

6 Q And agents moved in from behind the motel, from
7 the parking lot of the motel behind the Sea Wolf, is that
8 correct?

9 A That is correct.

10 Q How many would you say?

11 A Approximately half the team, about five or six, I
12 would say, and the other half was in front.

13 Q Didn't you previously state that there were about
14 25 people all together in this SWAT team?

15 A Yes, the primary team is the SWAT team. There
16 are approximately a dozen members of that. The secondary
17 team consisted of other agents, non-SWAT agents.

18 Q OK. And that might be another dozen?

19 A The two groups combined made approximately 20
20 people, I would say.

21 Q OK. When the SWAT team moved in, five or six
22 came from back, others came from both sides, around from the
23 front, is that correct?

24 A As I recall, yes.

25 Q And they were armed, is that right?

1 A Yes, sir.

2 Q With assault weapons of some kind?

3 A Yes, sir.

4 Q And tear gas canisters and things?

5 A I believe they were equipped with that, yes.

6 Q And they were wearing these raid jackets, is that
7 right?

8 A Correct.

9 Q Colored black?

10 A Their SWAT uniforms are black with silver
11 lettering.

12 Q Do they wear helmets?

13 A Yes, they do.

14 Q And so at the point they moved in, you could
15 observe what was happening, is that right?

16 A Correct.

17 Q And at the point they moved in, Ashraf Mohammed
18 and Wahid Saleh were lounging on chairs on the back patio,
19 is that correct?

20 A Yes.

21 Q And the kids were standing around, running
22 around, is that right, at least one was?

23 A I know Tony was. I don't recall if the girl was
24 there at that time.

25 Q And to your observation they had just finished

1 having a barbecue dinner, is that correct?

2 A Correct.

3 Q And when these people all moved in at once,
4 Mr. Saleh jumped up and grabbed his son, Tony, is that
5 right?

6 A That's correct.

7 Q And he went down the narrow passage on the west
8 side of the building, is that right?

9 A That's correct.

10 Q Which is somewhat obstructed and cluttered, is
11 that correct?

12 A Yes. It's very narrow, and there's some laundry
13 there, and I believe showers as well.

14 Q And that's what's shown in the Exhibits R3 and
15 R4, is that correct?

16 A Yes.

17 MR. NOOTER: At this time could I pass the
18 exhibits while I continue my examination?

19 THE COURT: Yes, you may.

20 (Exhibits published to jury)

21 Q And as he ran down the side, agents tackled him
22 and brought him down, is that right?

23 A The tackling took place across the street. He
24 successfully got to the front of the house, managed to cross
25 the street, and was starting to run in the vacant field

1 across the street from the motel.

2 Q The agents who tackled him were also SWAT agents,
3 or some of the other people?

4 A The SWAT agents.

5 Q Who were all armed, is that right?

6 A That's correct.

7 Q And while this was happening, Mr. Ashraf Mohammed
8 was being placed under arrest, is that right?

9 A Correct.

10 Q And, indeed, he had an asthma attack at that
11 point, did he not?

12 A Yes, I remember he asked for his medicine, yes.

13 Q And the little girl, Becky, was knocked to the
14 ground in the process, do you recall that?

15 A I don't recall seeing Becky there. She could
16 have been there. I don't recall. My focus of attention
17 wasn't on her.

18 Q Do you recall that an ambulance was eventually
19 called so the kids could be checked out?

20 A Yes, in fact, I was the one who asked for the
21 ambulance to be brought.

22 Q And Evelyn Cortez was up in the room upstairs, is
23 that right?

24 A Correct.

25 Q There's a kind of a balcony in front of that room

1 which is shown in one of the exhibits, is that correct?

2 A Correct.

3 Q And agents went up and pulled her out of the
4 shower, isn't that correct?

5 A Agents went upstairs. The agents that were on
6 the east side of the building were unaware that Mr. Saleh
7 had run along the west side of the building, and there was
8 confusion that there was only one subject in custody. They
9 did not know where Mr. Saleh was.

10 So before they found out that he ran along the
11 west side of the building, was apprehended across the
12 street, those agents were making entrance to the upstairs
13 apartment.

14 Q OK. They raced up the stairs, went into the
15 apartment, found Evelyn in the shower and pulled her out, is
16 that correct?

17 A I wasn't there. That's what I've heard, but,
18 again, my focus of attention was outside with Mr. Ashraf
19 Mohammed.

20 Q Now, when my client was tackled and brought down,
21 was he carrying any kind of weapon?

22 A I don't believe he was.

23 Q Were there any weapons out there on the patio?

24 A No, sir.

25 MR. NOOTER: No further questions.

1 THE COURT: Any redirect?

2 MR. KHUZAMI: No, your Honor.

3 THE COURT: You are excused. Thank you.

4 THE WITNESS: Thank you, your Honor.

5 (Witness excused)

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

8 (At the side bar)

9 THE COURT: How long is your next witness?

10 MR. KHUZAMI: Your Honor, it is Detective
11 Corrigan. It's about five questions. We could put him on
12 and then we will be finished with this segment of proof.

13 THE COURT: But it's Corrigan, not somebody else?

14 MR. KHUZAMI: That's right.

15 THE COURT: All right. We will take a break.

16 MR. STAVIS: When was your Honor going to give
17 the instruction regarding the Wahid Saleh consciousness of
18 guilt?

19 THE COURT: After the Saleh evidence is finished,
20 which would be after Corrigan?

21 MR. KHUZAMI: Yes.

22 THE COURT: Thank you.

23 (Continued on next page)

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1 (In open court)

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

6 (Recess)

7 MR. KHUZAMI: Your Honor, the government calls
8 Detective Corrigan to the stand.

9 THOMAS F. CORRIGAN,
10 called as a witness by the Government,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. KHUZAMI:

14 Q Detective Corrigan, were you recently requested
15 to investigate a certain address?

16 A Yes, sir, I was.

17 MR. KHUZAMI: Your Honor, may I approach?

18 THE COURT: Yes.

19 Q Let me show you what's been received into
20 evidence as Government Exhibit 180A, and ask you to take a
21 look at that address.

22 A Yes, sir.

23 Q Is that the address you were asked to
24 investigate?

25 A Yes, sir, I was.

1 Q What is the address?

2 A 107-11 84th Street, Ozone Park, New York, ZIP
3 code 11417.

4 Q What did you do to investigate that address?

5 A I drove to an area where this address should have
6 been.

7 Q Where was that?

8 A It was on 84th street between Liberty Avenue and
9 Pitcairn Avenue in Ozone Park.

10 Q Did you, in fact, find an address corresponding
11 to the address you just read?

12 A No, sir, I did not.

13 Q What was the street address or the number
14 immediately preceding 107-11 84th Street?

15 A On 84th Street, the houses that faced 84th Street
16 ran to the number, up to the number 105-35 84th Street.
17 There was then approximately five or six blocks where the
18 houses, the side of the houses faced 84th Street, and there
19 was no numbers on the sides of the houses. The numbers then
20 picked up on south of Pitcairn Avenue. I believe the
21 address was 132-10 84th Street in Ozone Park.

22 Q Did you find any address corresponding to 107-11
23 84th Street?

24 A Not in Ozone Park, sir.

25 MR. KHUZAMI: No further questions.

1 THE COURT: Mr. Nooter?

2 CROSS-EXAMINATION

3 BY MR. NOOTER:

4 Q Detective, were you asked or did you ever go
5 check the true address of Mona Awad?

6 A I was never asked, and I never went there, sir.

7 Q And how long have you been assigned to work on
8 this case now?

9 A Ever since October of 1992.

10 Q When did you make this investigation you've just
11 testified about?

12 A Yesterday evening.

13 MR. NOOTER: Thank you.

14 THE COURT: Anything else?

15 MR. KHUZAMI: No, your Honor.

16 THE COURT: Thank you. You're excused.

17 (Witness excused)

18 THE COURT: Ladies and gentlemen, I will tell you
19 that the testimony of the last six witnesses that you heard,
20 that is, the witnesses that you heard this afternoon, all
21 relates entirely to Mr. Wahid Saleh and may be considered
22 only with respect to him and not with respect to any other
23 defendant.

24 MR. KHUZAMI: Your Honor, the government calls

25 Kimberly Pritula, P-R-I-T-U-L-A, as its next witness.

1 KIMBERLY PRITULA,
2 called as a witness by the Government,
3 having been duly sworn, testified as follows:

4 THE COURT: Go ahead.

5 MR. KHUZAMI: Thank you.

6 Q Ms. Pritula, how are you employed?

7 A I am employed as custodian of the records of
8 Sturm Ruger & Co.

9 Q What business is Sturm Ruger in?

10 A Sturm Ruger is a firearms manufacturer.

11 Q If you could pull your chair a little closer or
12 pull the microphone a little closer so everyone can hear
13 you. Thank you.

14 How long have you been with Sturm Ruger?

15 A 14 years.

16 Q What are your duties and responsibilities as
17 custodian of the records?

18 A Just maintenance of the records and upkeep of the
19 records.

20 Q Do you know how long Sturm Ruger has been in
21 business?

22 A Since 1949.

23 MR. KHUZAMI: Your Honor, may I approach?

24 MR. STAVIS: I have an objection, your Honor.

25 May I be heard at the side bar?

1 THE COURT: Yes.

2 (At the side bar)

3 THE COURT: What is the objection?

4 MR. STAVIS: I understand that the weapon has
5 been introduced into evidence, but this woman who is an
6 employee of Sturm Ruger and is in charge of custody of the
7 records was about to be shown a copy of the weapon, and I
8 believe that there's no legitimate reason for her being
9 shown a copy. The actual weapon --

10 MR. KHUZAMI: How about identifying that Sturm
11 Ruger manufactures it?

12 MR. STAVIS: As I understand it, she was called
13 for the limited purpose of establishing the interstate
14 commerce element of Count 14.

15 THE COURT: Which probably should have been
16 stipulated to. But since it wasn't, there was a, what do
17 you call it, a serial number, was there not, that identified
18 it as a Sturm Ruger weapon?

19 MR. KHUZAMI: There was testimony about trying to
20 raise the serial number, but no definitive testimony about
21 what the actual number was.

22 MR. PATEL: I think there were innumerable
23 witnesses who identified the weapon as a Ruger, your Honor.

24 MR. KHUZAMI: If you want to stipulate that
25 Government Exhibit 11 was manufactured by Sturm Ruger --

1 THE COURT: There is no proof that --

2 MR. STAVIS: Hasn't that been proven?

3 MR. PATEL: I think that's been proven beyond a
4 shadow of a doubt.

5 THE COURT: There is no dispute. It is
6 undisputed.

7 MR. STAVIS: It is undisputed.

8 MR. KHUZAMI: OK.

9 THE COURT: I assume Sturm Ruger has only one
10 manufacturing location, if she could testify to that.

11 MR. KHUZAMI: They have a couple, but none in New
12 York.

13 THE COURT: Fine. If you could establish that.
14 (Continued on next page)

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1 (In open court)

2 Q Ms. Pritula, are you familiar with where Sturm
3 Ruger has manufacturing plants?

4 A Yes.

5 Q OK. And currently where do they have
6 manufacturing plants?

7 A Currently Sturm Ruger has manufacturing
8 facilities in Arizona and New Hampshire.

9 Q OK. Do they have any in New York State?

10 A No.

11 Q To your knowledge, in the history of the company
12 since 1949, has Sturm Ruger ever manufactured firearms in
13 New York State?

14 A No.

15 Q Have they had any other manufacturing facilities
16 since 1949 other than the ones you just mentioned?

17 A Yes. In Southport, Connecticut there was a
18 manufacturing facility until 1991.

19 MR. KHUZAMI: No further questions.

20 THE COURT: Any cross?

21 CROSS-EXAMINATION

22 BY MR. STAVIS:

23 Q Good afternoon, Ms. Pritula.

24 A Hello.

25 Q Now, prior to 1991 Sturm Ruger had three

1 manufacturing facilities, is that correct?

2 A That's correct.

3 Q One would be in Arizona?

4 A Yes.

5 Q Correct?

6 A Yes.

7 Q One would be in New Hampshire, correct?

8 A Yes.

9 Q One would be in Connecticut, correct?

10 A Yes.

11 Q Now, prior to 1991, when Sturm Ruger had the
12 manufacturing facility in Connecticut, did the company ship
13 firearms to various locations inside Connecticut?

14 A Yes.

15 Q In other words, Sturm Ruger sent and shipped
16 weapons to sporting goods stores in Connecticut, correct?

17 A We ship only to distributors, so we would ship to
18 distributors in any state, including Connecticut.

19 Q How many distributors did you have inside the
20 state of Connecticut?

21 A I don't know exactly. There were at least two
22 that I knew of. There may have been more in the past.
23 There might not be that many now.

24 Q Are you able to tell us how many of Sturm Ruger's
25 firearms were shipped to those two distributors in

1 Connecticut per year?

2 A No, I couldn't tell you that off the top of my
3 head.

4 Q Can you give us an approximation?

5 A No. I don't have that information available to
6 me. It's something that could be researched and we could
7 come up with, but it's not something we normally keep track
8 of.

9 Q Would it be fair to say, Ms. Pritula, that it is
10 a fair amount of firearms that are shipped from, or prior to
11 1991 that were shipped to those distributors in Connecticut?

12 THE COURT: What do you mean "fair amount?"

13 MR. STAVIS: If the witness can answer the
14 question.

15 THE COURT: I don't care whether the witness can
16 answer the question or not. It is completely incompetent.
17 Ask another question.

18 Q Did Sturm Ruger ship more than --

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: What is the relevance of this?

3 MR. STAVIS: It defeats the interstate commerce
4 element.

5 THE COURT: That is absurd.

6 MR. STAVIS: I don't believe so, your Honor.

7 THE COURT: I do, and I will tell you that it is
8 absurd. If he bought it in Connecticut and carried it
9 across state lines to New York, that's interstate commerce.

10 MR. STAVIS: As I understand the law, your Honor,
11 the movement in interstate commerce must precede the
12 defendant's possession of the weapon.

13 MR. KHUZAMI: Quite honestly, your Honor, I don't
14 know the answer to that. I don't know if that is an
15 accurate statement of the law or not.

16 MR. STAVIS: It happens to be in the government's
17 request to charge on Count 14.

18 THE COURT: Fine.

19 (Continued on next page)

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1 (In open court)

2 BY MR. STAVIS:

3 Q Ms. Pritula, would you say that there were
4 hundreds of firearms shipped from the Sturm Ruger facility
5 in Connecticut to those two distributors in Connecticut
6 prior to 1991?

7 A There could have been, yes.

8 Q Now, is it fair to say, Ms. Pritula, that without
9 a serial number it is not possible for you to tell if a gun
10 was shipped to Connecticut or to another state?

11 A Without a serial number, it's not possible to
12 tell where it's gone anywhere.

13 MR. STAVIS: Thank you, I have no further
14 questions, your Honor.

15 MR. KHUZAMI: No redirect.

16 THE COURT: You're excused. Thank you.

17 (Witness excused)

18 MR. McCARTHY: Your Honor, the government calls
19 Sue Ellen Capozzi. I believe it's C-A-P-O-Z-Z-I.

20 SUE CAPOZZI,

21 called as a witness by the Government,

22 having been duly sworn, testified as follows:

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

24 THE COURT: Go ahead.

25 DIRECT EXAMINATION

1 BY MR. McCARTHY:

2 Q Good afternoon.

3 A Good afternoon.

4 Q Would you tell us how you are employed.

5 A I am a special agent with the FBI.

6 Q How long have you been an FBI agent?

7 A Three and a half years.

8 Q What is your current assignment? That is, what
9 office are you assigned to?

10 A New York office.

11 Q Do you have any particular assignment that has to
12 do with searches and seizures of evidence at the FBI?

13 A Yes. I'm an evidence response team leader.

14 (Continued on next page)

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1 Q Can you explain briefly to the ladies and
2 gentlemen of the jury what the evidence and response team
3 is.

4 A The evidence response team is a group of FBI
5 agents that have been trained especially for conducting
6 searches in our office.

7 Q Directing your attention to the early morning
8 hours of June 24, 1993, did you have a particular assignment
9 that day?

10 A Yes.

11 Q Do you recall what that was?

12 A It was to conduct a search in Queens.

13 Q Do you recall where in Queens Agent Capozzi?

14 A It was 139-01 90th Avenue in Queens.

15 (Continued on next page)

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1 Q Give us some idea of what was located there.

2 A What was located?

3 Q Yes. What kind of premises did you go to?

4 A It was a warehouse.

5 Q Were you alone or with other agents?

6 A I was with other agents.

7 Q Had subjects of the investigation been removed by
8 the time you began your work there?

9 A Yes.

10 Q Did you have the assistance of any bomb
11 technicians?

12 A Yes.

13 Q Those were FBI bomb technicians?

14 A Yes.

15 Q Did you seize some items that evening?

16 A Yes, I did.

17 Q I have placed before you some photographs which
18 are marked for identification Government's Exhibits 385A
19 through 685F.

20 A Yes.

21 Q Agent Capozzi, do you recognize the scene
22 depicted in those photographs?

23 A Yes, I do.

24 Q Does it reflect scenes inside the warehouse that
25 you saw that evening?

1 MR. BERNSTEIN: Your Honor, may I?

2 THE COURT: Mr. Bernstein.

3 VOIR-DIRE EXAMINATION

4 BY MR. BERNSTEIN:

5 Q Agent Capozzi, what time did you enter the
6 garage, or warehouse as you called it?

7 A It was approximately 2 a.m.

8 Q 2 a.m. Do you know what time other agents
9 entered prior to --

10 MR. McCARTHY: Objection, scope.

11 THE COURT: Sustained.

12 Q As you look at those photographs do you know
13 whether or not the photos 685A through F reflect where those
14 items were in the building prior to your entry?

15 A I don't know where they were located prior to my
16 entry, no.

17 Q Do you know what time other agents first went
18 into the building?

19 A I do not know.

20 Q Do you have any approximation of what time they
21 entered into the building?

22 A I have no idea.

23 Q Is it fair to say that prior to your entry,
24 agents were, to your knowledge, in the building?

25 A Yes.

1 Q Do you know what they did in terms of moving
2 things in the building prior to your entry?

3 A I have no idea.

4 MR. BERNSTEIN: Your Honor, I have an objection
5 to the admission of the photos.

6 THE COURT: May I see the photographs.

7 The objection is overruled. 685A through F are
8 received.

9 (Government's Exhibits 685A through F received in
10 evidence)

11 MR. McCARTHY: Your Honor, I believe these are in
12 the jurors' books and I would ask that they be permitted to
13 turn to them. 685A through F.

14 THE COURT: It is in a book marked 500 through
15 699.

16 (Pause)

17 BY MR. McCARTHY:

18 Q Agent Capozzi, directing your attention first to
19 Government's Exhibit 685A, can you briefly describe for us
20 what is depicted in that photograph?

21 A It is barrels that we found at the search site,
22 large barrels.

23 Q Do you recall how many of them there were?

24 A There were five.

25 Q And those are the barrels that are depicted in

1 all these photographs?

2 A Yes, they are.

3 Q From different angles?

4 A Yes.

5 Q Directing your attention to 685B, do you see
6 there is a plastic container in the foreground on the left
7 with a long pole coming out of it?

8 A Yes.

9 Q And a bag of fertilizer in the front of the
10 picture?

11 A Yes.

12 Q And a funnel coming out of one of the cans or
13 barrels?

14 A Yes.

15 Q Did you seize those items that evening as well,
16 that is, the other items I have directed your attention to
17 besides the drums?

18 A Yes.

19 Q Were the drums seized by your team, that is, your
20 group of agents?

21 A No, they were not.

22 Q Who seized the drums?

23 A The bomb technicians.

24 Q Am I correct that 685C, D and E are photographs
25 of one or all of the barrels from the top?

1 A Yes. It's the top of the barrels.

2 Q And directing your attention to 685F, does that
3 depict the barrels as you saw them that evening?

4 A Yes.

5 Q Try, if you can, to speak into the microphone and
6 I will try to speak into this one.

7 Let me show you a number of items. I am placing
8 before you a box containing a group of bags which are marked
9 679A through 679H. Have you reviewed those items at my
10 request prior to testifying?

11 A Yes.

12 Q Do you recognize them?

13 A Yes.

14 Q What do you recognize them to be?

15 A They are fertilizer bags seized at the search
16 site.

17 MR. McCARTHY: Your Honor, the government offers
18 679A through H.

19 THE COURT: Those are received without objection.
20 (Government's Exhibits 679A through H received in
21 evidence)

22 MR. McCARTHY: Your Honor, may I just take one
23 out of the bag to display to the jury?

24 THE COURT: Yes.

25 MR. McCARTHY: I have taken out of the bag 679A.

1 The back of the bag says "35 nitrogen, 3 phosphorus, 5
2 potassium," in addition to other writing.

3 Q Directing your attention next to 685B for
4 identification, do you recognize that item?

5 A Yes.

6 Q What do you recognize it to be?

7 A It was a funnel at the site of the search.

8 MS. LONDON: I am sorry, we can't hear that.

9 (Record read)

10 Q Next, 684A for identification.

11 A Yes.

12 Q What do you recognize that to be?

13 A It was wires coming out of the top of one of the
14 black barrels.

15 MR. McCARTHY: Your Honor, the government offers
16 680B and 684A.

17 THE COURT: Those are received without objection.
18 Go ahead.

19 (Government's Exhibits 680B and 684A received in
20 evidence)

21 Q Agent Capozzi, I next show you 680C for
22 identification and 682A for identification. Do you
23 recognize those items?

24 A Yes.

25 Q Can you tell us, beginning with 680C, which is in

1 my right hand, what you recognize them to be?

2 A It was a funnel we found at the scene.

3 MS. LONDON: I am sorry.

4 A A funnel that we saw at the scene.

5 Q And 682A?

6 A It was a piece of metal that was at the search
7 site also.

8 (Continued on next page)

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1 MR. McCARTHY: Your Honor, the government offers
2 680C and 682A.

3 THE COURT: Those are received without objection.

4 MR. PATEL: Your Honor, could I see 682A?

5 401 objection, your Honor.

6 THE COURT: Do you want to be heard at the side?

7 MR. PATEL: Yes.

8 THE COURT: Come on up.

9 (At the side bar)

10 THE COURT: What is the theory?

11 MR. McCARTHY: It is twofold. Number one, I
12 think that these items were used to stir fertilizer and fuel
13 oil.

14 THE COURT: Are they depicted in the tape as
15 being so used?

16 MR. McCARTHY: Yes, your Honor, but the other
17 thing is that I think the cross you are going to get is,
18 anything I don't put in since I have been asked to bring
19 everything down, is going to be subject to examination
20 because I didn't put it in. So I am being overinclusive.

21 MR. SERRA: Your Honor, I think at least for this
22 examiner, Mr. McCarthy's fears are not grounded.

23 THE COURT: Speaking of "not grounded," we are
24 going to talk about the interstate commerce again. But if
25 that is depicted in the tape as being used to stir --

1 MR. McCARTHY: I am sorry I have taken up the
2 time with it. It is not that important.

3 THE COURT: Is it depicted on the tape?

4 MR. McCARTHY: Yes, but it is on the tape and I
5 guess for that reason it isn't that important to begin with.

6 MR. PATEL: I am sorry. I was just doing what I
7 do.

8 THE COURT: Are you offering it or not offering
9 it?

10 MR. McCARTHY: At this point I would rather have
11 it in.

12 THE COURT: Fine.

13 (In open court)

14 THE COURT: 680C is received without objection
15 and 682A is received over objection.

16 (Government's Exhibits 680C and 682A received in
17 evidence)

18 (Continued on next page)

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1 BY MR. McCARTHY:

2 Q Agent Capozzi, I am next showing you 678A and
3 678B for identification. Do you recognize those items?

4 A Yes.

5 Q What do you recognize them to be?

6 A They are electrical devices that appear to be
7 timers.

8 Q Were they seized that evening in the warehouse?

9 A Yes, they were.

10 MR. McCARTHY: Your Honor, the government offers
11 678A and B.

12 THE COURT: Those are received without objection.
13 (Government's Exhibits 678A and 678B received in
14 evidence)

15 Q I am also showing you 683 for identification. Do
16 you recognize that item?

17 A Yes.

18 Q What do you recognize that to be?

19 A It is a coil of green fuse.

20 Q Did you seize that that evening?

21 A Yes.

22 MR. McCARTHY: The government offers 683.

23 THE COURT: That is received without objection.
24 (Government's Exhibit 683 received in evidence)

25 Q Showing you 682C for identification, do you

1 recognize that item?

2 A Yes.

3 Q What do you recognize it to be?

4 A It was a metal stick.

5 Q Directing your attention briefly to the
6 photograph 685A, do you see the same metal stick depicted in
7 that photograph?

8 A Yes, I do.

9 Q Did you recover this from what you have called
10 the warehouse?

11 A Yes.

12 MR. McCARTHY: Your Honor, the government offers
13 682C.

14 THE COURT: 682C is received without objection.
15 (Government's Exhibit 682C received in evidence)

16 Q I am placing before you Government's Exhibits 675
17 and 675A, B and C for identification. Do you recognize this
18 item?

19 A Yes.

20 Q What do you recognize it to be?

21 A It was a gun that we found at the search site.

22 MR. McCARTHY: Your Honor, this has previously
23 been offered subject to connection. The government now
24 offers it for all purposes.

25 THE COURT: 675 through 675C are received.

1 (Government's Exhibits 675 and 675A through 675C
2 received in evidence)

3 Q Agent Capozzi, aside from the items that I have
4 shown you, did you seize a a number of other items from the
5 safe house that evening?

6 A Yes, we did.

7 Q Can you give us a general description, as you
8 recall it, of some of the other items you seized?

9 A We seized glasses, we seized videotapes, we
10 seized other tools, other wires.

11 Q Did you seize a monitor and a VCR machine as
12 well?

13 A Yes, we did.

14 (Continued on next page)

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1 MR. McCARTHY: Your Honor, I have no further
2 questions of Agent Capozzi at this time.

3 THE COURT: Ladies and gentlemen, instead of
4 starting cross now, we are going to break for the day. I
5 just have one other bit of housekeeping to clean up, which I
6 keep forgetting to clean up, and I am going to clean it up
7 now.

8 On April 17, a witness named -- first name John?

9 MR. FITZGERALD: Steven.

10 THE COURT: -- Steven Bermeister testified. He
11 testified on two different days, but he testified on April
12 17. His testimony on April 17 may not be considered in
13 connection with this case, so what I am going to ask you to
14 do is, if you have notes by date, go back to April 17 and
15 simply put a line through your notes relating to that
16 witness' testimony because it may not be considered. He
17 testified on another date as well. That testimony is in.
18 But the April 17 testimony is out.

19 In addition, the exhibits that were associated
20 with that testimony, which are Exhibits 74A, B and C, and
21 74F1 through 74F3 -- I will say that again. 74A, 74B, 74C
22 and 74F1, 74F2 and 74F3 are out. Those are exhibits that
23 relate to the search of Mr. Nosair's locker, or some of the
24 exhibits. The witness' testimony with regard to those as
25 well as the exhibits themselves may not be considered in

1 connection with this case.

2 With that, we will break for the day. Please
3 leave your notes and other materials behind. Please don't
4 discuss the case, and we will resume tomorrow at 9:30.

5 MS. AMSTERDAM: Thursday.

6 THE COURT: I am sorry, we will not resume
7 tomorrow, we will resume Thursday at 9:30. Tomorrow we are
8 not sitting. Have a pleasant day.

9 (Jury excused)

10 THE COURT: You can step down.

11 (Witness excused)

12 THE COURT: Just with regard to the interstate
13 commerce question, so I don't forget, I don't have the
14 government's requests here so I don't know whether --

15 MS. LONDON: Your Honor, it is difficult to hear
16 you.

17 THE COURT: I am sorry. Am I too close or too
18 far?

19 MS. LONDON: Not loud enough.

20 THE COURT: Not loud enough?

21 A question was raised at side bar about whether
22 it must be shown that a weapon was shipped in interstate
23 commerce before a defendant obtained it in order to fulfill
24 the requirements of the statute, and it was represented to
25 me that that requirement was in the government's requests to

1 charge, which may be. I don't have them in front of me.
2 But what the statute says is that whoever receives,
3 transports, etc., a weapon in interstate commerce in
4 connection with a crime of violence, which is what is
5 charged here, is guilty of a crime.

6 The only way that the interstate commerce
7 requirement is not fulfilled is if a defendant receives the
8 weapon in the state of its manufacture and commits the crime
9 in the state of manufacture. Otherwise, either the
10 defendant or somebody else has transported it in interstate
11 commerce. So I don't want any misimpression about that.
12 That is my view, and unless there is case law to the
13 contrary -- and I don't think there is -- the statute is
14 pretty clear.

15 What issue do we have to deal with at this point?
16 Mr. Jacobs.

17 MR. JACOBS: I think Mr. Fitzgerald and I have
18 discussed this and I think we need a sealed proceeding on
19 this, your Honor, pursuant to your Honor's disclosure order.
20 We are prepared to deal with it, understanding that it is a
21 sealed proceeding, understanding we are doing it at the
22 government's request. We have no objection to a sealed
23 proceeding.

24 MR. FITZGERALD: Your Honor, if we are going to
25 discuss the issue, the government would like the proceeding

1 sealed.

2 THE COURT: On what basis?

3 MR. FITZGERALD: On the basis that the contents
4 of some of the materials shown to defense counsel is very
5 sensitive.

6 THE COURT: That is not a basis for
7 sealing a proceeding.

8 MR. FITZGERALD: And that public disclosure of
9 those documents could result in harm to individuals.

10 THE COURT: Which individuals? Generic
11 description.

12 Let me ask you this: They inspected the Ramzi
13 Yousef material, correct?

14 MR. FITZGERALD: Yes.

15 THE COURT: Did they inspect anything else?

16 MR. FITZGERALD: No, Judge. Six documents
17 pertaining simply to Ramzi Yousef.

18 MR. JACOBS: Your Honor, there are substantive
19 arguments that have to be discussed. In light of the fact
20 that Mr. Yousef has a pending case for trial, I don't
21 believe that those matters should be public at this point
22 without his counsel having an opportunity to be heard. We
23 have no problem to its being sealed but since we need to
24 discuss the matters on the merits, I don't believe that the
25 statements should be public without counsel. I know Judge

1 Duffy has a sealed order, I believe, on these statements.

2 THE COURT: He does?

3 MR. JACOBS: As I say, I would not want to make
4 them public without Mr. Kulcsar -- I don't know. But we do
5 need to discuss the merits of what was said and not said and
6 I don't want that to prejudice Mr. Yousef in his case.

7 MR. FITZGERALD: Your Honor, there were other
8 items shown to defense counsel which relate to a person who
9 works in the FBI lab and it was a separate issue. I can put
10 on the record and send your Honor a sealed letter indicating
11 precisely what items were shown to defense counsel. With
12 regard to members of the conspiracy, there were six items
13 pertaining to Ramzi Yousef shown to defense counsel, and no
14 one else.

15 MR. LAVINE: We would like to proceed with an
16 overabundance of caution but I seem to recall that the court
17 order under which we were permitted to view these things
18 required that the sort of discussion we had in mind was
19 covered.

20 THE COURT: That is right, it did, but what I did
21 was to restrict the circulation of documents that were
22 produced to you. That is one thing, but when I am doing the
23 court's business, that is something else.

24 MR. LAVINE: Judge, we are not trying to freeze
25 the world out of the picture. We are just trying to act out

1 what we perceive to be our marching orders.

2 MR. JACOBS: The government asked us to look at
3 this under seal. We agreed. We are ready to proceed openly
4 if your Honor wants. The government asked us not to do it
5 publicly.

6 MR. STAVIS: The order covered dissemination. To
7 the extent this involves dissemination of the materials we
8 reviewed, in an abundance of caution we had asked your Honor
9 to seal the proceeding.

10 MR. FITZGERALD: If I could hand your Honor a
11 document and direct your Honor's attention to the third
12 paragraph of the document, that is where my concern arises.
13 That fact is not public.

14 THE COURT: Does that facts have to be alluded
15 to?

16 MR. FITZGERALD: No, your Honor, as long as
17 everyone understands that.

18 THE COURT: Why don't you show it to your
19 colleagues.

20 MR. SERRA: Your Honor, perhaps the court is not
21 aware of the circumstances under which we reviewed this
22 stuff. We took no substantial verbatim notes. We have no
23 copies of the materials and we are not aware of what Mr.
24 Fitzgerald just showed the court.

25 THE COURT: Perhaps you are not aware of what I

1 was about to do, which was to ask Mr. Fitzgerald to show
2 this particular paragraph to each of defense counsel and
3 determine whether any of them perceives the need to refer to
4 that specific fact.

5 (Pause)

6 MR. McCARTHY: Your Honor, I think we can
7 proceed, with the understanding arrived at, publicly.

8 THE COURT: Good, because I don't want to sound
9 self-serving, but frankly it goes against me to close a
10 courtroom. It is one thing to have proceedings that are
11 entirely sealed, but when we are out in open court with
12 everybody present, doing business in open court, to start
13 closing it engages concerns that aren't represented by any
14 of the lawyers here.

15 THE COURT: Go ahead.

16 MR. JACOBS: Your Honor, the background to last
17 night's disclosure began in the pretrial proceedings in this
18 case. They began with the motions --

19 THE COURT: Don't start with Genesis, please.

20 MR. JACOBS: It is important briefly so we are
21 clear --

22 THE COURT: I know something about the
23 background. I have seen the six documents that you have
24 seen. I saw them in March.

25 MR. LAVINE: Excuse me, your Honor. Could I have

1 a moment with Mr. Jacobs.

2 MR. JACOBS: OK. The point is that we have been
3 seeking disclosure of Yousef material, whether it be
4 statements or documents, from the beginning of this trial,
5 from the opening statements --

6 THE COURT: Mr. Jacobs, look. I keep telling you
7 not to do it, and you are doing it. If you have an argument
8 for me, make it. If you have an argument for the gallery,
9 please take your seat.

10 MR. JACOBS: Your Honor, when I make a mistrial
11 motion or a motion to dismiss the indictment, I would like
12 the record to indicate what is the basis of it. I don't
13 want the Second Circuit to think this is coming off the top
14 of my head this afternoon after looking at some documents
15 last night. We sought the disclosure of Yousef's statements
16 from February 13 on. We alerted the government and your
17 Honor that we considered statements that he made, may have
18 made, may have been Brady material and we alerted the
19 government and your Honor as to why they might be Brady
20 material, to your Honor on February 13, right after his
21 arrest. We also argued a theory of admissibility.

22 THE COURT: The theory of admissibility was what?

23 MR. JACOBS: The theory of admissibility that we
24 decided at that time was 804(b)(3) as the basis for any
25 statements that he made. Knowing that your Honor hadn't

1 ruled, we decided a particular theory at that point. We
2 continued the correspondence with the government and your
3 Honor. We also included a 17(c) subpoena, which I will get
4 to a bit later. What becomes apparent to the lawyers who
5 reviewed the documents last night, of the 20 or 30 pages of
6 statements that Yousef made to law enforcement, is simply as
7 follows: That the theory that the defense put forward in
8 their opening statement and the theory that we have
9 attempted to argue to this jury that the World Trade Center
10 has nothing to do with the defendants in this case, we think
11 is completely borne out by the 20 or 30 pages that we
12 reviewed. We think that there has been a massive Brady
13 violation in this case. That Brady violation continues at
14 the present time because the government is still withholding
15 parts of the statement that Mr. Serra will address in a few
16 minutes.

17 We could not believe that Yousef had made what we
18 considered to be a full confession to the government with
19 respect to his participation in the World Trade Center, not
20 only a full confession of his own involvement but anyone
21 else that had anything to do with the World Trade Center
22 case. We consider that his statement totally and completely
23 exculpates the defendants in this case and should have been
24 turned over at the time that the government had them. It
25 was in particular -- I don't understand --

1 THE COURT: Mr. Jacobs, you better tune it down,
2 because your presentation is at war with the truth. So I
3 would suggest you tune it down. But go ahead.

4 MR. JACOBS: Your Honor has your Honor's view.

5 THE COURT: I have seen the documents. You are
6 not talking to somebody who hasn't seen the documents.

7 MR. JACOBS: Your Honor, when Mr. Yousef makes a
8 statement that no particular group controls him and we don't
9 get to see that statement and the government charges a
10 single conspiracy in this case, I don't understand how that
11 isn't a Brady statement under any stretch of the
12 imagination.

13 THE COURT: My imagination is not as elastic as
14 yours. Go ahead.

15 MR. JACOBS: Pardon me. We understand the
16 government's theory in this case that there is a single
17 theory. Mr. Yousef doesn't suggest that at all, and what we
18 would like to do with respect to the actuals and specifics
19 of it is, Mr. Stavis, Mr. Serra and Miss Stewart want to
20 address the specific points. But as far as I am concerned,
21 I would like to at the conclusion discuss the 17(c) subpoena
22 that is outstanding for material that the FBI has from
23 Yousef. The record should be clear that as of last night
24 not one single solitary document seized from Yousef has been
25 shown to us despite the fact that his counsel Mr. Kulcsar is

1 sitting with the disk next door to my office and the
2 government cites privilege which we think has been totally
3 waived by giving Mr. Kulcsar the documents.

4 We believe that the government is sitting on
5 documents that will completely exculpate the defendants in
6 this case. You want to call it rhetoric, your Honor, let
7 the jury later the statement. If there is any question
8 whether it helps us or not, I say let the jury hear the
9 statement and let the jury hear the statement.

10 THE COURT: The jury may hear Mr. Yousef.
11 Whether they hear him or not is another matter. That
12 depends, I suppose, on whether or not somebody calls him.
13 You are telling me you want his statements to walk in on
14 their own?

15 MR. JACOBS: Under 804(b)(3).

16 THE COURT: Now I understand your theory.

17 MR. JACOBS: In addition, his statements
18 concerning the Fifth Battalion, that it is a real
19 organization and who the members are, that it is not anybody
20 in this case, we consider to be Brady, we consider the
21 government's failure to turn it over to be grounds for a
22 mistrial and dismissal of the indictment.

23 I think separate counsel want to address specific
24 points, and at the conclusion I want to address Brady
25 documents and continuing documents we haven't gotten yet.

1 THE COURT: Mr. Stavis?

2 MR. STAVIS: Yes. Thank you, your Honor. Your
3 Honor will recall that at the time the World Trade Center
4 mini-trial had commenced in this trial, I had objected to
5 the case being retried and I objected under Rule 403 at that
6 time. I objected to the specific World Trade Center
7 evidence coming in at this trial. Your Honor, my theory at
8 that time in objecting under Rule 403 was that this had all
9 been proven before at the prior trial, all the
10 circumstantial strands had been sewn together and the
11 connection to the defendants was a tenuous one.

12 The government in this case, in the indictment on
13 pages 13 and 14 -- that's the portion of the indictment that
14 deals with -- the subtitle is "The World Trade Center
15 bombing" -- starts out with visits to El Sayyid Nosair by
16 Ibrahim El-Gabrowni, and II and TT of the overt acts on page
17 14 are a visit by Mohammad Salameh to El Sayyid Nosair on
18 February 13, 1993, and then there is an earlier HH overt
19 act, which is a visit by Mahmoud Abouhalima to El Sayyid
20 Nosair on February 7. Then the World Trade Center bombing
21 is overt act LL on February 26.

22 The government had argued in its opening
23 statement that Mr. Nosair was connected to the World Trade
24 Center bombing, and they argued on page 1593, Mr. Khuzami
25 did, of his opening, that Mohammad Salameh's visit to El

1 Sayyid Nosair just days before the bombing was important
2 evidence implicating Mr. Nosair in the World Trade Center
3 bombing.

4 The documents that I reviewed yesterday, I
5 believe, seriously undermine that tenuous connection, and I
6 had argued at the time, which was, I believe, in the month
7 of April at this trial, that there was a tenuous connection
8 between the World Trade Center bombing or the World Trade
9 Center evidence and the evidence at this trial, and I
10 believe that what I saw yesterday, including Mr. Yousef's
11 statement that he and Mohammad Salameh kept the time and
12 target of the explosion a secret in order to avoid any
13 leaks, I think that that --

14 THE COURT: Do you have an 804(b)(3) basis as
15 well? Is that the basis for the admissibility of the
16 statements?

17 MR. STAVIS: Of the Ramzi Yousef statements?

18 THE COURT: Right.

19 MR. STAVIS: Yes. Your Honor, I will jump to
20 that. I would and I have prepared a subpoena for
21 Mr. Yousef, and since I believe the order of proof on the
22 defense side is that the Nosair defense will go in first, I
23 would propose to call him as the first witness. Should he
24 assert his Fifth Amendment privilege and not wish to testify
25 about matters while he is under indictment, I would seek the

1 testimony of Special Agents Pellegrino, Stern and Parr.

2 THE COURT: About the statements?

3 MR. STAVIS: About the statements, correct.

4 THE COURT: Do you have 804(b)(3) in front of
5 you?

6 MR. STAVIS: Yes, I do, your Honor.

7 THE COURT: Would you read the last sentence of
8 804(b)(3).

9 MR. STAVIS: Yes, your Honor, I have read it.

10 THE COURT: May I suggest to you that your offer
11 of proof is going to depend on your ability to fulfill the
12 requirements of that sentence.

13 MR. STAVIS: Yes, your Honor. I would remind
14 your Honor, and your Honor has indicated that you reviewed
15 those statements in March of this year, that they are
16 extraordinary in their detail, and I will make an
17 appropriate proffer.

18 THE COURT: That is the fulfillment of the last
19 sentence of 804(b)(3), that they are extraordinary in their
20 detail?

21 MR. STAVIS: No, excuse me. It is something that
22 I am reminding the court of when the court is indicating a
23 lack of trustworthiness in very, very extensive and detailed
24 statements. I am not now here, your Honor, with all due
25 respect I am not now here making that proffer at this time.

1 What I am here doing, your Honor, is objecting and renewing
2 my objection under Rule 403, which I made at the time the
3 evidence came in, because I believed that these statements
4 seriously undermine the connection between that evidence and
5 what went on here, and now the Rule 403 scale tips with
6 regard to the prejudice, your Honor. The prejudice was
7 overwhelming. Your Honor will recall that when Mr. Ferby
8 testified that he was blown clear across the garage, I made
9 a mistrial motion at that time, the prejudice was so great.
10 Now in light of these statements, I think the probative
11 value -- we weren't privy to these statements even though
12 they existed, when the World Trade Center evidence was
13 coming in here. But the probative value is so nil and the
14 prejudice is so great and there is no way to undo that
15 prejudice, your Honor, that I have no choice but to move for
16 a mistrial at this time.

17 THE COURT: Who is next? Mr. Serra.

18 MR. SERRA: Thank you, Judge. Your Honor, as the
19 court may recall, I am sure the court does recall,
20 Ms. London and I --

21 THE COURT: I wish people wouldn't do that.
22 Usually when people say "As I am sure your Honor recalls,"
23 it involves some event in the long distant past that I don't
24 remember. Nine times out of ten, it does.

25 MR. SERRA: Your Honor, all I was going to say to

1 the court was that I was going to address the court now on
2 something that I have addressed throughout the trial in the
3 rare moments when I rise, namely the circumstances of the
4 making of the bomb at the World Trade Center and the defense
5 in this case, which was distinguishing that bomb from what
6 was going on at the safe house.

7 Your Honor, the government's proof as to the
8 bombing of the World Trade Center, the construction and so
9 forth, was introduced through witnesses, Special Agents
10 Williams and Bermeister. Their testimony amounted to, and
11 they said this in so many words at least once or twice, that
12 they were reconstructing what happened from various
13 circumstances that they learned from their examination and
14 their experience in examining bomb scenes and residue
15 examination and so forth. Agent Williams, whom I
16 cross-examined in some detail, said so in so many words,
17 that it was not a matter as to which he had personal
18 knowledge but he was piecing it together, and the
19 environmental pollution, in his phrase, was considerable,
20 that nonetheless he was able to render an opinion but it was
21 only after considerable and detailed analysis.

22 At the same time that Agent Williams and Agent
23 Bermeister were testifying on mine and Ms. London's cross,
24 the government was in possession of documents of someone
25 that they say was the mastermind of the bomb and exactly how

1 it was made. Those documents we still have not seen because
2 while the court has unredacted copies from Mr. Yousef, we
3 were not provided that part, which amount to about a full
4 page single space, which was redacted from what we saw.

5 Your Honor, there are two implications from
6 that -- I am sorry. Does the court wish to examine
7 something before I continue?

8 THE COURT: Yes, please.

9 MR. FITZGERALD: Your Honor, the very first page
10 is the redaction Mr. Serra is talking about, the very first
11 page you are looking at.

12 THE COURT: Wait a second.

13 Right.

14 MR. SERRA: So, your Honor, there are at least
15 three things that I conclude we could have used that for.
16 Putting aside for the moment the question of independent
17 admissibility of those statements, which I will address in a
18 moment, nonetheless it would have clearly been useful in
19 examining the government's witnesses who testified as to how
20 the bomb was made, although they had no personal knowledge.
21 They only testified as to expert conclusions. So it would
22 have been useful in cross-examining.

23 Second, if the parts which we have not seen
24 because they are redacted in fact jibe with the testimony
25 that the government presented as to the composition of the

1 Trade Center bomb, then the court's understandable concern
2 of the last sentence of 804(b)(3) may well be satisfied,
3 because if Mr. Yousef said this bomb was made of urea
4 nitrate and we did this and we did that and we put the truck
5 here, so and so and so and so, and that is in fact what the
6 government's conclusions through Agents Bermeister and
7 Williams were, then perhaps the corroboration that the court
8 seeks in the last sentence of 804(b)(3) the court has just
9 found.

10 So first of all, my application is to have that
11 part of that particular document unredacted so that we can
12 see what is there. In any event, your Honor, it would have
13 clearly been useful in the cross-examination of a witness
14 who was drawing circumstantial conclusions to have the
15 advantage of what the government had, namely a statement by
16 someone who had firsthand knowledge and who in fact the
17 government contended was the one who was behind it all.

18 Mr. Stavis talked about the people who were
19 involved in the World Trade Center bomb. There was
20 testimony as to Mr. Yousef himself, from agents at JFK, from
21 the owner of a chemical company and so forth and so forth.
22 All of those matters were in the government's possession by
23 someone who had firsthand knowledge of what was going on,
24 namely Mr. Yousef, and they are all in the statements that
25 we just saw for the first time last night. It would surely

1 have been useful in cross-examining these witnesses for us
2 to have the information that the government alone had.

3 Finally, your Honor, this is all bolstered by the
4 other item that Mr. Fitzgerald and I referred to after he
5 and I had a whispered conference. That other item is a
6 statement from a senior forensic chemist in the FBI
7 laboratory who was mentioned in the testimony of this trial
8 by Agent Bermeister and Agent Williams as someone who is
9 intimately involved in the investigation of the World Trade
10 Center, and the documents which we saw last night appear to
11 say that that witness --

12 MR. FITZGERALD: Objection, your Honor. I think
13 we are going outside the scope of what we agreed needed to
14 be discussed.

15 MR. SERRA: Your Honor, this is something that I
16 wish to discuss with the court whether I do it openly or
17 not, because I do have an application based on this. So I
18 will stop now if the court wishes me to, but it does tie in
19 with the Ramzi Yousef information.

20 MR. FITZGERALD: Your Honor, it is part of a
21 sealed proceeding before Judge Duffy which I told Mr. Serra
22 I would get him additional information if Judge Duffy --

23 THE COURT: You can make that application in
24 writing, with respect to that.

25 MR. SERRA: Yes, your Honor, once I receive

1 whatever I receive from the government I certainly can do
2 that. But if the court has not seen those documents -- Mr.
3 Fitzgerald knows what I refer to -- I would ask the court to
4 take a look at them because I think it is clear how they tie
5 into the argument I have already made.

6 Basically, your Honor, this would have been most
7 useful to have. The government had it -- we didn't -- at
8 the time they were putting on the World Trade Center proofs.
9 I am not making any further application, your Honor, until I
10 see the sealed record, if I ever see it, that Mr. Fitzgerald
11 just referred to, but I think further application may well
12 be in order. And I ask the court to review what we reviewed
13 last night.

14 THE COURT: I thought up until two minutes ago
15 that I had.

16 MR. FITZGERALD: Your Honor, there are two
17 separate topics of materials made available yesterday and a
18 letter being made available today as to Mr. Yousef.

19 MR. SERRA: Your Honor, Miss Amsterdam points
20 out, the Ajaj immigration materials which were the subject
21 of testimony at this trial were also the subject of
22 considerable statements by Mr. Yousef in the material we
23 received. Again, I submit we were entitled to that before
24 we cross-examined those witnesses. Your Honor has reviewed
25 it.

1 THE COURT: I have.

2 Miss Stewart.

3 MS. STEWART: Your Honor, I understand you
4 cautioned Mr. Jacobs about Genesis and I also don't want to
5 go back to the primordial ooze, I guess, but I think your
6 Honor is well aware of what our defense has been in this
7 case, since day one and before. I just wish to say that the
8 statements, and I think that Dr. Abdel Rahman is the only
9 one that is named specifically in the pages of Mr. Yousef's
10 rather long and rambling dissertations. But when he says
11 that he became interested in Dr. Rahman after he entered
12 this country, that he was in contact with Mr. Salameh and
13 asked for an introduction, that they had dinner at his house
14 and visited for about an hour, that they had no other
15 contacts, and that he was the mastermind, meaning Yousef,
16 and that he acted independently, that is just the beginning
17 of what I think was material that we needed and should have
18 had in order to properly conduct this case.

19 And I would go on to say, Judge, that the fact
20 that he talks also about Mahmoud Abouhalima, his very
21 minimal role in the bombing, his lack of knowledge, also
22 redounds to the sheik's benefit in the sense that the links
23 proven by the government basically go to Mahmoud and the
24 sheik.

25 I would also say these papers are remarkable for

1 their lack of Muslim or Islamic consciousness. There is not
2 one reference in all of his long and rambling statements --
3 they are political but they are not grounded in Islamic
4 philosophy or background, which also distances him and his
5 operation from the sheik and what is alleged to be against
6 him in this case.

7 Judge, we are asking for a mistrial because I
8 think we would have conducted any examination we might have
9 cared to do on the World Trade Center aspect of this case in
10 a very different manner. For example, there is material in
11 there that deals with --

12 THE COURT: That is not a basis. I don't think
13 that is a basis for a mistrial motion, but go ahead. To say
14 that if I had known X I would have done differently doesn't
15 mean that you are entitled to X or that X is probative. But
16 go ahead.

17 MS. STEWART: I think, Judge, that underlying
18 Brady, underlying Giglio is the notion perhaps that only the
19 person who sits in the pilot seat -- and I don't, with all
20 due respect, mean the judge, I mean the defense lawyer.

21 THE COURT: I know.

22 MS. STEWART: -- knows how I can use this piece
23 of information tellingly for my client, and I think it goes
24 to the heart of what Brady and fair trial and Sixth
25 Amendment is all about.

1 How does the end of "Peter and the Wolf" go?
2 What if grandfather had not shot the wolf, what then? What
3 if Mr. Fitzgerald and Mr. McCarthy not shown these
4 materials? Then we would somewhere down the line be looking
5 at 2255 if the worst were to happen. Not to call out a
6 phantasmagoria I hope will not exist, but it seems to me the
7 best course of action, and indeed the course of action which
8 would have permitted us to have a full display before this
9 jury of all the pertinent facts, cannot now be done in
10 retrospect. To take the information and go backwards
11 somehow, I don't think we can turn back the clock, I don't
12 think the evidence that they heard at the very time of the
13 Oklahoma bombing -- they were looking at twisted metal at
14 the time they were looking at twisted metal on their TV
15 sets -- that we can go back and retry that whole aspect of
16 the case, and it is for that reason that I ask for a
17 mistrial, to put us in the position we would have been in
18 had the material been provided to us timely.

19 (Continued on next page)

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1 THE COURT: OK. Anyone else?

2 Mr. Jacobs, you are back for a second go-round?

3 MR. JACOBS: Well, I think we have addressed the
4 statements, and we made our positions known to your Honor.
5 But that is really just half the battle at this point. The
6 second half of the battle, and probably just as significant,
7 is what does the government still have that we have under
8 subpoena that has not been complied with or been ruled on by
9 the court under Rule 17(c).

10 We issued the 17(c) subpoena a few months ago.
11 We tried to negotiate it out. We have not been able to
12 reach a resolution with the government.

13 Mr. Fitzgerald and I have gone back and forth for
14 months on this without the Court's being asked to make some
15 final rulings on it, unlike the Brady material which your
16 Honor has examined. But the time has now come for the
17 government to decide, and I guess your Honor, if they don't
18 want to do it voluntarily, to decide what are we getting on
19 the Yousef material.

20 This is where we are at. The 17(c) subpoena
21 that's been hanging around does not call for law enforcement
22 reports. If we examine it, as we did a few months ago, it
23 is strictly a document request. So the government's
24 citation of the Bess Myerson case --

25 THE COURT: Mr. Jacobs, 17(c) permits subpoena of

1 evidentiary material. It doesn't permit discovery.

2 MR. JACOBS: I understand. I am just addressing
3 that.

4 THE COURT: Good.

5 MR. JACOBS: In response to the subpoena, the
6 government claimed the law enforcement privilege in their
7 letter to us about a week or so ago, and they cited -- yes,
8 their letter of June 11, cited law enforcement privilege as
9 well as Nixon, which I will address in a minute.

10 The In Re Department of Investigation case that
11 they cited, 856 F.2d 481, was Judge Keenan's case involving
12 Bess Myerson in an attempt to obtain statements of witnesses
13 that the Department of Investigation had. The Second
14 Circuit discussed the law enforcement privilege in that
15 case.

16 Our subpoena does not request a single law
17 enforcement report. It requests the computer files of
18 Yousef, his phone records, all the paraphernalia that was
19 seized from him, the documents that were seized from him.

20 But, unlike that case, we don't request law
21 enforcement reports. As I pointed out a few minutes ago,
22 Mr. Kulcsar is in my suite sitting there with the computer
23 disks and the phone records and the other documents seized,
24 so I find it difficult to believe that their letter of June
25 11 has any validity concerning the case that they cite when

1 Mr. Kulcsar is sitting with the documents in the next office
2 from me under an order from Judge Duffy which I disagree
3 with, but which I certainly comply with, and haven't seen
4 the documents.

5 Now we are left with a situation of what does the
6 government have that's relevant and admissible, and do we
7 get to see it? Well, let's start off with a very simple
8 item, the phone books. We have had Salameh's phone books,
9 Ayyad's phone books, some of the other World Trade Center
10 defendants' phone books put into evidence that were seized
11 pursuant to a search.

12 I make the simple argument that I would like to
13 put Yousef's phone book into evidence. I raise the
14 following very interesting example: We would like to see
15 whether the defendants in this case are there. Who's there?

16 We feel under 17(c) and under Nixon it is a
17 relevant and admissible document. I don't see how it isn't.

18 Mr. Fitzgerald and I chatted a little bit
19 informally, and I asked him about whether there were lists
20 of members of the organization in Yousef's files. He said,
21 "Even if there was, you are not entitled to it," and he gave
22 an equation to an organized crime case.

23 My simple explanation is this: If the Gambino
24 crime family has a member seized in a single conspiracy
25 case, and they find a list of members, I would like to see

1 if John Gotti is on that list, just as I would like to see
2 if the sheik is on the list.

3 We have a right to see these kind of documents,
4 your Honor, and put them into evidence. That is what 17(c)
5 is all about. That is what the subpoena is all about.

6 The United States Supreme Court talks about items
7 that are evidentiary and relevant. I can't understand how
8 the government can claim that a computer disk a la the one
9 that they put in on Ayyad isn't relevant that they seize
10 through Yousef. Certainly at the least we should be able to
11 see the document, and, when the government argues it's not
12 relevant, say to your Honor, "Well, your Honor, look at this
13 item and look at that item, and look at this legend and look
14 at this name."

15 What the government does, and I don't mean this
16 disrespectfully, they're stonewalling the documents. They
17 give it to Mr. Kulcsar in that case, but they tell us,
18 "You're on trial with the same conspiracy, with the same
19 overt acts that Yousef is charged with, but you can't see
20 it. You can't see the computer disk, and you can't even
21 argue to Judge Mukasey why it should come into evidence."

22 I don't understand their legal thinking. I think
23 it's as wrong as could possibly be. We are not in Brady
24 now. We are in 17(c), and we have offered the government to
25 look at it under protective orders. We have offered the

1 government to see it under seal. But we want to be in a
2 position to look at the computer, to look at phone books, to
3 look at the photographs, to look at the lists, to look at
4 the financial documents, and then come back and say to your
5 Honor: "Here's where the money trace is. Here's where the
6 connection is. Here's where we have no connection to those
7 things."

8 Your Honor might rule certain documents you are
9 not going to let in, maybe other ones we can't for
10 particular reasons, but we stand here on what we consider to
11 be the most crucial part of our case concerning the
12 government's entire theory of this prosecution without a
13 single document on Yousef. It has nothing to do with Brady
14 at the moment. This has to do with a classic 17(c)
15 argument.

16 I mean, do we get 17(c) or we don't? I have yet
17 to hear the government present an argument under Nixon.

18 They cited a case, and I think they waived it
19 under that case. In any event, I don't want to see one law
20 enforcement report. We are not seeking any interviews of
21 witnesses in Pakistan or these other countries. That's
22 their privilege, I acknowledge it, and we're not entitled to
23 see the interviews of their witnesses.

24 This is material seized from Yousef. It is not a
25 single interview which the Second Circuit talked about in

1 the Department of Investigation case where they reversed
2 Judge Keenan.

3 I don't think your Honor has seen the material,
4 so I am not prepared to state that your Honor has reviewed
5 this stuff item by item. But what we request is this: We
6 think that the government should turn it over to us under
7 these orders or give it to your Honor, mark it individually.
8 We want every item somehow characterized so that we can see
9 what it is at least generally, and give us a chance to go up
10 on a mandamus to the Second Circuit so we can get these
11 matters resolved. Because I don't think we should be in a
12 situation where the guy in the next office to me has the
13 stuff and we don't.

14 MS. AMSTERDAM: I would just like to add one last
15 thing on the address book and the computer printout. While
16 of course I agree completely with Mr. Jacobs that we are at
17 a lesser threshold standard, being the 17(c) subpoena, I
18 would indicate to the court that under even a higher
19 standard, Brady standard, and the recent Supreme Court case,
20 Kyles v. Whitley, one of the things that was found to be of
21 exculpatory nature was a computer printout of license plates
22 of cars parked at the crime scene on the night of the murder
23 in that case, which did not list the number of the
24 defendants car. I find the absence of any defendant's name
25 in Yousef's phone book to be an analogous situation.

1 THE COURT: You do?

2 MS. AMSTERDAM: I do.

3 THE COURT: I find that remarkable.

4 MS. AMSTERDAM: You do?

5 THE COURT: Yes.

6 MS. AMSTERDAM: Then obviously we have to be
7 prepared to differ on our opinion.

8 THE COURT: I guess we do.

9 MS. AMSTERDAM: But I that Mr. Yousef who says
10 that the Fifth --

11 THE COURT: You are talking about a particular
12 crime at a particular location.

13 MS. AMSTERDAM: Yes.

14 THE COURT: Where the defendant's car was not
15 located, you regard as analogous to a situation in which, I
16 don't understand the government to claim that anybody here
17 had direct contact with Ramzi Yousef.

18 You think those two situations are analogous?

19 MS. AMSTERDAM: OK.

20 THE COURT: Analogy, like beauty I suppose,
21 depends on who's looking at it.

22 MS. AMSTERDAM: I guess that's right. I find
23 that -- Mr. Stavis points out, of course, that while Ayyad's
24 computer disk came into evidence in this trial, Mr. Yousef's
25 position is that he wrote the letter that was on that

1 computer disk. There clearly is a link.

2 The fact that Mr. Yousef may not know any of the
3 people in this case is a fact that we should be able to
4 bring out to the jury.

5 THE COURT: There is no need to bring it out.
6 It's already in the case. There is no evidence that he
7 does.

8 MS. AMSTERDAM: I don't think that there being no
9 evidence is the equivalent of affirmatively having proof
10 that there was no connection. That's a very different
11 thing.

12 THE COURT: There is no such thing as proof that
13 there was no connection, because whatever is on his disk
14 doesn't prove whether there was a connection or not. All it
15 proves is whether it was on his disk.

16 MS. AMSTERDAM: Judge, virtually every
17 defendant's phone book came into evidence in this case, and
18 the government is going to stand up and say this defendant
19 knows that defendant, and this defendant's has Sheik
20 Rahman's phone number on it, and this defendant's has the
21 number of the mosque on it, and yet when Ramzi Yousef, who
22 is supposed to be the mastermind of the Trade Center, has an
23 address book and a computer disk which fails to mention
24 anyone in this case, I regard that as something I would like
25 to be able to affirmatively state to the jury in response to

1 their argument that, "Look at how these address books link
2 up."

3 MR. WASSERMAN: Your Honor, if I may?

4 THE COURT: Yes.

5 MR. WASSERMAN: I just want to take this
6 opportunity to make a specific point about a specific
7 defendant.

8 Perhaps of all of the defendants in this case, my
9 client has been singled out through the testimony of Haggag,
10 and I believe in other ways, and it has been alleged through
11 Haggag's testimony that Siddig Ali at least claimed that he
12 had done a test bombing through my client at the request of
13 Mahmud Abouhalima. To the extent that there is information
14 that is contrary to that in Ramzi Yousef documents and
15 proffers to negate what the government has tried --

16 THE COURT: What's contrary to that in the Ramzi
17 Yousef material?

18 MR. WASSERMAN: There are a couple of things.
19 For one thing, Ramzi Yousef doesn't speak about doing a test
20 bombing. Second, the role of Mahmud Abouhalima, to the
21 extent that Ramzi Yousef speaks about it, is de minimis. I
22 think those are relevant factors to the attempt by the
23 government to paint my client as an active participant in
24 the World Trade Center.

25 THE COURT: Thank you.

1 MR. FITZGERALD: Your Honor, I believe, if he
2 reviews the materials, Mr. Yousef indicated there were test
3 bombings and he refused to identify who it was he carried
4 them out with.

5 THE COURT: That is a minor point.

6 MR. WASSERMAN: I'm sorry, your Honor?

7 THE COURT: I said that is a minor point. I
8 meant in the broad scope. I am not minimizing it from your
9 client's standpoint.

10 Do you want to respond to any or all of this?

11 MR. FITZGERALD: Just briefly starting with Mr.
12 Jacobs point on the 17(c) subpoena, I agree with your Honor
13 that there is no relevance to a phone book two years later.

14 I did indicate to Mr. Jacobs I would verify my
15 belief that none of the defendant's phone numbers are in
16 whatever list there is, nor are the phone numbers of Salameh
17 Ayyad and Abouhalima, but I wanted to check to make sure.

18 The bottom line is the phone books that are in
19 evidence, whatever lack of links there are that the
20 defendants can argue, they can link the absence of
21 Mr. Yousef's phone number to their own books. The bottom
22 line here is I realize a lot of lawyers are arguing what
23 would be useful to them. There is a building across the
24 street full of useful information to them. The test is
25 whether it's exculpatory in this case. The information that

1 they are seeking is not exculpatory. It does not meet the
2 test under the rule of circumstances indicating that they
3 are trustworthy. I will simply indicate that if Mr. Yousef,
4 if they want him here next week, the government will make
5 sure he's here, if he's willing to testify. We will be more
6 than happy to participate in that process, and let's go with
7 it from there.

8 MR. STAVIS: I accept Mr. Fitzgerald's gracious
9 offer to produce Mr. Yousef.

10 THE COURT: He's isn't in a position to get him
11 physically present. Obviously, you are going to have to
12 talk to his lawyer.

13 MR. STAVIS: I have a subpoena. I believe his
14 lawyer will accept service.

15 THE COURT: I'll sure he will.

16 MR. RICCO: Your Honor, may I just speak for a
17 second. I disagree with Ms. Amsterdam. The issue is not,
18 and I agree with the court, not that their names may or may
19 not be there. But if the phone books identify a separate
20 conspiracy with separate conspirators, then it becomes
21 information that the jury should be aware of. If the phone
22 books have the names of, and addresses of different
23 conspirators, separate from the people who are on trial in
24 this case, then that's information that the jury should be
25 given.

1 MR. SERRA: Your Honor, one sentence on that: I
2 think "phone book" is a metaphor here because we don't know
3 what we're talking about. I agree with what Mr. Ricco just
4 said, if "phone book" means the totality of the Yousef
5 information, which we are just guessing as to what it is,
6 the issue is, if it shows a separate conspiracy it is
7 exculpatory. I don't care if Mr. Alvarez's name is in his
8 phone book or not. If it shows a separate conspiracy, it's
9 exculpatory.

10 THE COURT: Wait a second. There have been put
11 in evidence already various items of evidence connecting
12 various defendants in this case to various people who bombed
13 the World Trade Center. You have all offered to
14 stipulate -- although I don't think the stipulation has been
15 done in front of the jury -- many times over, that the four
16 people who were convicted in the case in fact participated.
17 There may have been others. I don't understand what it is
18 you are talking about when you say if there is an item of
19 information that identifies a separate conspiracy.

20 MR. JACOBS: Your Honor?

21 THE COURT: Yes.

22 MR. JACOBS: We have been arguing in opening
23 statements right through that this is a multiple conspiracy.

24 THE COURT: Right. And you are going to get a
25 charge on it.

1 MR. JACOBS: OK.

2 THE COURT: If I am not giving something away
3 before I should.

4 MR. JACOBS: We circulated the Johansen case,
5 which was just decided by the Second Circuit, a reversal on
6 a multiple conspiracy case. I think it was tried before
7 Judge Platt. What was interesting about the decision, the
8 facts are totally different than our case, was that the
9 prejudice --

10 THE COURT: He did not give a multiple conspiracy
11 charge.

12 MR. JACOBS: Yes, he did. He gave Sand's charge
13 on it, as a matter of fact. It wasn't the charge that was
14 the problem. It was the facts. But what the Second Circuit
15 talked about was when you get into the evidence of whether
16 there is a multiple conspiracy, assume there is some
17 evidence that there is --

18 THE COURT: But at one point there was no -- I'm
19 sorry. That case involved credit cards, and there was no
20 evidence of connection between two of the defendants --

21 MR. JACOBS: Correct.

22 THE COURT: -- and the activities that were going
23 on.

24 MR. JACOBS: That is the first test, but the
25 second test is called prejudice, and what the Second Circuit

1 cites is the following language, whether the second
2 conspiracy, here the World Trade Center, and, quoting from
3 the Second Circuit, "is shocking or inflammatory evidence
4 coming in against the defendants."

5 If there's any case that can ever be tried where,
6 if we are correct that this is a multiple conspiracy, that
7 the evidence of the World Trade Center and the deaths
8 surrounding it really put the government in a difficult
9 position. We think that Ramzi Yousef's information and
10 search documents prove a separate conspiracy.

11 This is what it is: We think, and we agree that
12 there is a Fifth Battalion Liberation Army. It has nothing
13 to do with the defendants in this case. They put in the two
14 documents already on their case.

15 There's a third one we haven't seen yet. What
16 we're saying is this: If we can show the jury that this
17 Liberation Army exists, committing other crimes, and it has
18 nothing to do with the defendants in this case, we have a
19 right to put that defense before the jury.

20 They may laugh us out and they may convict these
21 defendants in 30 seconds, but we think we have a right to
22 take our shot with the jury on that theory. We don't think
23 that it's that far-fetched.

24 Yousef's statement that we read last night
25 supports it 100 percent. So the gamble we took on our

1 opening statements prove 100 percent looking at Yousef's
2 statements last night.

3 What we are saying is this: We are willing to
4 take the risk. If there's stuff the government is going to
5 put in and hurt us, so be it. But if the Liberation Army is
6 out there committing crimes, and they have the list of the
7 members, and the sheik and these defendants are not members
8 of that list, then I think this jury should be told that.

9 So we would like to argue, "Ladies and gentlemen,
10 there is a multiple conspiracy in this case, and while some
11 defendants may know some of the fellows that did the World
12 Trade Center, it is not these defendants in a single jihad
13 conspiracy," and what the government's doing is saying,
14 "Well, you have a right to argue that, but we are not going
15 to give you the tools to argue it."

16 We just want the tools, Judge. The same as
17 Mr. Kulcsar is getting the tools in the office next to me.

18 We think it is unfair for this case to go to the
19 jury on our case -- because we are ready to do it in our
20 case -- to attempt to put this kind of evidence before the
21 jury. It is not remote; it's not speculative. It's their
22 theory of the Liberation Army.

23 The man disavowed that these defendants have
24 anything to do with it. So there could be an Ayyad
25 document, and they are saying to us that, Jacobs, you can

1 argue on our Ayyad document, but we are not going to give
2 you the Yousef document.

3 I mean, basically your Honor, what you have here
4 is that -- we've cited this paragraph before --
5 co-conspirators Abouhalima, Salameh, Ayyad Yousef and Ajaj,
6 among others, planned and carried out acts of terrorism.

7 Are we going to get to see who the "among others"
8 are? I don't mean it disrespectfully. Are we bound to what
9 Mr. Fitzgerald wants to tell us? I don't mean it
10 personally.

11 What he's doing is saying, "I'll let you know who
12 the others are, but we are not going to show you who else
13 you could argue are the others in this case." I don't think
14 we're getting a fair trial.

15 It is a real simple point: Do we get to have our
16 shot to the jury as to who the others are in the World Trade
17 Center, or who are the others in the Liberation Army, or are
18 we going to go to the jury with the government's theory in
19 this case?

20 THE COURT: The World Trade Center is not charged
21 as a substantive count in this indictment, which is a
22 notable fact. At least it's notable to me.

23 MR. JACOBS: Your Honor --

24 THE COURT: Is it?

25 MR. STAVIS: No, it is not. But the World Trade

1 Center defendants are listed in Paragraph Six as
2 co-conspirators.

3 THE COURT: I understand that. Nobody here is
4 charged with having --

5 MR. JACOBS: Your Honor --

6 THE COURT: May I, Mr. Jacobs?

7 MR. JACOBS: I don't --

8 THE COURT: There are very few benefits to this
9 job. One of them is I get to talk.

10 MR. JACOBS: Absolutely.

11 MR. STAVIS: Is that a benefit, your Honor?

12 THE COURT: To me. Not to you.

13 Nobody here is charged with a substantive count
14 in connection with the World Trade Center bombing.

15 MR. JACOBS: Your Honor, I don't mean to say --
16 that is to say that the World Trade Center is some little
17 sidelight in this case. You know, it isn't.

18 I mean, to think that these jurors understand the
19 difference between whether the World Trade Center is just an
20 overt act and is not an important crime in this case, I
21 think is unfair. I mean, there are dead bodies in this
22 case, and I don't mean disrespect to Mr. Nosair, I mean, the
23 World Trade Center is the heart and soul of this case for
24 the government on what I believe to be the seditious
25 conspiracy.

1 THE COURT: I'm sorry. I don't see it that way.
2 I really don't.

3 MR. JACOBS: Your Honor, how long did it take the
4 government to put in the World Trade Center? We stipulated
5 to a lot. We are talking over a month of testimony that
6 came in on the World Trade Center.

7 THE COURT: No, you're not.

8 MR. JACOBS: Three weeks. I'm sorry. I stand
9 corrected.

10 MS. AMSTERDAM: Four weeks.

11 MR. JACOBS: Four weeks.

12 THE COURT: Less than four weeks. It was
13 definitely less than four weeks.

14 MR. JACOBS: Your Honor, we as defense lawyers
15 understand why the government, we think, put the World Trade
16 Center case in. You know, some of us are former
17 prosecutors. We understand that.

18 The point is that to say that it really isn't
19 that significant a point, that you're not charging a
20 substantive act I don't think is fair to the lawyers for the
21 defendants in this case.

22 THE COURT: I am not saying it is insignificant.
23 I am simply pointing out when you make the statement that
24 these people didn't commit the World Trade Center bombing,
25 as you did repeatedly during the last part of your argument,

1 I think it's only fair for somebody to point out that
2 they're not charged with committing the World Trade Center
3 bombing.

4 MR. JACOBS: We believe that given the proper
5 tools the defendants in this case can get an acquittal on
6 the seditious conspiracy --

7 THE COURT: You could probably do it with some
8 improper tools.

9 MR. JACOBS: All we want are the tools that we
10 think we are entitled to. That's really what it comes down
11 to. Your Honor can make rulings under 17(c), and you know
12 of course we will abide with them and do what we have to do
13 as lawyers.

14 But the time has come, we are on the defense case
15 next week or so, for the government to either give it to us
16 or not, and your Honor will make the 17(c) rulings.

17 I think we made the record on it, and, you know,
18 we are either going to get the documents or we're not. The
19 record is what it is at this point, and all I can say is
20 it's going to go to the jury without us, if we have it
21 without, with some of this evidence before the jury. We are
22 not withdrawing the multiple conspiracy argument, and --

23 THE COURT: I don't understand you to be. I said
24 that I thought I wasn't giving anything away, and I'm not,
25 to tell you that there's going to be a multiple conspiracy

1 charge in the charge.

2 There is no doubt about that.

3 MR. JACOBS: Your Honor, Mr. Fitzgerald has
4 expressed to me the concern that law enforcement has for
5 some of the information, and I understand that.

6 We're willing to see the documents under a
7 protective order, and then we'll go to your Honor and say,
8 "We've looked at this, and we want three pieces out of 20 or
9 30," and then you, your Honor, can rule whether we can get
10 them.

11 But without us even seeing the things we're
12 really trying the case with our hands tied behind our back,
13 and I think that's the problem. The government, they know
14 they can't stand up there before your Honor and say, "It's
15 compromising our investigations." That is not a legal
16 theory. The President of the United States couldn't do it
17 in Nixon, and the government can't do it here in this case.
18 That's not a 17(c) ground to quash, and the government knows
19 it.

20 THE COURT: To start with, 17(c) requires that
21 the material you subpoena be evidentiary in this case.

22 MR. JACOBS: Your Honor, we have given your Honor
23 the outline of what we're looking for. We don't have the
24 advantage of, unlike other cases, saying to the court,
25 "Well, this phone book should come in because it has this,

1 and this computer disk has this," so we can rebut the
2 government's argument. Your Honor is going to have to look
3 at the stuff in a vacuum without hearing from us, and we
4 don't think that is what the Second Circuit has in mind
5 under 17(c).

6 THE COURT: It is not a question of what the
7 Second Circuit had in mind. It's a question of what whoever
8 drafted 1(c) had in mind. It's been evidentiary since the
9 day it was written.

10 MR. JACOBS: I understand. But what we're saying
11 is this: No lawyer subpoenaing documents knows the exact
12 substance of what they're getting. They didn't have the
13 Nixon tapes.

14 THE COURT: Sometimes they do and sometimes they
15 don't.

16 MR. JACOBS: What the Supreme Court talked about
17 in Nixon --

18 THE COURT: Nixon wasn't a 17(c) case, was it?

19 MR. JACOBS: Pardon me?

20 THE COURT: Was Nixon a 17(c) case?

21 MR. JACOBS: Yes.

22 MR. SERRA: Your Honor, the answer to 17(c), I
23 believe, is that it is only, is that under 804(3), if your
24 Honor, adopts our 804(b) analysis, then the 17(c) subpoenas
25 are for evidentiary material. It is simply that we don't

1 have it, so we can't make the argument to you.

2 MR. JACOBS: One of the things that the Supreme
3 Court talked about when they discussed 17(c), and I quote
4 from 94 S.Ct. 3090, "a subpoena for documents may be quashed
5 if their production would be unreasonable or oppressive, but
6 not otherwise." And then, of course, it talks about
7 relevancy and evidentiary things. And as I said, we made
8 our arguments --

9 THE COURT: Then, of course, it talks about --

10 MR. JACOBS: Relevancy and admissibility.

11 THE COURT: OK.

12 MR. JACOBS: What we're saying is the third
13 party -- as I said, if the government wants to go to the
14 Second Circuit someday without giving us the computer disk
15 the same way they put in Ayyad's, and that's what they want
16 to go to the Second Circuit on, that's their peril.

17 I tell the government that the fellow next to me
18 has it, he's going to put it into evidence in his case six
19 months from now, and all we're going to get are a lot of new
20 trial motions and a lot of collateral litigation when the
21 government knows it's coming in in a few months before Judge
22 Duffy. It's in the Duffy indictment. I just don't
23 understand why we're mincing words here about it. It's
24 coming in --

25 THE COURT: Nobody's mincing words, Mr. Jacobs,

1 least of all, you.

2 MR. JACOBS: I made our point.

3 THE COURT: I'm sorry. Ms. Stewart?

4 MS. STEWART: Your Honor, I just wanted to just
5 briefly add that we did way back when make a Brady/Giglio
6 demand. We got no answer from the government. We now have
7 a motion that was served about two weeks ago asking for that
8 original material plus Ramzi Yousef material.

9 I also want to alert that your Honor that I think
10 our position with regard to the computer disk is a little
11 bit different. The sheik has been alleged on the FISA's to
12 be calling London, Denmark, Pakistan, Milan, Romania, Saudi
13 Arabia -- I may have missed a few.

14 I think that we have the right to know if
15 Mr. Yousef is alleged to be part of "the worldwide jihad
16 organization," whether or not there is any community of
17 interest here, whether or not the organizations, the groups,
18 the people the sheik speaks to are indeed the same people
19 that Mr. Yousef speaks to. I would ask your Honor, in
20 looking over the materials, if that's what you intend to do,
21 to bear that in mind on behalf of the sheik.

22 THE COURT: Clarify which material we are talking
23 about that I'm looking over.

24 MS. STEWART: I am talking about the phone
25 directory that apparently is part of the computer disk.

1 THE COURT: That I have not seen.

2 MR. FITZGERALD: Your Honor, I believe

3 Mr. McCarthy responded orally to a Brady request. We will
4 put a response in writing in the next couple of days.

5 I think the bottom line is this: With regard to
6 the community of interest between the sheik and Ramzi
7 Yousef, that's already been demonstrated twice by one
8 Mr. Ramzi Yousef talking about the same Fifth Liberation
9 Army that Mr. Jacobs likes to refer to, describing that it's
10 an organization that seeks to help other organizations,
11 including Gama'a in Egypt, which, if you read the way the
12 jihad organization is described in the indictment, it's
13 entirely consistent. Indeed, it came up in the context
14 again with the Denmark materials that Mr. Yousef came from
15 Pakistan, where people involved in the Gama'a organization
16 who later went to Denmark were involved.

17 I still think the bottom line is the reason why
18 the person next door to Mr. Jacobs has all these materials
19 is the person next door represents someone charged with the
20 bombing in Manila and other activities in 1995, and they're
21 not a part of this case.

22 MR. JACOBS: Your Honor, I'm sorry. On certain
23 material that's what your Honor is there to take a look at.
24 I mean, if your Honor sees a document that's so unrelated on
25 the Manila bombing incident plans, then your Honor makes an

1 appropriate 17(c) ruling.

2 If your Honor sees a Fifth Liberation Army, now
3 the government's conceding that it seems to be the same
4 group for purposes of the argument, then maybe we get that
5 document.

6 I am not saying that out of two cartons of
7 material I am going to get to see everything. I have no
8 problem with your Honor obviously taking a look for legal
9 purposes. But I just don't think the government can stand
10 up here and say that nothing is relevant and nothing is
11 admissible.

12 THE COURT: Do you know what the status is of
13 the -- "status" is the wrong word. Do you know whether all
14 of the material on Yousef's computer has been reduced to
15 readable form?

16 MR. FITZGERALD: I can find that out. I don't
17 want to represent and be wrong.

18 THE COURT: Would you?

19 MR. FITZGERALD: Yes.

20 THE COURT: I would like you to find that out.
21 How much it is, and what the general nature is of the
22 material. I don't know how to ask, I guess, a focused
23 question about that material.

24 You say there were two other items that Mr. Serra
25 raised that were shown to defense counsel. I haven't seen

1 those. I have no way of knowing what that is. You are
2 going to forward a letter with regard to that?

3 MR. FITZGERALD: Yes.

4 THE COURT: You'll copy everyone on it?

5 MR. FITZGERALD: Yes, Judge.

6 MR. JACOBS: Your Honor, just logistically,
7 rather than get to the merits of it, these questions
8 concerning Yousef and multiple conspiracy go to the heart of
9 the organization question besides the seditious conspiracy.
10 It goes to whether there is an organization as named in the
11 indictment.

12 Your Honor said that the World Trade Center is
13 only an overt act in the indictment. But we're dealing here
14 with the jihad organization itself, and whether it really
15 exists or is a multiple conspiracy.

16 Logistically here's the problem we present to
17 your Honor: We'd like this material or some rulings from
18 the court one way or the other, win, lose or draw, before we
19 go forward with our case. We would like to know if we're
20 going to get some of these things or not -- like I say, win,
21 lose or draw, whatever the ruling is, it is -- before we
22 have to put on our witnesses. Mr. Stavis is going first
23 with agents, things like that. We would like to know
24 whether we're getting some of this material because it may
25 change the strategy of what we do and how we proceed in this

1 case.

2 I think all the lawyers join in my request that
3 we get these matters resolved before we go forward. Mr.
4 Stavis, do you agree that we're requesting that we not go
5 forward until we get these matters resolved?

6 THE COURT: Is that a sit-down strike or a
7 request?

8 MR. JACOBS: No.

9 THE COURT: You would prefer not to go forward,
10 right?

11 MR. JACOBS: Correct. We're requesting the court
12 to rule --

13 MR. STAVIS: I have indicated that should he
14 agree to waive his Fifth Amendment right that I would be
15 calling Ramzi Yousef as the first witness, so it is
16 something that we would have to address in a relatively
17 expeditious manner.

18 THE COURT: OK. Let's see whether we can address
19 it, and if we can, we will. I am not going to give you a
20 commitment on that now. That is necessarily going to be
21 addressed. All I'll tell you is that based on the six -- is
22 it six?

23 MR. FITZGERALD: Six items, yes, Judge.

24 THE COURT: -- six items which were represented
25 to me to be the same ones that I showed defense counsel last

1 night --

2 MR. FITZGERALD: Yes.

3 THE COURT: -- the mistrial motion is denied.

4 Without getting into detail, because I don't think it's
5 necessary, a great deal of that material is in fact
6 inculpatory rather than exculpatory, a good deal of it is
7 contradictory internally, and a good deal of it reflects --
8 some of it explicitly, some of it implicitly -- that
9 Mr. Yousef was withholding information, sometimes explicitly
10 withholding it, and sometimes I think it is plain from other
11 evidence that was available in this case and in the World
12 Trade Center that his information is in conflict with the
13 facts.

14 Under those circumstances I don't think there is
15 any well-grounded mistrial motion based on a Brady violation
16 or anything like it, and, accordingly, those are denied.

17 When I know more about the computer material, we
18 will go further with that and I will address the issue
19 raised by Mr. Serra based on separate submissions that I
20 gather I am going to get.

21 Thank you very much.

22 MR. JACOBS: Thank you.

23 (Proceedings adjourned to Thursday, June 22, 1995
24 at 9:30 a.m.)

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

3 v.

OMAR AHMAD ALI ABDEL RAHMAN,
4 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,"

EL SAYYID NOSAIR,
7 a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

IBRAHIM A. EL-GABROWNY,
9 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

CLEMENT HAMPTON-EL,
11 a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

AMIR ABDELGANI,
13 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

FADIL ABDELGANI,
17 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.

-----x

S5 93 Cr. 181 (MBM)

June 22, 1995
9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

25

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BY: THOMAS H. NOOTER
and
SALVATORE S. RUSSO

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning.

4 MR. SERRA: With the court's permission, James
5 Goward, a lawyer who has been working with us particularly
6 in terms of indexing the exhibits, will sit here for the
7 cross-examination of Agent Capozzi, the seizing agent from
8 the safe house. Is that agreeable with the court?

9 THE COURT: Fine.

10 MR. STAVIS: Your Honor, I was landed a letter
11 this morning from the government dated June 21, sending the
12 various FBI 302 reports concerning Mr. Ramzi Yousef's
13 various statements to the court. In order to prepare my
14 defense and to prepare for a hearing under Rule 104A, I
15 would ask that copies of those various statements be
16 released to the defense with all other provisions of your
17 Honor's order concerning nondisclosure to remain intact.
18 But I cannot prepare my defense and I cannot prepare for a
19 hearing regarding the corroboration of those statements
20 should I seek to introduce them through an FBI agent,
21 without having the statements themselves.

22 MR. McCARTHY: We decline to do that. Our
23 position from the get-go was that they are not discoverable.
24 We showed them as an accommodation. The fact that they make
25 a motion doesn't entitle them to additional discovery.

1 THE COURT: I know that, and I am not at all
2 suggesting that I think they are. However, it is immensely
3 difficult to argue the significance of something that you
4 have read once or twice or three times without having it in
5 front of you. The breadth of the request to release it to
6 quote, defense counsel, is what concerns me. You mean
7 release it to you?

8 MR. STAVIS: Your Honor, I need it --

9 THE COURT: I know you are a defense lawyer. I
10 am asking, are you asking to have it released to you?

11 MR. STAVIS: Yes, I am.

12 MR. MCCARTHY: Would your Honor be disposed to
13 let us have at least until the beginning session this
14 afternoon to work out an arrangement which satisfies our
15 security concerns but gives them sufficient access so that
16 they can prepare whatever they need to prepare?

17 THE COURT: I always prefer agreement to ruling
18 on anything. I like civil cases to settle, and so on. So
19 if you can work out something that is mutually satisfactory,
20 fine. If you can't, come back.

21 MR. MCCARTHY: I am just going to ask till this
22 afternoon.

23 THE COURT: Fine.

24 MS. AMSTERDAM: Your Honor, if we are able to
25 arrive at the accommodation and Mr. Stavis has one set of

1 the documents, I assume that your Honor would permit other
2 counsel to review those documents also.

3 THE COURT: Don't assume that. I am going to do
4 it on a lawyer by lawyer basis. I had an experience once in
5 this case, and let me tell you from the get-go that I do not
6 believe that that experience involved any -- in fact I
7 believe that that experience did not involve anybody sitting
8 in this room. I am sure to a moral certainty that it did
9 not. However, the day after I released transcripts of
10 conversations to defense counsel -- nobody in this room was
11 responsible, I believe -- I read about it. That is not an
12 experience that I want to repeat and I am going to do it on
13 a very careful basis.

14 MR. NOOTER: Your Honor, I expect that today
15 sometime we are going to get to the exhibits which are
16 numbered 171 through 179 exclusive of 173 and 178, which are
17 the flyers that were seized in my client's house. I simply
18 want to renew my objection to those materials and point out
19 to the court that the court has given an instruction, which
20 is perfectly proper, that my client is not on trial here for
21 his beliefs, whether they be religious or political or
22 anything else, and the only relevance these can possibly
23 have is to somehow show that because of his beliefs, if they
24 are in fact truly reflected by flyers that he had, that his
25 beliefs make him predisposed or give him a predilection

1 toward committing crimes involving murder and mayhem, and I
2 don't think that would be proper for the jury to even
3 consider. I don't think this court could instruct the jury
4 that they can use that kind of thing in determining his
5 intent to commit these crimes and therefore I simply do not
6 see a relevance. On the other hand I do see a very chilling
7 effect on constitutional right of free speech, of his
8 ability to have literature in his house if he wants to read
9 it, whether he agrees with it or not.

10 Finally I would like to point out that two of
11 these exhibits are dated 1991 and they are about the Iraqi
12 war, and they were apparently printed at the time that the
13 war between the United States and Iraq was happening. It
14 precedes my client's participation, to the extent that there
15 is one in this case, by two years or more, and for that
16 reason it seems to me remote in time, and those two
17 exhibits, which are 171 and 172 specifically, I think, are
18 particularly not relevant to anything in this case.

19 THE COURT: Let me hear from the government. Why
20 don't you focus your comments on 171 and 172.

21 MR. KHUZAMI: Your Honor, in terms of the dates,
22 I believe Mr. Nooter when he opened gave us a capsule
23 summary of Mr. Wahid Saleh's life, all of it designed to
24 show that he was a normal, hard-working person who was not
25 associated with these defendants. He has placed that in

1 issue. He is not on trial for his beliefs but they may be
2 evidentiary in nature and they are being offered for the
3 limited purpose, not for the truth of what they say but the
4 fact that he possessed them. Anything else goes to weight.

5 MR. NOOTER: With respect to opening, I also in
6 my opening admitted that my client was a Muslim, that he
7 goes to mosque and that he takes flyers. I talked about
8 flyers in the opening.

9 THE COURT: Then you are telling me it is not
10 prejudicial.

11 MR. NOOTER: No. I am saying that the content of
12 these flyers is prejudicial. One of the ones that are
13 referred to takes a quote directly out of the Los Angeles
14 Times. It is a mixture of political discussion with
15 religious discussions about whether the United States should
16 be bombing Baghdad, and a lot of people in this country have
17 disagreement over that. It just doesn't seem to me that it
18 is relevant whether in 1993 my client was going to agree to
19 assist in blowing up tunnels.

20 THE COURT: Sounds like an excellent jury
21 argument.

22 MR. NOOTER: I will make it if it comes in, but I
23 am saying that some of the tone of these flyers is such that
24 it is relatively inflammatory and I don't think that is
25 relevant -- my client didn't write them, after all. I don't

1 think it is relevant for the jury to jump to conclusions
2 about what he believes because this material is in his
3 house. Many of us have material in our house that we don't
4 agree with but that we choose to read or we choose not to
5 read. It comes in the mail and stuff like that. It seems a
6 lot of steps to get to something that is improper, to
7 suggest that he is predisposed to --

8 THE COURT: You deep saying "predispose." There
9 is such a thing as state of mind, which you opened on, which
10 is somebody who was into high living and not politics. That
11 is in essence how you portrayed him.

12 MR. NOOTER: And as a person who does go to
13 mosque and receives the flyers that they hand out. I think
14 the video that we looked at for five minutes shows the kind
15 of lifestyle that he had, and it is something that I would
16 like to show the jury. I don't think that the picture I
17 gave in the opening is unbalanced whatsoever. What is bad
18 about the flyers is that they contain inflammatory rhetoric.
19 The fact that there are flyers I don't object to. The exact
20 wording that goes before the jury, that I do object to. He
21 didn't write it. It doesn't mean that he agrees with it or
22 that he agrees with the inflammatory aspects of it.

23 THE COURT: It means at a minimum that he was
24 interested enough to have had them in his home.

25 MR. NOOTER: I am interested in a lot of stuff

1 that I don't believe in at all that I have in my home, and
2 probably some of that stuff has inflammatory rhetoric in it
3 that I wouldn't want anybody to conclude my beliefs are
4 based on.

5 THE COURT: Arguably.

6 MR. NOOTER: At least 171 and 172, remoteness of
7 the time.

8 THE COURT: When did he possess them?

9 MR. NOOTER: It was in the house when they
10 searched it in July. I have material from college that is
11 still in my house. We studied the Communist Manifesto. We
12 studied the Fascists. Does that mean that having kept that
13 stuff around I believe in communism or fascism or something
14 like that?

15 THE COURT: You can argue that this was course
16 material from a political science course, I suppose, if you
17 like.

18 Mr. McCarthy.

19 MR. McCARTHY: I was going to say, if Mr. Nooter
20 had a lawyer who had given the jury an opening who wasn't
21 remotely interested in politics, it wouldn't be relevant
22 regardless whether he agreed with it or didn't agree with
23 it, and that is where we are at now.

24 MR. NOOTER: Mr. McCarthy is exaggerating what I
25 said. I did not say that he wasn't remotely interested in

1 politics.

2 THE COURT: Do you have the opening? At what
3 point do you intend to offer it? This afternoon?

4 MR. KHUZAMI: Late this afternoon or Monday.

5 THE COURT: Let me look again at the opening.

6 MR. NOOTER: Thank you, your Honor.

7 (Jury present)

8 SUE ELLEN CAPOZZI, resumed.

9 THE COURT: Good morning, ladies and gentlemen.

10 JURORS: Good morning.

11 THE COURT: I am sorry again for the delay. I
12 had some matters that I had to talk over with the lawyers
13 and the talking took a little bit longer than it should
14 have.

15 MR. MCCARTHY: Your Honor, I have just a couple
16 of other questions that I should have put the other
17 afternoon.

18 THE COURT: Go ahead. Agent Capozzi, you are
19 still under oath. Good morning. Do you want to move that
20 microphone so that you are talking into it so that everybody
21 will be able to hear you, including the translators. Thank
22 you.

23 (Continued on next page)

24

25

1 DIRECT EXAMINATION continued

2 BY MR. McCARTHY:

3 Q Good morning, Agent Capozzi.

4 A Good morning.

5 Q Let me just show you first of all what came into
6 evidence, I guess it was Tuesday, as Government's Exhibit
7 682A, this long metal object. Am I correct that that in
8 fact is two metal objects marked 682A and 682B? Yes, sure.

9 A Yes.

10 MR. McCARTHY: Your Honor, I should have offered
11 these for clarity sake as two objects, 682A and B, and I do
12 that at this time.

13 THE COURT: Those are received as 682A and B.
14 Go ahead.

15 (Government's Exhibits 682A and B received in
16 evidence)

17 Q Let me show you a few other items. 680A, do you
18 recognize that?

19 A Yes, I do.

20 Q What do you recognize it to be?

21 A It is a funnel that was found at the top of one
22 of the barrels.

23 Q I am also showing you 681A and B. Do you
24 recognize those items?

25 A Yes, I do.

1 Q What do you recognize them to be?

2 A They were rubber gloves found at the scene.

3 Q Both 681A and 681B are rubber gloves?

4 A Yes.

5 MR. McCARTHY: Your Honor, the government offers
6 680A, 681A and 681B.

7 THE COURT: Absent objection, 680A, 681A and 681B
8 are received. Go ahead.

9 (Government's Exhibits 680A, 681A and 681B
10 received in evidence)

11 MR. McCARTHY: Thank you. I have no further
12 questions.

13 THE COURT: Cross, Mr. Serra.

14 MR. SERRA: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MR. SERRA:

17 Q Good morning, Agent Capozzi.

18 A Good morning.

19 Q Agent, the premises that you searched were 139-01
20 90th Avenue in Queens, is that correct?

21 A Yes.

22 Q Basically a garage, is that right?

23 A It was a warehouse.

24 Q Concrete block walls?

25 A Yes.

1 Q Are you aware that there was video monitoring
2 going on inside those premises?

3 A I am aware of that now but not at the time of the
4 search.

5 Q That was my next question, Agent. You did not
6 participate in the monitoring as an agent, is that correct?

7 A No. That is correct.

8 Q So the items which Mr. McCarthy introduced
9 through you day before yesterday, you don't know how they
10 got there, is that right?

11 A That is right.

12 Q Do you know of a person named Emad Salem?

13 A No.

14 Q You have never heard that name before?

15 A Yes, I have heard the name.

16 Q Your "no" meant you don't know him personally, is
17 that correct?

18 A Correct.

19 Q So you don't know whether any or all of the items
20 that Mr. McCarthy introduced this morning, day before
21 yesterday, were brought to that warehouse by Emad Salem, is
22 that right?

23 A I have no idea how they were brought there.

24 MR. SERRA: Your Honor, may I approach?

25 THE COURT: Yes.

1 Q Agent, I think we are going to have to share a
2 couple of microphones here.

3 Agent, I am showing you Government's Exhibit,
4 what has been marked as Government's Exhibit 677. Do you
5 recognize that?

6 A No, I don't.

7 Q Perhaps this will help you.

8 MR. SERRA: Your Honor, perhaps deemed marked
9 Exhibit 677C, cardboard.

10 A Yes, I have my initials on it.

11 Q Do you now recognize Government's Exhibit 677?

12 A Yes.

13 Q Was this one of the items that was recovered in
14 your search of that warehouse in Queens in the early morning
15 hours of June 24?

16 A Yes.

17 MR. SERRA: Your Honor, we would offer
18 Government's Exhibit 677.

19 MR. MCCARTHY: No objection.

20 THE COURT: 677 is received.

21 (Government's Exhibit 677 received in evidence)

22 MR. SERRA: With the court's permission, I will
23 just hold it up here briefly so that the jury can see it.

24 Q Agent Capozzi, do you have with you a copy of
25 your inventory from this search?

1 A No, I don't.

2 Q Agent, I am showing you what has been marked
3 Government's Exhibit 35130-A. If you ignore the
4 highlighting that has been put on that, is that a copy of
5 your inventory?

6 A Yes.

7 Q Basically, Agent, an inventory is a document
8 which you prepare either while you are doing a search or
9 immediately after, which contains a list of the items you
10 seized, right?

11 A While I am doing the search.

12 MR. SERRA: Your Honor, because these exhibits
13 are not being offered as defense exhibits for just one
14 defendant, with the court's permission, we are marking them
15 simply as Defendant's Exhibit Q and then a number, for
16 Queens.

17 THE COURT: Fine.

18 Q Agent, I am showing you what has been marked as
19 Defendant's Exhibit Q6, composed of two hammers, and I
20 direct your attention to number 17 on your inventory. Are
21 those items which you seized in the early morning hours of
22 June 24 from that warehouse?

23 A Yes.

24 MR. SERRA: Your Honor, we offer Defendant's
25 Exhibit Q6.

1 MR. McCARTHY: Your Honor, I have no objection to
2 anything the agent authenticates as being taken from the --

3 THE COURT: All right, then that will be seized
4 received. Go ahead.

5 (Defendant's Exhibit Q6 received in evidence)

6 Q Agent, I am showing you what has been marked
7 Defendant's Exhibit Q10, and direct your attention to item
8 number 12 on your inventory. Do you recognize Defendant's
9 Exhibit Q10 for identification as an item which you seized
10 from the warehouse in Queens?

11 A Yes.

12 MR. SERRA: We offer it.

13 THE COURT: That is received without objection.
14 Are those wires in a bag?

15 MR. SERRA: Yes, your Honor. With the court's
16 permission, I will briefly describe the item. It appears to
17 be wires commonly known as a circuit tester, a little bulb
18 with a couple sets of wires protruding from it.

19 THE COURT: OK.

20 (Defendant's Exhibit Q10 received in evidence)

21 Q Agent, showing you two items which have been
22 marked as Defendant's Exhibits Q2 and Q3, and directing your
23 attention to item 16 on your inventory, do you recognize
24 these -- they appear to be two power drills, one with a
25 drill bit, the other with a screw bit -- as being items that

1 you seized during your search of the warehouse?

2 A Yes.

3 MR. SERRA: Your Honor, we offer them.

4 THE COURT: They are received without objection.

5 Go ahead.

6 (Defendant's Exhibits Q2 and Q3 received in
7 evidence)

8 Q Directing your attention to Defendant's Exhibit
9 Q4 and directing your attention to item number 8 on your
10 inventory, do you recognize this item which appears to be a
11 container wrapped in duct tape with a protruding fuse? Do
12 you recognize that as an item which you seized during your
13 search?

14 A Yes.

15 MR. SERRA: We offer it, your Honor.

16 THE COURT: It is received without objection.

17 (Defendant's Exhibit Q4 received in evidence)

18 Q Agent, directing your attention to Defendant's
19 Exhibit Q8 for identification and to your inventory number
20 11, do you recognize that as an item which you seized during
21 the search of the warehouse?

22 A Yes.

23 MR. SERRA: For the record, your Honor, it
24 appears to be a hardware anchor kit with plastic anchors and
25 bolts. We offer it, your Honor.

1 THE COURT: That is received without objection.
2 (Defendant's Exhibit Q8 whatever received in
3 evidence)

4 Q Directing your attention to Defendant's Exhibit
5 Q9 for identification, and on your inventory to number 6, do
6 you recognize this as an item which you seized during your
7 search of the warehouse?

8 A Yes.

9 MR. SERRA: Your Honor, we would offer Q9, and
10 for the record it appears to be an orange plastic box with a
11 circuit board inside it.

12 Q Is that right, Agent?

13 A Yes.

14 THE COURT: That is received without objection.
15 (Defendant's Exhibit Q9 received in evidence)

16 Q Agent, directing your attention to Government's
17 Exhibit 684B for identification and directing your attention
18 to item number 10 on your inventory, do you recognize this
19 item as something which you seized during your search of the
20 warehouse?

21 A Yes.

22 MR. SERRA: Your Honor, we offer it.

23 THE COURT: What is it?

24 Q Agent, does this appear to you to be a circuit
25 board with wires and a bulb attached?

1 A Yes.

2 THE COURT: 684B is received without objection.

3 (Government's Exhibit 684B received in evidence)

4 Q Agent, directing your attention to what has been
5 marked as Defendant's Exhibit Q14A and Q14B, and, as it
6 turns out, number 14 on your inventory, do you recognize
7 these as two video cassettes which you seized during your
8 search of the warehouse?

9 A Yes.

10 MR. SERRA: We offer them, your Honor.

11 THE COURT: They are received without objection.

12 (Defendant's Exhibits Q14A and Q14B received in
13 evidence)

14 Q Agent, directing your attention to what has been
15 marked as Defendant's Exhibit Q1 for identification and your
16 inventory number 20, do you recognize this as an item which
17 you seized during your search of the warehouse?

18 A Yes.

19 MR. SERRA: Your Honor, it is a box containing,
20 quote, fixed spring wire connectors, and we offer it.

21 THE COURT: It is received without objection.

22 (Defendant's Exhibit Q1 received in evidence)

23 Q By the way, Agent, you seized a number of
24 drinking glasses as well as these items we are introducing,
25 didn't you?

1 A Yes.

2 Q Directing your attention to what has been marked
3 as Defendant's Exhibit Q12 for identification and your
4 inventory number 15, did you seize this item during your
5 search of the warehouse?

6 A Yes.

7 MR. SERRA: Your Honor, we offer it. It is
8 labeled as a combination ratchet socket set.

9 THE COURT: Q12 is received without objection.

10 (Defendant's Exhibit Q12 received in evidence)

11 Q Agent, directing your attention to what has been
12 labeled as Defendant's Exhibit Q11 for identification, which
13 is contained in a cardboard box, and your inventory number
14 21, do you recognize this as an object which you seized
15 during your search of the warehouse?

16 A Yes.

17 MR. SERRA: Your Honor, we offer it. For the
18 record, it is a cardboard box containing what appears to be
19 a video cassette case with circuitry inside it, wires
20 protruding from it, leading to a transformer.

21 Q Is that accurate, Agent?

22 A Yes.

23 THE COURT: Q11 is received without objection.

24 (Defendant's Exhibit Q11 received in evidence)

25 Q Agent, showing you a copy of what has been marked

1 Defendant's Exhibit Q13 for identification and directing
2 your attention to number 7 on your inventory, do you
3 recognize this as an item which you seized during your
4 search of the warehouse?

5 A Yes.

6 MR. SERRA: Your Honor, we offer Q13. For the
7 record, it is a gray plastic box containing a circuit board
8 with protruding wires.

9 Q Is that accurate, Agent?

10 A Yes.

11 THE COURT: Q13 is received without objection.
12 (Defendant's Exhibit Q13 received in evidence)

13 MR. SERRA: Your Honor, this item should have
14 been marked as Defendant's Exhibit Q7. I believe the
15 sticker fell off. We will mark it later. For the moment
16 may we deem it Q7?

17 THE COURT: It is deemed Q7.

18 Q Agent, showing you what has been deemed marked
19 Defendant's Exhibit Q7 for identification and what is
20 labeled item 22 from your inventory, do you recognize this
21 as something that you seized from the warehouse that night?

22 A Yes.

23 MR. SERRA: Your Honor, I would offer Q7. For
24 the record, it is a plastic envelope containing a length of
25 gray insulated wire.

1 THE COURT: Received without objection.

2 (Defendant's Exhibit Q7 received in evidence)

3 Q Agent, directing your attention to what has been
4 marked as Defendant's Exhibit Q5 for identification and to
5 your inventory number 23, do you recognize these three items
6 as things that you seized during your search of the
7 warehouse?

8 A Yes.

9 MR. SERRA: Your Honor, we would offer Q5. For
10 the record, they are three magic markers.

11 THE COURT: Q5 is received without objection.

12 (Defendant's Exhibit Q5 received in evidence)

13 Q Agent, how long were you at the warehouse in the
14 early morning hours of June 24, 1993?

15 A Approximately six hours.

16 Q When you were there, did you see a video
17 surveillance camera there?

18 A No, I did not.

19 Q Do you know what I mean by a video surveillance
20 camera, a video camera with a long, narrow lens?

21 A I did not see one.

22 MR. SERRA: May I have the court's indulgence for
23 just a moment?

24 THE COURT: Yes.

25 Q Final question, Agent. I had asked you

1 previously about the items which the government introduced,
2 as to whether you had any personal knowledge as to whether
3 someone by the name of Emad Salem brought them. Do you
4 remember that question?

5 A If --

6 Q Withdrawn. The items in the Q series which I
7 just introduced through your testimony, do you have any
8 personal knowledge as to whether someone by the name of Emad
9 Salem brought any or all of those items?

10 A I have no knowledge.

11 MR. SERRA: Thank you. I have nothing further.

12 THE COURT: Mr. Nooter, representing Mr. Wahid
13 Saleh. Go ahead.

14 CROSS-EXAMINATION

15 BY MR. NOOTER:

16 Q Agent, in addition to the things you have
17 discussed, is it not true that there were also soda cans
18 present? Like Pepsi cans?

19 A To the best of my knowledge, I believe there
20 were.

21 Q And food wrappers?

22 A I don't recollect that.

23 Q What about styrofoam cups for coffee?

24 A Yes.

25 Q Was there a coffee machine?

1 A I believe so.

2 Q And a little machine for heating water for tea or
3 something like that?

4 A I don't recall that.

5 MR. NOOTER: Nothing further.

6 THE COURT: Anyone else? Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. McCARTHY:

9 Q Did you see any maps of Bosnia around?

10 A No.

11 MR. McCARTHY: Thank you.

12 THE COURT: Anyone else? Thank you very much.
13 You are excused.

14 MS. AMSTERDAM: May I have one question, your
15 Honor? I apologize.

16 THE COURT: I am sorry.

17 MS. AMSTERDAM: I was thinking.

18 THE COURT: Serves you right for not leaving fast
19 enough.

20 MS. AMSTERDAM: May I have one moment? I
21 apologize.

22 RE-CROSS-EXAMINATION

23 BY MS. AMSTERDAM:

24 Q Good morning.

25 A Good morning.

1 Q Mr. McCarthy asked you a question about whether
2 or not you saw any maps of Bosnia at the garage location.
3 Do you recall that? Obviously; it just happened.

4 A Yes.

5 Q And you said you saw no maps, correct?

6 A Correct.

7 Q Did you see any photographs of the Lincoln
8 Tunnel?

9 A No.

10 Q Did you see any photographs of the Holland
11 Tunnel?

12 A No.

13 Q Do you see any photographs of the United Nations?

14 A No.

15 Q Did you see any photographs of the federal
16 building?

17 A No.

18 MS. AMSTERDAM: I have no further questions
19 questions.

20 THE COURT: Anything else?

21 REDIRECT EXAMINATION

22 BY MR. MCCARTHY:

23 Q Do you know if there was a videotape of the
24 tunnels in there?

25 A I do not know.

1 RE CROSS-EXAMINATION

2 BY MS. AMSTERDAM:

3 Q Do you know if there were any videotapes of
4 events occurring in Bosnia?

5 A I do not know.

6 (Continued on next page)

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1 MS. AMSTERDAM: Thank you.

2 THE COURT: Anything else?

3 THE COURT: You are excused, for good.

4 (Witness excused)

5 MR. McCARTHY: Your Honor, the government calls
6 Gamal Abdel-Hafiz, but I think we need to approach at side
7 bar briefly.

8 GAMAL ABDEL-HAFIZ, resumed.

9 (At the side bar)

10 THE COURT: What can I do for you?

11 MS. STEWART: Judge, two of the things that are
12 about to be introduced through the translator are FISA
13 tapes. I am making the relevance objection that I have made
14 as to all the FISA tapes by of the government. I believe
15 that neither of them in this case are relevant. I ask for
16 an offer of proof as to both of them.

17 THE COURT: Is this something that I have seen
18 before?

19 MS. STEWART: They have been kicking around for a
20 long time, 729 and 798.

21 THE COURT: Is this what you gave me earlier or
22 is this two different ones?

23 MS. STEWART: They have been around a long time.

24 THE COURT: I am sure they have.

25 MS. STEWART: One is a call to Milan. Does that

1 ring any bells?

2 THE COURT: It doesn't. Let me send them out.

3 (In open court)

4 THE COURT: Ladies and gentlemen, I am sorry.

5 This is going to take longer than a than I thought. Rather
6 than have you sit here and watch us I am going to excuse you
7 for a moment. Please don't discuss the case. We will
8 resume in a few minutes.

9 (Jury excused)

10 MR. FITZGERALD: Does your Honor have a copy of
11 both exhibits, 729T and 798T?

12 MS. STEWART: May the witness be excused, Judge?

13 THE COURT: Yes, you can be excused.

14 (Witness excused)

15 THE COURT: 729, I did have. That was one of
16 the -- Miss Stewart, you gave me a group, or somebody gave
17 me a group of transcripts a while ago to review, and I did
18 my homework and I reviewed that one. I haven't reviewed
19 798.

20 MS. STEWART: Very short, Judge.

21 (Pause)

22 THE COURT: I have reviewed it quickly and what I
23 get from this is that he wants to talk to somebody named
24 Mohammed Shawqi, who was not there. Is that fair?

25 MS. STEWART: That is fair.

1 THE COURT: Why don't I find out what it is
2 offered to show, and we can talk about whether it is
3 relevant.

4 MR. FITZGERALD: Yes, Judge. It is that
5 particular number which will be linked up in a chart which
6 will not be offered today, but a number in Pakistan that
7 shows up other times in other FISA's, and it is not where he
8 speaks to one of his sons or something like that, that he
9 makes appointments to meet people and particularly this
10 Mohammed Shawqi, that he is arranging the phone calls there,
11 and that is not a casual, "let me check up with my sons,"
12 that when he is calling that number and speaking with
13 people, these are prior appointments where he meets people
14 that he speaks to concerning his role as the leader of
15 Gamaat.

16 MS. STEWART: I scarcely see how that is relevant
17 to this case, that he called and asked to speak to someone
18 and that person is not there and he says tell him to be
19 there tomorrow at such and such a time and I will talk to
20 him then. Without more, it seems to me to be spinning off
21 in space somewhere, meaning why is he calling who the person
22 is -- it could be for a million different reasons. It asks
23 the jury to speculate every time he calls Pakistan. Is that
24 the situation here? It could be very well to say have you
25 seen my sons.

1 MR. FITZGERALD: This is, I believe, the same
2 number as the call that was 713T, which was the subject of
3 examination of Mr. Salem when he said that he was present
4 for a call overseas, and he indicated that he recalled the
5 conversation to be someone moving troops and then Ms.
6 Stewart aggressively cross-examined Mr. Salem about whether
7 or not he was just talking to his sons. Mr. Mohammed Shawqi
8 we believe will later, namely, in the defense case, will be
9 established to be an important person in Gamaat.

10 THE COURT: Well, why couldn't you offer it after
11 that if it happens.

12 MR. FITZGERALD: That is fine, Judge.

13 THE COURT: Passing to 729, that one I did look
14 at, and I saw two items that I thought were of some
15 significance. Go ahead.

16 MR. FITZGERALD: Your Honor, we offer Government
17 Exhibit 729T for three reasons. The first is that it shows
18 the defendant Abdel Rahman in an operational role in the
19 sense that when he's describing the attacks on the tourist
20 buses, he described it as we: "If we wanted to do this, we
21 would do that." Secondly, the rationales are very
22 important.

23 During some of the CM's that were received in
24 evidence Mr. Siddig Ali described the attack of the World
25 Trade Center as being directed at the buildings and not the

1 civilians, but if civilians die, so be it.

2 The same rationale comes into play here on the
3 attack of the tourists buses. They are not directed at the
4 tourists; they are directed at the buses.

5 Most importantly, Ms. Stewart opened that the
6 defendant Abdel Rahman condemned the attack on the Trade
7 Center, an attack that involved civilian lives, and also
8 that he had a sacred covenant with America. The one thing
9 that's become clear through the prior evidence at trial is
10 that he views America as an infidel and an enemy of Islam,
11 and yet he claims to have a sacred covenant with that enemy.

12 In this conversation he talks to this person who
13 asks him what about the sort of treaty or the promise of
14 safety to a tourist who visits Egypt, and he basically says
15 you can't have an understanding with someone who lacks the
16 power. He doesn't respect an assurance of safety from an
17 infidel.

18 THE COURT: That goes to an assurance given by
19 what he regards as an illegitimate Muslim government.

20 MR. FITZGERALD: Yes, your Honor.

21 THE COURT: Ms. Stewart?

22 MS. STEWART: Just broadly characterized, this is
23 apparently the sheik making a call to ask for an address in
24 which the woman who answers the phone asks him questions
25 regarding acts which took place in Egypt which were the

1 subject of a 404(b) application by the government as to bad
2 acts. That's my initial request to you, your Honor.

3 The second thing is that the things of Mr.
4 Fitzpatrick has talked to you --

5 THE COURT: Fitzgerald.

6 MS. STEWART: Fitzgerald. I will do that
7 forever. Between him and Mr. Abdel-Hafiz I have my
8 problems.

9 I think, first of all, to compare the sheik and
10 Siddig Ali as having the same view stretches it fairly thin.
11 I don't think that it is the same view at all.

12 I think you can talk about Egypt and you can talk
13 about the World Trade Center, and my opening was very
14 pointed, that things were different and separate. I think
15 also the fact about the covenant of tourists is a very
16 different thing than the covenant to live and work in a
17 country where the leadership is not branded as an apostate,
18 which Mubarak is branded as. It's a different thing.
19 Although the translation may sound the same, it is not the
20 same thing.

21 THE COURT: That is something I can see.

22 However, it does show concern with operations of
23 the sort that the government claims he directed. The second
24 thing that struck me was what you thought was innocuous was
25 the taking of the telephone number for the directory. There

1 was some dispute about whether or not in fact there was, or
2 I thought there was a dispute about whether or not there was
3 a telephone directory, and there was some suggestion that in
4 fact he maintained telephone numbers in braille. There was
5 the suggestion that the fact that there was a directory
6 which other people wrote numbers for him was not accurate.
7 This seems to bear out that there was such a directory.

8 MS. STEWART: Well, I must say, Judge, I also
9 like the reference to the fact that the person who made this
10 speech was arrested immediately thereafter in Egypt. But I
11 think on balance I would still prefer not to have it in.

12 THE COURT: OK. That objection is overruled.
13 The other exhibit, 798 is out for the moment,
14 principally on a relevance objection.

15 MR. FITZGERALD: All right, Judge.

16 THE COURT: Is there anything else we ought to
17 deal with now so that I don't have to send them out again?
18 I really don't want to send them out again.

19 Mr. Serra?

20 MR. SERRA: Your Honor, I'm not sure if we would
21 get to it before lunch or not, the government would know
22 better than I, but there are issues about the search of
23 Mr. Alvarez's house.

24 MR. FITZGERALD: We can deal with that I think at
25 the break I'm assuming that Mr. Abdel-Hafiz's cross will

1 take us to the morning break.

2 THE COURT: Mr. Jacobs?

3 MR. JACOBS: Your Honor, we have a dispute that
4 is going to come up again on some translations with what the
5 witness has heard on six lines of the last page of the FISA
6 that is about to come in. I was trying to think of a
7 procedure so we don't waste the jury's time, and what I
8 would suggest is as follows: I would request that the
9 witness prepare in Arabic what he heard so that I can review
10 it with my client. All we have is English. I can't
11 cross-examine English. I need to see what he heard in
12 Arabic.

13 THE COURT: You mean you want him to write it
14 out?

15 MR. JACOBS: Yes.

16 THE COURT: Those six lines?

17 MR. JACOBS: Yes.

18 So what I'm thinking is, I didn't want to do it
19 in the front of the jury. I think that would take 20
20 minutes, so I would suggest, if the government has no
21 problem, they can put the transcript in, I would like to
22 reserve the cross until he writes it out in Arabic for me
23 out of the presence of the jury, and then I'll take my 10 or
24 15 minutes or whatever it is to cross-examine if I choose to
25 at all. Is that OK?

1 MR. McCARTHY: That's fine, Judge.

2 THE COURT: They're nodding. I'm nodding.

3 Good. OK. Mr. Bernstein?

4 MR. BERNSTEIN: Before the jury comes back two
5 matters: I, of course, was not here at the very end of
6 yesterday. I left Mr. Serra -- I'm sorry, the day before
7 yesterday -- with my proxy. I have now read the record and
8 I just want the court to be aware that I obviously join in
9 the motions of counsel and Mr. Serra did not make any
10 application that I disagree with and did not join in any
11 applications. To the extent that any motions for mistrial
12 or otherwise were made by co-counsel, they were deemed
13 joined in my me.

14 The other is that I would like to have a few
15 minutes with the court and Mr. McCarthy during the break, if
16 possible in the robing room, on a matter that I would like
17 to discuss with the court on the record.

18 THE COURT: Fine.

19 MR. BERNSTEIN: Possibly sealed.

20 THE COURT: OK. I also need to talk to Mr. Serra
21 and the government at the break.

22 MR. SERRA: I'm sorry, your Honor?

23 THE COURT: I said I also need to talk to
24 Mr. Serra and the government at the break.

25 MR. JACOBS: Your Honor, I am sorry.

1 THE COURT: Yes.

2 MR. JACOBS: The same problem that is occurring
3 on V8 with respect to the new tapes that we just got the
4 other day --

5 THE COURT: What is the status of that?

6 MR. JACOBS: I'm about to, if I can, I think I
7 can help your Honor out. It looks like I'm going to have a
8 dispute of about six lines, the same kind of six lines on
9 V8. Less than that. Three lines, maybe, we're not sure.

10 In any event, the enhanced copies we're getting
11 today from Mr. Ginsberg. I represented to the government
12 that I would give them my final corrections tomorrow. I
13 said I have no objection if they wanted to play the first 40
14 pages today, if they wanted to, giving me an opportunity on
15 Monday morning, first thing, to contest it, and if
16 Mr. Fitzgerald would do the same thing, give it to me in
17 Arabic over the weekend, then we can, Monday morning, move
18 it along relatively quickly.

19 If Mr. Nooter would want to do his examination
20 today on V8, I have no problem with that. I don't think we
21 overlap. In other words, his client is not on those couple
22 of lines. So with that in mind, I think we've worked out
23 V8.

24 Mr. Fitzgerald, is that fair to say?

25 MR. FITZGERALD: Yes, Judge. I am going to offer

1 the transcripts other than 45 through 47, the parts dealing
2 with Mohammed Saleh.

3 THE COURT: Fine. Thank you. Thank you, both,
4 and all. OK. Let's the get the jury.

5 (Jury present)

6 GAMAL ABDEL-HAFIZ,
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 morning, Mr. Abdel-Hafiz.

12 A Good morning, sir.

13 Q Are you still employed as a translator for the
14 FBI?

15 A Yes, sir, I am.

16 Q This morning I've placed before you a number of
17 exhibits to your left. I would call your attention first to
18 a transcript marked government Exhibit 370T.

19 A Yes, sir.

20 Q Can you tell us the date of that transcript.

21 A Excuse me?

22 Q Can you just tell us the date of that transcript,
23 the date at the top. I'm sorry.

24 A At the top it's May 27-28, 1993.

25 Q Now, is it fair to say you've previously

1 testified to a translation of a CM recording for that date,
2 is that correct, a monitored tape made by Emad Salem, to
3 your understanding?

4 A CM19, yes.

5 Q Have you had occasion to go back and review the
6 videotape from the safe house for that same day, May 27-28
7 for the period before CM19 starts?

8 A Yes, sir, I have.

9 Q And in reviewing the videotape up until the point
10 where CM19 starts, did you make a transcript of that
11 conversation?

12 A Yes, sir, I have.

13 Q Is 370T a transcript that fairly and accurately
14 reflects the conversation that takes place on the videotape
15 in the safe house before CM19 begins?

16 A Yes, sir, it does.

17 Q And for the Arabic, do the Arabic words that were
18 used on 370T reflect a fair and accurate translation from
19 Arabic into English of the words spoken?

20 A Yes, sir, it does.

21 Q Are the voice attributions fair and accurate
22 where they indicate who is speaking?

23 A Yes, sir.

24 Q If you could put down that exhibit, 370T, and
25 look at Government Exhibits 729T, 796T, and 799T, and I

1 place before you three tapes, three cassettes, which should
2 be 729, 796, and 799.

3 A Yes, sir.

4 Q Have you reviewed those three cassettes and the
5 three corresponding transcripts prior to coming to court
6 today?

7 A Yes, sir, I have.

8 Q And are those three transcripts, 729T, 796T, and
9 799T, fair and accurate translations of the conversations
10 taking place on those three tapes?

11 A Yes, sir, they are.

12 Q And are the voice attributions fair and accurate
13 to the best of your ability?

14 A Yes, sir.

15 MR. FITZGERALD: Your Honor, I would offer
16 Government Exhibit 370T and Government Exhibits 729T, 796T,
17 and 799T.

18 MR. JACOBS: Subject to our discussion outside
19 the presence of the jury, your Honor, the procedure that we
20 discussed.

21 MS. AMSTERDAM: I just have a couple of brief
22 questions on 370T.

23 THE COURT: Go ahead.

24 (Counsel conferred)

25 MS. AMSTERDAM: Your Honor, I have spoken to Mr.

1 Fitzgerald, I will wait until the cross.

2 THE COURT: All right.

3 BY MR. FITZGERALD:

4 Q There is one last transcript, Mr. Abdel-Hafiz,
5 GX383T.

6 A Yes.

7 Q Were you provided a draft of Government Exhibit
8 383T?

9 A Yes, I was.

10 Q Were you asked to look at certain underlined
11 sections of 383T?

12 A Yes.

13 Q Did you compare those underlined sections by
14 viewing a set of original videotapes?

15 A Yes.

16 Q Did you also look at some enhanced copies of the
17 videotapes?

18 A Yes, two.

19 Q Recently did you also listen to some audiotapes
20 made at the same time as those videotapes?

21 A That's true.

22 Q Reviewing just the underlined portions of 383T,
23 are the underlined portions of that exhibit fair and
24 accurate translations of what is spoken during the time that
25 those videotapes and audiotapes were running?

1 A Yes, sir, it is.

2 Q Was there a gap in the videotapes when the
3 videotapes were being changed?

4 A Yes, sir. It was about 24 seconds or so, and the
5 audiotape filled this gap.

6 Q So the audiotape had some conversation recorded
7 for that gap?

8 A Yes, sir.

9 MR. FITZGERALD: Your Honor, with the exception
10 of pages 45 to 47, which I can identify as from the pause on
11 page 45 after the third attribution until the knock on the
12 door on page 47 in the eighth attribution, excepting those
13 three pages, the government offers at this time Government
14 Exhibit 383T in evidence with the caveat that there is some
15 English conversation and that the English parts are offered
16 as an aid to the jury.

17 MR. NOOTER: No objection.

18 THE COURT: All right. 383T is received and the
19 other exhibits are received as well; that is 370T, 729T,
20 796T, and 799T.

21 (Government's Exhibits 370T, 383T, 729T, 796T and
22 799T for identification were received in evidence)

23 MR. FITZGERALD: Thank you, Judge.

24 I have no further questions.

25 THE COURT: Cross? Ms. Amsterdam, representing

1 Mr. Khallafalla.

2 MS. AMSTERDAM: Do the jurors have 370T in their
3 book, Mr. Fitzgerald?

4 THE COURT: I assume they do. Yes.

5 MS. AMSTERDAM: I would ask at this time if the
6 jurors would take that transcript out.

7 THE COURT: Fine.

8 MS. AMSTERDAM: Thank you.

9 THE COURT: It is in the volume marked 349
10 through 370.

11 MS. AMSTERDAM: I think we're ready. Thank you.

12 CROSS-EXAMINATION

13 BY MS. AMSTERDAM:

14 Q Good morning, sir.

15 A Good morning.

16 Q The beginning of this tape, at the very beginning
17 it's captioned "V23, V23." That "V" indicates it's a
18 transcript of a videotape, correct?

19 A That's true.

20 Q OK. And the date of this transcript is May 27
21 through May 28, correct?

22 A That's correct.

23 Q Now, this portion of the transcript which is
24 represented by five pages, this comes at the beginning of
25 what we have previously heard as CM19, is that correct?

1 A It came before CM19 started.

2 Q All right. Now, CM19 is an audiotape, right?

3 A Yes, ma'am, yes, ma'am.

4 Q That was the consensually monitored tapes that
5 Mr. Salem made under the authority of the FBI, right?

6 A I believe so, yes.

7 Q On those you can just hear sound, you don't see
8 pictures, it's an audiotape, correct?

9 A That is true.

10 Q And we've heard and we've previously put in the
11 transcripts of CM19, which is the audio portion of the tape
12 made at the first night in the garage in Queens, correct?

13 A I'm not sure which night, but it was done in the
14 garage in Queens, yes.

15 Q This portion of the tape is the same night in
16 Queens as CM19, right?

17 A That's correct, ma'am.

18 Q It comes a few minutes before Mr. Salem
19 apparently activates his audio machine, right?

20 A I believe about 15 or 20 minutes.

21 Q And so this portion of the conversation is not in
22 CM19, right?

23 A That's correct.

24 Q Now, at the beginning, sir, of the transcript, it
25 says at 22:56:05, that's time, 10:56 in the evening?

1 A Yes.

2 Q And that time you actually took off of the
3 videotape, looking at the videotape?

4 A That's correct.

5 Q The very first attribution to Mr. Salem is
6 Mr. Salem saying to people in his car, do you see that?

7 A Yes, ma'am.

8 Q "Make yourselves comfortable until I" -- and then
9 he goes on to say, "that's it, please. Unfortunately I
10 didn't bring any chairs or anything like that."

11 Then a few words were exchanged and you indicate
12 that it is approximately two minutes later, it's 22:58, and
13 Salem, two steps up, opened a door and went inside.

14 Now, when you wrote that, "Salem two steps up,
15 opened door and went inside," you were writing down what you
16 observed on the video?

17 A That's true.

18 Q At the beginning when you said Salem to people in
19 his car, you were writing down also what you observed from
20 the video, correct?

21 A That's correct. Yes, ma'am.

22 Q This is not, however, a recording of the
23 conversation that took place in the car en route to Queens,
24 is it?

25 A No, ma'am. The car was inside the garage.

1 Q So the fact that it says to people in his car,
2 it's because the car has pulled into the garage at that
3 point, right?

4 A That's correct.

5 Q But there is no tape of the conversation en route
6 to the safe house, correct?

7 A Not that I am aware of.

8 MS. AMSTERDAM: Thank you, sir.

9 THE WITNESS: You're welcome.

10 THE COURT: Mr. Nooter, representing Mr. Wahid
11 Saleh, go ahead.

12 CROSS-EXAMINATION

13 BY MR. NOOTER:

14 Q Good morning, sir.

15 A Good morning, sir.

16 Q Now, this process of developing the transcript of
17 the V5, V8 tape which is Exhibit 383, --

18 A Yes, sir.

19 Q -- was rather time consuming, is that right?

20 A Yes.

21 Q You worked and reworked it quite a few times, is
22 that right?

23 A That's correct.

24 Q In connection with that you were provided with
25 other transcripts that other people had made, is that

1 correct?

2 A "Other people" meaning?

3 Q Other translators.

4 A From the government?

5 Q From anybody.

6 A Yes.

7 Q Were you provided with a transcript which had the
8 words in boxes with the English on one side and the Arabic
9 on the other?

10 A Yes.

11 Q And that was one of the things you used to see
12 whether or not -- withdrawn.

13 That's one of the things you used in the process
14 of creating the transcript, is that right?

15 A In correcting the transcript.

16 Q OK.

17 A Checking the underlines.

18 Q Now, the transcript you started with, which has
19 become 383T, you did not originally prepare, is that
20 correct?

21 A That's correct.

22 Q You checked portions of it, is that right?

23 A That's correct.

24 Q And I believe you said that when you do this, you
25 do not yourself write out the Arabic words you hear, you

1 only write in directly on to your word processor the English
2 that you think --

3 A The English, yes.

4 Q -- that that should be, is that correct?

5 A Yes.

6 Q The media that you used to check against included
7 videotapes, is that right?

8 A Yes.

9 Q You listened to V5, is that right?

10 A V5, yes.

11 Q And V8?

12 A And V8.

13 Q Did you also listen to V7 and V6?

14 A In some instances, yes.

15 Q Is it true that sometimes because V6 and V7 show
16 a different view, it was easier to see who was talking by
17 looking at those tapes rather than V5 or V8, is that
18 correct?

19 A Sometimes it helped, yes.

20 Q Is it also true that sometimes the audio quality
21 was a little better on V7 or V6?

22 A I'm not really sure if I can say it's a little
23 better. Maybe the noise is a little less on one or the
24 other on certain --

25 Q Background noise?

1 A Yes.

2 Q What kind of equipment did you use to listen to
3 the audio portion of these videos?

4 A I have a video, a VCR and I have a monitor that
5 I'm using.

6 Q Did you use headphones?

7 A Yes. And sometimes I do it without the
8 headphones. Sometimes I play it without the headphones and
9 walk four or five feet away from it. This way that will
10 drown -- when something that there's a problem hearing it
11 because of the background noise, if you turn it on, walk
12 away from it four or five feet, that will drown the, drown
13 the background noise and sometimes amplifies what was said.

14 Q Would it be fair to say that it was sometimes
15 difficult to hear what was said for various reasons, is that
16 correct?

17 A Yes, sometimes.

18 Q Sometimes because of background noise, is that
19 right?

20 A That's true.

21 Q Sometimes because a car might be passing outside
22 or some children playing outside would create noise, is that
23 true?

24 A That's true.

25 Q Sometimes, in fact, you could hear the people in

1 the store that was in the next building, you could hear them
2 talking in the background?

3 A I don't recall that.

4 Q OK. But you did hear cars passing from time to
5 time?

6 A Yes, yes.

7 Q Then sometimes inside the room someone would move
8 a chair or put something down on the table and there would
9 be noise?

10 A That's correct.

11 Q And sometimes people talked at the same time as
12 each other and it was hard to sort out what was being said
13 by whom?

14 A That's correct.

15 Q And sometimes people talked in very low voices
16 and it was simply hard to hear what they were saying, is
17 that correct?

18 A Sometimes, yes.

19 Q On the machinery that you used to listen to the
20 videotapes was it possible to slow down the audio track so
21 that you could try to distinguish the individual words more
22 easily?

23 A Yes, sir. I can slow it down or speed it up.

24 Q And you did do that sometimes in trying to --

25 A Yes, and I have buttons that I can push on the

1 machine to keep the background noise.

2 Q Now, in addition to the original videotapes, did
3 you also use so-called enhanced videotapes?

4 A That's correct.

5 Q What are these enhanced tapes?

6 A They are copies from five, six, seven and eight.

7 Q And they were made on equipment that tries to
8 take out some of the background noise, is that correct?

9 A I'm not really sure how they did them. They just
10 said it's enhanced. When I tried them compared to the
11 original, the enhanced were much better.

12 Q The enhanced were easier to hear, is that
13 correct?

14 A Yes, sir. Yes, sir.

15 Q Do you know whether in the enhanced it sometimes
16 boosted the volume of places where people were speaking in
17 very low volume?

18 A I'm not really sure of that.

19 Q Now, you also said you used an audiotape, is that
20 correct?

21 A Yes, just recently.

22 Q I am sorry?

23 A Just recently.

24 Q And does this recent tape, or maybe it was
25 several tapes, is that the only audiotape you used in trying

1 to correct or compare this transcript?

2 A That's correct.

3 Q And when you say "just recently," this was just a
4 few days ago that you first obtained this audiotape, is that
5 right?

6 A That's correct.

7 Q One of the things that audiotape did is it filled
8 the gap between V5 and V8, the 24-second gap, is that
9 correct?

10 A That's correct, yes, sir.

11 Q Is it true that in some instances it was also a
12 little clearer than the tapes, the videotapes you had been
13 using, is that right?

14 A Yes. In some instances, yes.

15 Q In a few instances you did, in fact, make changes
16 to the transcript because of that, is that correct?

17 A That's correct, yes.

18 Q Now, in some instances the people who were
19 speaking spoke in English, is that correct?

20 A Yes, every now and then, yes.

21 Q Usually it would just be an individual word that
22 might be said in English in the course of an otherwise
23 Arabic sentence, is that right?

24 A Yes, that happens, yes.

25 Q And this transcript does not identify which words

1 are in English, is that correct?

2 A That's correct.

3 Q You may have testified to this already, but I've
4 forgotten. Are you from Cairo?

5 A Yes, sir.

6 Q And so you're familiar with how Cairo residents
7 speak, the kind of slang and language they use?

8 A Yes, Cairo and other cities, yes.

9 Q What about Sudanese, the Sudanese sort of dialect
10 of Arabic, are you familiar with it?

11 A If it gets too deep into the dialect, it can be a
12 little difficult because the Sudanese --

13 THE COURT: Mr. Abdel-Hafiz, if you could, talk
14 into the microphone. Otherwise, it's difficult for the
15 translators. I am sure you sympathize with that.

16 A When the Sudanese speak their own dialect and
17 they speak it too fast, sometimes it's difficult to pick it.

18 Q There's also a big difference between classical
19 or formal Arabic and street Arabic, is that correct?

20 A That's correct.

21 Q And part of that difference is in the fact that
22 people often on the street don't use all of the vowels and
23 consonants that are available in the Arabic language, is
24 that a fair statement?

25 A It's a fair statement, yes.

1 Q They'll sometimes -- where the written language
2 will show you that there's a difference between three or
3 four consonants, they're all pronounced the same way in the
4 informal street version, is that correct?

5 A Well, if I can make this a little clearer, maybe
6 to myself, when we say it can be missed, that doesn't make
7 any difference when you write it down. If you listen to the
8 person when they talk, you can understand what they are
9 saying, and, in turn, you can translate what they are
10 saying.

11 It's not going to make a difference when they
12 talk slang that you say, well, I really didn't understand
13 what they are saying or what they're talking about. They
14 still can express themselves very clearly with the slang or
15 informal language.

16 Q In order to help you with the translation of
17 slang phrases, were you made familiar with what the whole
18 subject matter of the case and the conversation might have
19 been about?

20 A Made familiar by whom?

21 Q By the government.

22 A I became familiar with the case from working on
23 it, from working on different transcripts.

24 Q That helped you to identify what some of the
25 things are that people were saying, what they might refer

1 to, is that correct?

2 A That's correct, yes.

3 Q Is it true that sometimes the slang phrases if
4 literally translated would be completely meaningless, but
5 since they're slang phrases and they have a street meaning,
6 you knew what they meant, is that correct?

7 A That's correct, sir.

8 Q And is it fair to say that in those instances you
9 wrote down what it meant not what the literal words would
10 be, is that correct?

11 A In very few instances, yes.

12 Q Well, in one instance, for example, was the word
13 "watermelon" used, but it did not mean literally
14 "watermelon," it meant just nonsense, something like that,
15 any old things, sometimes they'll say "any old watermelon"?

16 A Yes, yes. It can be used. I don't recall
17 hearing this on the videotape. There is the water -- any
18 talk.

19 Q Any talk, "halamda"?

20 A No, any talk, aikallam. That means it's phony.

21 Q So it literally means "any talk," but it could
22 mean "phony," is that right?

23 A It does mean "phony" when you say the word
24 "aikallam."

25 Q OK. Does it also --

1 A That means it's not true, it's not correct, it's
2 phony.

3 Q Can it also mean any BS, any stuff, any almost
4 any nonsense?

5 A Yes, that's true.

6 Q In watching this videotape, there were some
7 things that people said which are part of the Arabic way of
8 speaking which is different from the way Americans speak, is
9 that correct?

10 A Such as?

11 Q For example, when people greet each other they
12 often say "peace be on you" as a greeting, is that right?

13 A That's right.

14 Q And that doesn't necessarily imply a religious
15 greeting, it's just a normal way people will greet each
16 other, is that correct?

17 A That's correct, yes.

18 Q It's a polite way of saying "How are you?" in a
19 way, is that correct?

20 A Yes, that's correct.

21 Q In Egypt is it not true that people in greeting
22 each other and in saying good-bye and parting shake hands
23 much more than we Americans do?

24 A That's true.

25 Q And shaking hands with somebody does not imply

1 whether you knew that person before or not, if you are
2 introduced to somebody, you might shake hands, is that
3 correct?

4 A That's a fact, yes.

5 Q And that would be normal?

6 A Yes.

7 Q And when leaving a person you would also shake
8 hands?

9 A That's correct.

10 Q Is that correct?

11 A Yes, sir.

12 Q If someone actually were quite friendly with
13 somebody, they might, as they do in Italy, actually give a
14 sort of kiss, even men might give a kiss greeting, is that
15 correct?

16 A That's correct, yes.

17 Q Going back to some of the language things, is it
18 not true that if in the course of speaking a person mentions
19 the name of God, it's normal for the person who is listening
20 to them to make a response that uses the word "God," such as
21 "leave it up to God" or "God is great" or "God willing," any
22 of those kinds of things?

23 A Yes. It's possible. It's possible. It depends
24 on what the statement was.

25 Q OK. Right, depending on what the statement is,

1 the wording of the response might be different?

2 A That's true.

3 Q But, generally speaking, a person won't just let
4 it pass that in the course of conversation someone says the
5 name of God without the listener interjecting some kind of
6 response using the word "God"?

7 A That's true.

8 Q Is that right?

9 A That's true.

10 Q That is true even among most Muslims, is that
11 correct?

12 A Yes.

13 Q Is it also true even of people who aren't Muslim
14 in Egypt?

15 A In Egypt, yes. Some of them, yes.

16 Q It's almost just part of the way you speak, is
17 that right?

18 A Yes. It's a habit of speech, yes.

19 Q In addition to that, is it not true that there's
20 a phrase, "Say there's no God but God," in other words,
21 directing someone to say it as a way of almost stopping them
22 or interrupting them from going on to say something?

23 A Yes, as a way of directing them -- yes, to stop
24 their speech or to start listening to you.

25 Q OK. Either way --

1 A Or to start up a conversation, yes.

2 Q "Stop and listen to me" --

3 A Yes.

4 Q -- will often be said by saying, "Say there's no
5 God but no God," because then the person has to stop and
6 say, "There's no God but God"?

7 A That's true.

8 Q In fact, it's even used was a way of stopping an
9 argument. If people are arguing, you can stop an argument
10 by telling the person, "Say there's no God but God," because
11 they have to stop and say it?

12 A That's a fact. Yes.

13 Q And there were examples of that in this
14 transcript, is that correct?

15 A That's true.

16 Q There is a phrase in Arabic something like "er
17 hamni," do you understand what I'm trying to say?

18 A Yes, sir.

19 Q That literally means "have mercy to me," is that
20 correct?

21 A Yes.

22 Q But it's also one of those phrases that can mean
23 something else, is that correct?

24 A Yes.

25 Q It could mean get to the point if someone is

1 speaking, is that right?

2 A Yes.

3 Q It could also mean "leave me alone, have mercy on
4 me, leave me alone"?

5 A That's true.

6 MR. NOOTER: Your Honor, at this point I would
7 ask if the jurors could be permitted to look at Exhibit 383
8 so that when I ask questions about it they can follow along.

9 THE COURT: All right.

10 MR. NOOTER: Do you have it?

11 THE COURT: That one is in the volume marked 371
12 to 499.

13 Q I will direct your attention to page 12 of
14 Exhibit 383.

15 MR. NOOTER: At this point I wonder if we can
16 turn on the monitors and put V7 in the machine, which I
17 think has been cued up.

18 MR. FITZGERALD: May I have a moment with Mr.
19 Nooter.

20 (Counsel conferred)

21 MR. BERNSTEIN: Your Honor, is 370 in evidence?

22 MR. NOOTER: Yes. It was one of these dozen
23 exhibits six envelopes and six tapes that were put in
24 evidence on Tuesday.

25 THE COURT: First off, can I get an exhibit

1 number. I don't have it as V7.

2 MR. NOOTER: OK. 382B.

3 (Counsel conferred)

4 Q Just hold that on pause a moment.

5 If you look at the top of page 12 of the exhibit
6 you'll see there is a line that is underlined, "The man is
7 waiting," do you see that?

8 A Yes, sir.

9 Q Is it fair to say that the underlining or areas
10 where you checked them and the words that are underlined are
11 the words you believe were said, is that correct?

12 A That's true.

13 Q The fact that it's underlined means that an
14 alternative proposal was made to you in the form of some
15 other transcript, but you decided you felt that this was the
16 correct one, is that right?

17 A Not exactly that there is an alternative
18 proposal, just that there was an objection on it.

19 Q And you checked it and felt that this was right?

20 A That's right.

21 Q You did not look at the transcript that I
22 referred you to before that had English on one side and
23 Arabic on the other in checking these underlined portions?

24 A I believe I looked at it about a couple of months
25 ago.

1 Q A few months ago you did that, is that right?

2 A Yes.

3 Q Then if we could just play the tape, and I think
4 you may need the headphones to hear. Are the headphones
5 there?

6 THE COURT: Before we do this, may I see you and
7 the government at the side briefly.

8 (Continued on next page)

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IPT

1 (At the side bar)

2 THE COURT: Two things: First of all, how long
3 is this going to take? Do you know? They haven't had a
4 break.

5 MR. NOOTER: That's true.

6 THE COURT: "They" being the defendants
7 principally.

8 MR. NOOTER: I have five or six of these things
9 to do through the videotape along with other questions about
10 the words he chose. So it will definitely take well past a
11 break.

12 THE COURT: All right. Then maybe we will stop
13 now. I should also point out this exhibit, according to my
14 notes, is not in evidence.

15 MR. FITZGERALD: OK.

16 THE COURT: Maybe I should have said that first,
17 but I am saying it now.

18 MR. FITZGERALD: So the other defendants' rights
19 are preserved, if you offer it, there is no objection. The
20 same with the enhanced copies.

21 MR. NOOTER: Didn't you offer it subject to the
22 last four pages not going in yet? I thought there was such
23 an offer.

24 THE COURT: The transcript was offered. The
25 videotape is not in.

1 MR. NOOTER: The tapes were not offered?

2 THE COURT: No.

3 MR. NOOTER: We went through that whole thing and
4 didn't offer them? I am surprised.

5 MR. FITZGERALD: If you want to offer them, I'll
6 jointly offer them. But they had should have an opportunity
7 to -- we will take it up at the break.

8 THE COURT: Let's take it up at the break.

9 (In open court)

10 THE COURT: Now we are going to take what usually
11 passes for the break, ladies and gentlemen. Please leave
12 your notes and other materials behind. Please don't discuss
13 the case and we will resume in a few minutes.

14 (Jury not present)

15 THE COURT: You can step down.

16 (Witness excused)

17 THE COURT: We are going to take a break. But I
18 should point out that the videotapes themselves, that is,
19 the 381 series, the 382 series and the 383 series, the
20 videotapes themselves are not received yet.

21 So they are going to have to be offered, I
22 suppose.

23 MR. NOOTER: I recall that we did put in a
24 portion of the envelopes that corresponded to the videos,
25 and I was under the impression they had been offered and

1 received. I would offer them at this time, I assume with
2 the consent of the government.

3 MR. FITZGERALD: We will join the offer.

4 THE COURT: All right. In that event, those are
5 received.

6 MR. SERRA: Your Honor, during the break, may
7 defense counsel discuss this among themselves before
8 admitting it without objection?

9 THE COURT: Sure. Just so the record is specific
10 it's 381A, 381B, 382A, 382B, 383A, and 383B that, as I
11 understand it, are being offered, right?

12 MR. NOOTER: That's correct.

13 THE COURT: All right. I wanted to see the
14 government with Mr. Serra in the robing room.

15 MR. BERNSTEIN: Judge, am I going to follow that?

16 THE COURT: Yes.

17 (In the robing room)

18 (Government counsel and Mr. Serra present)

19 THE COURT: I got some correspondence relating to
20 the examination of the evidence from the World Trade Center
21 bomb, is that what that relates to?

22 MR. FITZGERALD: Yes, the two reports that
23 concerning Whitehurst.

24 THE COURT: Right, and also the information in
25 Yousef's statements about the components that was redacted.

1 MR. FITZGERALD: Yes, Judge.

2 THE COURT: I don't understand the significance
3 of this, and you obviously do, so I would like you to
4 explain it.

5 MR. SERRA: Well, your Honor, the significance
6 of -- I think there are two different things: The
7 significance of the Yousef's account of what happened during
8 the building and execution of the Trade Center bomb, which
9 is what I take it was that page that was redacted, I am just
10 guessing, but it seems logical.

11 The government presented witnesses who pieced
12 together circumstantially what happened. I cross-examined
13 one of them; Ms. London cross-examined the other. Your
14 Honor said on the record something this morning about how
15 difficult it is to argue what I could have done with
16 something that I don't know what it is.

17 THE COURT: Let me say what I understood
18 basically the thrust of your cross-examination to be, and
19 you tell me if I'm wrong: You went into a lot of detail
20 about how the bomb was built and so on, most of which, or a
21 great deal of which would be highly relevant if this were a
22 patent case. The question was whether they infringed
23 somebody's patent on the bomb or not.

24 MR. SERRA: Or whether the safe house infringed
25 the Trade Center defendants' patent.

1 THE COURT: Right. It was clear to me that the
2 safe house did not infringe the patent, number one. Number
3 two, however, the thrust of it, as I understood it, was:
4 Look, even though the safe house bomb is different from the
5 World Trade Center bomb, the World Trade Center bomb having
6 been a rather intricate affair, this being a somewhat
7 simpler affair, nonetheless, bomb building is a complicated,
8 difficult business. If it's not brain surgery, at the very
9 least it's dermatology. In particular, it's not the sort of
10 project for which you have somebody like Victor Alvarez, who
11 is definitely not a brain surgeon and not even a
12 dermatologist.

13 That I understood to be basically the trust of
14 the cross.

15 MR. SERRA: Your Honor, I can't deny that that
16 was the thrust of the cross.

17 THE COURT: OK.

18 MR. SERRA: Contrasting the differences.

19 THE COURT: Given that --

20 MR. SERRA: And the 924(c), your Honor. I'm
21 sorry, your Honor.

22 THE COURT: -- and the 924(c), which, as I
23 understand it, is going to be out anyhow.

24 MR. SERRA: One of these days, Judge, yes.

25 THE COURT: We can talk about that at some point

1 out there, but I guess I can understand that your
2 examination might have been different had you seen, or
3 different in some respect had you seen what Ramzi Yousef
4 says he did to build the bomb. But I don't understand how
5 it would have been different in a relevant way.

6 MR. SERRA: Your Honor, let me give you an
7 example: Suppose in the redacted part of the Yousef 302s
8 there was a detailed explanation of how the bomb was built.
9 I don't know, but I think that is a reasonable -- I would
10 have read Agent Williams Ramzi Yousef's explanation of how
11 it was built, particularly for 804(b)(3), if nothing else.

12 THE COURT: 804(b)(3)?

13 MR. SERRA: The penal interest exception to the
14 hearsay rule. So if Yousef doesn't testify --

15 THE COURT: Let me understand this.

16 You did see in his statement, did you not, an
17 indication that he wished to conceal how the bomb was built
18 in at least one material respect.

19 MR. SERRA: I didn't see that, Judge.

20 THE COURT: You did not see that?

21 MR. SERRA: No.

22 THE COURT: It's in there.

23 MR. SERRA: I remember, albeit not substantially
24 verbatim, because then I would be violating my stipulation,
25 but I remember --

1 THE COURT: I resolve you.

2 MR. SERRA: Where the redaction was, again, was
3 right after he said the basis was urea nitrate, he would
4 have preferred something else, but didn't have the money,
5 and then it was redacted for a full page.

6 THE COURT: Why was that redacted?

7 MR. FITZGERALD: That part describing the
8 process, there's been a lot of evidence in this proceeding
9 that in the Salameh trial that people were actually using
10 the court processes to try to find out how bombs were made.
11 They wanted to see Mahmud Abouhalima in the Salameh trial,
12 and they were trying to contact Ajaj's lawyer to get the
13 discovery materials.

14 THE COURT: So you want to head off the next --

15 MR. FITZGERALD: Yes.

16 MR. SERRA: This was for counsel under a
17 nondisclosure order.

18 THE COURT: I understand, but I had a nasty
19 experience with a nondisclosure order.

20 MR. SERRA: I got off the Internet, your Honor, a
21 150-page bomb manual, which, if I were inclined to
22 distribute such things, I could.

23 THE COURT: That doesn't mean we have to make it
24 easy. I understand that.

25 All right. Now, that was the reason you took it

1 out?

2 MR. FITZGERALD: Yes.

3 The part, your Honor, where he indicated he did
4 not want to reveal how the bomb was made, that I believe was
5 made available to defense counsel. I can check. I believe
6 that was in a different part of one of the statements. It
7 is not on that page.

8 MR. SERRA: Mr. Fitzgerald is correct. I
9 remember reading that, but then I remember a page where it
10 appears he's about to go into how the bomb was made, maybe
11 in a different statement.

12 THE COURT: All right.

13 MR. SERRA: Your Honor, I'm sorry, what I would
14 have done, I would have taken Agent Williams through it step
15 by step, not only for 804(b)(3), but also to because then we
16 have -- then assuming Mr. Yousef were to testify, I have a
17 basis for saying that -- and as the court knows he's under
18 subpoena -- I have a basis for saying that what he says
19 actually is possible, you can build a bomb this way, further
20 contrasting it with the safe house, where it appears the
21 government is going to give up the ghost on whatever they
22 were doing, and you couldn't build the bombs. So we don't
23 have just the government's expert's conclusions of how it
24 was built. We have an actual account.

25 THE COURT: But it's not material to anything

1 that is at issue in this case, "this case" being the one
2 we're trying here.

3 MR. SERRA: Your Honor, all of this I suppose
4 ultimately goes to a multiple conspiracy argument; namely,
5 that the Trade Center bombing is not part of this
6 conspiracy.

7 THE COURT: Why? Because it was built
8 differently?

9 MR. SERRA: Your Honor, the relevant standard is
10 more likely than not. I don't have to make out multiple
11 conspiracy beyond -- as a matter of law, by every piece of
12 evidence that I want to present.

13 THE COURT: I know that. But even on what you've
14 got, it's clear that it's different, even to somebody like
15 me, who knows nothing at all about this.

16 MR. SERRA: Your Honor, if the court will charge
17 that, I will give up the argument.

18 THE COURT: Will charge what?

19 MR. SERRA: Charge that what was going on in the
20 safe house was obviously technically different from what
21 happened in the World Trade Center.

22 THE COURT: Those are facts. I am not in the
23 business of charging facts.

24 MR. SERRA: It is my business to get as many
25 facts to support my argument in front of the jury precisely

1 because the court won't charge it. I need to convince a
2 jury.

3 THE COURT: At least now I understand what the
4 proffer is. I want the material made available to Mr. Serra
5 in a form in which he can -- I mean, I want him to be able
6 to read it, and I want him to be able to read it in such a
7 way that he can assimilate it and make whatever arguments he
8 has to make, and I want the same thing to be true of Stavis
9 and whoever else has to make an argument.

10 I am not saying I am going to buy the argument.
11 I don't know that I will. I've indicated some reasons why I
12 wouldn't. But that's not to say that they shouldn't be able
13 to make the argument.

14 It seems to me unfair in essence to tie their
15 shoelaces together and then to say, "Judge, they didn't
16 dance good enough to get it into evidence, therefore, don't
17 admit it."

18 Let them do the dance.

19 MR. FITZGERALD: I think I understand, if I could
20 ask for two clarifications pending a ruling by your Honor.
21 No witness will be examined regarding the contents of what
22 is shown Mr. Serra?

23 THE COURT: That is for sure.

24 MR. SERRA: No problem, your Honor.

25 MR. FITZGERALD: And it will not be shared with

1 any client prior to any ruling.

2 THE COURT: That's also for sure.

3 MR. SERRA: Your Honor, the order I signed said I
4 could share it with my client in terms of substance, not,
5 obviously, showing him any documents, but I don't have the
6 documents. The order I signed didn't say I couldn't discuss
7 with my client what happened.

8 MR. FITZGERALD: Could this be in a different
9 category?

10 THE COURT: "This" being?

11 MR. FITZGERALD: The contents of what he sees.

12 THE COURT: You mean the stuff about the building
13 of the bomb?

14 MR. FITZGERALD: Yes.

15 MR. SERRA: Your Honor, with all due respect to
16 the government, on cross-examination I elicited enough
17 details for someone intelligent enough to do it, to build a
18 bomb. If that's the government's concern, it is in a public
19 record.

20 MR. FITZGERALD: I just don't think -- where the
21 record shows that Mr. Nosair sat in jail plotting to kill
22 and blow up everyone, and people were trying to get bomb
23 formulas -- we ought to put that knowledge in the
24 defendants' hands and say, "We trust you on penalty of
25 contempt."

1 THE COURT: This were present during his
2 cross-examination.

3 MR. FITZGERALD: Yes.

4 THE COURT: They presumably have a right to the
5 transcript.

6 MR. FITZGERALD: Yes, that we couldn't control,
7 but something which the government feels they weren't
8 entitled to under Brady in the first place, but as an
9 accommodation showed to them, and now counsel wishes to make
10 an argument.

11 THE COURT: We are not talking about showing them
12 the documents. We are talking about talking to them about
13 the substance of it.

14 MR. FITZGERALD: Yes. If Mr. Serra reads that
15 there's a particular way of configuring things or a
16 particular ingredient that makes a bomb particularly more
17 effective, why does he need to share that with defendants
18 who are charged with plotting a bombing from prison, or at
19 least one defendant, in order to make an argument to your
20 Honor as to why he shouldn't be able to use it before a
21 jury.

22 THE COURT: I don't see that he does. I really
23 don't. Or that anybody does. That part is going to be
24 counsel only.

25 MR. SERRA: Of course we will abide by your

1 order.

2 As long as we are here judge, there is an issue
3 coming up on the search of Mr. Alvarez's home, which we may
4 not well get to before lunch at this point.

5 THE COURT: We are certainly not going to get to
6 it before lunch, but since we're here.

7 MR. FITZGERALD: The exhibit, your Honor, I'll
8 hand up, it is Government Exhibits 187A and B.

9 MR. SERRA: So the court understands, those are
10 the actual things that were recovered -- in other words,
11 Xeroxes were the only things that were recovered.

12 Your Honor, for shorthand, what they show, and
13 what I would ask the court to look at, they show
14 Mr. Alvarez -- they are identification documents, Xeroxes of
15 identification documents of some sort showing Mr. Alvarez's
16 name with other people's pictures.

17 I have asked the government about the
18 significance of either of the other two people. In other
19 words, who are these people in relation to this case, and,
20 as far as Mr. Fitzgerald has told me, as of the day before
21 yesterday, the government doesn't know who they are. So in
22 other words Ahmed Bayoumi. The government doesn't know who
23 he is.

24 My argument, your Honor -- this is the shorthand
25 version -- my argument would be that this is, if anything,

1 impeachment material should he testify. The next step is
2 404(b), which I was entitled to notice of six months ago and
3 didn't get.

4 In any event, this is not relevant proof on the
5 government's case. It would be different if the government
6 could point to the people whose photos are on the
7 identification cards as people who are relevant
8 independently to this case, but they couldn't do that.

9 The one thing that the government doesn't have --
10 and I'm anticipating Mr. Fitzgerald saying -- is the address
11 on one of those, 5515 7th Avenue in Brooklyn, the government
12 claims -- and if they can show it fine -- is the address of
13 someone whose name has come up Mustafa Assad Mohammed.

14 I am prepared to stipulate that recovered in the
15 search of Mr. Alvarez's home was the Xerox of an
16 identification document showing Mr. Alvarez's name and an
17 address, whatever is there, and the government can connect
18 it up with Mustafa Mohammed.

19 THE COURT: And somebody else's picture.
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1 MR. SERRA: Your Honor, what is the relevance of
2 that? The relevance the government says is the association
3 with Mustafa Assad Mohammed, which I understand, but it is
4 not Mustafa Assad's picture and his name is not on the
5 document. It is Mr. Alvarez's name, an address which the
6 government says it can connect to Mustafa Assad, and a
7 picture, and someone else's picture, no question about it.
8 Neither Mr. Alvarez's picture nor Mr. Assad's picture,
9 someone the government doesn't know who it is. I will
10 stipulate -- I assume this is for association with Mustafa
11 Assad. They have it 12 other ways including phone books but
12 they are entitled to number 13. I will stipulate that he
13 had an identification card with his name and the 5515
14 Seventh Avenue, and the government can take it where they
15 wish. But the only relevance -- your Honor, if not under
16 federal at least under New York State law that is a forgery.
17 It is an uncharged crime which if it is not 404(b) is
18 impeachment material, should Mr. Alvarez testify.

19 THE COURT: It is possession of --

20 MR. SERRA: It is uncharged crime.

21 THE COURT: I am still holed up on New York law.
22 To possess in your house a piece of false identification
23 with your name on it --

24 MR. SERRA: One of those, I believe, is a New
25 York State DMV identification card.

1 THE COURT: Right, and the other is a New York
2 State driver's license.

3 MR. SERRA: And the other is a driver's license.
4 They are documents issued by New York State. If they are
5 forgery it is under New York state law. It is an uncharged
6 crime, and should Mr. Alvarez testify, the court will rule
7 on probativeness and therefore cross-examinable. Therefore,
8 nothing to do with this case.

9 MR. FITZGERALD: As to the 404(b) point, the fact
10 that it is admissible, I will get to. The fact that also
11 should it constitute a crime takes out the relevant
12 evidence.

13 MR. SERRA: Agreed.

14 MR. FITZGERALD: Moreover, it has been available
15 for inspection. The point in offering it is, Mr. Serra
16 opened that Mr. Salem and Mr. Siddig Ali basically
17 bamboozled Mr. Alvarez into thinking that he was going to
18 Bosnia and that he was otherwise led by the nose to this
19 conspiracy. What we are trying to show through these phone
20 records and these items is that he had an illicit
21 identification for some reason tied to Mustafa Assad who
22 came up in the proof as someone Salem was told by Nosair he
23 could see about building bombs back in 1992. He is someone
24 who visited the courtroom and stood up. Besides that, he
25 came up in the Hampton-El FISAs as calling for the

1 detonators.

2 MR. SERRA: I will stick to that.

3 MR. FITZGERALD: And somehow he is using his
4 address for an illicit purpose. To have a false
5 identification presents a starkly different image than the
6 Rube who was led by the nose by Salem and Siddig Ali into a
7 conspiracy.

8 MR. SERRA: The only thing that exhibit
9 demonstrates is that he had a xerox of a card on which a
10 picture for all we know had been taped over on the picture
11 that was on the card. That is the only thing that
12 demonstrates, and if again -- if there was any independent
13 relevance -- I hesitate to use a codefendant example but it
14 has already been admitted. The government has made
15 independently relevant the passports which were found in Mr.
16 El-Gabrownny's house, relevant to what they charge is a claim
17 that Mr. Nosair would escape and somehow his family would
18 use them. If that sort of independent relevance was
19 established, we wouldn't be sitting here arguing about this.
20 But all that these show -- by the way, Judge, I don't think
21 that they refute -- albeit in government-oriented language,
22 Mr. Fitzgerald did accurately summarize my opening
23 statement, but I don't see how this refutes it if all you do
24 is take it out and tape it over an ID card, and that is all
25 the government has since they don't have the originals.

1 That doesn't impute much of a rube defense. I don't
2 understand the relevance of Mustafa Assad. I understand the
3 relevance. I object to independent crimes which are not
4 independently relevant to this case.

5 THE COURT: The uncharged crimes part of it, the
6 prejudice insofar as it constitutes an uncharged crime, I
7 think, is nil. I will bet you a nickel that there aren't
8 three jurors there or that there are any jurors there who
9 understand that it is a violation of law to possess a
10 document like this. It is fairly abstruse stuff. Using it
11 is one thing, possessing it is something else. I will admit
12 that I didn't know that, and I am supposedly trained in the
13 law, although not in the law of New York State.

14 It seems to me that for him to have a
15 photograph -- a piece of identification with his own name on
16 it, copy of a piece of identification with his own name on
17 it with the address of somebody to whom you concede that it
18 is relevant to show a connection, and a photograph, means at
19 a minimum that he is obviously aware that somebody somewhere
20 is running around with the original of that.

21 MR. SERRA: I can concede all of that with no
22 problem, your Honor, without seeing the relevance of that to
23 prove a crime charged in this case, other than the
24 association with Mustafa Assad, which I am not arguing.

25 THE COURT: One of the crimes charged in this

1 case is conspiracy, and one of the ways in which
2 conspirators go about their business is with ID's that point
3 up various kinds of false leads. Witness Mohammad Salameh
4 who was found with a driver's license or an identification
5 card -- I don't know which it was -- that had El-Gabrowny's
6 address on it, which I gather is what sent the agents to
7 El-Gabrowny's house in the first place.

8 MR. SERRA: But, your Honor, at least as far as
9 the charges are concerned, Mr. Salameh and El-Gabrowny are
10 charged as coconspirators. The people on those documents
11 are not only not charged as coconspirators, the government
12 doesn't know who they are.

13 MR. FITZGERALD: The relevance of Mr. Bayoumi's
14 picture is that it is not Mr. Alvarez on an address where
15 Mr. Assad is clearly a coconspirator. I don't think that
16 this jury is going to run out and get inflamed by a false ID
17 of Mr. Alvarez trying to blow up New York, with all the
18 evidence in this case.

19 MR. SERRA: I was arguing that the pictures are
20 not relevant, your Honor.

21 MR. FITZGERALD: The simple point, your Honor, is
22 that he has placed his client's sophistication in issue and
23 whether he has been led into this, and this goes to show a
24 freestanding association with other people involved in these
25 activities, specifically Mustafa Assad, in an illicit

1 manner. That makes it much less likely that he is the rube
2 who got baited by Bosnia.

3 THE COURT: I am going to let it in. The
4 objection is overruled.

5 Is the pay stub in dispute or not?

6 MR. SERRA: It probably isn't, your Honor, but I
7 didn't know the government intended to introduce the pay
8 stub.

9 MR. FITZGERALD: It is on the same piece of
10 paper.

11 MR. SERRA: Your Honor, may I see that?

12 MR. FITZGERALD: If you want that redacted, you
13 can have it redacted.

14 MR. SERRA: I see, I see.

15 THE COURT: There is one more exhibit here that
16 is an employee ID. Does that have Mr. Alvarez's picture on
17 it or not? It is hard to tell. The one that I had --

18 MR. SERRA: It doesn't appear to me as though
19 that is Mr. Alvarez's picture. I would assume that it is
20 not. That is what I was arguing. I don't believe that is
21 him.

22 THE COURT: But it is not the same as the person,
23 or is it the same as the person who is on the license?

24 MR. SERRA: No, your Honor. I think the
25 government doesn't contend it is the same person.

1 MR. FITZGERALD: Hard to tell. Could be the same
2 person, could not be. It is definitely not Mr. Alvarez.

3 THE COURT: Are you offering that, too?

4 MR. FITZGERALD: We were offering it as a set.
5 187B means more to me. I will withdraw 187A.

6 MR. SERRA: Fine. Your Honor, that doesn't mean
7 that I am stipulating to the admissibility of 187A.

8 THE COURT: I understand that.

9 MR. FITZGERALD: Thank you, Judge.

10 (Pages 12554 and 12555 sealed)

11 (Continued on next page)

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1 (Recess)

2 In open court; jury not present)

3 MR. FITZGERALD: Your Honor, I believe by
4 discussion with Mr. Nooter and discussion with counsel
5 enhanced copies of those items 382A and B and 383A and B are
6 offered and received in evidence and they will be noted by
7 adding an E to those exhibits.

8 MR. NOOTER: That is correct, your Honor.

9 THE COURT: What about 381A and B?

10 MR. FITZGERALD: Not at this time, Judge.

11 MR. NOOTER: Actually, it is all right. Do you
12 want to just do those as well?

13 MR. FITZGERALD: That is fine.

14 THE COURT: 381 is V12 and V11.

15 MR. NOOTER: No, not those.

16 MR. FITZGERALD: That was just a video section
17 with no audio, so we don't need enhancement for that. We
18 will limit it as to 382 and 383 A and B. We will offer it
19 as to those.

20 THE COURT: Fine.

21 (Jury present)

22 THE COURT: Mr. Nooter. I think the first order
23 of business is that video Exhibits 382AE, 382BE, 383AE and
24 383BE are going to be received in evidence. Is that right?

25 MR. NOOTER: That is correct, your Honor. Those

1 are the enhanced copies of the --

2 THE COURT: Corresponding exhibits that were in
3 the envelopes on which we broke earlier today.

4 MR. NOOTER: Right.

5 (Government's Exhibits 382AE, 382BE, 383AE and
6 383BE received in evidence)

7 (Continued on next page)

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IPT

1 BY MR. NOOTER:

2 Q Sir, I am going to ask you to listen from time to
3 time to the video. I assume it would be better to listen to
4 the enhanced video, is that correct?

5 A That is correct.

6 Q I am going to direct your attention again to the
7 top of page 12 of Exhibit 383T. The underlined words "the
8 man is waiting," I am going to ask you to listen to it on
9 the tape. Since you said that you have not used the
10 English-Arabic pages that were submitted for quite a few
11 months, I would ask you to listen to see if at the point
12 where Siddig Ali says "the man is waiting," if indeed he is
13 not in fact saying "The man you told me about." If you
14 could just listen to that, it comes just before you see
15 Siddig Ali waving with his hand, as noted in the transcript.
16 If you could try that one time.

17 (Videotape played)

18 MR. NOOTER: I am sorry. We were off by a minute
19 on the cueing. I think the part is coming just now.

20 (Videotape continued)

21 THE WITNESS: We already passed it.

22 Q That is correct, because just before he says it
23 he sees Siddig waving, is that correct? Were you able to
24 hear it this time through?

25 A No, I really was not concentrating on it because

1 you said it is off.

2 Q Let me try it one more time, and actually, if I
3 can direct your attention, just after the waving there is a
4 line that says "the rest are what" and Siddig Ali "the rest
5 of them unintelligible." I would ask you to listen and see
6 if that unintelligible word is "will be difficult." If you
7 could listen for both of those things and if we could take
8 it back to 45:10.

9 (Videotape continued)

10 Q Does listening to that change your opinion about
11 either of those two entries?

12 A Absolutely not.

13 Q The unintelligible is still unintelligible, as
14 far as you can tell?

15 A Yes.

16 MR. NOOTER: We can turn off the video for now,
17 if you like.

18 Q Directing your attention to the bottom of page
19 12, do you see there is an entrance that Salem says "All
20 right, have you explained to Wahid" and then Siddig Ali
21 responds "no, no, no" and "a negative interjection by the
22 tongue," "I have relieved him on the subject."

23 This is a change that was recently made, is that
24 correct?

25 THE COURT: Excuse me. You will have to talk

1 into the microphone because it is hard even for me to hear
2 you.

3 A The part where it says "no, no, no, interjection
4 with the tongue," that's the one that was recently changed.

5 Q And before that there was something else but now
6 having listened to that new tape that was provided to you --

7 A To the audiotape, yes.

8 Q You have concluded that "no, no, no" is the
9 correct?

10 A Yes.

11 MR. NOOTER: I will just note now for the record
12 we do not now have a dispute on that area, even though it is
13 underlined.

14 Q I would however ask you on the words "relieved
15 him from the subject," what is the Arabic word that means
16 relieved?

17 A Raiyh, R-A-I-Y-H.

18 Q Does that have other meanings as well as the word
19 relieved?

20 A To give comfort.

21 Q Isn't he saying -- withdrawn. I am just not
22 quite sure what that is supposed to mean, "I have relieved
23 him." Does that have a meaning to you or is it essentially
24 not clear what is being said?

25 A I am not really sure what he meant by it.

1 Q If you would turn to page 13, the attribution to
2 Amir Abdelgani which is underlined, rather than have you try
3 to listen to it, I wonder, if I give you a piece of paper,
4 if you could simply write out in Arabic what you think the
5 words are that you heard there. Would you be able to do it?

6 A I believe I can. It's not going to be exact
7 because I don't have it fresh in my mind, but I will
8 translate what I wrote here.

9 Q You would not be able to write what you think you
10 heard that you made into this English?

11 A Not exactly. I haven't reviewed this in about a
12 week.

13 Q When you reviewed that, did you have again the
14 defense -- not the defense. Did you have any other
15 transcript that you were comparing when you reviewed that
16 recently?

17 A Not this one, no.

18 Q In that case, let's just move down a little bit
19 to the word "Peace" on page 13, almost halfway down. If we
20 could run the videotape up to about 23:49:00.

21 MR. FITZGERALD: Could I just have a moment with
22 Mr. Nooter?

23 MR. NOOTER: Just let it play. We don't need the
24 earphones for this.

25 (Videotape played)

1 Q At this point, sir, Mr. Wahid Saleh is not in the
2 room, is that correct? On the transcript it says "Peace be
3 on you," but looking at the video up until this point he has
4 not come into the room at all, is that correct?

5 A I believe he is in the room when Salem was saying
6 this is set for four minutes.

7 Q We haven't gotten to that yet.

8 A So we went too far then.

9 Q I don't think so. I think in fact I probably
10 didn't go far enough.

11 MR. NOOTER: Run it up about another two minutes.
12 Just keep going fast forward until I indicate to stop.

13 I am sorry, stop. Perhaps we did run past it.

14 Q In any event, at the point on the transcript --

15 A At this point he is in the room and Siddig is
16 talking to him.

17 Q You are right, I am sorry, and we can't see
18 because this is the wrong view.

19 A All right.

20 Q That is all right. You can turn off the video.
21 In any event, he came into the room at about 11:49 or so, is
22 that correct, in the evening?

23 A As I can recall, yes.

24 Q And the greeting that occurred was "Peace, peace
25 and God's mercy and peace be upon you," is that correct?

1 A That is correct.

2 Q And as we have said, that is sort of normal
3 greeting, is that correct?

4 A That is correct.

5 Q When Mr. Wahid Saleh came in, he shook hands with
6 the people, is that correct?

7 A That is correct.

8 Q And as we said, that is a sort of normal way of
9 greeting each other in the Middle East, is that correct?

10 A That is correct, sir.

11 Q Down at the bottom of page 13 there is an
12 underlined phrase, "Thanks be to God." Is it not true that
13 in fact that was being said as a response to the question
14 which is on the next page, the top of 14, "Most welcome,
15 sheik," that the position of that line is a little bit
16 wrong?

17 A No, I reviewed that one several times. I don't
18 believe the position is wrong.

19 Q Were you asked to specifically look for the
20 position?

21 A No. Along with the rest of the underlines and I
22 was asked one time or twice to check the position of this of
23 this because there was an objection to it.

24 Q On the top of page 14, the response "most
25 welcome" said by Wahid, wouldn't that be an inappropriate

1 response? Wouldn't the person who is in the place say "most
2 welcome" and the other person say "thanks be to God" or
3 "thank you" or anything like that?

4 A No. In the Middle East when you are sitting down
5 and after you welcome someone in and couple minutes later or
6 a minute later you say "most welcome," they say "most
7 welcome," which means ahalan, A-H-A-L-A-N, and the other
8 person will respond with the same thing.

9 Q There are a number of places, for example, on the
10 top of page 14, where there are words in brackets. Do you
11 see that?

12 A Yes.

13 Q Those are not words that are said, those are
14 indications of what is happening on the tape, is that
15 correct?

16 A That is correct.

17 Q What you can see, is that right?

18 A That is right.

19 Q In addition to people's movements, sometimes
20 there will be a bracketed word that indicates how something
21 is being said, is that correct, such as about almost halfway
22 down the word "whispering" is in brackets, is that correct?

23 A That is correct, yes.

24 Q And about two thirds or three quarters of the way
25 down there is the word "interrupting," is that correct?

1 A "Interrupting," correct.

2 Q Is it fair to say -- did you put those in
3 yourself?

4 A Yes.

5 Q Is it fair to say that you did not put that in
6 every time something happened, though, that you could see?
7 Is that right?

8 A I believe I tried to put them as I could. I
9 mean, if I missed some, it's possible, there is a
10 possibility.

11 Q Sometimes people interrupted each other but you
12 didn't put the word "interrupting," is that right?

13 A Sometimes.

14 Q And sometimes you indicated that by putting three
15 dots at the end of the interrupted passage, would that be
16 fair?

17 A That is correct, yes, sir.

18 Q So again, near the top of page 14, the fourth
19 attribution, "This is ready for four minutes," dot dot dot,
20 was interrupted by the next speech, "Sit down, please," is
21 that correct? Do you see where I am, the fourth attribution
22 where Salem is speaking, on the top of page 14?

23 A Yes.

24 Q And a little further down we have the statement
25 by Salem, "This one is ready at four minutes," period.

1 Siddig Ali again says "sit down over here, please," and then
2 Salem's next line starts with four dots. That is because he
3 was continuing, he was again interrupted, is that correct?

4 A Yes.

5 Q On the underlined passage where it says "set at
6 quarter of an hour" about two thirds of the way down the
7 page --

8 A Yes.

9 Q Did you listen to that with a specific request to
10 see if in fact it said "Leave it for later"?

11 A I was not asked to see if it says "Leave it for
12 later." I don't recall that. But I was asked to listen to
13 it several times and I believe it says "Set it at quarter of
14 an hour."

15 Q Going further down to Siddig again interrupting
16 and there is an underline, "Those are coming right behind
17 me," would it be possible for you to write out in Arabic
18 what you heard there on the tape?

19 THE COURT: You mean without listening to it?

20 MR. NOOTER: Either way.

21 Q Would it help to listen to it?

22 A I would much rather listen to it.

23 MR. NOOTER: Your Honor, I know that there is
24 going to be a procedure with another attorney to do this at
25 a separate time. Perhaps we could follow the same

1 procedure, he could listen to it, write it down out, and if
2 there are any further questions we could resume. Would that
3 make sense?

4 THE COURT: All right.

5 MR. FITZGERALD: For as long as lunch allows.

6 Q On that attribution and on the one below it,
7 which is underlined, which says "You told me about," are you
8 sure the one that says you told me about isn't "Like I told
9 you" or "Like I told you before"?

10 A I believe I wrote what I heard on that one.

11 Q Can you tell from the sense of the sentence
12 whether the brother who is being referred to in that line is
13 the brother Wahid sitting here or some other brother?

14 A I couldn't tell before, but after listening to
15 the audiotapes and listening to what happened after the V5
16 started, I can tell that they are talking about Mohammed,
17 Victor Alvarez.

18 Q You think that is who they are talking about?

19 A Yes.

20 Q But it just says the brother, "the brother is
21 going to be late," is that right?

22 A Yes.

23 Q And below that, you have written, or you have
24 adopted "before he arrives." Are you sure you didn't hear
25 or that it couldn't be "they arrive, tanian?"

1 A What is the location of that, please?

2 Q The third attribution from the bottom, it is not
3 underlined but it says "before he arrives."

4 A Yes.

5 Q Are you sure it couldn't have been "before they
6 arrive"?

7 MR. FITZGERALD: Objection, your Honor, scope, if
8 I could have a moment with Mr. Nooter.

9 MR. NOOTER: I will withdraw that.

10 Q I am going to direct your attention now to the
11 top of page 15 and ask if we could put in the enhanced
12 video, which is V5, 382AE. If you could actually run that
13 up to 11:51:20.

14 A My monitor is not working.

15 Q This one you need to see.

16 A Now it came on. Thank you.

17 (Continued on next page)

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1 Q Before I ask you to play, let me ask you what I
2 want you to listen for. At the point on your transcript
3 where you say Emad grabbed a chair and rested his buttocks
4 on the back, there is some conversation. Is it not true
5 that previously you had indicated that there were
6 unintelligible words being said there at the same time which
7 now no longer appear in the transcript?

8 MR. FITZGERALD: Objection, objection.

9 THE COURT: May I see counsel.

10 MR. NOOTER: This is a disputed area.

11 (AT the side bar)

12 MR. NOOTER: I will rephrase the question.

13 (In open court)

14 (Continued on next page)

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1 BY MR. NOOTER:

2 Q Let me just rephrase the question for you. I
3 would like you to watch and see when Emad Salem takes the
4 chair and sits down on it, and he is having some
5 conversation with Wahid, if there isn't a point where he and
6 Wahid sort of look off in what is the direction of the lower
7 left-hand corner of the screen and there are some
8 unintelligible words that are apparently being said by
9 somebody they are looking at.

10 A Both Salem and Wahid look?

11 Q Yes, they appear to look over and there are some
12 words fairly quickly said and then it goes into Mr. Salem's
13 line about scuba diver, which is said in English.

14 A OK.

15 Q Before scuba diver.

16 (Videotape played)

17 Q Do you see what I mean? Is there some
18 conversation sort of off stage that you can't really make
19 out but you hear some words being said?

20 A While Emad was trying to grab the chair or when
21 he head for the chair, that's when Abdelgani said "How are
22 you, Wahid?" And Wahid say "May God bless you." Then
23 Siddig said sit down to Emad. Emad was grabbing the chair
24 and he sat on the back of it.

25 Q Right.

1 A At this time Siddig told you the chair will not
2 carry you or will not carry.

3 Q That is what you mean by a liability or
4 something?

5 A No, the chair will not carry. Then Wahid said
6 "and it will be a liability."

7 Q What does that mean "it will be a liability"?

8 A That's something that the Egyptians say when you
9 do something that will harm you or harm somebody, you say
10 well it will be our liability or it will be our
11 responsibility or it will be it will be our problem if you
12 fall or that chair will be broke or whatever.

13 Q But my question is, do you hear that there is
14 some other difficult or almost impossible to hear
15 conversation which is taking place?

16 A It is not really a conversation. As soon as
17 Wahid finishes "that will be our liability," that's when
18 Siddig said two or three words that represent
19 unintelligible. Then he told them "let him tell you a
20 little."

21 Q And then Emad starts with the scuba diver line.

22 A Emad starts with the scuba diver line.

23 Q You will note that the words are underlined. Are
24 you sure he isn't saying "I" was a scuba diver as opposed to
25 "you"?

1 A I believe Emad was saying "I was a scuba diver."

2 Q If he were saying "I was," he would say ana, is
3 that right, for "I"?

4 A Yes.

5 Q And if he were saying "you were," he would say
6 inta, is that right?

7 A That is right.

8 Q Those two things sound pretty close to each
9 other, is that right?

10 A Sometimes. Depends on how fast you say it.

11 Q Isn't it true he says it pretty fast here?

12 A He was talking fast.

13 Q Are you sure that he was saying I was rather than
14 you were or you are?

15 A Yes, I am.

16 Q I would like to direct your attention to page 16,
17 about two thirds of the way down. I am not disputing your
18 translation. I just would ask you, where Siddig Ali says
19 the two line statement "I know that, too, this is only a
20 common saying," and so forth, he mentions the word Allah,
21 and Wahid Saleh responds "There is no God but Allah." Is
22 that correct?

23 A Yes.

24 Q That is an example of what we were talking about
25 before, that a person would normally make that kind of

1 response while listening to someone else who uses the word
2 Allah, is that correct?

3 A That is correct.

4 Q Going down to the bottom of the page, again not
5 disputing your translation but asking you what you mean, the
6 second to last attribution ends with the word debaucher,
7 D-E-B-A-U-C-H-E-R, and Siddig's next line also uses the word
8 debaucher.

9 A Yes.

10 Q That is a somewhat archaic word. Is that the
11 word in Arabic, fegoor F-E-G-O-O-R?

12 A Yes.

13 Q And that essentially means a sinner, something
14 like that?

15 A Yes. It's a high stage of sinner, yes.

16 Q A very serious, like deadly sin type of thing, is
17 that right?

18 A Yes.

19 Q In fact, does it not mean someone, a person who
20 is such a sinner that he could be put to death for
21 committing such a sin?

22 A I am not sure that that is what means.

23 Q But it is the most serious kind of violation of
24 moral and ethical and religious law that you could commit,
25 would make you a fegoor, is that correct?

1 A It will make a fager, which is F-A-G-E-R.

2 Q Is that the word that he used here?

3 A No. He used fagar, F-A-G-A-R.

4 Q Is that a different word?

5 A That's the past tense of the word fegoor,
6 F-E-G-O-O-R.

7 Q In any event, it means a very serious violation,
8 very serious kind of sin, is that right?

9 A Religiously, yes.

10 Q Directing your attention to the bottom of page
11 17, the very last attribution, "I know that," you have with
12 a period, and going to the next page where Siddig says "I
13 know which you have," with a period, is it not true that
14 those are sentences which were interrupted by Siddig Ali's
15 lines? In other words, he didn't just say "I know that" but
16 he says "I know that" as if he was going to go on and say
17 something else but he was cut off by Siddig?

18 A I don't believe so. I don't believe so.

19 Q Then let me direct your attention to the third
20 line on page 18 where Siddig Ali says Wahid, Wahid, "Say
21 there is no God but Allah, and Wahid Saleh says "There is no
22 God but Allah." That is what we talked about before as a
23 method of interrupting a person, of stopping them from
24 speaking, is that correct?

25 A Yes, but in this instant he did not, I don't

1 believe he interrupted him.

2 Q You don't believe he did?

3 A I don't believe that Wahid was interrupted.

4 Q Two more lines down doesn't Siddig Ali say "Wahid
5 wait a minute"? And Wahid then responds "continue," if you
6 please," and Siddig goes on with his speech?

7 A Yes. When he said "There is no God but Allah,"
8 then Siddig, "Wahid, wait a minute."

9 Q That is one of the things that you said before,
10 say "there is no God but God" can mean, wait a minute, isn't
11 that correct?

12 MR. FITZGERALD: Objection to form.

13 THE COURT: Sustained.

14 Q When Siddig Ali says "wait a minute," isn't that
15 more or less synonymous with his having said say "there is
16 no God but God"?

17 MR. FITZGERALD: Objection to form.

18 THE COURT: Sustained as to form. Do you want
19 him to look at the tape while he is testifying to this or
20 not?

21 MR. NOOTER: If I could. If you could put it at
22 11:55:00.

23 Q What I would ask you to do, sir, is, this will
24 review the passage we have just spoken about, and when we
25 get to the point where Siddig says "Do me a favor,

1 please" --

2 THE COURT: The translator can't hear a word you
3 just said.

4 MR. NOOTER: I am sorry, repeating.

5 Q We will just listen to the part I have just been
6 asking you about, with the question and the interruptions,
7 and when we get to the part where Siddig says "get to me
8 fourthly," would you indicate that and we can stop, because
9 my Arabic isn't good enough to know that.

10 (Videotape played)

11 MR. NOOTER: Stop.

12 Q Looking at the tape, doesn't it appear as if
13 Wahid is speaking with his hands and Siddig interrupts him?

14 A I think he was not speaking yet. He was raising
15 his hand and Siddig said just --

16 Q Was preventing him?

17 A Yes, just wait.

18 Q Thank you.

19 A You are welcome.

20 Q I am going to direct your attention to the middle
21 of page 18, underlined portion starting with "I wish." I
22 just tell you that we have no further dispute on those
23 areas.

24 THE COURT: Would you come to a convenient break
25 point in the next five minutes or so.

1 MR. NOOTER: Maybe this would be it.

2 THE COURT: Ladies and gentlemen, we are going to
3 break now for lunch. Please leave your notes and other
4 materials behind. Please don't discuss the case, and we
5 will see you this afternoon.

6 (Luncheon recess)

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

2 Time noted: 2:10 p.m.

3 THE COURT: Yes?

4 MR. SERRA: Your Honor, the portion of the robing
5 room conference which the court and I and the government had
6 which involved an item from the search of Mr. Alvarez's
7 home --

8 THE COURT: Is not sealed.

9 MR. SERRA: Is not?

10 THE COURT: Correct.

11 MR. SERRA: That is what I wanted to know.

12 MS. STEWART: I think the government and Mr.
13 Nooter consented to letting me examine the witness out of
14 turn to interrupt Mr. Nooter's cross-examination. I had
15 hoped to be out of here before the lunch break, I didn't
16 know Mr. Nooter was --

17 THE COURT: OK. Fine.

18 Do you want me to just tell the jury that we're
19 doing that or do you want to just do it?

20 MS. STEWART: I think you better tell them.

21 THE COURT: Tell them?

22 MS. STEWART: Yes, I think you better tell them.

23 MR. FITZGERALD: That's fine, Judge.

24 THE COURT: Get the jury.

25 Ms. Stewart, if I don't get a chance before you

1 leave, felicitations.

2 MS. STEWART: Thank you, Judge.

3 GAMAL ABDEL-HAFIZ, resumed.

4 (Jury present)

5 THE COURT: Good afternoon, ladies and gentlemen.

6 JURORS: Good afternoon.

7 THE COURT: Ms. Stewart is going to examine this
8 witness briefly and then Mr. Nooter will resume. So we are
9 going to interrupt Mr. Nooter's examination for a short
10 time.

11 Go ahead, Ms. Stewart.

12 MS. STEWART: Thank you, Judge.

13 CROSS-EXAMINATION

14 BY MS. STEWART:

15 Q Good afternoon, Mr. Abdel-Hafiz.

16 A Good afternoon.

17 Q I wonder if you would look at 729T.

18 MS. STEWART: And I wonder if I could ask the
19 jury, your Honor, to look at that in their notebooks.

20 THE COURT: Yes.

21 MS. STEWART: 729T.

22 THE COURT: That's in the volume marked 700 to
23 750.

24 Q Mr. Abdel-Hafiz --

25 A Yes.

1 Q -- this is a Rahman FISA tape, is that correct?

2 A That's correct, ma'am.

3 Q This is a call that he makes outward, is that
4 right?

5 A That's right.

6 Q Are you able to tell from the tape itself where
7 the call was made to?

8 A I believe that was determined it was, I believe,
9 in Italy or somewhere like that.

10 Q And he spoke with a woman, did he not?

11 A She sounded like a little girl.

12 Q Well, like a little girl.

13 A I mean, she sounded like a teenager in talking.
14 That is not a woman. When you say "a woman," you know --

15 Q We may have to discuss this at some other time.
16 (Laughter)

17 Q In any event, she was an unidentified female?

18 A That's correct, yes, ma'am.

19 Q Were you able to tell what accent she spoke
20 Arabic with, if any?

21 A Egyptian.

22 Q Egyptian.

23 Initially the sheik is trying to get their
24 address, is that right, in Milan?

25 A Yes, that's correct.

1 Q And the conversation is about that. And turning
2 to page 2, in the middle of the page, he turns the phone
3 over to someone else to take down the address, is that
4 right?

5 A That's correct.

6 Q You don't know as you sit there whether that
7 person took it down in an address book or put it right on an
8 envelope or on a package, do you?

9 A I have no way of knowing.

10 Q However, on the last page of the FISA or of the
11 transcript in the middle of the translations near the top,
12 the sheik does say, "I just want to send him," meaning he
13 wants to send him something to that address, is that right?

14 A Yes, yes.

15 Q Turning to page 3 of the transcript, at the very
16 last remark you have Dr. Abdel Rahman saying, "Yes," and
17 then you used the word "snickering."

18 A Yes.

19 Q Is that the same as chuckling?

20 A Yes, but it's a very light one.

21 Q Pardon me?

22 A It's a very light chuckle.

23 Q A very light chuckle?

24 A Yes.

25 Q But it's not laughing out loud, is that right?

1 A No, it was not.

2 Q It was this young lady on the phone who turns the
3 conversation to -- she has a question and she wants to get
4 an explanation from Dr. Abdel Rahman, is that right?

5 A That's correct.

6 Q It's a question that she has about events that
7 are taking place in Egypt, is that correct?

8 A That's correct.

9 Q And she is -- how can I say it -- so involved
10 with the conversation she's actually interrupting him at
11 times, is that right?

12 A I believe so, yes.

13 Q At one point she mentions, and this is at page 7,
14 she mentions Mufti, M-U-F-T-I. It's in the fourth
15 attribution from the top.

16 A Page 7, the fourth attribution to the girl?

17 Q No, the fourth attribution totally from the --

18 A Page 7, the fourth attribution from the top is
19 Sheik Rahman saying, "Fine, fine."

20 Q Maybe we have a different --

21 MS. STEWART: May I just approach, Judge?

22 THE COURT: Yes, go ahead.

23 Q It's the third, not counting the partial
24 attribution.

25 A Oh, OK. Yes.

1 Q She's speaking about another sheik and his speech
2 at the Friday service, is that right?

3 A That's correct, yes.

4 Q And she says he spoke about the, the Mufti, is
5 that right?

6 A El-Mufti, yes.

7 Q What exactly does that mean? It's an Arabic
8 term, is it not?

9 A Yes.

10 Q Could you just tell us what that means.

11 A El-Mufti, here she meant by it, the sheik, the
12 great sheik in Egypt. He's the one who is in charge to make
13 the legal opinions in everything that's dealing with
14 government laws or rules or regulations. Or when there is a
15 dispute, religious dispute his word is the final word
16 officially.

17 Q You said this is an official position, is that
18 right?

19 A That's an official position, yes.

20 Q He is appointed by the government to make
21 decisions, is that right?

22 A That's true.

23 Q And there has been, has there not, a lot of
24 contention about whether or not these people are serving the
25 government rather than serving God, has there not?

1 A That's a fact.

2 Q At the very end the sheik goes back to the
3 address again, is that correct?

4 A That's right, yes.

5 Q One other thing: On page 7, near the bottom,
6 again, page 7, the third attribution from the bottom, the
7 young woman says she read about the speech given by this
8 other sheik in something called "Al-Morabtoon," excuse my
9 pronunciation.

10 A Yes.

11 Q Do you know what that is?

12 A I haven't seen it. I understood it's one of the
13 religious newspapers or magazines, I'm not sure.

14 Q Publicly distributed, is that right?

15 A Yes, it is. Yes.

16 MS. STEWART: I have nothing else, your Honor.

17 Thank you.

18 THE COURT: Thank you. Mr. Nooter, are you ready
19 to resume?

20 MR. NOOTER: Yes.

21 CROSS-EXAMINATION (Continued)

22 BY MR. NOOTER:

23 Q Sir, during the lunch break, did you have an
24 opportunity to write down some Arabic as --

25 A Yes.

1 Q -- I'd asked?

2 A Yes, sir.

3 Q Do you have that in front of you?

4 A Yes, I have it here.

5 MR. NOOTER: Your Honor, if I can approach to
6 mark it as an exhibit, I think it would be appropriate.

7 THE COURT: Go ahead.

8 MR. NOOTER: This will be exhibit --

9 THE COURT: L.

10 MR. NOOTER: I think we're way past that because
11 there are a few that I skipped because they're premarked.

12 We might be up to T.

13 THE COURT: Just to be on the safe side, do you
14 want to mark it W?

15 MR. NOOTER: Yes.

16 THE COURT: Fine. Wahid Saleh Exhibit W.

17 (Wahid Saleh Exhibit W was marked for
18 identification)

19 Q Sir, do you remember what page on Exhibit 383
20 these references were on?

21 A If I can recall, it's 14. I don't have the
22 transcript in front of me.

23 Q It would be helpful to have that.

24 A Thank you.

25 THE COURT: Mr. Nooter, are the jurors going to

1 need that transcript?

2 MR. NOOTER: Yes, please.

3 THE COURT: What is the transcript?

4 MR. NOOTER: It's 383T.

5 Q I'm sorry. Did you find the page?

6 A Yes, sir.

7 Q Which page is it?

8 A Page 14.

9 Q Which portion of the page is it that the words in
10 Arabic that you've written relate to?

11 A It's the last two underlined portions.

12 Q OK. "Ah those are coming right behind me," and
13 also the "you told me about"?

14 A Yes.

15 Q OK. Looking at Exhibit W, your handwriting,
16 could you tell us literally what the Arabic words mean that
17 you've written?

18 A OK on the first one says, "uh, those are coming
19 behind me, insha Allah," or those are coming, insha Allah,
20 behind me, God willing."

21 Q OK. What is the next line?

22 A The next line, "Because the brother, because that
23 brother will be late a little, the one you told me about."

24 Q OK. Thank you very much.

25 If you would turn in 383 to page 18. In the

1 middle just after the underlined portions there are the
2 words, "Listen to me. I am the boss. You work for me now."

3 I'm not disputing that translation. Isn't it
4 true that all or some of those words are spoken in English?

5 A Yes.

6 Q That is essentially a joke and the response is
7 laughter, is that correct?

8 A Yes.

9 Q Moving down a little further to Wahid Saleh,
10 "Everything is in God's hand." I'm not disputing the
11 translation, but doesn't that essentially mean, "Leave it up
12 to God"?

13 A That's true.

14 Q OK. On the next underlined portion just under
15 that, when you listened to check that dispute, did you check
16 to see whether after the words, "I want you to understand
17 very good," were the words, "there is nothing against you."

18 Did you listen for those words?

19 A I don't recall hearing, "There is nothing against
20 you."

21 Q You did not hear that?

22 A I don't recall.

23 Q OK. Going to page 19, once again, in the middle
24 of the page, we see a number of examples where Siddig Ali
25 uses the word "God" or "Allah," and Wahid Saleh responds

1 with a phrase using the word Allah, is that correct?

2 A Yes.

3 Q Now, a little lower you see a disputed line that
4 says, "That is it."

5 Did you listen to see if in fact that says,
6 "About what?" as a question rather than, "That is it"?

7 A I believe it was, "That's it."

8 Q And do you believe that was spoken in English or
9 Arabic?

10 A I believe it was in Arabic.

11 Q Arabic. OK.

12 Just below that, on the line that says "Because
13 you want to assure me that you are --" and then there are
14 three A's "working," did you mean that mean like "ah"?

15 A A-a-ah.

16 Q OK.

17 A He stutters.

18 Q We didn't underline that, but could that -- if he
19 had been saying the word "not," "that you were not working,"
20 would the word --

21 MR. FITZGERALD: Objection.

22 Q Be "ma"?

23 THE COURT: Sustained.

24 Q OK. Turning the page to page 20 of the exhibit,
25 I see you have made a footnote with reference to the first

1 entry, is that correct?

2 A Yes.

3 Q That's because you were explaining that is an
4 expression that means something a little bit, or can mean
5 something different from the literal meaning of the words,
6 is that correct?

7 A Well, it was about the words, "Have mercy on me."

8 Q And you said that one of the meanings is, "Get to
9 the point"?

10 A Yes.

11 Q We also discussed some other possible meanings,
12 like, "Leave me alone," is that correct?

13 A That is true, yes.

14 Q OK. This is the only place in which you placed a
15 footnote in this exhibit, is that right?

16 A Yes.

17 Q But it's not in fact the only place where an
18 expression is used where the literal meaning of the word is
19 different from the sense of it, am I correct?

20 A That's correct.

21 Q Now, you testified that from time to time you
22 tried to indicate that there was action going on on the
23 screen at certain places. Directing your attention to the
24 Salem's line about a quarter of the way or a third of the
25 way down the page, "You are torturing him," do you recall

1 that Mr. Salem at that time was making sort of a whipping
2 motion with his hands?

3 A Yes.

4 Q But that was not noted in the transcript?

5 A Because I did not make the original transcript.
6 Anything that needed to be noted while I was doing the
7 corrections or the disputed underlined portions, I tried as
8 much as I could to note it there.

9 Q OK. But you do remember that that happens right
10 at that point?

11 A Yes, I remember that.

12 Q Looking at the underlined portion right in the
13 middle of the page, Siddig Ali: "I am going."

14 If he were saying "I am not going," would he have
15 used the word "mish" or "ma" instead of just "I am going"?

16 A That's true.

17 Q You're certain you don't hear that when you
18 listen to that line?

19 A I believe it's not there.

20 Q OK. Going about halfway down from that point to
21 the bottom, there is a Siddig Ali line which is not in
22 dispute, and I'm not disputing it, the word "driveway," do
23 you see that?

24 A Yes.

25 Q OK. What is the word in Arabic for "driveway"?

1 Is it "matla'a?

2 A There's a "matla'a" or "mahmar."

3 Q OK.

4 A It could be used either or.

5 Q Do you remember which one it is here?

6 A I'm not really positive which one he used.

7 Q OK. Turning to the next page, the top of -- near
8 the top of page 21, you have the word in the fifth
9 attribution, "Just explain to me the mission of the cars,"
10 do you see that?

11 A Yes.

12 Q Is the word in Arabic that you saw there
13 "mohemna"?

14 A "Mohima."

15 Q "Mohima"?

16 A Yes.

17 THE COURT: Could you spell that for the
18 reporter, please.

19 THE WITNESS: M-O-H-I-M-A.

20 Q And that word comes from the same word as the
21 word in Arabic for "important," "mohem," isn't that correct?

22 A No. They are similar, but "mohimet" it's a
23 mission, "mohem" is important.

24 Q But wouldn't "mohimet" also mean "the importance
25 of"?

1 A The word "mohimet" means mission. If you say
2 this is, "mohimah," with an H at the end, that means this is
3 important. If you say, "the 'mohimet' of," that means, "the
4 mission of."

5 Q OK. And if you say "mission," "mission" means
6 sort of the purpose of, is that right?

7 A It can be used as that, yes.

8 Q It doesn't necessarily mean like a military
9 mission or a military operation or something like that?

10 A No, not necessarily.

11 Q OK. Turning to the top of page 22, the word
12 there underlined is "factory."

13 Was the word you heard or think you heard
14 "masna'a"?

15 A Yes.

16 Q OK. Could you spell that for the record.

17 A M-A-S-N-A apostrophe A.

18 Q And "masna'a" sounds something like "matla'a,"
19 isn't that correct?

20 A Only in two letters and some vowels. But when
21 you hear the word "masna'a" you have to listen to the S
22 sound in it to determine, is it "masna'a" or matla'a, which
23 is M-A-T-L-A apostrophe-A.

24 Q Is it true that at this point Siddig Ali is
25 making a long speech in a very low volume?

1 A Well, it was good enough that I could hear it.

2 Q You feel pretty certain it's "masna'a" and not
3 "matla'a"?

4 A Yes.

5 Q Going down to the middle of the page where it
6 says, "What do you do?" are you sure that wasn't, "What did
7 you do?" in response to the line, "I was in jail"?

8 A No. "What do you do?" He was asked, "inta
9 eitisht ghala aya?"

10 Q Looking at the next attribution you have in that
11 there the word "line."

12 Do you see that, "line of car theft"?

13 A Yes.

14 Q Was that a word you heard in English?

15 A I believe it was.

16 Q Now, what I'd like to do actually is play that
17 piece of the tape. If you could run it to 12:02:20 while I
18 ask you would you consider whether or not the word is really
19 "license," particularly in view of the statement four lines
20 down which says, "this license."

21 Do you see what I'm saying?

22 A Yes.

23 Q And also whether in fact it's not Emad Salem
24 who's saying something about a license rather than Wahid
25 Saleh saying something about line of car theft. If you

1 would please try to determine that?

2 A Sure.

3 MR. NOOTER: We have to go up seven minutes to
4 12:02.

5 While he's doing that, is it fair to say that in
6 that conversation which follows about license they usually
7 used the English word "license"?

8 A Yes, it's fair to say that.

9 MR. NOOTER: OK. Are we ready?

10 A But the word "license" was used in Arabic, too,
11 in this conversation.

12 Q OK. So not all of them are English?

13 A Not all of them, no.

14 (Tape played)

15 Q Can I just ask you didn't you just hear the word
16 "matla'a" right there, "driveway"?

17 A No.

18 Q OK. Then let's proceed.

19 A He told him, "When I want to do something, I want
20 to do it right."

21 Q OK. OK. Let's proceed. It should be at about
22 12:02:23 on the counter.

23 A OK.

24 Q Do you hear the word "license"?

25 A Let me hear it again, please.

1 Q OK. And I'll note that Wahid Saleh, at this
2 point his head goes down off the screen and Emad's head is
3 down, so you can't really see who the speaker is, so if you
4 could just try to listen to who it might be, if you could
5 run it back to I would say 02:10.

6 (Tape played)

7 A It sounded like the word "license," but I believe
8 he said the "line of."

9 Q So you still think it is that even though --

10 A Yes.

11 Q -- it does sound like the word "license"?

12 A And he told him "inta eitisht ghala aya."

13 Q "Inta" means?

14 A "You."

15 Q You are you talking about Salem's line?

16 A Salem, yes, at the beginning he said, "What do
17 you do?"

18 Q OK.

19 A Then Wahid answered him, "In the line of car
20 theft."

21 (Continued on next page)

22

23

24

25

1 Q Even though it does sound like license and we
2 can't tell who is speaking, you are pretty sure that is what
3 is it is?

4 A I was sure that Wahid was the one who was
5 talking, because Emad talked and he stopped. He asked the
6 question and he stopped, and I don't believe he said
7 anything else.

8 Q Even though two or three lines down Wahid says
9 this license, which otherwise would would not have been
10 brought up before? In other words, if it is not brought up
11 in the line that is underlined, this is the first reference
12 to license, where he says leave this license and you can go.
13 That doesn't cause you to question whether or not what you
14 hear above is in fact the word license and not line of?

15 A I don't think it should prejudice me about what I
16 am hearing if he mention later on.

17 Q It doesn't help you to know the context?

18 A I don't think it has any effect on that. It was
19 said -- what I heard that he said I was working the line of
20 car theft. If he mentioned the word license after that, I
21 wouldn't let that prejudice my decision on what I heard.

22 Q I will move on now to the top of page 23, the
23 underlined portion where I will simply note that we no
24 longer have a dispute. Two thirds of the way down on page
25 23, do you see the word details underlined?

1 A Yes.

2 Q Is that the word tafaseel?

3 A Tafaseel, T-A-F-A-S-E-E-L.

4 Q Isn't that, can't that word also be translated as
5 explanations, details or explanations or something -- either
6 of those things?

7 A In some conversations, yes, it could be used as
8 that.

9 Q Thank you.

10 A You are welcome.

11 Q Turning to page 24, I am going to direct your
12 attention to the fourth attribution down, the new month will
13 be due. From that point down to the footnote number 2, the
14 footnote which says beginning of V8, those were the new
15 lines that you were able to fill in in the last day or two
16 with the audiotape, is that correct?

17 A Yes, that is correct.

18 Q And directing your attention to the very bottom
19 of the page, the very last word trace, was the Arabic word
20 that you heard there ather?

21 A Ather, A-T-H-E-R.

22 Q That sort of means like a trace or a whiff or a
23 hint or smell, things like that?

24 MR. FITZGERALD: Objection to form.

25 THE COURT: Sustained as to form.

1 Q Trace obviously is the word you chose for the
2 meaning of that word, is that correct?

3 A If you check the dictionary, the word ather, you
4 will find it means trace.

5 Q Does it also sort of mean -- is it derived from
6 the same English word ether?

7 A No.

8 Q No?

9 A No.

10 Q Do you remember when we talked before about some
11 words that literally mean something and others that don't,
12 and I mentioned the word watermelon?

13 A Yes.

14 Q That is bateekh?

15 A Bateekh, B-A-T-E-E-K-H.

16 Q Isn't it fair that another word like that which
17 has a literal meaning but also a meaning on the street is
18 reeha?

19 A Reeha, R-E-E-H-A. That means smell.

20 Q It means smell, and is it often used in an
21 expression meaning a trace of something, or none of
22 something? Let me rephrase the question this way.

23 In street talk, if someone asks someone else do
24 you have any money in your pocket, would an answer possibly
25 be I don't even have the smell of money in my pocket? Is

1 that a street expression in Arabic?

2 A That can be used, yes.

3 Q And it doesn't mean literally the smell, it just
4 means anything, any trace of or anything, is that correct?

5 A That is correct.

6 Q If we turn the page to page 25, on the sixth
7 attribution it says any way or any nonsense, and then right
8 exactly, and any scent. The three "any" words there, any
9 way means what? Do you remember the Arabic for that?

10 A I can't recall the Arabic for that.

11 Q Do you remember if it was kallam?

12 A I don't recall it, kallam, K-A-L-L-A-M.

13 Q Just to remind, that literally means speech but
14 it also can mean any nonsense in effect, is that true?

15 A Yes, when you say, when you use that word, yes.

16 Q And the next word, the any nonsense, do you
17 recall that that was the word bateekh, meaning watermelon?

18 A Yes, I recall that.

19 Q And then any scent, that was the word reeha, is
20 that correct?

21 A That is correct.

22 Q And then do you see below that the underlined
23 word remove? Do you recall whether the Arabic word was
24 titya'a?

25 A Titya'a, T-I-T-Y-A apostrophe A.

1 Q Would a fair translation of that word also be to
2 lose?

3 A Excuse me. Let's change that. T-I-T-D-Y-A
4 apostrophe A.

5 Q If someone said I lost my money, would they also
6 possibly use that word?

7 A Yes.

8 Q Directing your attention to --

9 A Excuse me. Let me make a statement here. When
10 you say I lost my money, you use that word that's your money
11 being removed from where you had it or where you think it
12 was. So the word there titdya'a, the one that I just
13 spelled, it is used --

14 Q It's been taken away.

15 A No, no. It's used in the slang language to mean
16 that the money was removed from its original place.

17 Q OK.

18 A But here when it was saying to remove the scent,
19 something that will take the scent away from the place.

20 Q Would you also use the same word if you lost your
21 money in a casino, they took your money away?

22 A No. If I lost in the casino it will not be used
23 like that.

24 Q You would not use that Arabic word?

25 A I don't think it should be used there.

1 Q I went to Atlantic City and lost my money?

2 A Yes, you say I lost my money but not --

3 Q Not titdya'a?

4 A Not titdya'a, no.

5 Q OK. I am going to skip down to the very bottom.

6 The word phony is underlined. Was that the word also
7 kallam?

8 A Ai kallam.

9 Q A?

10 A A-I, kallam, K-A-L-L-A-M.

11 Q Any nonsense?

12 A Any nonsense, or here -- when I say -- if
13 somebody asks me did you show your ID before you came here
14 to the building, I say no, I showed them ai kallam, I showed
15 them anything, anything or something phony. That means it
16 could have something phony -- did you show them the correct
17 one? No, I showed them ai kallam, that means I showed them
18 something that is not true, or is not the original one, is
19 not the authentic one.

20 Q But it could be either any or it could be
21 actually phony meaning forged, but you can't tell from this
22 usage which it is, would that be fair?

23 A I believe I can tell from the conversation --

24 Q From the context, you are saying?

25 A Yes. From the context here, it was used that you

1 will give any one authentic names.

2 Q It says any name. It could be any real name but
3 not of you, or it could be a totally made up name.

4 A Any made up name.

5 Q It could be any name, right?

6 A Any made-up name.

7 Q Any non-made-up name but not you, isn't that
8 correct?

9 A If it is not my name it could be a made-up name.

10 Q But it could be a made-up name of a real person?

11 A It is possible, yes.

12 Q I would like to go back to the underlined portion
13 and ask if you would listen, and we should run it up to
14 12:05:40, where you have the words referring to 250. I am
15 not sure how that would be said in Arabic or if that was
16 said in English. But I would ask you to listen and see if
17 you hear the English word bitch, B-I-T-C-H, there, rather
18 than the money reference.

19 (Pause)

20 Q While they are rewinding that tape -- if I can
21 remember where I put down my transcript -- if you would look
22 at page 26 near the bottom, five attributions up Salem says
23 yes, I understand you, under any name, and Siddig Ali says
24 any name. Is that again the same word we were just talking
25 about?

1 A No, I don't think so. I believe he used the word
2 issm.

3 Q Issm?

4 A Issm, I-S-S-M.

5 MR. NOOTER: I think we are ready on the other.

6 Q Again, directing your attention to page 25, the
7 underlined portion three quarters of the way down where you
8 have the numbers 250.

9 (Videotape played)

10 THE WITNESS: Can you play it one more time,
11 please. One more time.

12 (Videotape played)

13 A It sounds like bitch but it's not.

14 Q What do you think it is?

15 A Maiteen, M-A-I-T-E-E-N.

16 Q That is the word that you hear that you think
17 sounds like bitch?

18 A No. The word I will put, he said arooh, ahoot,
19 A-R-O-O-H, A-H-O-O-T, sht, sht, sht, sht, he put, like,
20 something like sht maiteen.

21 Q The last phrase you are saying is sort of like an
22 S-H sound, is that correct?

23 A S-H sound and he said maiteen, the number two
24 hundred, then unintelligible, then and fifty.

25 Q And you don't hear the American word or the

1 English word bitch?

2 A No.

3 MR. NOOTER: If we could run up to 12:06, I would
4 direct your attention to page 27, the underlined word today,
5 and ask you, first of all, do you recall whether the word
6 today was a word you thought was in English?

7 A Word which was in Arabic.

8 Q I would ask you to listen and see whether or not
9 the word is OK, the word in English, meaning Wahid, how are
10 you, are you OK, if you can listen and see if in fact
11 instead of today it's OK.

12 MR. NOOTER: If you run up to 12:06, I don't have
13 the exact seconds but the voice drops and Siddig says Wahid,
14 Wahid, Wahid a number of times.

15 AGENT CORRIGAN: I will go back to 12:59.

16 (Videotape played)

17 Q Excuse me. Do you know where we are? I am not
18 100 percent sure.

19 A We are not there yet. We are not there yet.

20 (Playing continued)

21 A That's it. It's very clear. There is no doubt
22 about it. How are you doing today, how you do today, how
23 are you today.

24 Q Going down lower on the page, do you see where we
25 have the words stuff itself? Is this again kallam?

1 A Kallam, yes, K-A-L-L-A-M.

2 Q And you have interpreted that as the word stuffed
3 based on the colloquial expressions that we have talked
4 about, is that right?

5 A No, no, based on the arm movement of Emad Salem,
6 when he looked around and said elkallam elle hena dah,
7 E-L-K-A-L-L-A-M, E-L-L-E, H-E-N-A, D-A-H.

8 Q But literally the word does mean words, or talk,
9 does it not?

10 A Literally, yes.

11 Q So he could be saying these words, could he not?

12 A When he turned around and he looked around and he
13 said this --

14 Q You thought he meant physical stuff but that's
15 your interpretation, is that correct?

16 A That is the way I understood it.

17 Q But the word could also mean this kind of talk,
18 even if he is waving his hand, am I correct?

19 A Even if he turns his back to the people he is
20 talking to and look around, I don't believe so.

21 Q Just after that, the word underlined get rid of,
22 I am not sure what Arabic word you had there, but could that
23 not also be to finish up, rather than get rid of, but to
24 finish this up?

25 A No. He used the word akhalas, A-K-H-A-L-A-S,

1 mem, M-E-M.

2 Q Which does not mean finish up, it means get rid
3 of?

4 A No, it means get rid of.

5 Q What I want to do is play and have you listen to
6 the next portion where you have I can do it, um, but I don't
7 deal with just anyone, and ask you to listen for the
8 following words, mesh mumken, M-I-S-H-M-U-N-K-I-N?

9 A Mesh, M-E-S-H, mumken, M-U-M-K-E-N.

10 Q Which means not possible.

11 A Which means not possible.

12 Q And ask you if in fact he is not saying is it not
13 possible to deal not just with anybody but with one who
14 works in a garage, rather than the I can do it, if you would
15 listen to this and see if you hear mesh mumken and see
16 whether that is a fair interpretation.

17 A No problem.

18 MR. NOOTER: I think if we just play it from this
19 point we will get to it in a few lines.

20 (Videotape played)

21 Q You didn't hear mesh memken?

22 A I didn't hear the word mesh mumken.

23 Q You heard mumken?

24 A Ama, A-M-A, mumken, M-U-M-K-E-N, a'amelha, A
25 apostrophe A-M-E-L-H-A.

1 Q And literally, those words mean what?

2 A I can do it.

3 Q Doesn't it mean it's possible? Mumken is
4 possible, isn't it?

5 A Mumken means possible or can.

6 Q We just went past the point also where we saw the
7 waving that you referred to.

8 A Yes. And we saw him that he turned his face to
9 them and he waved to the things behind him, to the stuff
10 behind.

11 Q Let me just run it back, if you would run it back
12 20 seconds, maybe 30 seconds.

13 (Playing continued)

14 Q That is what you were referring to?

15 A When he turned his face this way.

16 Q But the word was kallam that he was using at that
17 point?

18 A Yes.

19 MR. NOOTER: If you would run it up to 12:09:45,
20 I guess.

21 Q Turning to page 28, around the middle you have a
22 reference in Siddig Ali speaking, three clicking noises.
23 Those noises mean, like no, no, no, is that correct?

24 A I am not sure I can recall that. I need to hear
25 it before I say is it tongue interjection or what is it.

1 Q I see. You don't remember if it might be
2 something that was clicking in the room or something?

3 A Well, I don't recall right now. I need to hear
4 it.

5 Q What I would like to do to save time is play the
6 area that covers the clicking noises and the next two
7 underlined attributions and ask you whether the Wahid Saleh
8 yes but tell me the facts really isn't why are you talking
9 to me like this, as a question, and then the next underlined
10 portion where you have I will find you the cars, even two
11 cars, if in fact that isn't Emad Salem who is speaking,
12 saying something about cars. If you would listen for those
13 three things, the clicking, the tell me the facts line that
14 you have, and who is speaking about the cars.

15 (Videotape played)

16 Q I think we may have started past the clicking
17 noises, is that correct?

18 A I didn't even hear the clicking noise.

19 MR. NOOTER: Why don't you run it back to 9 and
20 30 seconds.

21 That's it right there. Why don't you run it back
22 to 9 and 20 seconds.

23 (Videotape played)

24 THE WITNESS: Excuse me. Can we go back to
25 12:09:30, please.

1 (Videotape played)

2 A The three clicking noises, they were three tongue
3 interjections.

4 Q And those would normally mean no, negative?

5 A Yes, no, no, no, and that was in response to Emad
6 Salem's conversation when he said this guy will be dangerous
7 for us.

8 Q Right.

9 A And the first underlined Wahid said yes, if you
10 just can give me the details, and he used the word details
11 in English.

12 Q Details in English?

13 A Yes. The second underline, it's exactly the
14 same. He said I will find your cars, even two cars if I
15 couldn't find the vans.

16 Q Sir, each of the times we played that, I believe
17 I heard the word OK right at that point. Did you hear the
18 word OK?

19 THE COURT: Sustained.

20 Q Withdrawn. Did you hear the word OK said in
21 English by somebody?

22 A I don't recall it.

23 MR. NOOTER: If you would run it back to 09:45.

24 (Videotape played)

25 A That word OK should fall before with God's

1 permission, from Wahid.

2 Q So it is not in the transcript?

3 A It is not.

4 Q And it should be right before the line with God's
5 permission?

6 A Exactly.

7 Q In fact, didn't he say something like God loves
8 the patient?

9 A No, I didn't hear that.

10 Q All right, and he insist that it is he speaking
11 when he says the lines you say he says about cars and vans?

12 A Yes, sir.

13 Q We should be able to hear the word car in Arabic,
14 is that correct, which is arabeiteen?

15 A Arabeiteen. He said two cars, arabeiteen.
16 A-R-A-B-E-I-T-E-E-N.

17 Q And how do you say van in Arabic?

18 A He didn't say it in Arabic. He said it in
19 English.

20 Q So we should be able to hear those two words when
21 we listen?

22 A Yes.

23 Q Turning to page 29, I am going to direct your
24 attention to the bottom of the page, not because I have a
25 transcript dispute with you --

1 A Excuse me. When you said we should be able to
2 hear the word van, it will be vanat, V-A-N-A-T, and that,
3 the transliteration, if you call it, of the word vans in
4 English.

5 Q But in addition to my client saying it, Siddig
6 Ali says it, according to this transcript, is that correct?

7 THE COURT: Wait a second. Are you saying that
8 whoever the speaker was attached an Arabic plural to an
9 English word?

10 THE WITNESS: Yes, sir.

11 Q And that word is also spoken by Siddig Ali right
12 after, according to this transcript, is that correct?

13 A Yes, but he used it the word vaneen, V-A-N-E-E-N.

14 Q Which would mean two vans?

15 A Two vans.

16 Q Now I want to direct your attention to page 29.
17 The fifth line from the bottom, I am not asking you about
18 your translation, I just would ask you, in those five lines
19 and the next two lines, the first two lines on page 30, it
20 is fair to say you don't have any indication that there is
21 unintelligible talk there, is that correct?

22 A I don't believe so.

23 Q So all of those lines leading up to the popping
24 sound, while beautiful, you can hear and are properly
25 translated as you have put them down, is that correct?

1 A I believe so, yes.

2 Q Directing your attention to the middle of page
3 30, with particular reference to the word in the underlined
4 portion, the word we, we buy them, is it not true that other
5 than that use of the word we, all of the conversation by the
6 speakers in that speech and the next two speeches refer to
7 they, meaning other people, they have no jobs, they are
8 crooks, they remove the counter, they are usually people
9 with complexes?

10 A They remove the counter?

11 Q They remove the counter is the beginning of a
12 translation.

13 A Yes, yes.

14 Q The pronoun is they, not we, is that correct?

15 A Yes.

16 Q So my question to you, sir, is, isn't it true
17 that in fact in the underlined portion that should be they
18 and not we, they buy them?

19 A I heard the word ehna, E-H-N-A.

20 Q Meaning?

21 A We.

22 Q How would you say they?

23 A They can be said humah, H-U-M-A-H, or it can be
24 used when you refer to someone else in plural language. You
25 don't necessarily use the word humah when you are talking

1 about somebody else.

2 Q You mean you just don't use the pronoun at all?

3 A You don't use it at all but there is a referral
4 to it at the end of the verb that will be added to mean that
5 you are talking about somebody else, group of people.

6 Q So it would be a grammatical change to the verb?

7 A Yes, it will make a change to the verb if it is
8 talking about we or talking about them.

9 Q So you think you heard that word even though the
10 other words in that discussion about the people who have no
11 jobs and all of that is they, is that correct?

12 A He said benshtreehum, he didn't say ehna. The
13 word ehna were not used here. He said benshtreehum.

14 Q You better spell those things.

15 A B-E-N-S-H-T-R-E-E-H-U-M.

16 Q And that means what?

17 A That means we buy them.

18 Q It literally has the word we? It is not a
19 grammatical change of the verb?

20 A No. When we say benshtreehum, that means we.

21 MR. NOOTER: If you could run the tape up to
22 12:15:00.

23 Just run it back to 14:40.

24 Q Sir, if you could just tell us what is being said
25 exactly as Wahid Saleh stands up. There is no reference in

1 the transcript to his standing up and I would just like to
2 have you note where it is when he stands up, what is being
3 said on the transcript.

4 (Videotape played)

5 Q Is that on the top of page 32, where it says Van
6 Wyck going west, approximately?

7 A I believe that is when Siddig was giving him
8 directions.

9 Q Right. What I want to know is, which part is it
10 in the transcript is it when he stands up?

11 MR. NOOTER: If you would run it back about 15
12 seconds.

13 (Videotape played)

14 Q Can you just indicate approximately where on the
15 transcript that was, where he stood up.

16 A OK. That's here when on the fourth attribution,
17 when he told him the sign will say Van Wyck.

18 Q Fourth attribution on page 32.

19 A You will go west not east.

20 Q Now I would like to continue the playing of the
21 tape and ask you to identify the point in the transcript
22 where he shakes hands with somebody.

23 (Videotape played)

24 A That's when Emad Salem was asking him
25 ehtemalatna, E-H-T-E-M-A-L-A-T-N-A, kam percent, K-A-M,

1 percent.

2 Q Percent in English?

3 A Percent in English.

4 Q So that on the transcript is the what are your
5 possibilities percentagewise?

6 A Yes.

7 Q And the shaking hands is the form of saying
8 goodbye in effect, isn't that correct?

9 A That is correct.

10 Q But Emad Salem goes on to speak, is that right?

11 A Yes.

12 Q And asks these questions?

13 A That is right.

14 Q And the next few lines are in English, except
15 where we have the underlined portion, beautiful, that's it,
16 God, God. I would like to ask you to listen through that
17 part and see whether or not instead of the word Allah,
18 Allah, he is in fact saying yallah, yallah, meaning go or
19 scat. First of all, is that a fair meaning of yallah?

20 A No. There is a difference here between when you
21 say yallah, Y-A-L-L-A-H, and when you say ya, Y-A, space
22 Allah. The first one means let's go, or hurry up, or let's
23 move it. The second one would mean oh God, or means you are
24 calling God, God's name.

25 Q Just in terms of the context of the conversation,

1 would it normally be said in Arabic God, God, in that way?

2 A When you comment on something, you are asking for
3 God to facilitate it.

4 Q But don't you usually add other words instead of
5 just the word God standing alone?

6 A Not necessarily.

7 Q In this case the word God was not followed by
8 anybody else saying anything about God, is that correct?

9 A That is correct.

10 Q And the two words you have just described, the
11 one meaning God, the other meaning go or hurry up, sound
12 very similar, is that correct?

13 A Close enough.

14 Q Do you happen to know whether it is pronounced
15 differently by someone speaking who is Sudanese?

16 A I don't think it will make any difference with
17 the dialect on this one, because the first one you will say
18 it as one word, the second one you will say it as two words,
19 ya Allah, ya Allah. The first one you will say yallah, and
20 it will be merged together.

21 MR. NOOTER: If we could play through that point
22 and see whether it changes your mind about what it is. I
23 think we can just start where we are.

24 (Videotape played)

25 A Matter of fact here he didn't say ya Allah, ya

1 rab, Y-A, rab, R-A-B, which means God, God. That's when you
2 are calling God to facilitate things.

3 Q Finally just two more lines down where it says
4 one or two more days God willing, the term God willing means
5 if God wills, isn't that correct?

6 A That is true.

7 MR. NOOTER: I have no further questions. Thank
8 you.

9 THE COURT: I think we will take a break. Ladies
10 and gentlemen, we are going to take a break now. Please
11 leave your notes and other materials behind. Please don't
12 discuss the case, and we will resume in a short time.

13 (Recess)

14 (Continued on next page)

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1 MR. NOOTER: Your Honor, I wonder if I might be
2 permitted to reopen for about two more questions.

3 THE COURT: About two more?

4 MR. NOOTER: Three, tops. Make it three.

5 THE COURT: That is a 50-percent difference.

6 Yes.

7 MR. NOOTER: Thank you.

8 MR. FITZGERALD: I will stipulate that in, unless
9 they want to use up one of his questions.

10 GAMAL ABDEL-HAFIZ, resumed.

11 (Jury present)

12 THE COURT: Mr. Nooter, you had about two
13 questions?

14 MR. NOOTER: Thank you.

15 First of all, I would just offer Defendants'
16 Wahid Saleh Exhibit W into evidence.

17 MR. FITZGERALD: No objection.

18 THE COURT: That is the handwritten Arabic?

19 MR. NOOTER: Yes, it is.

20 THE COURT: That is received without objection.

21 MR. NOOTER: Thank you.

22 (Wahid Saleh Exhibit W for identification was
23 received in evidence)

24 Q Sir, just two more questions:

25 Shortly after the piece of tape we watched where

1 Mr. Wahid Saleh shakes hands with Emad, he leaves the room
2 altogether, is that correct?

3 A That's correct, yes.

4 Q He does not appear again in the transcript after
5 that, is that right?

6 A That's true.

7 Q There is some talk about him afterwards, but he
8 is not present, is that correct?

9 A That's correct.

10 MR. NOOTER: Nothing further, thank you.

11 THE COURT: Thank you.

12 Mr. Jacobs, representing Mr. Mohammed Saleh.

13 CROSS-EXAMINATION

14 BY MR. JACOBS:

15 Q Good afternoon, sir.

16 A Good afternoon, sir.

17 Q I am going to ask you a couple of questions about
18 799T, which is a FISA tape dated June 14, 1993 at 6:54.

19 It is a conversation between Siddig Ali and my
20 client, Mohammed Ali Saleh.

21 MR. JACOBS: With the Court's permission, may the
22 jurors turn to the exhibit.

23 THE COURT: Yes.

24 MR. JACOBS: While it has not been published, I
25 think we have agreed that I can question him on the last

1 page of the exhibit and the government has no objections,
2 even though it has not been read to the jury yet.

3 THE COURT: All right.

4 It is a two-page exhibit, isn't it?

5 MR. JACOBS: No, the one I have, your Honor is 13
6 pages.

7 THE COURT: I am sorry.

8 MR. JACOBS: 799T.

9 THE COURT: 799T. It's in the binder marked 751
10 through 850.

11 MR. JACOBS: Ladies and gentlemen, if you would
12 turn to the last page, page 13, the examination will be
13 relative to that last page. So it would be page 13 of
14 Exhibit 799T.

15 MR. RICCO: Your Honor, may I speak to the
16 government before we proceed.

17 (Counsel conferred)

18 MR. JACOBS: I think I can proceed, your Honor.

19 THE COURT: Please.

20 Q Mr. Gamal Abdel-Hafiz, I asked you, at my
21 request, to take a look at the first 17 lines of page 13
22 and, in particular, I asked you to review lines 1, 2, 3, 9,
23 15, 16, and 17, is that correct?

24 A That's correct, sir.

25 Q At my request, and with the government's consent,

1 you prepared the Arabic that you heard or you believed you
2 heard with respect to those lines, those seven lines, is
3 that correct, sir?

4 A That's correct, sir.

5 Q OK. To the best of your ability, that's what you
6 heard and you wrote down on a piece of paper for my benefit,
7 correct?

8 A That's correct, sir.

9 MR. JACOBS: Your Honor, I believe the government
10 has no objection to that piece of paper coming into evidence
11 as Defendant Saleh Ali's W at this time. I don't think it's
12 necessary to pass it to the jury because it's in Arabic, but
13 the government, I understand, has no objection.

14 THE COURT: Right.

15 MR. FITZGERALD: Correct.

16 THE COURT: So, Mohammed Saleh W is received
17 without objection.

18 (Mohammed Saleh Exhibit W for identification was
19 received in evidence)

20 MR. JACOBS: If the jurors would take a look, you
21 will see the third attribution down, for Saleh, that entire
22 portion is underlined, and then if we look down to line No.
23 9 the word "visit" is underlined, and there is some
24 additional underlinings at lines 15 where you have
25 attributed in English, "Did he find it?" And then line 17,

1 "Then we wait" is also underlined.

2 Q Am I correct that at my request we focused in on
3 those lines, you put them down in Arabic, is that correct?

4 A That's correct, sir.

5 Q OK. Fine.

6 I would ask you if you would be so kind as to
7 take a look at this piece of paper, which is also in Arabic,
8 and I ask you to take a look at it.

9 THE COURT: Mr. Jacobs, the interpreters can't
10 hear you.

11 MR. JACOBS: I'm sorry.

12 Q I have marked this as defendant Saleh Ali's X for
13 identification.

14 (Pause)

15 Q Have you looked at it?

16 A Yes, sir.

17 Q After looking at it, I would also ask, and I
18 think Mr. Fitzgerald has agreed, we've cued up the tape,
19 it's about 20 seconds, your Honor, and I ask that the
20 witness be permitted to hear the tape once more before we
21 ask just a couple of questions, and, Mr. Fitzgerald, if you
22 would be so kind as to play that last 17 lines that I've
23 highlighted. Thank you.

24 THE COURT: Is this an audiotape?

25 MR. FITZGERALD: Yes.

1 MR. JACOBS: Just an audiotape.

2 THE COURT: All right.

3 MR. FITZGERALD: If the witness can tell me if
4 I'm in the right spot.

5 MR. JACOBS: As a matter of fact, I would request
6 the jurors listen to it because there are some words they
7 may be able to hear.

8 THE WITNESS: Go up about ten counts, please.

9 MR. FITZGERALD: I already did ten counts. OK.

10 (Tape played)

11 BY MR. JACOBS:

12 Q Sir, let me ask you, looking at the third line on
13 your transcript in English, if we can, I think it should be
14 before you.

15 A I have it.

16 Q You have it, OK. All right. Thank you.

17 You have a "UI, with us in the personalities -- I
18 mean in the Parliament."

19 A Yes.

20 Q Having taken a look at Defendants' X for
21 identification, and having just heard the tape, do you hear
22 any references to the words "went to school" or to "they
23 went to school" or "he went to school" on that third line?

24 A There is a possibility, but I am not sure. That
25 is why I put it unintelligible.

1 Q OK. And I am going from Arabic to English is --
2 I'm certain I am going to mispronounce it, but it would be
3 daraso nanna, D-A-R-A-S-O, N-A-N-N-A?

4 Did you hear that?

5 A Not exactly that.

6 Q OK.

7 A Because Siddig Ali was talking over him.

8 Q Right.

9 A I couldn't make the determination, the
10 determination that that's the word that was said.

11 Q But it might be "school"?

12 A It might be "school."

13 Q OK. Fine.

14 Now, let's take a look, then, at the ninth line
15 down, and the jurors don't have their lines numbered, but it
16 would be, "By God, I wanted to pay you a visit."

17 We have the word "visit" underlined.

18 A Yes.

19 Q Now, at that particular point in the tape, do you
20 hear Mr. Saleh Ali refer to -- and again I'm going to
21 butcher the word -- "the feast" or "the eid"? I think it's
22 E-I-D in English. Did you hear that?

23 A No, I did not.

24 Q So you will stand by your transcript that all you
25 heard is the words "pay you a visit" and nothing after that?

1 A Yes, sir.

2 Q Nothing about the feast?

3 A Nothing about the feast that I heard.

4 Q Now, if we could look then at 15, 16, and 17, did
5 you hear in particular on the Saleh reference at 17 the word
6 "inshallah" at that particular point?

7 A On the --

8 Q On 17, with Saleh speaking at that point?

9 A No. There was not the word "inshallah."

10 Q How about what we translate as "not important"?
11 Did you hear that word?

12 A No, it's definitely not there.

13 Q Definitely not there?

14 A Definitely not there and insha Allah is not
15 there. He said, "ezan," E-Z-A-N, "nestena," N-E-S-T-A-N-A,
16 comma, "walama," W-A-L-A-M-A, "ashafook," A-S-H-A-F-O-O-K,
17 "netklam," NETKLAM.

18 Q And that's your English spelling of line 17 and W
19 in evidence, is that fair to say?

20 A Yes.

21 MR. JACOBS: Might I just have one moment, your
22 Honor?

23 THE COURT: Yes.

24 (Pause)

25 MR. JACOBS: I have nothing further. Thank you.

1 THE COURT: Ms. Amsterdam, representing
2 Mr. Khallafalla.

3 MS. AMSTERDAM: I just have several brief
4 questions that I missed this morning on transcript 370T,
5 with the court's permission.

6 THE COURT: Go ahead.

7 MS. AMSTERDAM: Thank you, sir. I apologize.

8 CROSS-EXAMINATION (Continued)

9 BY MS. AMSTERDAM:

10 Q Do you have 370T?

11 A Yes, ma'am, I do.

12 THE COURT: This is in the volume marked 349
13 through 370.

14 Q Sir, this is the transcript that we spoke about
15 this morning, correct?

16 A Yes, ma'am.

17 Q And this is the videotape that precedes CM19,
18 correct?

19 A That's correct.

20 Q On page 3, sir, the first three attributions, the
21 first three attributions Emad Salem says: "The bomb is
22 called hadduta. From now on, we are not going to say bomb."

23 And Siddig Ali says: "We agreed that there is
24 nothing called bomb."

25 And Emad Salem says: "We are making the hadduta."

1 How is the hadduta? Is the hadduta ready or not?"

2 Isn't that so, do you see that, sir?

3 A Yes, ma'am.

4 Q You did not translate "hadduta" into English,
5 correct?

6 A That's correct.

7 Q But it has an actual English translation,
8 correct?

9 A When it's used right, yes.

10 Q The word "hadduta" is an Arabic word, correct?

11 A Yes.

12 Q And the word "hadduta" in Arabic translated to
13 English means "a fairy tale" or "story"?

14 A Or a story, yes.

15 Q Something made up?

16 A Yes.

17 Q Made up, children's story?

18 A Sometimes, yes.

19 MS. AMSTERDAM: Thank you, sir.

20 MR. FITZGERALD: Very brief redirect, Judge.

21 REDIRECT EXAMINATION

22 BY MR. FITZGERALD:

23 Q Mr. Abdel-Hafiz, I don't think you even need to
24 look, on Government Exhibit 383, there is a discussion at
25 one point about Mr. Salem putting his buttocks on a chair

1 and Mr. Siddig Ali says, "I don't know that it can take it,"

2 and Mr. Wahid Saleh says, "It will be a liability"?

3 A Yes.

4 Q Is that what we call in English a "joke"?

5 A Yes.

6 MR. FITZGERALD: Thank you.

7 MR. NOOTER: No recross.

8 THE COURT: You are excused. Thank you.

9 THE WITNESS: Thank you.

10 (Witness excused)

11 The government calls Eric Pilker, P-I-L-K-E-R.

12 ERIC H. PILKER,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FITZGERALD:

17 Q Mr. Pilker, can you tell the jury what you do for
18 a living.

19 A I'm a special agent with the FBI.

20 Q Where are you currently assigned?

21 A Newark Division.

22 Q For how long have you been an FBI agent?

23 A Seven years.

24 Q Let me direct your attention to June 25, 1993,

25 did you have occasion to do a search that day?

1 A Yes, I did.

2 Q Do you recall the location where you executed the
3 search?

4 A That was at 42 Wright Avenue, Apartment A, also
5 known as Four Wright, in Jersey City, New Jersey.

6 Q Did you have a search warrant to search that
7 location?

8 A Yes, I did.

9 Q When you got to this apartment at 42 Wright
10 Avenue in Jersey City, was anyone home in the apartment?

11 A No, there was no one home.

12 Q How did you actually get into the apartment?

13 A I obtained a key to the apartment from the
14 landlord and we let ourselves in.

15 Q And did you seize a number of items from that
16 apartment?

17 A Yes, we did.

18 Q Did you have an understanding of who lived in the
19 apartment?

20 A When we went in, yes, we did.

21 Q Whose apartment was it?

22 A The apartment was actually leased, occupied by a
23 woman named Maria Ortiz, also living with her, as we
24 understood at the time, was a Victor Alvarez.

25 Q Now, I've placed a number of exhibits before you,

1 and if you could look for an exhibit, Government Exhibit
2 182, which is a stack of cards, and is that an item you
3 seized on June 25, 1993?

4 A Yes, it is.

5 Q Can you tell the jury where you seized that stack
6 of cards from?

7 A It was in the apartment. I have to look at
8 specific notes as to which room it came out of. I believe
9 this one came out of the kitchen, though.

10 Q Let me approach you with what's been marked as
11 Government Exhibit 35134A for identification. If you could
12 look at that item and tell us if it refreshes your
13 recollection as to where you recovered the item, and, if so,
14 just describe which page.

15 A OK. These specific cards came out of the kitchen
16 area in the apartment.

17 Q Do you recall where in the kitchen area you
18 seized them?

19 A They would have been, from the notes here, it
20 would have been a black gym bag that was in the kitchen
21 area.

22 Q If you could take out from Government Exhibit 182
23 the top three cards which have been premarked 182A, B, and
24 C.

25 A OK.

1 Q When you seized the cards, were they all together
2 as they are now, or were they scattered about? Could you
3 just tell the jury.

4 A They were held together partly by a rubber band,
5 but they were all together in a stack.

6 MR. FITZGERALD: The government would offer
7 Government Exhibits 182A, B, and C.

8 MR. SERRA: No objection.

9 THE COURT: 182A, B, and C are received without
10 objection.

11 (Government's Exhibits 182A, 182B and 182C for
12 identification were received in evidence)

13 Q Just looking at 182A, if you could tell us what
14 the front of the card reads.

15 A Written on it is, "Emad Salem, Jewelry Designer,
16 Marketing Manager," and a telephone number.

17 Q And is that spelled E-M-A-D, S-A-L-E-M?

18 A Yes, it is.

19 Q If you can just flip the card over and tell us
20 what, if anything, is written on the back.

21 A There's a number that's designated as a beeper
22 number, and then there's another number that's designated
23 Amir.

24 Q A-M-I-R?

25 A Yes, it is.

1 Q And if you could just read that number into the
2 record?

3 A 222-9134.

4 Q If you can just put down Government Exhibit 182
5 and turn to Government Exhibits 183 first.

6 Do you recognize Government Exhibit 183, once you
7 have had a chance to look at it?

8 A Yes, I do.

9 Q And what is it?

10 A It's a small red address book, on the front page
11 it has my initials and date.

12 Q Is that something you seized on June 25, 1993
13 from the apartment?

14 A Yes, it is.

15 Q I would offer 183, your Honor.

16 MR. SERRA: No objection.

17 THE COURT: 183 is received without objection.

18 (Government's Exhibit 183 for identification was
19 received in evidence)

20 Q Turning to Government Exhibit 184, do you
21 recognize that item?

22 A Yes, I do.

23 Q And what is it?

24 A It's a calendar, a small personal calendar pad.
25 It has the date of 1991 on it. It has my initials and date

1 on the front page.

2 Q Did you seize that during the search on that same
3 day?

4 A Yes, I did.

5 MR. FITZGERALD: I would offer 184, Judge.

6 MR. SERRA: No objection.

7 THE COURT: 184 is received without objection.

8 (Government's Exhibit 184 for identification was
9 received in evidence)

10 Q The next exhibit, Government Exhibit 185, should
11 also be before you. I ask you if you recognize that item?

12 A Yes, I do.

13 Q And is that an item you seized that day?

14 A Yes, it was.

15 MR. FITZGERALD: I offer 185, your Honor.

16 MR. SERRA: May I have a moment, your Honor, with
17 Mr. Fitzgerald.

18 THE COURT: Yes.

19 (Counsel conferred)

20 MR. SERRA: No objection, your Honor.

21 THE COURT: Can we find out what it is.

22 MR. FITZGERALD: Yes, Judge.

23 (Government's Exhibit 185 for identification was
24 received in evidence)

25 Q Now that it's in evidence, can you tell us what

1 the item is.

2 A The title of the book is "Jihaad Al-Afggaan,
3 Making the Word of Allah Supreme."

4 Q If you could turn to -- it's a book. If you can
5 just hold it up and show us what it is.

6 A Yes, I'm sorry. It's a book.

7 MR. FITZGERALD: Thank you.

8 THE COURT: More like a booklet.

9 MR. FITZGERALD: I'm sorry?

10 THE COURT: Booklet.

11 MR. FITZGERALD: Booklet, thank you, Judge.

12 THE COURT: As in a small book. Go ahead.

13 Q And if you could turn to Government Exhibit 186,
14 I think it's in your left hand right now, the package with
15 the brown envelope in it -- oh, I'm sorry. If you can just
16 look at the manila envelope.

17 A Yes.

18 Q And I ask you if you recognize what that is.

19 A Yes, I do.

20 Q And what is the manila envelope?

21 A It's a manila envelope, it has loose papers and
22 envelopes in it, and it has my initials and date on the
23 front portion of it.

24 Q If you could look inside the manila envelope and
25 see if there's a particular page in there that's been put in

1 an exhibit wrapper and marked as Government Exhibit 186.

2 A Yes, it is.

3 MR. FITZGERALD: Your Honor, I would offer that
4 item, Government Exhibit 186, after a moment with counsel.

5 MR. SERRA: No objection.

6 MR. FITZGERALD: I will have him describe it once
7 it's in evidence.

8 Q If you could describe what Government Exhibit 186
9 is.

10 A It's a Xerox piece -- sheet of paper. On the
11 front side it says "Islamic Society of North America,
12 Matrimonial Referral Service."

13 Q And if you could turn that document over and tell
14 us if there is any handwriting on the back.

15 A There is two telephone numbers with annotations
16 of the names of two different individuals and another, I
17 believe a name that's written in red.

18 Q OK. Can you just tell us the two names written
19 next to phone numbers?

20 A The first one is Omar Mohammed, telephone number
21 is 201-653-8195.

22 Q If you could tell us the second name and number.

23 A The second number is 921-1984, and the name is
24 Mahmud.

25 Q Does Mahmud have a last name after it?

1 A No, it does not.

2 MR. FITZGERALD: Thank you.

3 Q I have also placed before you what's been marked
4 as Government Exhibit 187B, and I ask you if you recognize
5 that item?

6 A Yes, I do.

7 Q And is that an item you seized in the search on
8 that day?

9 A Yes, it was.

10 MR. FITZGERALD: Your Honor, I would offer
11 Government Exhibit 187B.

12 MR. SERRA: No further objection, your Honor,
13 other than what was previously discussed.

14 THE COURT: This is what we talked about inside?

15 MR. SERRA: Yes, sir.

16 THE COURT: 187B is received over objection. Go
17 ahead.

18 (Government's Exhibit 187B for identification was
19 received in evidence)

20 Q Does 187B appear to be a Xerox?

21 A It's a Xerox sheet, yes, it is.

22 Q Is that a Xerox of what you seized or what you
23 actually seized was that Xerox itself?

24 A No, it's actually what was seized.

25 Q Can you describe what's at the top of the Xerox.

1 A On the top of the sheet it's a Xerox copy of a
2 New York State identification card. It has the name Victor
3 Alvarez on it, but then it has another picture of an
4 individual not Victor Alvarez.

5 Q What address is listed on that New York State
6 card?

7 A It looks like 8515 -- or actually it could be a
8 5, 5515 7th Avenue, Brooklyn, New York.

9 Q Finally, if you could look before you at
10 Government Exhibit 188, and I ask you to take a look at that
11 item and tell us if you recognize what that is.

12 A Yes, I do.

13 Q What is that?

14 A It's paperwork for passport services in the
15 name -- it is addressed on the front sheet to a Victor P.
16 Alvarez.

17 Q Is that an item you seized from 42 Wright Avenue
18 in Jersey City on June 25, 1993?

19 A Yes, it is.

20 MR. FITZGERALD: Your Honor, I would offer
21 Government Exhibit 188.

22 MR. SERRA: No objection, your Honor.

23 THE COURT: 188 is received without objection.

24 (Government's Exhibit 188 for identification was
25 received in evidence)

1 MR. FITZGERALD: I have no further questions,
2 your Honor.

3 THE COURT: Cross. Mr. Serra, representing
4 Mr. Alvarez. Go ahead.

5 MR. SERRA: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. SERRA:

8 Q Good afternoon, Agent.

9 Agent, how many law enforcement officers in total
10 went to 42 Wright Avenue on June 25, 1993?

11 A Five.

12 Q That was a combination of FBI agents and local
13 Jersey City police, is that correct?

14 A There was one Jersey City detective with --

15 Q I'm sorry, sir. I can't hear you.

16 A There was one Jersey City detective with us.

17 Q And four FBI agents, is that correct?

18 A There was two FBI agents, there was a New Jersey
19 state trooper, and there was a Secret Service agent with us.

20 Q OK. A total of five, correct?

21 A Correct.

22 Q No SWAT team responded, is that right?

23 A No SWAT team.

24 Q No bomb dog?

25 A No bomb dog.

1 Q No forensic chemists?

2 A None.

3 Q Do you know a special agent by the name of
4 Stephen Burmeister?

5 A I am familiar with him, but not through this
6 investigation or case.

7 Q He is an FBI forensic chemist, is that correct?

8 A Yes, he is.

9 Q He did not respond to this search, is that right?

10 A No, he did not.

11 Q Agent Pilker, you just identified several
12 business cards that were seized from Mr. Alvarez's
13 apartment, is that right?

14 A Correct.

15 MR. SERRA: May I approach, your Honor?

16 THE COURT: Yes.

17 MR. SERRA: Your Honor, may we deem these as
18 Defendant Alvarez Exhibit H, it's cumulatively a
19 rubber-banded collection of business cards. I don't intend
20 to offer them.

21 THE COURT: OK. Is this the same as what was
22 182?

23 MR. SERRA: No, sir, it's not.

24 THE COURT: Different group?

25 MR. SERRA: Yes.

1 THE COURT: Fine, Alvarez H. Go ahead.

2 Q Agent Pilker, I'm showing you what's been -- I
3 need to share a microphone with you, I'm afraid. I'm
4 showing you what's been deemed Defendant Alvarez Exhibit H
5 for identification. Do you recognize those?

6 A I do from the R. Trading Company card, yes.

7 Q These were further business cards that were
8 seized from -- that you seized from Mr. Alvarez' apartment
9 on June 25, is that correct?

10 A Correct.

11 Q Agent Pilker, showing you what's been marked
12 Defendant Alvarez Exhibit E for identification, I ask if you
13 recognize that.

14 A Yes, I do.

15 THE COURT: You can't be heard, Agent, unless you
16 talk into a microphone. So either share the microphone, or
17 you have two up there, divide them up however you like, just
18 talk into one of them.

19 Q Perhaps you could speak into that one and I could
20 speak into this one, is that OK?

21 A Yes, it is.

22 Q Agent Pilker, I have shown you Defendant Alvarez
23 Exhibit E, you testified you recognize it, is that right?

24 A Yes.

25 Q Did you seize that at Mr. Alvarez' apartment on

1 June 25, 1993?

2 A Correct.

3 Q It is a 1993 calendar/date book, is that correct?

4 A That's correct.

5 MR. SERRA: Your Honor, I would offer Defendant
6 Alvarez E.

7 MR. FITZGERALD: No objection.

8 THE COURT: E is received without objection.

9 (Defendant Alvarez E for identification was
10 received in evidence)

11 Q Agent, I am showing you defendant Alvarez Exhibit
12 F for identification. Do you recognize that?

13 A Not this specific piece of paper, no, I do not.

14 MR. FITZGERALD: I will stipulate to
15 authenticity. No objection.

16 MR. SERRA: Your Honor, I believe that the
17 government will stipulate that Defendant Alvarez F, Agent
18 Pilker in fact seized during the search of the Mr. Alvarez'
19 apartment.

20 THE COURT: On that stipulation you offer it?

21 MR. SERRA: Yes.

22 MR. FITZGERALD: No objection.

23 THE COURT: All right.

24 F is received without objection.

25 (Defendant Alvarez Exhibit F for identification

1 was received in evidence)

2 Q Finally, Agent Pilker, I show you defendant
3 Alvarez's Exhibit G for identification, and I ask you if you
4 recognize that.

5 A Yes, I do.

6 Q That is a passport receipt which you seized from
7 Mr. Alvarez's apartment on June 25, is that right?

8 A That's correct.

9 MR. SERRA: I would offer defendant Alvarez G,
10 your Honor.

11 MR. FITZGERALD: No objection.

12 THE COURT: G is received without objection.
13 Go ahead.

14 (Defendant Alvarez Exhibit G for identification
15 was received in evidence)

16 Q Would you please tell the jury the date on the
17 passport receipt?

18 A 9/30/91.

19 Q 1991, is that correct?

20 A That's correct.

21 Q OK. Going back to Defendant Alvarez F -- which
22 for the record is a napkin with writing on it, is that
23 correct?

24 A That's correct.

25 Q It appears to say Federal Express Account No. and

1 then an account number and an address below it, is that
2 correct?

3 A That's what's written.

4 Q Well, could you read how the word "express" is
5 spelled?

6 A E-P-R-E-Z.

7 Q Can you read how the word "account" is spelled?

8 A A-C-O-U-N-T.

9 Q And can you read please how the word which
10 appears to be "number" is spelled?

11 A N-O-N-B-E-R.

12 (Continued on next page)

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1 Q Thank you.

2 Agent Pilker, you told Mr. Fitzgerald that you
3 conducted this search pursuant to a search warrant, is that
4 correct?

5 A Yes, it is.

6 Q Do you happen to have a copy of that with you?

7 A No, I do not.

8 MR. SERRA: Your Honor, it is not marked on the
9 exhibit sticker. Perhaps we could deem it Alvarez Exhibit
10 E. I don't intend to offer this.

11 THE COURT: OK.

12 Q Agent Pilker, showing you what has been deemed
13 Defendant Alvarez Exhibit E, do you recognize that?

14 A Yes, I do.

15 Q That is the search warrant for the search of 42
16 Wright Street, Mr. Alvarez's apartment, that you conducted
17 on June 25, is that correct?

18 A That is correct.

19 Q That lists a number of items for which you are
20 authorized to search and subsequently to seize, is that
21 correct?

22 A That is correct.

23 Q In a document called a rider, which is the second
24 page of the warrant, is that right?

25 A Yes.

1 Q You were authorized to seize firearms, is that
2 correct?

3 A That is correct.

4 Q Did you find any firearms?

5 A No, we did not.

6 Q You were authorized to seize other weapons, is
7 that correct?

8 A That is correct.

9 Q Did you find any weapons?

10 A No, we did not.

11 Q You were authorized to seize ammunition, is that
12 right?

13 A That is correct.

14 Q Did you find any ammunition?

15 A No, we did not.

16 Q You were authorized to seize firearms
17 accessories, is that right?

18 A That is correct.

19 Q By firearms accessories, do you understand that
20 to be things like empty magazines and silencers and that
21 sort of thing?

22 A You I understand that.

23 Q That is how you would understand that phrase, is
24 that right? Firearms accessories -- I am sorry. Maybe I am
25 being too complicated. That is what firearms accessories

1 means, right?

2 A It could be a lot more different things from that
3 also.

4 Q Did you find any firearms accessories?

5 A No, we did not.

6 Q Of any description?

7 A No, we did not.

8 Q And you were authorized to seize explosive
9 devices, is that correct?

10 A That is correct.

11 Q Did you find any explosive devices?

12 A No, we did not.

13 Q You were authorized to seize components of
14 explosive devices, is that right?

15 A That is correct.

16 Q Including fuses, is that right?

17 A Correct.

18 Q Fusing devices, correct?

19 A Correct.

20 Q Timing devices, correct?

21 A Correct.

22 Q Wires, correct?

23 A Correct.

24 Q Containment devices, correct?

25 A Correct.

1 Q Did you find any of those items during your
2 search?

3 A No, I did not.

4 Q You were authorized to seize chemicals used to
5 manufacture explosives, is that right?

6 A That is correct.

7 Q Did you find any such chemicals?

8 A No, we did not.

9 Q You were authorized to seize explosive residues,
10 is that correct?

11 A That is correct.

12 Q And if necessary you were authorized to take
13 samples of clothing and fibers to test them for explosive
14 residues, is that right?

15 A That is correct.

16 Q Did you find any such explosive residues?

17 A No, we did not.

18 Q Did you take any clothing or carpet samples to
19 test for explosive residues?

20 A We didn't take any clothing. The only personal
21 items we took were a pair of shoes.

22 Q You took a pair of Mr. Alvarez's work boots, is
23 that correct?

24 A That is correct.

25 Q Other than his work boots did you take any other

1 items of clothing to test for explosive residues?

2 A No.

3 Q Did you take any carpeting or pieces of furniture
4 or drapery to test for explosive residues?

5 A No, we did not.

6 Q And you were authorized to do that if you felt it
7 was necessary, is that correct?

8 A That is correct.

9 Q You were authorized to take records and date
10 books and phone books, the sorts of things that you in fact
11 took, is that correct?

12 A That is correct.

13 Q And you were also authorized to take generally
14 any materials relating to the procurement of materials used
15 in the construction or manufacture of explosive devices, is
16 that right?

17 A That is correct.

18 Q Did you seize any such items?

19 A No, we did not.

20 MR. SERRA: Thank you, Agent. I have nothing
21 further, your Honor.

22 THE COURT: Any other cross? Any redirect?

23 MR. FITZGERALD: Two questions, Judge.

24 (Continued on next page)

25

1 REDIRECT EXAMINATION

2 BY MR. FITZGERALD:

3 Q Fair to say, Agent Pilker, that on June 25, 1993,
4 there was no trace of an Uzi in that apartment?

5 A There was no Uzi in there, no.

6 Q Let me approach you with Government's Exhibit
7 186. That is the piece of paper that says Mahmoud 921-1984?

8 A That is correct.

9 Q As far as you understood on June 25, 1993, that
10 was not a piece of paper having anything to do with
11 explosives at that time, correct?

12 A That is correct.

13 (Continued on next page)

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1 MR. FITZGERALD: Nothing further.

2 MR. SERRA: No recross, your Honor.

3 THE COURT: You are excused. Thank you.

4 (Witness excused)

5 MR. FITZGERALD: Your Honor, at this time the
6 government would propose to read Government's Exhibit 370T,
7 which should be in the jurors' books.

8 Your Honor, Government's Exhibit 370T is a
9 transcript dated May 27 to 28, 1993. I will read the
10 statements attributed to Mr. Siddig Ali, Mr. Khuzami will
11 read the statements attributed to Emad Salem, Mr. McCarthy
12 will read the statements attributed to Amir Abdelgani, and
13 Ms. Chu will read the statements attributed to Fares
14 Khallafalla. By stipulation with Ms. Amsterdam, I will
15 indicate that the very last paragraph on page 4, spilling
16 over to two words on page 5 that begins with at zero hour is
17 where CM 19 starts. That is the overlap, and then the
18 transcript stops.

19 THE COURT: What exhibit is CM 19?

20 MR. MCCARTHY: 320T.

21 THE COURT: Go ahead.

22 (Government's Exhibit 370T in evidence read to
23 the jury)

24 MR. FITZGERALD: Your Honor, the government would
25 next propose to read Government's Exhibit 729T.

1 Government's Exhibit 729T is an interception over the Abdel
2 Rahman FISA interception, dated April 30, 1993, at 8:56 in
3 the morning. Mr. McCarthy will read the statements
4 attributed to defendant Abdel Rahman, Ms. Chu will read the
5 statements of the unidentified female, and I will read the
6 statements of the unidentified male.

7 THE COURT: Go ahead.

8 (Government's Exhibit 729T in evidence read to
9 the jury)

10 THE COURT: Ladies and gentlemen, we are going to
11 break for today until Monday. Please leave your notes and
12 other materials behind. Please don't discuss the case.
13 Have a pleasant weekend, and we will see you on Monday.

14 (Jury excused)

15 MR. MCCARTHY: Your Honor, if I may, I think we
16 have worked out an agreement with respect to the matter that
17 came up this morning, that is, the availability of the
18 Yousef materials to counsel.

19 THE COURT: Do you want to put it on the record?

20 MR. MCCARTHY: I would like to do that. The
21 agreement is the following: We will provide to Mr. Stavis,
22 to be kept in his office only, one copy of the Yousef
23 materials. Their access is going to be limited to counsel
24 only in this case, not paralegals, not any other
25 individuals. Mr. Stavis has agreed to keep a log of who

1 sees them and when. He will maintain them in his office
2 only, not to be moved from office to office. At the
3 conclusion of whatever litigation arises out of them they
4 will be returned to the government.

5 MR. STAVIS: It is also my understanding that
6 they cannot be copied but they must be viewed at my office.

7 MR. McCARTHY: Yes, your Honor, that is correct.

8 THE COURT: People presumably can take notes,
9 correct?

10 MR. STAVIS: But not verbatim notes.

11 THE COURT: Not verbatim notes.

12 MR. McCARTHY: No objection to that.

13 MR. SERRA: Mr. Alvarez wishes me to convey to
14 the court that he wishes access to it himself.

15 THE COURT: Thank you for telling me that.

16 MR. McCARTHY: Your Honor, I wanted to except one
17 category of the reports, and that is with respect to the
18 material that came up in the discussion with Mr. Serra
19 today. That one particular category, we would maintain that
20 in our office and make it accessible there to whichever
21 counsel it is that get designated to take on that task.

22 THE COURT: Is that part of this?

23 MR. McCARTHY: It actually was not part of that
24 discussion. This is a separate matter that I didn't think
25 to --

1 THE COURT: Part of the discussion with Mr.
2 Serra? Let me ask you this. Is this agreed to with anybody
3 or is this a request?

4 MR. MCCARTHY: No, it is a request. I should
5 have cast it that way.

6 THE COURT: Does anybody want to be heard? Does
7 anybody want to be heard?

8 MS. LONDON: I am sorry, Judge. I didn't hear
9 the last part.

10 THE COURT: What he said was, there is a part of
11 the --

12 MS. LONDON: That part I understand.

13 THE COURT: -- that was redacted.

14 MS. LONDON: Yes, your Honor.

15 THE COURT: -- that that part would also be
16 accessible but what is going to be available at Mr. Stavis'
17 office will continue to be the redacted version of these
18 materials, but that the part that would be redacted out
19 would be accessible at the U.S. Attorney's Office to the
20 lawyer or lawyers who are, to use the vernacular, the
21 designated hitters with respect to the issue covered by the
22 redacted portion, which I gather is the building of the
23 bomb. Correct?

24 MR. MCCARTHY: Your Honor, I think designated to
25 be available to Mr. Serra, and we agreed in speaking to Mr.

1 Serra to make it also available to Ms. London, who I
2 understand is working on the same issue.

3 THE COURT: Then you would be able to view it at
4 the U.S. Attorney's Office.

5 MR. SERRA: Your Honor, the only other item of
6 unfinished business was referred to on the record by Mr.
7 Fitzgerald, namely the sealed record before Judge Duffy. I
8 expect the government will keep us up to date on the
9 availability of that record.

10 MR. FITZGERALD: Yes, I will.

11 THE COURT: There was one other thing, and I
12 don't know whether I ultimately got this into the record or
13 I didn't. I was asked to follow up with respect to juror
14 number 104 as to whether he ultimately was or wasn't
15 admitted to the hospital. He was. What I am going to do is
16 draft a memo containing how I know that and what I know
17 about it, and seal it, so it will be available, should it
18 need to be available, in connection with an appeal, if there
19 is one.

20 MR. STAVIS: May Mr. Patel and I see you in the
21 robing room? It concerns an aspect of the defense.

22 THE COURT: Yes. Anything else?

23 (Pages 12655 through 12661 sealed)

24 (Proceedings adjourned until 9:35, Monday, June
25 26, 1995)

1 UNITED STATES DISTRICT COURT
2 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,"

Defendants.

-----x

S5 93 Cr. 181 (MBM)

June 26, 1995
9:45 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1

2

APPEARANCES

3

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United States Attorney for the
Southern District of New York

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BY: THOMAS H. NOOTER
and
SALVATORE S. RUSSO

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Is there anything we need to do
4 before the jury comes out?

5 MR. KHUZAMI: The only thing, your Honor, is, if
6 the court has had the opportunity to review the proposed
7 redactions by Mr. Nooter. That evidence will not be going
8 on until the afternoon.

9 MR. BERNSTEIN: I am sorry, Judge. I can't hear.

10 THE COURT: What he told me is that some proposed
11 redactions by Mr. Nooter will not become an issue until this
12 afternoon, and I will look at them.

13 MR. MCCARTHY: Thank you.

14 THE COURT: Let's get the jury.

15 MR. JACOBS: Your Honor, on V5, V8, I am going to
16 do the same -- which they are going to play this morning, I
17 am going to do the same procedure that we worked out with
18 Mr. Fitzgerald Patrick. The witness will give me some
19 Arabic translations, we will put them in later in the day.
20 I am not going to object, so they can play the whole tape to
21 the jury.

22 THE COURT: You will write it out.

23 MR. JACOBS: This way we can do it out of the
24 presence of the jury.

25 THE COURT: Thank you very much.

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1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 JURORS: Good morning.

4 THE COURT: Mr. Fitzgerald.

5 MR. FITZGERALD: Good morning. Your Honor, the
6 government calls Gamal Abdel-Hafiz.

7 GAMAL ABDEL-HAFIZ,

8 called as a witness by the government,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FITZGERALD:

12 Q Good morning, Mr. Abdel-Hafiz.

13 A Good morning, sir.

14 Q I have placed before you Government's Exhibit
15 383T2 -- and, your Honor, by agreement with counsel for Mr.
16 Alvarez, 3832T is substantially the same as 383T, with the
17 addition that the Arabic portions are double underlined
18 where Mr. Alvarez is present and with the changes that Mr.
19 Abdel-Hafiz will describe now.

20 Mr. Abdel-Hafiz, with regard to pages 45 through
21 47 of 383T2, did you review the single underlined portions
22 of those pages 45 through 47 over the weekend, and prior to
23 that as well?

24 A Yes.

25 Q Are those underlined portions fair and accurate

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1 translations of the conversation taking place on pages 45
2 through 47?

3 A Yes.

4 Q Are the voice attributions on those pages fair
5 and accurate, to the best of your ability?

6 A Yes.

7 MR. FITZGERALD: Your Honor, the government would
8 offer Government's Exhibit 383T2, those three pages in
9 particular, and the exhibit as a replacement for
10 Government's Exhibit 383T, or in addition to it.

11 MR. JACOBS: Subject to --

12 THE COURT: That will be received subject to
13 cross-examination in which the witness may be asked to write
14 out some of the Arabic. Thank you. That is received.

15 (Government's Exhibit 383T2 received in evidence)

16 MR. FITZGERALD: I have nothing further.

17 THE COURT: Cross. Mr. Bernstein, representing
18 Mr. Amir Abdelgani. Go ahead.

19 CROSS-EXAMINATION

20 BY MR. BERNSTEIN:

21 Q Mr. Abdel-Hafiz, you have done work on a lot of
22 the CM's, correct?

23 A Yes, sir.

24 Q Would it be fair to say that has been an ongoing
25 process for several months?

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1 A Yes, sir.

2 Q With respect to Exhibit 383T2, those represent
3 something also known as videotapes V5 and V8, is that
4 correct?

5 A That is correct.

6 Q With respect to advice attributions, is there a
7 science of determining or how you determine whose voice you
8 attribute a particular statement to?

9 A After listening to the different voices several
10 times, you would be able to tell whose voice is what.

11 Q Would it be fair to say that at times you have
12 been unable to differentiate one voice from another and
13 ultimately put down unidentified males because you couldn't
14 in your own mind make an appropriate judgment as to whose
15 voice it was?

16 A That had happened under circumstances when
17 someone makes just one or two words comment in the middle of
18 a speech and you cannot really tell who made that comment.

19 Q Is it fair to say that you have worked on 383 for
20 an extensive period of time prior to just this weekend?

21 A Yes, sir.

22 Q And would it be fair to say that over the course
23 of time of developing what you call your final transcript,
24 your opinion may have shifted as to whose voice at a given
25 moment you believed you were picking up?

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1 A In a few instances, yes.

2 Q I refer to page 45 of 383T2 and refer you to the,
3 I guess, fourth attribution on that page where it says A.
4 Abdelgani, and the words Mohammed Saleh are allegedly
5 uttered by him according to your transcript, is that
6 correct?

7 A Yes, sir.

8 Q Would it be fair to say that in the course of
9 developing this transcript, for instance, at an earlier time
10 in your thinking you believed that was a statement made by
11 Siddig Ali as part of the conversation?

12 A If I recall correctly, what I was attributing was
13 to Abdelgani, that he said Mohammed Saleh, I mean maybe.
14 Then now half of it is Siddig Ali, I mean maybe.

15 Q Sir, isn't it a fact that you indicated that you
16 thought Mr. Abdelgani was saying the word who? In fact I
17 will show you 383T if it will help refresh your
18 recollection.

19 A Please.

20 Yes.

21 Q That was as long as a few days ago, correct?

22 A Yes.

23 Q Now you have Mr. Abdelgani using the name
24 Mohammed Saleh, correct?

25 MR. FITZGERALD: Objection, your Honor. Can I

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1 have a moment with Mr. Bernstein?

2 THE COURT: Yes.

3 Q Sir, would it be fair to say generally that Mr.
4 Abdelgani's voice throughout the CM's is sometimes similar
5 to voices of other people?

6 A I don't think that is a fair statement, no.

7 Q Is it your opinion that his voice is so distinct
8 in all conversations that there is no question in your mind
9 when you put his name down as an attribution that that is in
10 fact the voice of Amir Abdelgani?

11 A When I gave attributions to Mr. Abdelgani, in my
12 heart, in my mind that is Mr. Abdelgani talking, yes.

13 Q And even where that is one word or two words,
14 correct?

15 A Even if it is one or two words.

16 Q Would it be fair to say, sir, that that is not
17 based upon -- let me withdraw that question.

18 Is there any science in your determination of
19 whose voice you are attributing to a particular statement?

20 A Again, you get used to the voices when you hear
21 them several times, when you see a person talking many times
22 and you see the person talking. You can tell, and in this
23 case you would be able to have in the frame of your mind
24 that this person is talking because you see them on a
25 videotape talking.

1 Q And on the audiotapes you can't see a mouth
2 moving, correct?

3 A No, you can't, but if you are already familiar
4 with the voice you can tell who is talking.

5 Q But it is fair to say that what you hear to the
6 best of your personal ability is the way you make
7 attributions?

8 A That is fair.

9 Q There is no science involved, is there?

10 A Not that I am aware of.

11 MR. BERNSTEIN: Thank you. I have no further
12 questions.

13 THE COURT: Anyone else? Mr. Jacobs?

14 MR. JACOBS: I am going to reserve until later
15 when we get the Arabic translations. Other than that, I
16 have nothing.

17 THE COURT: Mr. Fitzgerald.

18 REDIRECT EXAMINATION

19 BY MR. FITZGERALD:

20 Q Mr. Abdel-Hafiz, I have handed you what is
21 Government's Exhibit 383T, open to page 45.

22 A Yes, sir.

23 Q Mr. Bernstein asked you some questions about the
24 attributions to Amir Abdelgani and Siddig Ali on that page.

25 A Yes.

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1 Q When you have been testifying to transcripts,
2 have you been asked to review the underlined portions of the
3 transcripts?

4 A Yes.

5 Q When you testified last week, you did not testify
6 as to pages 45, 46 and 47, is that correct?

7 A No, I have not.

8 Q The attributions that Mr. Bernstein asked you
9 about, are they underlined or not underlined in 383T?

10 A No, they are not underlined.

11 Q In other words, were you specifically directed to
12 review those passages before you testified last week?

13 A No, sir, I was not.

14 Q When were you asked to specifically review those
15 passages?

16 A On Thursday afternoon, Friday, something like
17 that. It was Saturday morning, as a matter of fact.

18 Q And what resulted was Government's Exhibit 383T?

19 A Yes, sir.

20 MR. FITZGERALD: Thank you.

21 MR. BERNSTEIN: Recross, your Honor?

22 THE COURT: Go ahead.

23 RE CROSS-EXAMINATION

24 BY MR. BERNSTEIN:

25 Q Mr. Abdel-Hafiz, when you say you were asked to

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1 review, you are talking about reviewing work that you had
2 already done on a prior occasion, correct?

3 A I am the one who did the underlined portions on
4 the V5 through 8. All the original translations are done by
5 somebody else, I review it, I do some corrections.
6 Regarding the CM's and the videotapes, I am only reviewing
7 the underlined portions.

8 Q So is it your testimony that with respect to the
9 CM's and the V5, V8, which is now 383T or T2, that you did
10 not do any of the bulk of the translation work initially?

11 A Not the bulk, no.

12 Q So would it be fair to say, however, that when
13 383, the V5, V8 transcript was done, that you reviewed not
14 just the underlined portions but prior to the submission
15 through you in front of the jury, that you did review the
16 underlying translation of the entire document?

17 A Yes, sir.

18 Q So that you have listened to and made a
19 professional judgment about the entire document. It is not
20 merely your professional judgment as to those few areas that
21 were underlined, correct?

22 MR. FITZGERALD: Objection.

23 A No, that is not correct.

24 THE COURT: The question can stand. Overruled.

25 MR. BERNSTEIN: May I approach Mr. Fitzgerald?

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1 THE COURT: Yes.

2 MR. BERNSTEIN: I have no further questions.

3 Thank you, Judge.

4 MS. AMSTERDAM: May I just ask one question?

5 THE COURT: Ms. Amsterdam. Relating to this?

6 MS. AMSTERDAM: Yes.

7 RECROSS-EXAMINATION

8 BY MS. AMSTERDAM:

9 Q Good morning, sir.

10 A Good morning, ma'am.

11 Q You indicated that you reviewed work done by
12 other translators, correct?

13 A Yes.

14 Q Did you have the ultimate say-so as to what
15 ultimately ended up in the transcripts?

16 A I don't understand what you mean by the question,
17 please.

18 Q Sorry.

19 A That is all right.

20 Q If there is a difference in interpretation and
21 attribution by yourself and other translators, did the final
22 product represent your opinion?

23 MR. FITZGERALD: Objection to form. May I have a
24 moment with Ms. Amsterdam?

25 Q Putting aside the underlined portions for a

1 moment, when you reviewed the transcripts you stated that
2 the bulk of the work was done by other translators, correct?

3 A That is correct.

4 Q But that you reviewed everything before it was
5 offered as an exhibit, correct?

6 A I reviewed all the underlined portions, or
7 disputed portions.

8 Q Disputed portion. In a disputed portion, if
9 there was a difference between your interpretation and the
10 original translator's interpretation, did you have the final
11 say-so as to what would be represented in a document?

12 A Yes, ma'am.

13 MS. AMSTERDAM: Thank you.

14 THE COURT: Anything else?

15 MR. FITZGERALD: No, Judge.

16 THE COURT: Thank you, Mr. Abdel-Hafiz. You are
17 excused.

18 (Witness excused)

19 MR. FITZGERALD: Your Honor, at this point the
20 government would like to read Government's Exhibit 383 and
21 read portions and play portions of the videotape. First we
22 will begin by reading 11 pages.

23 THE COURT: That exhibit should be in a binder
24 marked 371 through 499.

25 MR. FITZGERALD: Government's Exhibit 383T2, the

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1 transcript dated June 23 to 24, 1993, from a minute after 10
2 in the evening on June 23 to 1:17 in the morning of June 24.
3 We will be reading from page 1 to 11 at first, and Mr.
4 Khuzami will read the statements attributed to Emad Salem
5 and Mr. McCarthy will read the statements attributed to Amir
6 Abdelgani.

7 THE COURT: Go ahead.

8 (Government's Exhibit 383T2 in evidence read to
9 the jury)

10 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, we would stop at
2 this point to play some sections of the video corresponding
3 to what just happened, beginning with 10:38:30 and
4 continuing to 10:41.

5 THE COURT: Would you indicate approximately what
6 page that was on in the transcript.

7 MR. FITZGERALD: Yes, Judge. I believe it's on
8 page 4.

9 MR. BERNSTEIN: May we approach, your Honor.

10 THE COURT: Yes.

11 (At the side bar)

12 MR. BERNSTEIN: It seems to me what we are about
13 to do is do the evidence three times. Part of this tape was
14 done with Mr. Salem on the witness stand, they have just
15 read the transcript to the jury. I had no idea that what
16 the government was intending to do was have the jury read
17 the transcript, and now go back and watch the tape and do
18 the transcript at the same time. I think that is now three
19 times for the same evidence. It comes at least from the
20 transcript twice. The jury has the absolute right to do
21 what they want with these in the jury room, but having the
22 same evidence given to them is asked and answered, and it is
23 just not fair, and we had no notice that this was their
24 intention.

25 THE COURT: I understood simply that the

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1 government was going to be playing the tape that
2 corresponded to pages they had already read, not that they
3 were going to reread those pages while the tape was playing.

4 MR. BERNSTEIN: It seems to me now from what the
5 court just indicated they were going back to page 4.

6 THE COURT: Right.

7 MR. BERNSTEIN: He wants the jurors to go back
8 and reread that which they have just read as the tape is
9 coming in.

10 THE COURT: I think it's simply so that they can
11 see what action corresponded to what they heard. They may
12 glance at it to follow it, but I don't think it is
13 reiterating the same thing. You can't follow a transcript
14 that is being read and watch a tape at the same time.

15 MR. BERNSTEIN: I don't think you can either, but
16 you can attempt to do both. If this was the government's
17 intention, they should have done it either by superimposing
18 them on the tape, or not doing it the way it was done.

19 THE COURT: I understand your objection. I don't
20 think it's well taken, and it's overruled.

21 MR. SERRA: Your Honor, as long as we are here,
22 the part of the tape that was played when Mr. Salem was on
23 the stand we haven't gotten to yet, but it involved my
24 client and Ms. London's client and a couple of other people.
25 The actual videotape was played while Mr. Salem was on the

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1 stand. If the government intends to play the tape again, I
2 would object to it.

3 MR. FITZGERALD: Your Honor, I believe snippets
4 were played. If Mr. Serra has asked us to read every
5 portion which Mr. Alvarez is present, I think they ought to
6 see Mr. Alvarez's presence as one continuous 20-minute
7 section.

8 THE COURT: All right. That objection is
9 overruled as well. Let's go.

10 (In open court)

11 MR. FITZGERALD: Your Honor, we will be playing
12 from 10:38:30 through 10:41. The jurors can listen on their
13 headsets for the background noise if they'd like.

14 (Videotape played)

15 MR. FITZGERALD: Your Honor, we will fast forward
16 to 10:48:45, which should be on the same page, and we will
17 play through 10:51.

18 (Videotape played)

19 MR. FITZGERALD: Your Honor, we will now resume
20 reading the transcript, 383T2, at page 11.

21 Mr. Khuzami will read the statements attributed
22 to Emad Salem; I will read the statements attributed to
23 Mr. Siddig Ali; Mr. McCarthy will read the statements
24 attributed to Amir Abdelgani, and he will also read the
25 statements attributed to Wahid Saleh.

12681

1 We will be beginning a little more than halfway
2 down the page after it says "a few whispered words," the
3 first attribution to Salem, "Who is this?"

4 (Government Exhibit 383T2 in evidence was read to
5 the jury)

6 MR. FITZGERALD: Your Honor, the government would
7 stop here and play the remaining portion of V5 from 11:46,
8 and I will give you the corresponding cite in the
9 transcript. It should pick up around page 12 shortly before
10 Wahid Saleh enters.

11 MR. BERNSTEIN: Your Honor, objection, 106. I
12 would ask that we continue from the earlier portion.

13 THE COURT: Continue from the earlier portion?

14 MR. BERNSTEIN: From the earlier portion rather
15 than skip a portion.

16 MR. FITZGERALD: Your Honor, then we will go back
17 to 10:51.

18 THE COURT: Go ahead.

19 MR. BERNSTEIN: Judge, can we approach to figure
20 out the appropriate time on this.

21 THE COURT: Do you want to talk between
22 yourselves?

23 MR. BERNSTEIN: Yes.

24 (Counsel conferred)

25 MR. MCCARTHY: Your Honor, for the record what's

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1 been referred to as V5 is 382A. That is the exhibit number
2 of the cassette tape.

3 THE COURT: All right. Why don't we take a break
4 now and you can work it out during the break. Ladies and
5 gentlemen, please leave your notes and other materials
6 behind. Please don't discuss the case, and we will resume
7 in a few minutes.

8 (Jury not present)

9 THE COURT: May I see Messrs. Patel, Stavis, and
10 Serra in the robing room, please.

11 I will ask the government to stand by also,
12 please.

13 (Pages 12683 to 12688 sealed)

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1 (Pages 12689 - 12692 sealed)

2 (Recess)

3 (Jury not present)

4 MR. FITZGERALD: Judge, one housekeeping matter.

5 I think we saved an hour of time during the break. By
6 agreement with Mr. Bernstein and Mr. Nooter, we will be
7 playing the videotape, Wahid Saleh Exhibit B, which goes
8 back and forth between V5 and V7, and I think affords Mr.
9 Bernstein what he wants, in lieu of pulling out each
10 section.

11 THE COURT: Why don't you simply indicate at the
12 time you are playing it which exhibit number you are playing
13 and leave it at that.

14 MR. FITZGERALD: Yes, Judge.

15 (Jury present)

16 THE COURT: Mr. Fitzgerald.

17 MR. FITZGERALD: Yes, Judge. At this time the
18 government would play from Wahid Saleh Exhibit B, which is a
19 composite tape overlapping with Government's Exhibit 383T2,
20 at page 11 in the middle. The agreement among counsel is
21 that it shifts back and forth between two cameras whose
22 clocks are a little out of sync, so that the time would
23 appear to be out of order but it is not.

24 THE COURT: That is Wahid Saleh Exhibit B?

25 MR. FITZGERALD: Wahid Saleh Exhibit B. We are

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1 on page 11 of the transcript. Any juror who wishes can
2 listen on the headsets.

3 I should make clear for the record, there is no
4 382T, it is 383T2.

5 (Videotape played)

6 MR. FITZGERALD: Your Honor, for the report, we
7 played through 12:03:50, and the government would resume
8 reading from the transcript 383T2 at page 24.

9 THE COURT: Go ahead.

10 MR. FITZGERALD: Beginning with the fifth
11 attribution attributed to Wahid Saleh, we will begin at page
12 24.

13 (Reading continued)

14 MR. FITZGERALD: Your Honor, we would stop at
15 this point and play Government's Exhibit 383BE. For
16 counsel's benefit that is the tape of V8, picking up at 4
17 minutes after 12 and playing through those portions. That
18 would be the starting of the transcript at about page 24, at
19 the top.

20 We will play from 12:04 through 12:15:46.

21 (Videotape played)

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1 MR. FITZGERALD: Your Honor, at this point the
2 government would resume reading from the transcript 383T2,
3 on page 32. By agreement with counsel for Mr. Wahid Saleh,
4 when we pick this up in the transcript, Mr. Wahid Saleh is
5 no longer present for the conversation.

6 Mr. McCarthy will read the statements attributed
7 to Amir Abdelgani; Mr. Khuzami will read the statements
8 attributed to Emad Salem; and I will read the statements
9 attributed to Siddig Ali.

10 Starting at the very top of page 33.

11 (Government Exhibit 383T2 in evidence was read to
12 the jury)

13 MR. FITZGERALD: Judge, did you want to break for
14 lunch, or did you want us to continue?

15 THE COURT: How much longer until the end?

16 MR. FITZGERALD: We were going to read in this
17 section to page 47.

18 THE COURT: Read it to 47.

19 MR. FITZGERALD: OK.

20 (Reading continued)

21 MR. FITZGERALD: We would stop there, Judge.

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 this afternoon.

1 (Jury not present)

2 MR. WASSERMAN: Your Honor, may I see you briefly
3 in the robing room about my client. I have a health matter
4 to discuss.

5 MR. McCARTHY: You Honor.

6 THE COURT: Yes.

7 MR. McCARTHY: One piece of business that hasn't
8 been ruled upon yet is Government Exhibit 327, which we may
9 get to by the end of the day if we were to proceed
10 chronologically.

11 THE COURT: All right. I have lots of
12 correspondence on that.

13 Is there anything else other than what I have
14 that you want to tell me? Mr. Patel, you look puzzled.

15 MR. PATEL: No, your Honor. I think we have all
16 said pretty much what needs to be said.

17 THE COURT: All right. I said earlier I didn't
18 think it was admissible for the truth, and I will hold to
19 that. I do think it is admissible for rehabilitation
20 purposes, in part because there was extensive
21 cross-examination of Salem as to whether he had or hadn't
22 told various people various people versions of the things
23 that he was saying from the witness stand, notably, somebody
24 named Adnan Constantine. He was asked about whether he
25 repeated it to him, and he was asked as well whether he ever

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1 repeated it to others. I think the fact that he had
2 repeated it to Siddig Ali can be argued. I have an
3 instruction that I am prepared to give along with it.

4 MR. PATEL: I am hopeful that it is somewhat
5 different than what Mr. McCarthy proposed.

6 THE COURT: Well, the end of it is different.
7 The beginning of it is the same. Which part of it didn't
8 you want?

9 MR. PATEL: To be perfectly honest, your Honor, I
10 have been focused elsewhere.

11 THE COURT: That's fair.

12 Do you want to look at this over lunch and talk
13 about it afterwards?

14 MR. PATEL: May I?

15 THE COURT: Yes. This is out of the blue.

16 MR. PATEL: I understand Mr. McCarthy's position.
17 I would just like to say, your Honor, that I do not think
18 that the fact that Mr. Salem repeated this to Siddig Ali
19 really rehabilitates it. It has been our position, and I
20 think I said this in our letter, that it was a lie in '92
21 and that it was a lie in '95. So the fact that he limits
22 the number of people that he lied to really doesn't
23 rehabilitate him in any way.

24 THE COURT: OK. But then you're saying it's not
25 prejudicial.

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1 MR. PATEL: It is certainly prejudicial, your
2 Honor. A repeated lie is certainly prejudicial.

3 THE COURT: It is there for more than the fact
4 that he simply repeated it. The circumstances under which
5 he repeated it and the person who whom he repeated it tends
6 to show something arguably -- you argue it doesn't --
7 particularly when there was cross-examination about whether
8 he had in fact repeated it to Mr. Constantine and to others.
9 I think it's fair. If you want an instruction, I will give
10 it. If you don't want an instruction, I suppose we can do
11 without it.

12 MR. PATEL: It is the language of the instruction
13 that concerns me.

14 THE COURT: Understood.

15 MR. PATEL: I would certainly like an
16 instruction.

17 THE COURT: Do you want to be heard further this
18 afternoon?

19 MR. PATEL: Yes, your Honor.

20 THE COURT: Do you want to hear the instruction
21 as I propose to give it?

22 MR. PATEL: That's really what I would like to
23 do, your Honor. I don't know if you would be willing to
24 share a draft with us.

25 THE COURT: I'm willing to share a draft. I

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1 would be willing to bet a nickel you can't read my
2 handwriting.

3 MR. PATEL: I will take that bet.

4 THE COURT: You've got it. Here's the draft.
5 The interlineations are mine, and they occur principally at
6 the end.

7 Speaking of instructions, I was told that
8 somebody wanted me to give an instruction with regard to a
9 news item that was over the air this morning.

10 MR. JABARA: Your Honor, we discussed this during
11 the break, several of us, and we thought perhaps it would be
12 in order to instruct the jury that if anything of this news
13 item that occurred of the attempted assassination, that the
14 court would so advise whether or not that would affect their
15 consideration of the evidence in this case.

16 THE COURT: Let me understand, are you saying
17 that you want an instruction, or are you saying that you
18 want them polled?

19 MR. JABARA: No. I think just an instruction.

20 THE COURT: OK. Do you want me to tell them what
21 the event is?

22 MR. JABARA: Well --

23 THE COURT: Mr. Jacobs is shaking his head
24 violently back and forth indicating negative.

25 Can I make a suggestion. Why don't you caucus

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1 over lunch and decide, if you can, on a consensus about what
2 you want me to do and, if there is an instruction, what you
3 want it to be, if you could propose one. I will think about
4 it over lunch as well.

5 MR. JABARA: Fine.

6 THE COURT: OK.

7 MR. JACOBS: Just one another matter.

8 THE COURT: Yes.

9 MR. JACOBS: Ramzi Yousef's lawyer contacted me
10 relative to a subpoena which is technically returnable as of
11 tomorrow. I suggested that he contact chambers. I think he
12 has some applications with respect to it. I think we do as
13 well. Perhaps in the next few days we can arrange a
14 mutually convenient time where we can discuss the matter,
15 obviously outside the presence of the jury.

16 THE COURT: I would suggest we do it right after
17 the government rests.

18 MR. JACOBS: I told Mr. Kulcsar I would contact
19 chambers to arrange a time.

20 MR. STAVIS: Your Honor, in my subpoena, I said
21 as early as June 27 or as soon thereafter as directed by
22 counsel. I have had correspondence with Mr. Kulcsar, and he
23 knows that it is not necessarily tomorrow, but it's on a
24 day-by-day basis dependent upon when the government rests
25 its case. So I assume we can all work out the scheduling of

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1 it.

2 THE COURT: Fine. I assume I can hear from
3 Mr. Kulcsar initially without his client present?

4 MR. JACOBS: Sure.

5 THE COURT: Good. Thank you.

6 (Luncheon recess)

7 (Page 12702 sealed)

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AFTERNOON SESSION

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2:20 p.m.

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(In open court; jury not present)

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MR. NOOTER: Your Honor, I have a brief application before the jury comes out. I think we are getting to the point this afternoon when those flyers that are Exhibit 171 up through 179, exclusive of some of them, may be coming in evidence through the translator, and I had a couple of applications with respect to that. First of all, I had asked on Thursday if your Honor would review your ruling on the admissibility of that and your Honor said you would read my opening statement.

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THE COURT: I did.

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MR. NOOTER: So we are looking for a ruling on that.

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THE COURT: The ruling stands.

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MR. NOOTER: The second point, your Honor, is that I had submitted to let government and passed on to your Honor some proposed redactions to redact some of the more inflammatory material, which I think adds little to the probative value of this material, and yet I think it should be somewhat sanitized and my proposals were underlinings that I had forwarded to your Honor and the government.

24

THE COURT: What is your position?

25

MR. KHUZAMI: Your Honor, the government's

1 position is that those redactions are not warranted, for the
2 same reasons that the items in their entirety were available
3 and in opening and in the cross-examination of Mr. Salem
4 Mr. Saleh positioned himself that way.

5 THE COURT: To some extent these go to matters
6 that you talked about in your opening.

7 MR. NOOTER: A lot of it is the most inflammatory
8 anti-Jewish or anti-Israeli material.

9 THE COURT: A topic that you dealt with in your
10 opening in discussing what sorts of views and attitudes your
11 client has.

12 MR. NOOTER: I still say, because some radical
13 kook writes a lot of inflammatory stuff that happens to be
14 sitting in my client's house, that he should not necessarily
15 receive the burden of that form of language. I left in
16 things that show what the tenor and the substance of the
17 document is, which would be anti-Israel or anti, sometimes
18 anti the Jews, seeing the Jews as the enemy, whatever it may
19 be, but just taking out the most inflammatory stuff.

20 THE COURT: I didn't see that any of it was left
21 in, according to the redactions that you proposed.

22 MR. NOOTER: I think I did. There are
23 discussions about -- I can't remember in detail now.

24 MR. JACOBS: I think I read that passage before,
25 Judge. I have it in 171T, page 1 of the flyer, 171T.

1 "One of the people in places he said we will
2 overcome are the Jews. We will kill them until the stones
3 and the trees call upon us saying: O, Muslim, O, servant of
4 God, here is a Jew behind me, come and kill him. This shall
5 be take place soon, with God's help."

6 THE COURT: Where are you?

7 MR. NOOTER: 171T, the third full paragraph,
8 which is the long paragraph, the last several sentences.

9 MR. NOOTER: This is one that we asked your Honor
10 to exclude on remoteness grounds, given the date.

11 (Pause)

12 THE COURT: I am sorry, I do have the exhibit,
13 and the material that is underlined is the material that you
14 want out, the material that Mr. Jacobs just read.

15 MR. NOOTER: That is right.

16 THE COURT: I know what you want out. I have the
17 underlined part. I thought you were talking about something
18 that was left in.

19 MR. NOOTER: Your Honor, for example, on the
20 second page, the two paragraphs, the last two full
21 paragraphs on that page discuss the political issues of
22 dealing with the people who are allies of Israel, including
23 the United States and the other Arab countries. That, it
24 seems, could remotely be relevant. It's the "kill the Jews"
25 language that I am asking for you to strike.

1 THE COURT: There is other material as well.

2 MR. NOOTER: There is plenty of discussion in
3 this thing about the politics, which is what I understood
4 Mr. McCarthy to say has some relevance to it.

5 MR. KHUZAMI: Your Honor, it is Mr. Nooter who
6 opened on the fact that Mr. Wahid Saleh had married a Jewish
7 woman and that he went to peace demonstrations and things
8 along those lines. This is responsive to that.

9 THE COURT: I am going to leave it in. You can
10 argue it.

11 MR. STAVIS: Your Honor, last week with regard to
12 some of the Wahid Saleh material that was introduced solely
13 as to Mr. Saleh, I asked your Honor for a limiting
14 instruction.

15 THE COURT: And I think you got it.

16 MR. STAVIS: Yes. I would request that with
17 regard to these documents.

18 THE COURT: Absolutely.

19 MR. NOOTER: Judge, the final application with
20 respect to this is that the translator who translated this
21 is coming on, apparently this afternoon. Some of the most
22 recent version of this material was just handed to us now
23 after lunch, and I would respectfully request that the
24 translator be put over until tomorrow morning so that my
25 client and I have a chance to go over it and prepare for our

1 cross tomorrow.

2 MR. KHUZAMI: Your Honor, that is patently
3 untrue. Mr. Nooter got these materials on Friday. We told
4 him which portions we were going to read and I submitted the
5 redactions in court. This is the same translations that he
6 has had.

7 MR. NOOTER: It was on the table when I came back
8 after lunch.

9 THE COURT: He says it is not new.

10 MR. NOOTER: Nevertheless, your Honor, I wonder
11 if in the court's discretion you would allow us until
12 tomorrow. It is a short witness, a short cross. The whole
13 thing would take 15 minutes. I would feel a lot more
14 comfortable if I could go over this with my client.

15 MR. KHUZAMI: Your Honor, this witness is
16 necessary to fill a portion of the day and Mr. Nooter has
17 had a lot of time with these documents.

18 THE COURT: Did you plan to read this whole thing
19 in?

20 MR. KHUZAMI: No, just portions, which I gave to
21 all defense counsel.

22 THE COURT: Do you have anything else to last the
23 day?

24 MR. MCCARTHY: If we have to, we will.

25 THE COURT: You have to.

1 MR. McCARTHY: But the court should know that
2 what is not in front of your Honor is accommodations that we
3 have made to other people to put things over until tomorrow.
4 We will fill up the day.

5 THE COURT: Wait a second. If you have material
6 to fill out the day, fine. If you don't, this is going in.
7 I do want to finish.

8 MR. McCARTHY: Your Honor, I represent in good
9 faith that we will try to fill up the day without this, and
10 if it is a problem I will be back, and I won't be shy about
11 it.

12 MR. NOOTER: Thank you very much, your Honor.

13 MR. JABARA: Your Honor, with regard to the
14 instruction, we did discuss it over lunch and we decided
15 just to leave it and see what happens in terms of news
16 coverage.

17 THE COURT: I will try to give a particularly
18 forceful general instruction at the end of the day about
19 reading news events about matters at all related to this or
20 similar to this case.

21 (Jury present)

22 THE COURT: Good afternoon, ladies and gentlemen.

23 JURORS: Good afternoon.

24 THE COURT: Mr. Fitzgerald.

25 MR. FITZGERALD: Yes, Judge. We will be

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1 continuing with Government's Exhibit 383T2. We will be
2 playing a 10-minute portion of the videotape, starting on
3 page 47.

4 MS. AMSTERDAM: I am sorry, Mr. Fitzgerald. We
5 will be playing --

6 MR. FITZGERALD: We will be playing a 10-minute
7 portion of the videotape starting on page 47, corresponding
8 with the time 12:36:40. This part of the conversation is
9 substantially in English, or has substantial English
10 portions, so we will be playing while we read and the jurors
11 can make use of their headsets. We will be starting in the
12 middle of page 47, where it indicates that the conversation
13 will be starting in English.

14 (Videotape played)

15 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, we are going to stop
2 there to read the Arabic portion of the transcript, which
3 will cover the Arabic portion of the portion just heard. We
4 will be starting at the bottom of page 49 of 383T2, the last
5 attribution. We are going to read to the middle of page 51.

6 For purposes of figuring out where we are, when
7 we get to the middle of page 50, we will have covered up to
8 12:47:58, where we just stopped.

9 Mr. Khuzami will read the attributions of Emad
10 Salem; I will read the statements attributed to Siddig Ali;
11 and Mr. McCarthy will read the statements attributed to
12 Tarig Elhassan and the statement attributed to Victor
13 Alvarez.

14 Starting at the last speaking part on page 49.

15 (Government Exhibit 383T2 in evidence was read to
16 the jury)

17 MR. FITZGERALD: We will stop there, Judge, and
18 we will resume playing the tape from 12:46 through this
19 portion, 12:52.

20 I'm sorry. We are resuming from 12:47:58, which
21 is the middle of page 50, after the word "pop."

22 (Videotape played)

23 MR. FITZGERALD: Your Honor, we will read the
24 balance of the transcript at this point. Picking up on page
25 51, with the attribution of Salem saying, "All of us became

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1 nervous."

2 Mr. Khuzami will again read the voice of
3 Mr. Salem; Mr. McCarthy will read the voice of Amir
4 Abdelgani and Mr. Elhassan; Ms. Chu will read the voice of
5 Fadil Abdelgani; and I will read the voice of Mr. Siddig
6 Ali.

7 (Government Exhibit 383T2 in evidence was read to
8 the jury)

9 MR. FITZGERALD: Your Honor, we will play the
10 balance of the tape at this point, beginning with 12:52,
11 which is on page 51.

12 (Videotape played)

13 MR. FITZGERALD: That concludes that exhibit,
14 your Honor.

15 MR. KHUZAMI: The government calls Anthony
16 Annunziato as its next witness.

17 ANTHONY ANNUNZIATO,
18 called as a witness by the Government,
19 having been duly sworn, testified as follows:

20 MR. KHUZAMI: May I proceed, your Honor?

21 THE COURT: Please.

22 DIRECT EXAMINATION

23 BY MR. KHUZAMI:

24 Q Agent Annunziato, you have testified previously
25 in case, is that correct?

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1 A Yes, I have.

2 Q Are you still a special agent with the Bureau of
3 Alcohol, Tobacco & Firearms?

4 A Yes, I am.

5 Q Were you recently asked to test fire a firearm?

6 A Yes, I was.

7 Q Did you in fact conduct such a test?

8 A Yes, I did.

9 Q What date?

10 A I believe on June 20, around June 20.

11 Q Have you tested firearms in the past?

12 A Yes, I have.

13 Q Approximately how many times?

14 A Approximately a thousand times, over a thousand
15 times.

16 MR. KHUZAMI: Your Honor, may I approach?

17 THE COURT: Go ahead.

18 Q Special Agent Annunziato, let me show you what
19 has been received in evidence as Government Exhibit 675A and
20 ask you if you recognize it.

21 A Yes, I do.

22 Q What is it?

23 A It is an Uzi semi-automatic Model A nine
24 millimeter pistol.

25 Q Is that the one that you test fired?

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1 A Yes, it is.

2 Q Can you describe for the jury what you did when
3 you test fired it.

4 A I unscrewed the top portion here. I placed this
5 barrel into the firearm. Then I took a nine millimeter
6 round, I extracted the projectile from the round, took the
7 powder out of the casing, and I placed the casing and the
8 primer into the chamber of the weapon. I chambered the
9 round by making the bolt, allowing the bolt to go forward.
10 I put the selector switch to "F" for fire. I pulled the
11 trigger, and the weapon functioned as designed, firing the
12 primer.

13 MR. KHUZAMI: Your Honor, I believe I misspoke.
14 That's Exhibit 675, not 675A.

15 No further questions.

16 THE COURT: Cross?

17 MR. SERRA: A couple of questions, your Honor.

18 CROSS-EXAMINATION

19 BY MR. SERRA:

20 Q Good afternoon, Agent.

21 I believe you testified that you performed the
22 procedure you just described to the jury, you said on June
23 20, is that right?

24 A Around June 20.

25 Q That's of 1995, isn't that correct?

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1 A Yes.

2 Q In other words, less than a week ago?

3 A Yes.

4 Q Are you aware of any other agents having fired
5 this gun after it was seized and before you did?

6 A No, I'm not.

7 Q Agent Annunziato, what's a machine gun?

8 A It's a gun that will fire -- if you pull the
9 trigger once, it will continue to fire rapidly.

10 Q It's not with -- I'm sorry, did you finish your
11 answer?

12 A No, I didn't.

13 Q Please. I am sorry.

14 A It is a gun that, once you pull the trigger of
15 the weapon, it will continue to fire until all of the rounds
16 are expended, just with one pull of the trigger.

17 Q You described Government Exhibit 675A as a
18 semi-automatic, is that right?

19 A Yes.

20 Q Semi-automatic means one pull of the trigger, one
21 bullet, correct?

22 A Correct.

23 Q If there were 30 in the magazine it will only
24 fire once, is that right?

25 A Yes.

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1 Q So that is not a machine gun?

2 A I didn't testify if it was a machine gun or not,
3 unless it was altered. I don't believe it is altered, but
4 from my examination I believe it's a semi-automatic.

5 Q There is a gun sitting next to you, is that
6 right?

7 A Yes.

8 Q You just talked about unless it was altered. Is
9 the gun sitting next to you a machine gun?

10 A I really didn't examine it to see if it's
11 altered. I would have to fire it in rapid succession. I
12 only field tested it, and I field tested it as a
13 semi-automatic.

14 Q Can you tell by looking?

15 A Not really by just looking on the outside of it.

16 Q It has written semi-automatic on it, is that
17 correct?

18 A Yes.

19 MR. SERRA: I have nothing further.

20 MR. NOOTER: Your Honor.

21 THE COURT: Mr. Nooter.

22 CROSS-EXAMINATION

23 BY MR. NOOTER:

24 Q Agent, at the time that you retrieved the weapon
25 in order to test it, did it have some plastic things in it?

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1 A Yes, it did.

2 Q And those were designed to keep it from being
3 assembled properly and fired, is that right?

4 A Yes.

5 Q You had to remove them in order to test it, is
6 that right?

7 A Yes, I did.

8 Q Have they been reinstalled?

9 A Yes, I reinstalled them.

10 Q In the situation where the weapon is now, can you
11 put the clip in and take it out?

12 A No.

13 Q You would have to take off the plastic in order
14 to do that?

15 A Right.

16 Q You did do that in order to test it?

17 A Yes.

18 MR. NOOTER: Your Honor, may I request at this
19 time that the plastic be removed so the clip can be
20 installed and taken out.

21 THE COURT: OK.

22 Q Are you able to do that?

23 A I need a scissor or some type of clipper.

24 Q While that is being retrieved, let me just ask
25 you, when you retrieved the weapon for purposes of testing

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1 it, did it have any ammunition with it?

2 A No, it did not.

3 Q You provided your own ammunition or government
4 ammunition in order to test it, is that correct?

5 A That's correct.

6 Q If you could proceed. Could you just explain to
7 the jury what a clip is.

8 A A clip is where the ammunition is held that feeds
9 into the weapon.

10 Q It's like a little metal chamber that will hold a
11 certain number of bullets, is that correct?

12 A Correct.

13 Q How many would it hold normally?

14 A I believe this holds 25 or 30.

15 Q If you could just click it in and release it
16 again.

17 That had to be done in order to fire, is that
18 correct?

19 A Yes. You can put the clip in, you can fire
20 without the clip on one time. You just feed the round in
21 without having the clip in.

22 Q That would fire one time?

23 A Correct.

24 Q If you would just hold it up again, put in the
25 clip from the bottom, if you would. OK.

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1 Then to release it, is there something you have
2 to pull?

3 A There's a release on the side.

4 MR. NOOTER: OK. Thank you.

5 I have no further questions. One moment, your
6 Honor.

7 (Pause)

8 MR. NOOTER: One other question.

9 Q In order to arm the weapon in order to fire it,
10 is there a bolt that has to be pulled back?

11 A Yes.

12 Q Can you do that on that weapon at this time.
13 You pull it back until it cocks, is that correct?

14 A You just pull it back and pull it forward.

15 MR. NOOTER: OK. Thank you.

16 No further questions.

17 (Continued on next page)

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1 THE COURT: Any other cross? Any redirect?

2 MR. KHUZAMI: None, your Honor.

3 THE COURT: You can step down.

4 THE WITNESS: Thank you.

5 (Witness excused)

6 MR. KHUZAMI: The government calls Joyce Reddy,

7 R-E-D-D-Y.

8 MR. JACOBS: May we see your Honor at the side
9 bar?

10 THE COURT: We are going to take a break, ladies
11 and gentlemen. Please leave your notes and other materials
12 behind. Please don't discuss the case, and we will resume
13 in a few minutes.

14 (Jury excused)

15 MR. JACOBS: Your Honor, I gather the government
16 is putting on this witness to offer 375D1 through the last
17 three numbers. Can we have an offer of proof as to what
18 counts this is relevant to and what seems to be the issue,
19 if possible?

20 MR. KHUZAMI: Sure. The government will not be
21 offering the documents, but the testimony of the witness
22 will be that she conducted a search of the records of the
23 Bureau of Alcohol Tobacco and Firearms and found that none
24 of the defendants are licensees or permittees to sell or use
25 explosives, and in Count 5 of the indictment, bombing

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1 conspiracy charge, the government alleges in paragraph 29
2 that it was an object of the conspiracy that the defendants
3 and their coconspirators, who are not licensees or
4 permittees, would unlawfully ship, cause to be transported
5 or ship in interstate or foreign commerce explosive
6 materials.

7 MR. JACOBS: I am not aware of any of these items
8 being transported in interstate commerce to begin with. I
9 am not sure what the relevancy of this document is to that
10 particular overt act.

11 THE COURT: The short answer is that he says he
12 is not offering the document, but since he says he is
13 offering the testimony --

14 MR. JACOBS: It's the same thing.

15 MR. KHUZAMI: It is an object of the conspiracy.

16 THE COURT: Does this relate to the 924(c)
17 counts?

18 MR. KHUZAMI: No, your Honor.

19 THE COURT: 371, to violate which statute?

20 MR. KHUZAMI: To violate 841(c).

21 THE COURT: One of these elements is that whoever
22 does it is not in fact a licensee.

23 MS. LONDON: I am sorry. I can't hear, your
24 Honor.

25 THE COURT: One of whose elements is that whoever

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1 it is who traffics in the material in question is not
2 licensed to do so. There is another way around it, I
3 suppose, which is that you could stipulate that nobody here
4 holds such a license.

5 MR. LAVINE: I will be happy to stipulate on
6 behalf of my client for that.

7 MR. STAVIS: There was a pistol license
8 introduced in evidence at this trial, your Honor.

9 THE COURT: That is not the nature of the license
10 involved here.

11 MR. JACOBS: I don't think there is a problem
12 with the stipulation as the government states, your Honor.

13 THE COURT: It sounds from what Mr. Stavis just
14 said that there is a problem. He says there was a pistol
15 permit introduced and this could create some confusion.

16 MR. JACOBS: With respect to the explosive
17 device, I think most of the lawyers don't have a problem.
18 Mr. Stavis may have another issue but not with respect to
19 that count.

20 THE COURT: I don't read minds. My suggestion is
21 that you talk over the break. If you stipulate, fine. I
22 don't know how much time you will save, but if you
23 stipulate, fine.

24 Is there anything else? See you after the break.

25 (Recess)

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1 (Jury not present)

2 THE COURT: What is it going to be?

3 MR. KHUZAMI: I understand that there will be no
4 stipulation and we will put the witness on.

5 THE COURT: Let's go.

6 MS. LONDON: Your Honor, I have an application.
7 I would like to make application to preclude the testimony
8 of this witness with respect to Mr. Elhassan not being a
9 licensee or permittee to receive an explosive, receive
10 explosive materials. There has been no evidence of
11 explosive materials in this case and as I understand there
12 will be no such evidence, and therefore I object to this
13 testimony on relevance grounds.

14 MR. KHUZAMI: Your Honor, it is a conspiracy
15 charge.

16 THE COURT: The question is what was intended,
17 not what was there. The application is denied. Let's go.

18 (Jury present)

19 THE COURT: Mr. Khuzami.

20 MR. KHUZAMI: Your Honor, the government calls
21 Joyce Reddy, R-E-D-D-Y.

22 JOYCE A. REDDY,

23 called as a witness by the government,

24 having been duly sworn, testified as follows:

25 MR. KHUZAMI: May I proceed, your Honor?

1 THE COURT: Please.

2 DIRECT EXAMINATION

3 BY MR. KHUZAMI:

4 Q Ms. Reddy, how are you employed?

5 A I am employed by the Bureau of Alcohol, Tobacco
6 and Firearms as an analyst.

7 Q If you could pull the microphone a little closer
8 so everyone can hear you. Thank you.

9 How long have you been with the Bureau of
10 Alcohol, Tobacco and Firearms?

11 A Since 1975.

12 Q Are you employed in a particular department of
13 the Bureau of Alcohol, Tobacco and Firearms?

14 A Yes, I am. I am employed in the Explosives and
15 Firearms License Center located in Atlanta, Georgia.

16 Q What does the Explosives and Firearms License
17 Center do?

18 A We issue all licenses to arms dealers and
19 explosive dealers and users.

20 Q Does the licensing center maintain records?

21 A Yes, we do.

22 Q In terms of licenses or permits to sell or use
23 explosives, what types of records does the center maintain?

24 A We maintain an application that is completed by
25 the applicant, with all of the pertinent information

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1 regarding his storage and the dealings that he plans to do.

2 Q Are those records searchable by computer?

3 A Yes, we do. We put everything on a data base.

4 Q Have you recently been asked to search
5 approximately 12 names to determine whether or not ATF ever
6 issued licenses or permits to those people?

7 A I have.

8 Q Can you describe the search that you conducted?

9 A First of all, I did a search that I did by name,
10 the individual given name. I searched that name by a
11 business name. I searched date of births and locations.

12 Q What period of time did your search encompass?

13 A I started with January 1, 1989, through June 22,
14 1995.

15 Q In the course of your search was Omar Ahmad Ali
16 Abdel Rahman one of the names that you searched?

17 A Yes, it was.

18 Q Was Clement Hampton-El one of the names that you
19 searched?

20 A Yes.

21 Q Was Matarawy Mohammed Said Saleh one of the
22 persons that you searched?

23 A Yes.

24 Q Was El Sayyid Nosair one of the persons that you
25 searched?

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1 A Yes.

2 Q And Ibrahim El-Gabrowny?

3 A Yes, sir.

4 Q I will read a number of names and at the end tell
5 me whether or not these are names that you searched. Siddig
6 Ibrahim Siddig Ali?

7 A Yes.

8 Q Amir Abdelgani?

9 A Yes.

10 Q Fares Khallafalla?

11 A Yes.

12 Q Tarig Elhassan?

13 A Yes.

14 Q Mohammed Saleh?

15 A Yes.

16 Q Victor Alvarez?

17 A Yes.

18 Q And Fadil Abdelgani.

19 A Yes.

20 Q As a result of your search, did the Bureau of
21 Alcohol Tobacco and Firearms, from January 1, 1990 till the
22 present, ever issue a license or permit to any of those
23 persons to sell or use explosives?

24 A No, we have never issued a permit.

25 Q Or licenses?

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1 A Or a license.

2 MR. KHUZAMI: No further questions.

3 THE COURT: Cross, Ms. Amsterdam, representing
4 Mr. Khallafalla.

5 CROSS-EXAMINATION

6 BY MS. AMSTERDAM:

7 Q Good afternoon. Were you asked to search your
8 records to ascertain whether or not a person by the name of
9 Emad Salem was licensed to receive explosive materials?

10 A Ma'am, I searched for those that are licensed to
11 sell.

12 Q To sell?

13 A Or use.

14 Q Were you asked to check Emad Salem?

15 A Yes.

16 Q You were?

17 A Um-hum.

18 Q And was he?

19 A No.

20 MS. AMSTERDAM: Thank you.

21 CROSS-EXAMINATION

22 BY MS. LONDON:

23 Q Good afternoon, Miss Reddy. Miss Reddy, you do
24 searches at your licensing center for firearms licenses, is
25 that correct?

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1 A And explosive licenses.

2 Q Are they issued as a combined license or two
3 separate licenses?

4 A Two separate licenses.

5 Q So in other words, an individual has a firearms
6 license does not necessarily have an explosives license, is
7 that correct?

8 A Correct.

9 Q You testified that you did a search in the name
10 of Tarig Elhassan, is that correct?

11 A Yes.

12 Q And that in the search you -- and as a result of
13 the search you did, you made a certified statement, is that
14 correct?

15 A Yes.

16 Q In that certified statement, you wrote that Tarig
17 Elhassan had not applied for a firearms license, is that
18 correct?

19 A Correct. Ma'am, my data base takes care of both
20 firearms and explosives.

21 Q But your certification states that there was no
22 record or entry found for a firearms license, correct?

23 A That is what my statement said.

24 (Continued on next page)

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1 MS. LONDON: I have no further questions.

2 MR. RICCO: Your Honor, may we have a side bar?

3 THE COURT: Yes.

4 (At the side bar)

5 THE COURT: Yes, sir.

6 MR. RICCO: Judge, apparently there was a mistake
7 in the exhibit that was referred to by Miss London, 675D1 in
8 sequence. Apparently the witness' search came back stating
9 that Mr. El-Gabrownly does not have a pistol license, when in
10 fact we know that he does because it is in evidence.

11 THE COURT: I don't know that he got one from
12 ATF. He got one from New York State, didn't he?

13 MR. RICCO: They said they searched the 50 states
14 of the United States and territories. So I had spoke to Mr.
15 Khuzami about this before this witness took the stand and
16 Mr. Khuzami said he was going to limit the testimony of the
17 witness to explosives. Ms. London went into firearms.

18 THE COURT: Let me make sure I understand.

19 MR. KHUZAMI: License to sell, permits to use,
20 nothing to do with firearms. She just grabbed the wrong
21 form, which said firearms.

22 MR. STAVIS: That is why I raised it earlier.

23 MR. RICCO: Which is why I didn't cross the
24 witness on it because it is obviously in error. But the
25 jury may have the impression now that this search extended

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1 to firearms and that there was no finding that Mr.

2 El-Gabrownny had a firearms license, and I don't want the

3 jury to get that impression.

4 THE COURT: Why don't I just tell them that in
5 fact her testimony is not that Mr. El-Gabrownny did not have
6 a firearms license, the proof is that he does, or did.

7 MR. RICCO: OK.

8 MR. PATEL: But she didn't search for firearms,
9 did she?

10 THE COURT: Why don't you work it out.

11 MR. KHUZAMI: One other thing. The witness was
12 in error when she indicated she conducted a search for Emad
13 Salem's name as a person who was licensed to possess or use
14 explosives. Frankly, I am not sure that I really care that
15 much one way or the other, but it was not one of the names
16 she was asked to check.

17 MS. AMSTERDAM: Then I think that we should by
18 stipulation indicate that they did not check.

19 MR. RICCO: We have to.

20 MR. STAVIS: There is sworn testimony in the
21 record.

22 THE COURT: You can stipulate it out if you want
23 to stipulate it out. Does anybody have anything else with
24 regard to this witness?

25 MR. JACOBS: I do.

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1 THE COURT: Why don't we let him do what he is
2 going to do and deal with whatever repairs we have to make
3 afterwards.

4 (Continued on next page)

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1 (In open court)

2 THE COURT: Mr. Jacobs. Representing Mohammed
3 Saleh.

4 CROSS-EXAMINATION

5 BY MR. JACOBS:

6 Q Ma'am, do you know whether ATF has jurisdiction
7 over the federal sale of gasoline and/or diesel fuel?

8 A ATF, that is not one of our charged missions.

9 Q So you would not know whether Mohammed Saleh has
10 a federal license to sell gasoline or diesel fuel, do you?

11 A No, I do not know that.

12 Q It would be another department of the federal
13 government?

14 A Yes.

15 Q What department would that be, ma'am, if you
16 know?

17 A Probably the Department of Transportation. I'm
18 sorry, or maybe Commerce. I don't know, sir.

19 MR. JACOBS: Thank you very much. I have nothing
20 further.

21 THE COURT: Anyone else? Any redirect?

22 MR. KHUZAMI: None, your Honor.

23 THE COURT: You can step down.

24 You're excused. Thank you.

25 MR. KHUZAMI: Your Honor, at this time the

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1 government would offer into evidence Government Exhibit 846,
2 previously identified in connection with the testimony of
3 Police Officer Shaw and would ask permission to read that
4 note to the jury.

5 THE COURT: That was the note found on the car?

6 MR. KHUZAMI: That's correct, your Honor.

7 THE COURT: All right. That is received.

8 (Government's Exhibit 846 for identification was
9 received in evidence)

10 THE COURT: Go ahead.

11 MR. KHUZAMI: Your Honor, this item can be found
12 in the jurors' binders marked binder 751 to 860. It is
13 Government Exhibit 846.

14 Your Honor, pursuant to stipulation with
15 Mr. Wasserman, the government and Mr. Wasserman agree that
16 this is a note that was discussed in the testimony of Police
17 Officer Shaw on June 5, 1995, and that the note was seized
18 on June 24, 1993 from a white Mazda owned by the defendant
19 Clement Hampton-El.

20 (Government Exhibit 846 was read to the jury)

21 MR. McCARTHY: Your Honor, at this time the
22 government would offer into evidence, but not read at this
23 time, any portions from the Government's Exhibits 3534T and
24 3534U, which have been previously identified as the
25 agreement between the witness Emad Salem and the Federal

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1 Bureau of Investigation. That's 3534T, and 3534U is the
2 modification to that agreement.

3 THE COURT: Without objection those are received.

4 (Government's Exhibits 3534T and 3534U for
5 identification were received in evidence)

6 MR. FITZGERALD: Your Honor, at this time the
7 government would offer Government Exhibits 515 through 519,
8 sets of phone records which, if received, I will describe in
9 further detail.

10 THE COURT: I gather there is no objection to
11 those. Those are received. Go ahead.

12 (Government's Exhibits 515, 516, 517, 518 and 519
13 for identification were received in evidence)

14 MR. FITZGERALD: Government Exhibit 515 is a set
15 of phone records in the name A. Abdullah, A-B-D-U-L-L-A-H,
16 the phone number for which is 718-941-0226, and the address
17 is 1351 New York Avenue, Brooklyn, New York.

18 Government Exhibit 516 is the phone records for
19 the customer in the name of S. Ali, A-L-I, address 112
20 Brunswick, Jersey City, New Jersey. The phone number is
21 201-222-7804.

22 Government Exhibit 517 is the phone records for
23 Ebru, E-B-R-U, Trading, 1238 Yonkers Avenue, Yonkers, New
24 York, and the phone number is area code 914-237-6052.

25 Government Exhibit 518 is the phone records for

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1 Mohammed Saleh, care of Shorco, S-H-O-R-C-O, 1238 Yonkers
2 Avenue, for the phone number 914-969-4831.

3 Finally, Government Exhibit 519 is the phone
4 records for the customer name Maribel, M-A-R-I-B-E-L,
5 Rodriguez, 5515 Seventh Avenue, Brooklyn, New York for the
6 phone number 718-851-3491.

7 MR. McCARTHY: If I may, your Honor, just take a
8 moment with Mr. Patel.

9 THE COURT: Go ahead.

10 (Counsel conferred)

11 MR. McCARTHY: Your Honor, the government is
12 about to ask to read from Government's Exhibit 327T, which I
13 understand is in the jurors' books marked, I believe, 326 to
14 349. That is an exhibit as to which there is an instruction
15 from your Honor.

16 THE COURT: May I see counsel at the side on
17 that.

18 MR. McCARTHY: Yes, your Honor.

19 (At the side bar)

20 THE COURT: I gave you over lunch the draft. You
21 gave it back, but I don't know what your views are.

22 MR. STAVIS: We had no suggested changes in it,
23 apart from a few mustard stains that are on the top copy
24 that your Honor has.

25 MR. PATEL: Your Honor, Mr. Stavis is correct.

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1 We have no suggestion to add to the instruction your Honor
2 is going to give. Standing by my original objection, I
3 would just say that the instruction is legally correct, but
4 I have no idea if the jury is capable of understanding it.

5 THE COURT: I think they are.

6 MR. PATEL: There are just some things that a
7 curative instruction --

8 THE COURT: Can't cure?

9 MR. PATEL: Exactly.

10 THE COURT: I don't think this is one of them,
11 principally because, and I don't want to take a lot of time
12 with this, but principally because they have heard this
13 before. This is not news. Its being stated now doesn't
14 convey something new. What is dwelled on here is the fact
15 that it was repeated, if they find it was.

16 MR. PATEL: It is just the concept of it not
17 being for the truth but for establishing credibility. It is
18 a difficult concept.

19 THE COURT: OK. But I explained that in the
20 handwritten part.

21 MR. PATEL: Exactly.

22 THE COURT: As opposed to the language that the
23 government suggested, which I think was not making apparent
24 what it was doing.

25 MR. PATEL: We couldn't think of a better way to

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1 do it either, your Honor. I just don't know if it can be
2 done.

3 THE COURT: All right. Thank you.

4 (In open court)

5 THE COURT: I want to give you an instruction
6 with regard to the exhibit that you are about to hear read,
7 ladies and gentlemen.

8 You have already heard in this case evidence of
9 recorded conversations between Siddig Ibrahim Siddig Ali and
10 Emad Salem in which Salem described to Siddig Ali events
11 which, according to Salem, occurred in 1991 and 1992 and
12 included various people, including some of the defendants
13 who are on trial here.

14 You are about to hear in Government Exhibit 327
15 evidence of additional statements like that by Mr. Salem.
16 Now, many of the matters that Mr. Salem is heard discussing
17 with Mr. Siddig Ali were touched on and were testified to in
18 Mr. Salem's testimony at this trial. I want to say a few
19 words about the evidence that you are about to hear as
20 opposed to the testimony of Mr. Salem.

21 Mr. Salem's statements to Mr. Siddig Ali in this
22 exhibit are not being received as evidence to prove the
23 truth of those statements. That was what Mr. Salem
24 testified to at the trial, and you can decide whether he was
25 telling the truth about what he says occurred at that time.

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1 In other words, if in this exhibit Mr. Salem says to
2 Mr. Siddig Ali that certain persons took certain actions in
3 the past, you may not consider those statements as proof
4 that those persons actually took those actions. That is not
5 what they are being offered for.

6 Why, then, is this evidence being received?

7 You have heard arguments and questions in
8 cross-examination in this case relating to Mr. Salem's
9 credibility and his possible motives for giving the version
10 of events that he gave during his testimony. The evidence
11 of Mr. Salem's description to Siddig Ali of prior events
12 that you are going to hear now is being offered for whatever
13 weight, if any, you think it has bearing on Mr. Salem's
14 credibility. In other words, the question that this
15 evidence is being offered to help you answer is: Does the
16 fact that Mr. Salem may have made statements to Mr. Siddig
17 Ali in 1993 and the circumstances in which he made them
18 prove anything about his credibility when he testified here
19 before you about those events?

20 I want to remind you -- and I will discuss this
21 with you again in my final instructions -- that you, the
22 members of the jury, are the only judges of the credibility
23 of all witnesses, including the credibility of Mr. Salem.

24 Go ahead.

25 MR. MCCARTHY: Thank you, your Honor.

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1 Government Exhibit 327T -- for counsel, known as
2 CM29 -- is a conversation which took place on May 31, 1993.

3 Mr. Khuzami will read the statements attributed
4 to Emad Salem, and Mr. Fitzgerald will read the statements
5 attributed to Siddig Ibrahim Siddig Ali.

6 (Government Exhibit 327T was read to the jury)

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1 THE COURT: Ladies and gentlemen, we are going to
2 break for the day. Please leave your notes and other
3 materials behind. Please don't discuss the case, and we
4 will resume tomorrow.

5 I would ask you please to take particular care
6 not to read any newspaper accounts that relate either to
7 this case or to any matter that may be related to this case,
8 and to be on the safe side, I would ask you to exclude any
9 newspaper articles dealing at all with the Middle East.
10 That way you will not read about this case or anything
11 related to it. Thank you.

12 (Jury excused)

13 MR. FITZGERALD: Judge, I think there are some
14 matters that we probably need to address before tomorrow,
15 one of which was concerning some proof involving Mr. Yousef
16 Hussein. I can lay out briefly what the government proposed
17 to offer.

18 There is a fellow referred to in the CM's by
19 Siddig Ali, Yousef Hussein, whom he sent a fax to in the
20 United Arab Emirates in the spring of 1993, seeking money to
21 fund jihad products.

22 Mr. Salem also testified about Yousef Hussein,
23 saying that there was someone he heard of, a Yousef from El
24 Shareqe, about providing money for the jihad. He was asked
25 questions on cross. Mr. Salem identified a Michigan

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1 driver's license as being of a person Yousef Hussein whom he
2 met at defendant Abdel Rahman's house, and there was some
3 question on cross as to who this Yousef Hussein was.

4 The government was going to offer proof that this
5 Yousef Hussein exists and it is the same Yousef Hussein that
6 they all knew. For example, during a search of defendant
7 Nosair's house in December 1990, an address was located of a
8 Yousef Hussein living in Wisconsin. Proof we are offering
9 are records of the University of Wisconsin showing that that
10 person lived at that address and then moved to a separate
11 address in Wisconsin, and later moved to the United Arab
12 Emirates. During one of the CM's Siddig Ali had said that
13 this person lived in Wisconsin while his wife attended
14 school. The address and phone numbers link to numbers that
15 Siddig Ali called in 1993 and also numbers faxed to Siddig
16 Ali, and also Mr. Yousef Hussein's fax number seized on the
17 back of a business card from Mohammed Saleh at the time of
18 his arrest. It is simply offered to prove that this person
19 existed and that he knew the defendants.

20 THE COURT: Mr. Jacobs.

21 MR. JACOBS: I gather that the government has no
22 evidence that somebody by that name gave a dollar to anybody
23 in connection with this case. I asked the government before
24 do you have any evidence that this fellow contributed any
25 money to, I will call it terrorist activities, and Mr.

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1 Fitzgerald's answer to me was yes, but I can't disclose it
2 to you.

3 If the government wants to offer this kind of
4 proof I would like to see what the government has in their
5 files. I don't know who this fellow is. It is clear that
6 there is no money given to any defendant in this case as
7 part of this conspiracy, and if the government has in their
8 possession information that this individual did contribute
9 to some other conspiracy or other, quote, jihad
10 organization, I think the time is now to show us the
11 documents, before we start getting into speculating who this
12 individual might be.

13 I do this in lieu of sending subpoenas, but if
14 the government is sitting on some evidence that they believe
15 that this person has contributed money to some other
16 organization, I think the defense is entitled to see that,
17 perhaps to offer into evidence to show that they did
18 contribute to this so-called conspiracy.

19 I would object to this. I think it is
20 speculative. The government is not contending any money
21 went to anybody in this case, and without further
22 disclosures by the government of what they have in their
23 files, I strongly object to this evidence coming in.

24 I don't know what this Wisconsin evidence is. I
25 don't know whether it is the same person or not. If they

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1 are trying to link some money man funding jihad operations
2 with at least two of the defendants in this case -- I gather
3 that is Mr. Nosair and my client -- and they are sitting on
4 the files that they have on this person, I think we should
5 get the files and we are in a better position under 401 and
6 403 why this evidence shouldn't come in.

7 MR. PATEL: May I have a moment with Mr.
8 Fitzgerald?

9 MS. AMSTERDAM: Before Mr. Fitzgerald responds, I
10 would like to add a supporting fact in this argument. I
11 wrote a letter to the government which I copied to the court
12 regarding specific information that I believed the
13 government might be in possession of which we would be able
14 to use under Rule 806 to impeach the credibility of Siddig
15 Ali's coconspirator statements. Specifically on this issue
16 regarding Yousef Hussein, I asked the government to disclose
17 whether in any of the many weeks of proffer sessions they
18 had with Siddig Ali, whether Mr. Ali either rebutted,
19 attributed or offered evidence which we would use to impeach
20 the credibility or believability of his statements regarding
21 that person Yousef Hussein.

22 I am submitting a memo of law on the issue of 806
23 specifically tomorrow, but I am at this point joining Mr.
24 Jacobs' motion that this is premature in the absence of some
25 showing from the government as to a more complete picture.

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1 Specifically I am interested in the aspect of the 806
2 rebuttal to this evidence. The government seems to want to
3 offer substantiation that Yousef Hussein exists. I want to
4 know whether or not anything that Mr. Siddig Ali
5 subsequently told the government rebuts the assumption that
6 one could draw from these tapes, that Mr. Hussein was asked
7 to and was considering giving money.

8 THE COURT: Why don't we take one issue at a time
9 regarding Mr. Hussein. It is easier that way.

10 Mr. Patel, you wanted to add something?

11 MR. PATEL: Your Honor, may I have a moment with
12 Mr. Fitzgerald?

13 THE COURT: Yes.

14 (Pause)

15 MR. PATEL: Your Honor, I would join the 403
16 application. This is another uncompleted loop that the
17 government has. That this person exists is really
18 irrelevant if there is zero proof that he did anything, and
19 there is none.

20 MS. AMSTERDAM: Indeed I would just state, your
21 Honor, just to refresh the court's recollection --

22 THE COURT: Mr. Fitzgerald.

23 MR. FITZGERALD: Yes, Judge. Responding first,
24 there is no 806 contradicting Mr. Yousef Hussein's role in
25 this.

1 THE COURT: What was his role and what is the
2 antecedent of "this"?

3 MR. FITZGERALD: This, Mr. Salem testified that
4 Yousef from El Shareqe was someone that you could go to for
5 jihad funding. Mr. Siddig Ali in one of the FISA's we will
6 play calls Yousef Hussein in the Emirates, gets his fax
7 number. There is a fax to be offered in evidence where he
8 writes and says dear brother, we have a very good project,
9 we would like you to contribute.

10 There was cross-examination by Ms. Amsterdam of
11 Mr. Salem as to why they never got money. Mr. Salem said
12 because we took the case down too soon. She placed the
13 issue before this jury as to how real that request was to
14 Yousef Hussein.

15 I think we should be able to show that he exists,
16 he is a person known to a number of different defendants,
17 which shows association. I don't think that Mr. Jacobs can
18 stand up here and say before we can mention anyone at the
19 trial we have to give open file discovery to anyone who
20 comes up. Mr. Yousef Hussein is someone Mr. Salem learned
21 of in the course of his investigation. Mr. Haggag was
22 present with him in the apartment of Abdel Rahman. Siddig
23 Ali was intercepted on the FISA concerning him. Mr. Nosair
24 had his phone number. Mr. Siddig Ali had his phone number.
25 I believe we did not have the address. We can clarify that

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1 later. It goes to show this person is real. If it is
2 important, we can give you the cites in the transcript and
3 fax it to counsel, where people went after the fact that
4 there were efforts to get money from Mr. Hussein.

5 THE COURT: I recall such information. I don't
6 recall that it was this person. I gather it was.

7 MR. JACOBS: Your Honor, the government can try
8 their case. That is no problem. But if it got possession
9 of information who this person is and we want to introduce
10 it as relevant and admissible evidence to maybe rebut the
11 point that he is a funder, to maybe rebut the fact that he
12 may know the defendants in this case, that is what subpoenas
13 are for, that is what a defense case is for, and the
14 government can't sit back and take their theory and say I am
15 going to cut you off here and not let you argue --

16 THE COURT: It sounds like I am going to be
17 reading some more files, doesn't it? Mr. Fitzgerald?

18 MR. JACOBS: And we would request, your Honor.

19 THE COURT: I thought I would get to that sooner
20 rather than later.

21 MR. FITZGERALD: I know the drill, Judge.

22 THE COURT: Do you?

23 MR. FITZGERALD: Yes.

24 THE COURT: May I have it?

25 MR. FITZGERALD: Sure.

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1 THE COURT: When?

2 MR. FITZGERALD: This evening, or if I need to
3 get extra things I will get them tomorrow.

4 THE COURT: Fine. I will rule on it after I see
5 it.

6 Mr. Serra.

7 MR. SERRA: Your Honor, Mr. Alvarez wished to
8 address the court, perhaps in the robing room, about the
9 subject of the Ramzi Yousef so ordered stipulation which he
10 signed.

11 THE COURT: Mr. Alvarez has a lawyer. I will
12 hear from Mr. Alvarez's lawyer.

13 MR. SERRA: Your Honor, Mr. Alvarez says that he
14 did not understand what he was signing.

15 THE COURT: He can make that argument to the
16 Court of Appeals.

17 MR. FITZGERALD: Your Honor, I believe there
18 were -- Miss Stewart is not here. There are some issues we
19 have to tee up regarding that documents and a video we were
20 going to offer with regard to Abdel Rahman. I don't know
21 whether Mr. Jabara is prepared to go forward or not.

22 MR. JABARA: She is in the office.

23 MS. AMSTERDAM: I will get her.

24 (Pause)

25 THE COURT: What is the issue?

1 MR. FITZGERALD: The issue for the moment, Judge,
2 is, we intended to offer tomorrow Government's Exhibit 550T,
3 which is a videotape of a speech given by defendant Abdel
4 Rahman in Denmark in, I believe, December of '90, that was
5 seized in February of this year in Denmark. Putting aside
6 the translation issues, I know that there may have been a
7 different objection from counsel by Miss Stewart.

8 MS. STEWART: Judge, we are making our seemingly
9 endless relevancy objection to the ongoing tapes but we
10 would add to that fact that this tape apparently was seized
11 sometime in 1994, in an exercise, at least as reported by
12 the New York Times, that took place with the full
13 understanding and knowledge of the FBI, and yet it was never
14 supplied to us until this past weekend, in its entirety. We
15 did get a copy of the videotape, but even that -- and I
16 would ask the government to correct me if I am wrong --
17 appears to have been on two separate cassettes interspersed
18 with a cartoon with Arabic subtitles, so that some of the
19 questions are indeed cut off. So we don't know even -- not
20 subtitles, but some of the text is missing. Although it is
21 in the government's translation it is not on our videotape.
22 Whether that was an editing thing that they did or whether
23 that is how the original tape came through, I am also
24 arguing that this is not the most reliable of evidence, and
25 also that it is late, it is too late, that not to have given

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1 us this at a time earlier when it clearly was something they
2 knew or should have known about, they should be precluded
3 from offering it at this time.

4 MR. FITZGERALD: Your Honor, with regard to the
5 state of her copy of the tape, that is the first I am
6 hearing of it. We can look into it. I fast-forwarded to
7 the tapes, since I don't speak Arabic, and saw no cartoons,
8 to me. It looked like a whole tape to me, the video.

9 As to the timing, I can't speak to what the New
10 York Times is recording. My understanding is that the
11 search was conducted in February of this year. It was after
12 issues arose earlier in the trial where the government
13 indicated that it may seek to use evidence from Denmark,
14 that the government submitted letters rogatory to Denmark
15 and in the process of submitting the letters rogatory it
16 came to my attention that there was a series of videotapes
17 seized earlier this year. When we seized them -- I am bad
18 with dates, but some weeks back, as soon as we got them we
19 made our best efforts to convert them from the European
20 format to the American format, and as soon as we got copies
21 we would bring them daily to Ms. Stewart and make them
22 available to other counsel.

23 I believe in the middle of last week is when I
24 saw a summary of this particular item and immediately saw
25 its significance, gave that summary to defense counsel, and

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1 immediately the next evening we had a verbatim translation.
2 This is not something we were sitting on. We did not have
3 the videotape until a few weeks ago, and when it was
4 converted it was immediately given to the defense, and as it
5 was translated drafts were coming to us and going over to
6 the defense at the same time.

7 This is not something we have been sitting on.
8 In fact, my understanding is that this wasn't in the
9 possession of the Danish authorities until after this trial
10 started, as I was advised that this was seized in February
11 of '95.

12 I can address relevance if your Honor wishes.

13 THE COURT: Why don't you start with that.

14 MR. FITZGERALD: I note in here that defendant
15 Abdel Rahman talks about America in a way that is
16 inconsistent with the defense theory that he had a sacred
17 covenant with America. There are statements in here, for
18 example, page 4, the last full paragraph, that he who seeks
19 the protection from the Americans in the meaning of the
20 sentence is taking off the noose of Islam from his neck and
21 he does not become from the group of the Muslims, nor from
22 the ranks nor from the orders, but he is become from the
23 group of the Jews and the Christians.

24 There are a number of pages where he talks about
25 how it is improper for a true Muslim to seek assistance from

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1 the Americans, which is inconsistent with the theory
2 espoused in the opening that he would not be part of any
3 seditious conspiracy because he had a sacred covenant with
4 America.

5 Elsewhere we have had some examination and
6 dispute as to what the meaning of jihad is, and there is a
7 section in this transcript where he makes clear in a
8 question and answer session that jihad is by the gun, the
9 bomb, the bullet, and the missile, and I can point your
10 Honor to that question and answer, when someone suggested
11 that perhaps being successful at commerce might be one way
12 of doing jihad.

13 Elsewhere, twice during this tape -- that
14 reference is on page 22 -- defendant Abdel Rahman laughs at
15 the notion that jihad could be taking care of commerce,
16 industry and education, and his answer proceeds from there.
17 In the middle it says, I quote: "Jihad, it means to do
18 jihad with a sword, with a cannon, with the grenades and
19 with the missile. This is jihad."

20 If I could point to the last paragraph or the
21 last answer given by defendant Abdel Rahman, he states there
22 that as to what jihad means and where someone should go and
23 what they should do, he says quite clearly, on page 26:

24 "You either go to the traditional known fields
25 which do clearly exist or if you are capable, form

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1 battalions in the camps of the two fighting parties and
2 perform jihad in it. I said, if six or seven operations
3 were done to the American army the same like was done in
4 Lebanon, the American army would withdraw all its forces."

5 This goes to the heart of the case where
6 defendant Abdel Rahman is charged with soliciting an attack
7 on the American military. He has opened that that would be
8 against his principles, that he has a sacred covenant with
9 America. After this case started he went to Denmark and
10 made this speech.

11 THE COURT: Miss Stewart. That is the relevance,
12 your Honor.

13 MS. STEWART: Judge, I am not going to go into
14 the entire argument. If this was seized in February 1995,
15 from whom was it seized and where was it seized? The large
16 amount of Danish papers talk an arrest in November 1993, and
17 those are the supposed fingerprints that are connected to
18 Ramzi Yousef and Ajaj, the Danish fingerprints that are
19 connected. If this is a subsequent arrest of Said
20 Mansour -- I would like a good-faith basis for the way in
21 which these tapes come to us.

22 MR. FITZGERALD: My understanding, I mentioned to
23 Mr. Jabara on Friday, is that they were seized from Mr.
24 Mansour.

25 MS. STEWART: But the charges against him were

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1 dismissed, were they not?

2 MR. FITZGERALD: We are not going to offer any
3 details as to the arrest.

4 THE COURT: You are talking at cross purposes. I
5 think the point is not the circumstances under which they
6 were seized or from whom, but rather the speaker and the
7 views expressed.

8 MR. FITZGERALD: Yes, Judge.

9 MS. STEWART: Judge, I would say that when you
10 are handed a tape on the weekend before the government is
11 resting in a six-month case, after you have opened, after
12 you have based it on the known and unknown before you at
13 least -- and I am not saying at the point that I opened that
14 I knew everything in the case but I had spoken with everyone
15 and had read everything over that was available at that
16 point. To supply a tape on the last weekend, regardless
17 whether it was seized legally, regardless who the speaker
18 is, it is unfair. To deal with it in a very short space of
19 time makes it unfair in the way in which we try cases in
20 this country.

21 THE COURT: It may be difficult, I don't think it
22 is unfair. It would be unfair if they were sitting on it as
23 you suggested earlier. It does not appear they were. I
24 don't mean to preach, but there is always a risk in taking a
25 position at the beginning of a case when subsequent events

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1 may produce evidence that undercut that position.

2 MS. STEWART: I am saying that they did not use
3 diligence which was due, let's say that. It seems if they
4 were on the case since November 1993, they were cooperating
5 with the Danish authorities. I am sure Mr. Fitzgerald has
6 seen the letters rogatory from the Danish officials to the
7 FBI by Detective Napoli, that appears in '94 during the
8 World Trade Center case --

9 THE COURT: But again, the first seizure of this
10 tape, as I understand it, is in February 1995 -- nobody
11 disputes that -- which is after this case started, after he
12 opened and after you opened. I understand the difficulty.
13 The question is whether those difficulties amount to
14 unfairness. I don't think they do. The fact that the U.S.
15 authorities may have been cooperating with the Danes on an
16 investigation certainly doesn't put information in his head
17 and it doesn't even put information into the hands even of
18 the Danes before they have it. So I will permit it. Yes.

19 MR. STAVIS: I just rise to raise a point. Miss
20 Stewart raised the issue of the authentication of this tape
21 and your Honor seemed to indicate that it is
22 self-authenticating because it does have Miss Stewart's
23 client.

24 THE COURT: I asked if there was any dispute
25 about who was on the tape. I don't understand there to be.

1 MR. STAVIS: It may be important for the purpose
2 for which the tape is introduced. If the tape is introduced
3 against coconspirators as well as Dr. Abdel Rahman, then the
4 authentication of the tape would be important to show that
5 it is not in furtherance of the conspiracy, it somehow
6 relates to the conspiracy. I don't know, your Honor, and I
7 don't know what purpose it is being admitted for.

8 MS. STEWART: My understanding, Judge, was that
9 Mr. Fitzgerald said that they were going to check their
10 original version of the tape because this is what our
11 translators told us, that it was on two separate tapes
12 interspersed by a cartoon.

13 MR. FITZGERALD: That I will look into. We are
14 offering it only against defendant Abdel Rahman, if that
15 moots the other issues. As to Miss Stewart's copy of the
16 tape, we will check it out.

17 MR. STAVIS: I would ask the court for the
18 appropriate instruction at the appropriate time.

19 THE COURT: You'll get it. OK. Anything else?
20 Good night.

21 (In the robing room)

22 MR. SERRA: Your Honor, first of all I spoke to
23 Mr. McCarthy, I told him what I was going to tell the court,
24 he said go ahead and tell the court, basically.

25 Secondly, I would ask that this not be sealed

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1 because it is going to be discussing something that happened
2 in open court and my client would like to read it.

3 THE COURT: OK.

4 MR. SERRA: What Mr. Alvarez was alluding to when
5 I told the court that he didn't understand what he was
6 signing when he signed the so ordered stipulation, that was
7 the short version. The long version is as follows. It was
8 a two-page text document in English. I summarized for Mr.
9 Alvarez in Spanish the main provisions of the document,
10 including telling him that what the document said was that
11 we the lawyers were going to be permitted to see the Yousef
12 documents, that we could tell our clients, as I have done
13 with Mr. Alvarez, what the substance of them was but that we
14 the lawyers would not be receiving copies and therefore they
15 the clients would not be receiving copies.

16 I did not go through it word for word translating
17 every word, and my Spanish is not the quality of the Spanish
18 that is interpreted in court in any event.

19 That is what happened. Mr. Alvarez's position is
20 that he had a right to have the document translated into
21 Spanish before he signed it.

22 THE COURT: The document being the stipulation?

23 MR. SERRA: Yes, your Honor.

24 THE COURT: Other than that right, which he
25 didn't assert earlier but now does, is there some particular

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1 feature of the stipulation that he now finds inconvenient?

2 MR. SERRA: He would like a copy of the
3 documents, your Honor. I have explained to him that I don't
4 have a copy of the documents and that even if he had not
5 signed it, that hardly means that I was going to get a copy
6 of the documents, but that is his position.

7 THE COURT: That is right. I think to close the
8 circle you should go back and tell him that all that he
9 would have achieved by not signing the document is possibly
10 assured that neither he nor his lawyer would get the
11 document --

12 MR. SERRA: Your Honor, I not only told
13 Mr. Alvarez that, I told him depending on what the
14 government's position was going to be, perhaps none of the
15 lawyers would have gotten the documents.

16 THE COURT: They might have and might not have,
17 but it certainly would not have resulted in his getting a
18 copy.

19 MR. SERRA: I explained that, Judge, but in his
20 position as a defendant in a conspiracy in which the World
21 Trade Center bombing is charged as an overt act, he is
22 entitled to see the statements of coconspirators.

23 THE COURT: Statements of coconspirators in
24 furtherance of the conspiracy that are introduced in
25 evidence, which he has seen. The statement of an alleged

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1 coconspirator that is not alleged to be in furtherance of
2 the conspiracy and has not been introduced in evidence is
3 something quite different.

4 The record is complete.

5 MR. SERRA: I think the record is complete.

6 Thank you, your Honor.

7 THE COURT: Thank you very much.

8 MR. SERRA: Have a good evening.

9 (Proceedings adjourned until 9:30 a.m., Tuesday,
10 June 27, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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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,"

IBRAHIM A. EL-GABROWNY,

9 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)

10 a/k/a "Abdul Rashid Abdullah,"
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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June 27, 1995
9:45 p.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

24

25

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1 (Pages 12762 to 12763 sealed)

2 (In the robing room)

3 (Mr. Patel, Mr. Stavis and Mr. McCarthy present)

4 MR. STAVIS: Good morning.

5 MR. McCARTHY: Good morning, your Honor.

6 THE COURT: Good morning.

7 I thought while folks were coming in we could
8 talk about the evidence issue. I have your letter, and I
9 have Mr. Khuzami's letter.

10 MR. McCARTHY: On which one?

11 THE COURT: On the taped conversations. Are you
12 the wrong person?

13 MR. McCARTHY: I am the wrong person. Let me get
14 him.

15 MR. STAVIS: I have a folder outside.

16 (Pause)

17 (Mr. Khuzami and Mr. Ricco present)

18 MR. STAVIS: Mr. El-Gabrownny's attorney,
19 Mr. Ricco is here.

20 THE COURT: Fine. Good.

21 MR. RICCO: Good morning, your Honor.

22 THE COURT: Good morning. I have correspondence
23 from Mr. Stavis and Mr. Khuzami on the issue of the
24 admissibility of the telephone calls.

25 Mr. Ricco, have you seen the correspondence?

1 MR. RICCO: Yes, your Honor.

2 THE COURT: Is there anything you want to tell
3 me?

4 MR. RICCO: I don't have anything to add on those
5 issues.

6 THE COURT: OK. Let's talk about confidentiality
7 first. Your point is that there is, that is, Mr. Stavis's
8 point is that there is some evidence that the telephone
9 calls were not routinely taped, but that is different from
10 whether they were subject to monitoring. If there is no
11 expectation or no reasonable expectation of complete privacy
12 how can you claim privilege?

13 MR. STAVIS: There is an expectation of privacy,
14 your Honor.

15 THE COURT: How?

16 MR. STAVIS: Because Mr. Khuzami's letter
17 referred to a sign that says the calls are monitored. That
18 sign was not up at Attica in '91 and in '92.

19 THE COURT: Forget whether it was up there in '91
20 and '92. What about his own statements on the tape that
21 they are listening to him?

22 MR. STAVIS: His own statements on the tape that
23 they are listening to him?

24 THE COURT: Right.

25 MR. STAVIS: First of all, the call in which I'm

1 raising the matter of privilege, and that is what we should
2 remain focused on, is the call between his him and his wife
3 where there is no statement like that made. If he has a
4 general suspicion without having knowledge, that's not
5 evident from the call that I am seeking to assert the
6 privilege as to.

7 THE COURT: What you are saying is that you have
8 to focus only on that call and you can't consider anything
9 else, any other call?

10 MR. STAVIS: That is the call that I am
11 protesting, your Honor.

12 THE COURT: I understand that.

13 MR. STAVIS: There is also a legitimate argument
14 that could be made that if he has a suspicion when he speaks
15 to Ibrahim El-Gabrownny or somebody else, he might not have a
16 suspicion and he might believe, legitimately and reasonably,
17 that while they may tape my call with Ibrahim El-Gabrownny,
18 they wouldn't dare tape a call between myself and my wife.

19 THE COURT: I am talking about listening in.

20 MR. STAVIS: They wouldn't listen in on a call
21 between a husband and wife.

22 THE COURT: What about the conversation they cite
23 be between him and his wife in which they talk about the
24 possibility of being monitored?

25 MR. STAVIS: They don't talk about the

1 possibility of being monitored. They talk about let's not
2 talk over the phone. We will talk in person. I don't think
3 that is sufficient evidence to overcome the presumption in
4 favor of marital confidentiality, your Honor.

5 MR. KHUZAMI: Two points, your Honor, there are
6 calls preceding the September 20 call cited in our letter
7 whereby Mr. Nosair indicates that there are subjects he does
8 want to talk on the phone about. The call has repeated
9 admonitions by Mrs. Nosair not to say or voice
10 antigovernmental sentiments, and only quote the Koran and to
11 keep his mouth shut basically. Following that, particularly
12 the December 28 call, there are massive amounts of evidence
13 that he knew he was being monitored.

14 THE COURT: Was that a call with his wife or
15 somebody else?

16 MR. KHUZAMI: No, that is Mr. El-Gabrownny.

17 THE COURT: Let's talk about the conversations
18 with his wife.

19 MR. KHUZAMI: I think it's in the middle of page
20 3.

21 MR. STAVIS: The September 20 call, your Honor.

22 THE COURT: Page 3?

23 MR. KHUZAMI: No, I'm sorry. I was referring to
24 the letter. You are looking at the transcript.

25 THE COURT: 6 and 7 of the September 20 call?

1 MR. KHUZAMI: Right, the bottom of the page.

2 THE COURT: One second.

3 MR. KHUZAMI: Then again at 9, 10, and 12.

4 THE COURT: Wait a second.

5 MR. STAVIS: I might say, your Honor, there is no
6 evidence --

7 THE COURT: Wait. One minute.

8 (Pause)

9 THE COURT: What else in that conversation?

10 MR. KHUZAMI: There are references -- let me find
11 the pages.

12 THE COURT: Or any other conversation with his
13 wife.

14 MR. KHUZAMI: The middle of page 9. "Sayyid, I'm
15 begging you," that reference.

16 THE COURT: But that is equally, that can equally
17 be interpreted as a statement, generally, to use the
18 vernacular, "Don't run your mouth."

19 MR. KHUZAMI: I understand.

20 THE COURT: Not, "Don't run your mouth on the
21 phone."

22 MR. KHUZAMI: There are, as I mentioned, calls
23 preceding the September 20 call where there are statements
24 by Mr. Nosair indicating that he believes he was monitored.

25 THE COURT: With his wife?

1 MR. KHUZAMI: I don't know if I can answer the
2 question without going back to the office as to who they
3 were with.

4 THE COURT: You are going to have to answer it
5 before you get this in.

6 MR. KHUZAMI: I understand.

7 THE COURT: I think one of the points Mr. Stavis
8 makes is a legitimate one, namely, that you can have a
9 belief or a suspicion that your calls are being monitored
10 and still not believe that they would listen in on a call
11 with your wife.

12 Unless you can show me that he had some reason to
13 believe that his calls with his wife were being monitored,
14 either from the posting of the sign, which he says wasn't
15 there, or through statements in a conversation with his wife
16 that he believed he was being monitored or her statements to
17 him that she thought he was being monitored in a fashion
18 that really relates to monitoring and not to general advice,
19 this is out.

20 MR. STAVIS: May I make one additional point,
21 your Honor. There is no evidence that the calls were
22 monitored. The portion of the hearing that I gave you
23 indicates that the way calls -- it is not that calls are
24 monitored and then decided to be taped. It has to focus on
25 a person to tape --

1 THE COURT: It is not a question of whether they
2 were actually monitored. The invocation of the privilege
3 goes to a person's expectation or lack of it. If they had a
4 sign up, then whether they were actually monitoring or not,
5 unless he knew that they weren't, he has no expectation.
6 There is a sign over at the MCC. Sometimes they monitor,
7 sometimes they don't, I think. But let's see what else you
8 come up with.

9 MR. KHUZAMI: The only other point I would make,
10 your Honor, is there is a regulation indicating that these
11 telephones were posted. As to Mr. Stavis's proffer that
12 they weren't there, I would think that the balance of the
13 evidence, while it is my burden to show that they should be
14 admissible.

15 THE COURT: Right. It is your burden.

16 MR. KHUZAMI: That certainly that directive and
17 the state of it certainly rebuts Mr. Stavis's proffer that
18 it wasn't there.

19 THE COURT: I assume Mr. Stavis is making a
20 proffer.

21 MR. STAVIS: I am prepared to have testimony at
22 an evidentiary hearing.

23 THE COURT: Fine. You ought to be prepared to
24 have somebody testify that it was there.

25 MR. KHUZAMI: The only other point I would make

1 is that in this four- or five-month period, there is no
2 indication that Mr. Nosair ever drew a distinction between
3 phone calls with his wife or anyone else. He constantly
4 says that they're listening to me, and I'm being monitored.
5 That's from before the September 20 call to December 28.

6 MR. STAVIS: I will referral your Honor to the
7 September 22 call which discusses the most intimate of
8 marital affairs which would seem to indicate that there was
9 some expectation of privacy in the conversations.

10 MR. KHUZAMI: In terms of the content, one also
11 wouldn't expect Mr. Nosair to be saying some of the things
12 he said regarding the government and others if he thought he
13 was being monitored. I don't think that the substance
14 reflects his state of mind.

15 MR. STAVIS: I am being deliberately cryptic,
16 your Honor.

17 THE COURT: I think if he was talking about sex
18 to his wife on the telephone that one can draw the
19 conclusion that he didn't think he was being monitored.
20 Whether that expectation was reasonable or not is something
21 that is up to you to prove. They call it a presumption for
22 a reason, and the presumption favors him. So it's not in
23 unless I rule otherwise, that conversation.

24 MR. KHUZAMI: OK. We will check the other calls.

25 THE COURT: Thank you. You can also find out if

1 you have a witness.

2 MR. PATEL: Your Honor, do you want to deal with,
3 or shall we deal with this at a later point, 403 objections
4 to parts of these, and other kinds of objections to these
5 things.

6 THE COURT: When do you plan to offer them?

7 MR. KHUZAMI: I will over the break go back and
8 check the calls, so they won't be in until late morning or
9 perhaps the afternoon.

10 THE COURT: What other objections are there?

11 MR. PATEL: Your Honor, the question about, I'm
12 sorry --

13 THE COURT: I haven't reviewed these, so you are
14 really going to have to focus me.

15 MR. PATEL: There is a discussion in one of these
16 conversations, to paraphrase it, about being grateful that
17 God destroyed the Air Force base in Florida, or Hurricane
18 Andrew. It's essentially, "God as my co-conspirator."

19 The question is how is this a conversation in
20 furtherance of the conspiracy. It comes at the very end of
21 the conversation.

22 THE COURT: I gather the government is using it
23 to date the conversation, not for any other reason.

24 MR. PATEL: No. I assume that they are offering
25 it -- we don't have any great disputes about dates, although

1 Mr. Khuzami and I may have had a misunderstanding about
2 that. I really don't see how that aspect of, you know,
3 one's prayers being answered --

4 THE COURT: That is gratuitous. It really is.
5 What are you offering it to show?

6 MR. KHUZAMI: It is an admission.

7 THE COURT: About what? That he conspired with
8 God to destroy the Air Force base?

9 MR. KHUZAMI: No. It's that his prayers were
10 answered by causing destruction on an Air Force base and
11 that this is retaliation against the devils, which is what
12 he refers to.

13 THE COURT: Given the other evidence in this
14 case, and given the gratuitously inflammatory nature of that
15 statement, a 403 balance I think recommends that I exclude
16 it, and I am going to exclude it.

17 MR. STAVIS: There is an authentication issue I
18 believe.

19 THE COURT: Let's talk about that.

20 MR. KHUZAMI: I think that the conversations are
21 amply self-authenticating. There are references within them
22 to Mr. Nosair referring to himself as Sayyid, the people
23 he's speaking to referring him to as Sayyid, and a whole
24 string of events and circumstances that the record shows
25 would be known peculiarly to him.

1 THE COURT: That it seems to me is a soft point.
2 It really is.

3 MR. STAVIS: I believe that under 901(6), I think
4 it is, telephone calls are required to be authenticated as
5 to when -- I believe before you can admit a tape recording,
6 when the tape recording was made, where the tape recording
7 went physically, and whose voice is on the tape recording.
8 The number dialed is an important consideration under Rule
9 901, and then a voice identification. Under 902, which is
10 self-authenticating, they don't list telephone calls under
11 that section of the Federal Rules.

12 THE COURT: I don't have the rule in front of me
13 so we are going to have to revisit this I think.

14 MR. KHUZAMI: That is one way to authenticate a
15 phone call. I don't believe it is the only way. I think
16 contents and substance come under 904(b)(4).

17 MR. STAVIS: Cutting to the chase, I was asked to
18 stipulate to this and I have a strategic reason -- it is
19 part of my defense to show the tape recordings were made of
20 the telephone calls. For purposes of my defense, I am
21 unable to stipulate to it, and I believe the government
22 should have to authenticate it.

23 THE COURT: I am not suggesting that you are
24 obligated to stipulate to it.

25 MR. STAVIS: I am just being candid, which is

1 something that I am not supposed to do.

2 MR. KHUZAMI: If that issue is relevant, Mr.
3 Stavis will be entitled to a witness that the government
4 will provide concerning tape recording at Attica. I don't
5 think that really plays a part in whether or not these calls
6 are self-authenticating.

7 MR. STAVIS: I was just advising your Honor that
8 I view it as important to cross-examine the witness from
9 Attica who will authenticate it.

10 THE COURT: They call it a stipulation for a
11 reason, and that is that somebody agrees to it. If somebody
12 doesn't agree to it, the government has to prove its case.
13 Those are the rules.

14 MR. RICCO: If you decide that the calls are
15 self-authenticating, then I would request that the dates of
16 the calls be placed on the exhibit.

17 THE COURT: Be placed or not placed?

18 MR. RICCO: Be placed on the exhibit.

19 Mr. Khuzami removed the dates because of the lack
20 of an agreement between the lawyers and the government, but
21 I think that it is important that if we know the dates that
22 the dates appear on the calls themselves.

23 MR. KHUZAMI: I'm happy to put the dates. I
24 thought we had to self-authenticate the dates as well.

25 THE COURT: I would think you would have to time

1 them.

2 MR. KHUZAMI: That's why we gave a span based on
3 the content of the call.

4 THE COURT: Why don't you work that mechanical
5 part out.

6 MR. PATEL: There was a misunderstanding.

7 THE COURT: OK. Thank you, all.

8 (In open court)

9 THE COURT: Good morning.

10 MS. STEWART: Your Honor, I have one thing to
11 take up before the jury comes in.

12 THE COURT: Yes.

13 MS. STEWART: I apparently was not listening
14 carefully enough, but my client was yesterday afternoon, and
15 wished me to respond to that part of the government's
16 argument with regard to the Denmark tape that's being
17 offered this morning which dealt with the fact that it was
18 evidence to prove that Dr. Abdel Rahman did not have a
19 covenant or did not believe he had a covenant with the
20 United States that would guarantee his being at peace with
21 the United States during the time that his visa was in
22 operation, which is what I opened on and what I said to the
23 jury.

24 We would contend that there is nothing in this
25 document that indicates anything to the contrary. Once

1 again, the sheik is talking in Denmark to Danish Moslem
2 listeners about events in the Middle East at the point at
3 which the Americans are in the Middle East with an army. He
4 is suggesting to them that one of the fields of jihad may be
5 in the Middle East attacking the Americans as allies of the
6 enemies of Moslems.

7 That is a very different thing than urging people
8 to attack Americans in America on their home ground. We
9 would contend that it does not speak at all to his covenant
10 to remain and live peacefully within the United States.

11 THE COURT: Which exhibit was that?

12 MR. FITZGERALD: 550T.

13 THE COURT: What page are we talking about?

14 MR. FITZGERALD: I think the two references --

15 THE COURT: Is it in the questions at the end?

16 MR. FITZGERALD: Yes, Judge, the last page.

17 There is a reference on page 26.

18 THE COURT: One second.

19 And the other?

20 MR. FITZGERALD: Yes. Page 4, the last full
21 paragraph directly addresses the American issue.

22 THE COURT: I think it is a jury issue.

23 What else?

24 MS. STEWART: Judge, just with regard to that on
25 page 4, which I did not address, it is our contention that

1 there is a mistranslation here, and that the translation for
2 "friends," to which all of this refers, really is talking
3 about alliances, allies in the geopolitical sense of that
4 word.

5 THE COURT: Where?

6 MS. STEWART: On page 4.

7 THE COURT: In which paragraph?

8 MS. STEWART: The next to the last paragraph.
9 But I think to understand that, you have to read the
10 paragraph ahead of that.

11 THE COURT: You mean the one before it?

12 MS. STEWART: Yes.

13 THE COURT: What you are saying is the word was
14 "ally" not "friend"?

15 MS. STEWART: Yes. Meaning that it's talking
16 about -- it certainly is a different word in English than
17 "friend." "Friend" connotes some kind of emotional tie. An
18 ally of someone --

19 THE COURT: I can't speak to what the word was
20 that was used in Arabic, but that it seems to me goes to the
21 accuracy of the translation. There is going to be a
22 translator to testify to this, is there not?

23 MR. FITZGERALD: Yes, Judge.

24 THE COURT: I assume you will cross on that?

25 MS. STEWART: Yes. But my answer is that I'm

1 using that also as part of the argument that it does not
2 really deal with a covenant, because we are talking here
3 about countries aligning themselves with other countries.
4 We are not talking about an individual entering the country
5 and agreeing to remain peaceful while he is under the
6 protection of that country.

7 THE COURT: That is a distinction that I think
8 you can argue to the jury. That really goes to the
9 statement at the end more than it does to the statement on
10 page 4.

11 MS. STEWART: The other thing, Judge, we would
12 raise once again is the redundancy argument, that we have
13 had so many sermons and so many questions and answers, and
14 this is just piling it on, nothing new.

15 THE COURT: I don't know that we have had, number
16 one, that many, and number two, this makes certain explicit
17 statements that were made in one or two others, but I don't
18 see it as all that redundant.

19 MS. STEWART: Finally, Judge, these are general
20 opinions, general religious political opinions. These are
21 not seditious expressions. They are opinions of the sheik
22 communicated to followers or to people who are listening --

23 THE COURT: They are not being offered as
24 statements in furtherance. That is the question.

25 MS. STEWART: They are offered as to his intent,

1 and I would say they show no seditious intent.

2 THE COURT: Again, that is an argument.

3 MS. AMSTERDAM: Just so I am clear, your Honor,
4 these statements are only being admitted against Sheik
5 Rahman?

6 THE COURT: Yes.

7 MS. AMSTERDAM: Thank you, Judge.

8 MS. STEWART: Judge, one housekeeping situation
9 has arisen. Mr. Feghali translated half of the Denmark
10 tape. Mr. Feghali has been Mr. Jabara's witness in this
11 trial. Whenever he has appeared, Mr. Jabara has
12 cross-examined him. However, I did the preparation on the
13 Denmark tapes. So I am just alerting you to the fact that
14 we are both going to cross-examine Mr. Feghali this morning.
15 He is going to cross-examine him on the
16 translations of the Saleh documents, and I am going to
17 cross-examine him on the Denmark tape. We are not
18 duplicating each other at all.

19 THE COURT: Fine, OK. So the usual rule about
20 one lawyer one witness --

21 MS. STEWART: No double teaming.

22 THE COURT: Right.

23 -- will be amended for this purpose.

24 Thanks for telling me.

25 MS. STEWART: OK.

1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 JURORS: Good morning.

4 THE COURT: We are starting notably late today.

5 This is my fault if it is anybody's, because I had some
6 legal issues to talk to the lawyers about. Usually I try to
7 do that at a time when you are not waiting in the jury room.
8 Sometimes I am successful, sometimes I am not. This morning
9 I wasn't. Sorry.

10 MR. KHUZAMI: Your Honor, the government calls
11 Mike Feghali as its next witness.

12 (Continued on next page)

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1 MIKE FEGHALI,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 MR. KHUZAMI: May I proceed, your Honor?

5 THE COURT: Please.

6 DIRECT EXAMINATION

7 BY MR. KHUZAMI:

8 Q Mr. Feghali, you have testified before in this
9 case, is that correct?

10 A Yes, sir, I did.

11 Q Are you still employed as a translator for the
12 Federal Bureau of Investigation?

13 A Yes, sir, I am.

14 Q Would you please pick up what has been placed on
15 the jury stand in a folder marked Government's Exhibit 809
16 and 809T.

17 A Yes, sir, I have it.

18 Q Let me ask you if you recognize those items?

19 A Yes, I do.

20 Q What are they?

21 A This is an Arabic document which I have
22 translated into English.

23 Q Is 809T the English translation of the Arabic
24 document marked Government's Exhibit 809?

25 A Yes, sir, it is.

1 Q Did you create 809T by translating the Arabic?

2 A Yes, sir.

3 Q How do you know that?

4 A Because I have initialed both of them.

5 Q Is the English translation in Government's
6 Exhibit 809T a fair and accurate translation of the Arabic
7 that appears on --

8 THE COURT: Mr. Khuzami, your microphone is not
9 working.

10 Q Let me repeat the last question. Is the English
11 translation that appears in Government's Exhibit 809T a fair
12 and accurate translation of the Arabic that appears in
13 Government's Exhibit 809?

14 A Yes, sir, I believe it is.

15 MR. KHUZAMI: Your Honor, at this time I would
16 move Government's Exhibit 809 and 809T into evidence.

17 THE COURT: 809 and 809T are received without
18 objection.

19 (Government's Exhibits 809 and 809T received in
20 evidence)

21 Q Mr. Feghali, if you would next please pick up the
22 two groups of exhibits marked Government's Exhibits 170
23 through 177 and 179, and also the corresponding T exhibits,
24 and take a look at those, please.

25 A Yes, sir, from 170 through 177, 178 is not

1 included here but the rest I have initialed.

2 Q And the rest is 179, is that correct?

3 A Yes, sir.

4 Q Do you recognize those documents?

5 A Yes, I do.

6 Q What are they?

7 A They are Arabic documents which I have translated
8 into English.

9 Q How do you know you translated them?

10 A I have initialed both the original and the
11 translation.

12 Q Are the English translations that appear on
13 Government's Exhibits 170 through 177T and 179T, are they
14 fair and accurate translations of the Arabic that appears on
15 the corresponding exhibits, Government's Exhibits 170
16 through 177 and 179?

17 A Yes, sir, they are.

18 MR. KHUZAMI: Your Honor, at this time I would
19 move Government's Exhibits 170 through 177 and 179 into
20 evidence, as well as the corresponding T exhibits.

21 MR. NOOTER: Objection.

22 THE COURT: That objection has been previously
23 ruled on and it is overruled. Those exhibits are received.

24 (Government's Exhibits 170 through 177, 179, 170T
25 through 177T and 179T were received in evidence)

1 Q Mr. Feghali, if you would next please take out
2 the items in the folder, Government's Exhibits W2611 and
3 W2602. Do you see those items?

4 A Yes, I do.

5 Q What are the Exhibits W2611 and W2602?

6 A The translations are excerpts that I was shown
7 from these two books that I have translated.

8 Q The books are phone books?

9 A Yes, sir.

10 Q And you translated selected entries in those
11 phone books?

12 A Right.

13 Q Is the translation marked Government's Exhibits
14 W2611T and W2602T?

15 A Yes, sir, they are.

16 Q And are those translations of those selected
17 portions fair and accurate translations?

18 A Yes, they are.

19 (Continued on next page)

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1 MR. KHUZAMI: Your Honor, I would move
2 Government's Exhibits W2611T and W2602T in evidence.

3 MR. STAVIS: May I have a moment with cocounsel?

4 THE COURT: Yes.

5 MR. STAVIS: Your Honor, may we have a side bar,
6 please?

7 THE COURT: As to this?

8 MR. STAVIS: Yes.

9 (At the side bar)

10 MR. STAVIS: Your Honor, in a previous
11 incarnation, Government's Exhibit W2602T and 2611T, which
12 represent Mr. Salameh's telephone books, were a full
13 translation that were provided to us by the government
14 earlier. This is a summary, or the best of Mohammad
15 Salameh's telephone book. There was a specific item that I
16 wished to raise that Mr. Patel and I discussed earlier in
17 the trial, which is not on this summary.

18 MR. FITZGERALD: Judge, the 2602 --

19 THE COURT: Wait a second. Is it a summary or is
20 it simply some entries?

21 MR. FITZGERALD: Some entries.

22 THE COURT: That is not a summary.

23 MR. FITZGERALD: The previous book had been
24 translated at a prior trial. There was no stipulation as to
25 the translation or the entire phone book. I will stipulate

1 to any entry of any phone number. If he wants it, I will
2 stip to it. Anything that is a fair and accurate
3 translation in those books I will stip with any counsel as
4 to what is in there.

5 THE COURT: OK.

6 MR. PATEL: Thank you.

7 (In open court)

8 THE COURT: That is on 2602?

9 MR. FITZGERALD: And 2611.

10 MR. STAVIS: Subject to the representations made
11 by the government, I have no objections to the admission of
12 this.

13 THE COURT: 2611, 2602, and the corresponding T
14 numbers are received subject to the agreement that any other
15 entries from those documents may be received as well.

16 (Government's Exhibits 2602, 2611, 2602T and
17 2611T received in evidence)

18 Q Mr. Feghali, would you please pick up the
19 videotape and transcript in front of you marked, the
20 videotape 550 and the corresponding transcript 550T, and I
21 ask you if you recognize those items?

22 A Yes, I do.

23 Q What are they?

24 A This is a videotape of a lecture and question and
25 answer in Arabic, and I have translated part of that from

1 the Arabic in the English document which is 550T.

2 Q How do you recognize those as items that you
3 translated in part?

4 A I have initialed both.

5 Q At what part of the transcript, Government's
6 Exhibit 550T, does your translation of the videotape begin?

7 A It's part of page 14 and on to the end of the
8 document.

9 Q Do you know where in the end of the document?

10 A Beg your pardon.

11 Q Do you know where in the end of the document your
12 translation begins?

13 A Where in the document?

14 Q Where on page 14 does your translation begin?

15 A Not right offhand. I can look it up.

16 Q Why don't you do that.

17 A I believe from "If we read the memoires of
18 President Nixon."

19 Q Is the portion of the videotape that you
20 translated beginning at that statement and going to the end,
21 is that a fair and accurate translation of the corresponding
22 Arabic portion that appears on Government's Exhibits 550?

23 A Yes, sir, it is.

24 MR. KHUZAMI: No further questions.

25 THE COURT: Cross. Mr. Jabara, representing

1 Dr. Abdel Rahman. Go ahead.

2 CROSS-EXAMINATION

3 BY MR. JABARA:

4 Q Good morning, sir.

5 A Good morning, sir.

6 Q Mr. Feghali, with regard to these translations
7 that you conducted for the government in this case, there
8 are a number of quotations, are there not, from the Koran?

9 A Yes, sir.

10 Q Did you use any edition translation of the Koran
11 to refer to in the the use of making these translations?

12 A Yes, sir. Well, not one particularly. I think
13 there are three or four different translations in the
14 office, and I use whatever translation is available to me.

15 Q And you looked to these different translations?

16 A Yes, sir.

17 Q Mr. Feghali, do you understand that the Muslims
18 regard the Koran as the revealed word of God to the Prophet
19 Mohammed?

20 A Yes, I do.

21 Q You understand that?

22 A Yes, sir.

23 Q And you understand that this was revealed to
24 Mohammed in the Arabic language, is that correct?

25 A I think so. I am not sure but I think so, yes,

1 sir.

2 Q And you realize, do you not, Mr. Feghali, that
3 the Muslims are very particular about how this Koran is
4 translated, isn't that correct?

5 A Probably they are. I am not sure. I am not
6 Muslim. I don't know.

7 Q Mr. Feghali, when you translated -- you recall on
8 a previous occasion I asked you about the use of the
9 recitation "In the name of God most gracious most merciful"?

10 A Yes, sir.

11 Q This appears on various documents that are
12 written, is that correct?

13 A There were three documents in one, and I have
14 translated two, but the third one did not appear on the
15 working copy.

16 Q Yes.

17 A That's it, but I have translated it on the two
18 other documents which were included.

19 Q We are talking about the previous documents?

20 A Yes.

21 Q Mr. Feghali, in terms of these translations, for
22 instance, do you have in front of you the translations that
23 were just now referred to and admitted into evidence?

24 A Yes, sir.

25 Q In translation 176 -- do you have that in front

1 of you, Mr. Feghali?

2 A I think I do. Let me just look it up so we make
3 sure we are communicating. Yes, sir.

4 Q That document you have entitled Al-Da'wa, do you
5 not?

6 A Yes, sir.

7 Q Al-Da'wa means something in Arabic, does it not?

8 A Yes, it does.

9 Q It can be translated, in other words?

10 A Yes, it can, if it is a word by itself.

11 Q Here it appears as a word by itself, does it not?

12 A Well, it looks to me, sir, like it's the name of
13 a newsletter or a magazine, if you want. That usually is
14 not, you know, translatable, not translated.

15 Q It is not translatable or it is not translated?

16 A Usually it is not translated because that's the
17 name of that magazine.

18 Q What does it mean, Mr. Feghali?

19 A It means the calling, if you would.

20 Q It means preaching, does it not?

21 A No. It means calling. Al-Da'wa is to call.

22 Q But it is a call to God, is it not?

23 A Yes.

24 Q It is not any calling. It is not my calling your
25 name out across the room.

1 A You could call it that way. If I were going to
2 call somebody across the room, I would use the same word,
3 sir.

4 Q But here the word translated means the call to
5 God, is that correct?

6 A I believe so. I mean, we can call it that way,
7 yes.

8 Q Mr. Feghali, immediately under that to the left,
9 you will see Friday, Rajab 23, R-A-J-A-B, 1411.

10 A Yes, sir.

11 Q Can you tell me what that is?

12 A This is a Muslim dating, a lunar dating.

13 Q So that is the Muslim calendar, is that correct?

14 A Yes.

15 Q That corresponds to February 1 of 1991, is that
16 correct?

17 A Right, yes, sir.

18 Q In the second paragraph of that document, Mr.
19 Feghali, I notice that you refer to several passages of the
20 Koran, is that correct?

21 A Yes, sir.

22 Q The chapter is divided into chapters?

23 A Yes, first books. First it is divided by books.

24 Q By books?

25 A Right, like the book of Al Omran.

1 Q What is the title of this book?

2 A Al Omran.

3 Q What does Al Omran mean?

4 A It is the name of a family. Al is like a family
5 and Ran is the name of the family.

6 THE COURT: Can I see counsel at the side,
7 please.

8 (At the side bar)

9 THE COURT: Where is this going?

10 MR. JABARA: Getting into the fact that he has
11 made some errors here. The title of this chapter is not Al
12 Omran, it is Al Omaran, which is very different. There are
13 some other errors that he made.

14 THE COURT: Something to do with the issues in
15 this case or general errors?

16 MR. JABARA: No, it has to do with the way the
17 translations were made,

18 MR. KHUZAMI: Just for the record, these are
19 documents that is only being offered against Wahid Saleh.

20 MR. NOOTER: That is true, but I have essentially
21 deferred some of this to Mr. Jabara because I don't
22 understand Arabic.

23 MS. STEWART: One of the documents is signed Al
24 Gama Islamiya, which has been mentioned in connection with
25 Dr. Abdel Rahman.

1 THE COURT: I am not questioning any of that and
2 I will let you do it for a limited period of time, but not
3 for a substantial period of time. Let's go.

4 (Continued on next page)

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1 (In open court)

2 BY MR. JABARA:

3 Q Mr. Feghali, turning, if you will, to document
4 174.

5 A Yes, sir.

6 Q In this document, Mr. Feghali, again you
7 translated from the Koran, did you not?

8 A If it is a quotation from the Koran, I did, yes,
9 sir.

10 Q The word that you translated Al-Janah?

11 A Yes.

12 Q That's A-L dash J-A-N-A-H -- how do you translate
13 that, Mr. Feghali?

14 A I am sorry. I can't see the word here. Can you
15 point it out for me?

16 Q Yes. It is immediately under the heading in the
17 first quotation from the Koran on that document, in the
18 first line.

19 A Under the quotation?

20 Q Yes.

21 A OK, the third line, the persons are joyful.

22 Q No. Or do you think that you shall enter -- this
23 is 174, where it says a communique from the mosques and
24 Islamic Center in New York and New Jersey regarding the
25 situation in Palestine.

1 A Yes, sir.

2 Q Immediately under that, how do you translate the
3 word Al-Janah?

4 A You mean the garden? Is that what you are
5 talking about, sir? I said here the garden?

6 Q You translate that as the garden?

7 A Is this what you refer to first? This is the
8 first line.

9 Q Yes.

10 A And then afterwards I have the word of bliss.

11 Q You translated it as garden, did you not?

12 A No, I didn't translate it, sir. I copied it from
13 the Koran.

14 Q You copied it from the Koran?

15 A Yes.

16 Q From what copy of the Koran?

17 A I really don't recall which edition it is, but
18 definitely, sir, when it is a quotation I look it up in one
19 of the translations.

20 Q On the second page, Mr. Feghali, of that
21 document, the word jihad can be translated, can it not?

22 A Yes, sometimes it can. Sometimes it comes as a
23 name, which you cannot translate.

24 Q But it is a word, another Arabic word. You
25 translated an Arabic document and it is filled with Arabic

1 words and you translate those, do you not?

2 A Not always true, sir. I try to be very accurate
3 in what I am doing, so if it is a name jihad only, I don't
4 translate it, I put it as jihad. But if he is talking about
5 jihad as a verb, I would use struggle or one --

6 Q Struggle, is that a verb?

7 A No, to struggle. Like if he says, you know, to
8 act jihad I probably would use -- it depends how it is in
9 Arabic, sir.

10 Q Would it be correct to say to struggle in the
11 path of God?

12 A To struggle what?

13 Q In the path of God?

14 A Well, I would have to see it in Arabic, sir, to
15 tell you if I can translate it that way.

16 Q Let's take the document 174 and look on the
17 second page, item on the second page marked second.

18 A What line would that be, sir?

19 Q The second line.

20 A Second line.

21 A Is that first point?

22 Q No, it's the second point, the second line in the
23 second point.

24 A Yes, sir, I see it.

25 Q Doesn't that mean struggle in the cause of God?

1 A No. Here I would definitely say, you know, for
2 jihad. It's used as the word jihad without any other
3 indication on it, that to struggle, so I use the word jihad
4 just as it is.

5 Q But it could be translated as jihad, could it
6 not?

7 A I would be pushing it, sir. I feel like I would
8 not be comfortable with it if I use struggle here.
9 Sometimes I have in other documents but not here, I wouldn't
10 use it here.

11 Q Let's take the next line after that.

12 A All right.

13 Q Do you know what a caliph is?

14 A How is that?

15 Q Do you know what a caliph is?

16 A Caliph?

17 Q Yes.

18 A Khalifa, you mean.

19 Q How do you translate khalifa in English?

20 A Usually I use khalifa because it is known in
21 English also.

22 Q Why didn't you translate it into the English word
23 if there is an English word for it?

24 A Why didn't I?

25 Q Yes.

1 A Let me look at it here. Let me tell you why, I
2 will be glad. This is under third, sir?

3 Q Under second.

4 A I think I have it, khalifa. Why is khalifa?

5 Q No, I said is there an English word for khalifa?

6 A Yes.

7 Q What is it?

8 A Caliph.

9 Q No, it is caliph, is it not? You said caliph
10 earlier, did you not?

11 MR. KHUZAMI: Objection to form.

12 THE COURT: Sustained.

13 Q What does that mean? What does khalifa mean?

14 A Khalifa is a Muslim leader who would issue fatwas
15 and who leads the Muslim religion and community.

16 Q Doesn't khalifa mean successor?

17 A In one sense, yes, it does.

18 Q And isn't the khalifa that we are talking about
19 here the successor to the Prophet Mohammed?

20 A Not necessarily. Khalifa today could be a
21 religious leader, and what the text is talking about is
22 finding a religious leader.

23 Q You are not an expert on the Muslim religion, are
24 you?

25 A No, sir, I am not. But what I am reading here,

1 sir, I go by the spirit of the text and by the letter of the
2 text, and I try to do the honest job possible.

3 Q But there is an English translation for khalifa,
4 is there not, and it is chief?

5 A Yes, it is called khalifa too.

6 Q In the English --

7 A In the English, yes, sir.

8 Q Mr. Feghali, I would like to have you take a look
9 at now, if you will, Government's Exhibit 172T, or 172. If
10 you just get the Arabic of that.

11 A Yes, sir.

12 Q If you just look at the Arabic -- may I approach
13 the witness, your Honor?

14 THE COURT: Yes.

15 Q Mr. Feghali, I would like to point your attention
16 to one of the paragraphs here and I would like to ask you to
17 translate it for me on this pad of paper, if you will,
18 beginning right here, the whole sentence.

19 A The whole sentence.

20 (Pause)

21 Q Would you please read to me --

22 THE COURT: First of all, I want that document
23 marked as something.

24 MR. JABARA: All right. Abdel Rahman -- I don't
25 know --

1 THE COURT: You mark your own exhibits. Just,
2 what is the next number or letter?

3 MR. JABARA: I don't know.

4 THE COURT: I believe it is U or T.

5 THE CLERK: I think it is T.

6 Q I would like to show you what is Abdel Rahman T
7 and ask you to read that.

8 MR. KHUZAMI: Excuse me, your Honor. May the
9 government just take a look at the exhibit?

10 MR. JABARA: Sure.

11 A "The pronunciation of the verse leaves no room
12 for doubt. The pronunciation and the meaning of jihad, of
13 the soul, and sin and the devil, as some wish."

14 I think I missed a word, "against" jihad, here.
15 But nevertheless.

16 Q Mr. Feghali, I would like to have you look at the
17 English translation marked as 172T.

18 A Yes, sir, I have.

19 Q I would like to have you read that translation
20 that you just gave that appears in 172T.

21 A Yes, sir. "The meaning of this word and its
22 pronunciation leaves no room for any doubt. Jihad is not
23 against the self, not against the sin and not against the
24 devil as some wants it."

25 Q In this translation that you have just provided

1 for me here, do you find the word "verse" in the 172T that
2 you translated and submitted here?

3 A Yes.

4 Q Where do you find that?

5 A In Arabic it says the second word.

6 Q No, in the English translation.

7 A In the typed one?

8 Q That is correct.

9 A Let me see here, sir. I think I used "word"
10 instead of "verse."

11 Q Is "verse" the same as "word"?

12 A Sometimes it may mean the same thing, sir. If he
13 is talking about the words that he is saying, you know, when
14 a preacher says something, it's his word.

15 Q The word aya, doesn't that mean a verse of the
16 Koran?

17 A Yes, it does.

18 Q So he is not talking about the word of the
19 preacher here, is that correct?

20 A I am not sure if he is referring to a certain aya
21 in particular or just the words about jihad.

22 Q The word that appears in Arabic is aya, A-Y-A, is
23 that correct?

24 A That is correct.

25 Q And that means verse or chapter of the Koran, is

1 that correct?

2 A Yes, the literal meaning.

3 Q And you do not have that in your translation, do
4 you?

5 A Yes, I do.

6 Q The word "verse"?

7 A No, I don't have the word "verse," I am sorry.

8 Q And the word "against," how many times did you
9 find in your translation did you use the word "against"?

10 A How many times?

11 Q Yes, in this translation of that sentence?

12 A I don't know, sir. I didn't count them.

13 Q Take a look at 172T.

14 A All right. You want me to count --

15 Q Yes, in that sentence.

16 A In that sentence, you mean. Well, three times.

17 Q In the translation that you just gave me and you
18 wrote here on the stand, did you use the word "against"?

19 A No, I don't think I did.

20 Q Fine. Mr. Feghali, in any of the translations
21 that you did, did you ever translate a noun to be struggle,
22 the word jihad as a noun to be struggle?

23 A I could have. I am not perfect. I don't claim
24 to be. And I don't know if it has --

25 THE COURT: Question. Are you talking about all

1 the translations he has done for this case?

2 MR. JABARA: I was talking about that, all the
3 translations, but let me be specific, your Honor.

4 Q In, say, document 172T, is there any place in
5 there where you translated the word jihad to be struggle?

6 A I might have. If it looks to me in Arabic
7 that --

8 Q Would you take a look at it and tell me.

9 MR. KHUZAMI: Objection, cutting off the witness.

10 THE COURT: Sustained.

11 Do you want to put a question.

12 MR. JABARA: Yes Jabara.

13 MR. JABARA: Yes.

14 Q There is a word in here, Mr. Feghali, is there
15 not?

16 A Yes, sir.

17 Q You utilized that as an Arabic word, did you not?

18 A Right.

19 Q Can you tell me what that means?

20 A Hadeeth is discussion if you want to take the
21 letter word, but hadeeth in the Islamic religion is the
22 Islamic traditions.

23 Q Referring to page 3, Mr. Feghali, of Government's
24 Exhibit 172T.

25 A Yes, sir, I have it.

1 Q On paragraph 3.

2 A Yes, sir.

3 Q We find two Arabic words that you use there,
4 jihad and da'wa. There da'wa is not referring to the name
5 of a newspaper or publication, is it?

6 A I don't know what they are referring to.

7 Q Well, you made a decision not to translate the
8 word da'wa there, did you not?

9 A Yes.

10 Q Why did you not translate it?

11 A Because it is still on the same document, and
12 right here the name is da'wa.

13 Q Are they referring in the word da'wa here to the
14 newspaper or are they referring to something else?

15 A They could be referring to either one.

16 Q So you don't know.

17 A They could refer to the paper or they could refer
18 to the calling.

19 Q So you don't know?

20 A No, I don't know for sure.

21 Q So you made a decision, though, that they were
22 referring to the paper, did you not?

23 A Yes, I would say so.

24 MR. JABARA: I have nothing further of this
25 witness, your Honor.

1 THE COURT: Miss Stewart, also representing
2 Dr. Abdel Rahman, but with respect to another exhibit. Go
3 ahead.

4 CROSS-EXAMINATION

5 BY MS. STEWART:

6 Q Good morning, Mr. Feghali.

7 A Good morning, ma'am.

8 Q You also indicated that you had worked on the
9 translation of Government's Exhibit 550T, is that right?

10 THE COURT: Miss Stewart, you will have to talk
11 into the microphone to be heard. Thank you.

12 Q Mr. Feghali, you have indicated that you also
13 worked on the translation of Government's Exhibit 550T, is
14 that right?

15 A Yes, ma'am, I did.

16 MS. STEWART: Your Honor, is the jury provided
17 with that document and may they turn to it at this time?

18 THE COURT: They are provided with it but it
19 hasn't been offered yet. If you want them to turn to it --

20 MS. STEWART: I am sorry.

21 THE COURT: It is not offered because only the
22 end has been authenticated. But if you want to cross about
23 it and you think --

24 MS. STEWART: Let me establish from Mr. Feghali
25 what portions he worked on, and maybe the jury could work on

1 that.

2 THE COURT: He has testified that he worked from
3 page 14 on.

4 MR. KHUZAMI: Your Honor, the government will
5 offer the portion of the transcript that Mr. Feghali
6 translated and the corresponding portions of the videotape
7 at this time.

8 THE COURT: I would rather not have an exhibit
9 offered --

10 MS. STEWART: I would not object to the entire
11 exhibit coming in at this time even though we have not heard
12 from the person who translated the other half, if the
13 government has no objection.

14 MR. KHUZAMI: Sure.

15 THE COURT: Fine. 550 and 550T are received.

16 MS. STEWART: Thank you, Judge.

17 (Government's Exhibits 550 and 550T received in
18 evidence)

19 MS. STEWART: May the jury turn to that in their
20 notebooks, then.

21 Q Mr. Feghali, you indicated that you only worked
22 from page 14 onward.

23 A Yes, ma'am.

24 Q How did that happen to be? How did that come to
25 be?

1 A I am sorry. I don't understand what you are
2 saying.

3 Q Did the government come and give you, show you
4 the videotape and say you start from here?

5 A I think we were pressed on time and one could not
6 humanly possible to do the whole thing, so we divided into
7 portions and recorded it and worked that way.

8 Q At the point that you took over, were you doing
9 an original translation? In other words, were you taking
10 the Arabic and translating it directly into English or were
11 you working from a draft?

12 A I was listening to the Arabic text, to the Arabic
13 audio.

14 Q Yes.

15 A And translating.

16 Q So you prepared the first draft of the
17 translation or --

18 A Part of it I did, part of it I had some help.

19 Q Was that help another interpreter employed by the
20 government?

21 A Yes, ma'am.

22 Q At any time during your translation did you refer
23 back to the earlier portions of this particular videotape?

24 MR. KHUZAMI: Objection to form.

25 MS. STEWART: Let me start again.

1 Q You started at page 14, is that right?

2 A Right, yes, ma'am.

3 Q Did you find it necessary at any time while you
4 were translating to refer back to the earlier portions of
5 the videotape?

6 A No.

7 Q So you have no knowledge whatsoever of what is in
8 this tape from page 1 through page 14 where you picked it
9 up, is that correct?

10 A You mean when I was translating?

11 Q Yes.

12 A No, I didn't.

13 Q Did you at any time, whether you were translating
14 or you weren't translating?

15 A Yes, afterwards I have taken the video and, you
16 know, looked at it, because when I was translating, I was
17 translating from an audio. So after I finished I took the
18 video and kind of looked at the whole thing.

19 Q So you became aware at that point that this was a
20 videotape of Sheik Omar Abdel Rahman that was recorded in
21 Denmark, is that right?

22 A Yes, ma'am.

23 Q And that it was dated on the video, isn't that
24 right, December 1990, isn't that right?

25 A It could be December '90, but it could also be

1 September '90, simply ma'am, because overseas many societies
2 date the month first and some of them date the day first.
3 So I think it was 9/12/90, so we are not sure if it was
4 September or December.

5 Q But you do remember seeing that series of
6 numbers, is that right?

7 A Yes.

8 Q Do you recall at the beginning of the lecture the
9 sheik quotes from the Koran fairly extensively, is that
10 right?

11 A Yes, he does.

12 Q Then he goes on to talk about the theme of what
13 he is going to lecture on, is that fair to say?

14 A I don't precisely remember that, but I think he
15 did.

16 Q If you would look at page 3.

17 A Yes, ma'am.

18 Q The third paragraph down he speaks, does he not,
19 that the verses are about taking the enemies of Islam for
20 allies, is that right?

21 A Yes, ma'am.

22 Q Turning then to the portions that you worked on,
23 starting at page 14, you began in the second paragraph from
24 the bottom of the page, is that right, where it says third?

25 A Yes.

1 Q Turning to the next page, page 15 at the very
2 top, the sheik is answering questions from the audience
3 here, is that correct?

4 A I don't think he has started answering questions
5 here. I think he was still lecturing, if I recall
6 correctly.

7 Yes, that is true, ma'am, he was still lecturing.

8 Q In this paragraph he is talking about what is
9 commonly referred to as the Gulf War, is that correct?

10 A Yes, ma'am.

11 Q That was a war in which, if you know, the United
12 States and the Saudis and Egypt and other allies were
13 against Iraq, basically?

14 A Yes, ma'am.

15 Q Over Kuwait, is that right?

16 A Yes.

17 Q Here at the very top of the page 15, you
18 translated that as they landed on the desert of, and my bad
19 pronunciation, Najef?

20 A Yes, ma'am.

21 Q Could it also have been Najd, N-A-J-D?

22 A Could be.

23 Q Najef is a city in Iraq, is that right?

24 A Right.

25 Q Najd is the desert of Saudi Arabia, isn't that

1 right?

2 A Right.

3 Q They do sound somewhat similar, do they not?

4 A Yes, very close.

5 Q Going down a little bit in that same page -- this
6 would be the third full paragraph where the sheik is talking
7 about the liquor drinker.

8 A Yes, ma'am.

9 Q I think you translated -- this is in quotations
10 there -- "I was about to loose it (Audience laugh) due to my
11 exhaustion and a glass of wine calmed me down for
12 necessity."

13 Is that loose or lose?

14 A Lose, I guess.

15 Q L-O-S-E?

16 A Yes.

17 Q At the very last paragraph on this page, in the
18 middle where it begins "For the Sunnis, you translated "for
19 the Sunnis." The Sunnis are one branch of Muslim belief, is
20 that correct?

21 A Yes, ma'am.

22 Q And that is the branch that Sheik Omar belongs
23 to, is that right?

24 A I am not sure.

25 Q At any rate, you translated "for the Sunnis

1 nobody is sinless except the prophet of God."

2 A Yes, ma'am.

3 Q Is it also possible to translate that word
4 sinless as infallible?

5 A Yes, I would say so.

6 Q Turning now to page 18, here we are now in the
7 question and answer portion of the presentation, is that
8 right?

9 A Yes, ma'am.

10 Q Do you see where it is the first attribution to
11 Rahman, it says here?

12 A Yes, ma'am.

13 Q You know, Mr. Feghali, that the proper address
14 would be Abdel Rahman in Arabic, meaning not God but the
15 servant of God?

16 A Yes, of course, but I think that we were
17 instructed that the name used in court is Rahman, right?

18 Q Who instructed you as to that?

19 A At the office, the supervisor. They want me to
20 refer to certain person talking, we use, you know, this what
21 is used in court.

22 (Continued on next page)

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24

25

1 Q The paragraph just preceding that first
2 attribution, this is the imam or the master of ceremonies or
3 whatever we wish to call him, and he is translating the
4 questions before they are put to Sheik Omar, is that right?

5 A Yes. Well, he is reading them, supposedly.

6 Q Yes. He sometimes edits them also, does he not?

7 A Yes, he would put them in his own words, because
8 he says before he has collected a series of questions and
9 grouped them into these questions, yes, ma'am.

10 Q The very last sentence there, where he says also,
11 who should a Muslim support in the event of a war between
12 the two countries, if he has a chance to become a fighter.

13 A Yes, ma'am.

14 Q Did you hear at that portion after "fighter,"
15 that he also said as the Koran and Sunna say?

16 A No, ma'am, he didn't.

17 Q He didn't?

18 A No, I recollect this very definitely, no.

19 Q Turning to page 19, the first attribution to the
20 sheik on that page?

21 A Yes, ma'am.

22 Q You have, "This question should be paused to
23 Saddam."

24 A Yes, ma'am.

25 Q Is that not correct to say "posed"?

1 A Yes, I guess.

2 Q Well, "pause" means to hesitate.

3 A I know, yes.

4 Q You were listening, is that right?

5 A That's true, yes.

6 Q And the next attribution from what you have
7 called the MC, which is, "Your eminence --

8 A Right.

9 Q -- "the struggling sheik."

10 A Yes.

11 Q They called him, did they not, the mujahed sheik.
12 That was the word that they used for struggling?

13 A I don't think at this point they called him the
14 mujahed, no.

15 Q Are you certain of that?

16 A Yes, I am.

17 Q At the very last attribution to the MC --

18 A Yes.

19 Q -- beginning with, "A followup to this question,
20 is there a call to organize Islamic jihad to overthrow
21 Saddam?"

22 Do you see that?

23 A Yes, ma'am, I do.

24 Q Do you hear there "the tyrant of the 20th
25 century" immediately after "Saddam"?

1 A I don't think so, ma'am. I would have definitely
2 put it.

3 Q Turning, then, to page 21. There is a question
4 that revolves around Salah Al-Din?

5 A Yes, Salah Al-Din. Yes, ma'am.

6 Q That is commonly written in English, sometimes at
7 any rate, as Salah Din, isn't that right?

8 A I'm not sure. I just translated it, you know,
9 phonetically I should say, Salah Al-Din.

10 Q Do you know who in historical context Salah Din
11 is?

12 A I think he was a Moslem leader who led the
13 Muslims in many wars.

14 Q Particularly in the Crusades, is that right?

15 A I think so, yes.

16 Q Back in the 10th century or 12th century?

17 A Yes.

18 Q And it had to do with Jerusalem and the invasion
19 of the crusaders into the Middle East?

20 A Yes.

21 Q Is that right?

22 A Yes.

23 Q And the question compares Saddam to Salah Din, is
24 that right?

25 A Yes, ma'am.

1 Q It's fair to say that the sheik finds this, he
2 says, or you have translated, "this is strange, this
3 comparison"?

4 A That's true, yes.

5 Q Would another translation for "strange" be
6 "amazing"?

7 A I'm not sure what the Arabic word was exactly,
8 but it could be.

9 Q He says it three times, does he not? "This is
10 strange, this is strange," and then in the next paragraph,
11 "this is really strange" you have translated, is that right?

12 A I am sorry. I don't recollect that sentence
13 exactly, but my impression is you're correct.

14 Q The next page, 22, there is a question put to him
15 through the MC which deals with whether jihad, which you did
16 not translate, but meaning "struggle," right, should be only
17 by weapons, is that right?

18 A Yes, ma'am.

19 Q And the person asks, can't it be done by putting
20 science and commerce --

21 A Right.

22 Q -- in the service of Islam.

23 A Yes, ma'am.

24 Q Is that right?

25 A Yes.

1 Q And the sheik does answer that.

2 A Yes.

3 Q But at the very beginning of that answer, does he
4 not say, "Praise be to God. How ingenious"?

5 A I don't think he says, "Praise be to God."

6 Q Because you would have translated it if you had
7 heard it, is that right?

8 A Yes, I guess I would.

9 Q Page 23, he is asked a question about his
10 personal life, about the road he took in jihad and the
11 reasons why he was put in jail in Egypt, is that correct?

12 A Yes, ma'am.

13 Q And he talks about the Islamic group --

14 A Yes.

15 Q -- is that correct?

16 A Yes, ma'am.

17 Q The word for "group" is gama'a?

18 A Gama'a.

19 Q Is that right?

20 A Yes, it could be gama'a.

21 Q And it implies, does it not, a congregation of
22 believers -- in this case, obviously, Moslem believers --
23 but it has that implication? It's not just a group?

24 A Well, it has more than one meaning, I suppose.

25 It is a name of a group, that's for sure. There is a group

1 called Al-Gama'a Islamiya, and you could translate that, if
2 you want, into "the Islamic group."

3 Q Which is what you did?

4 A Yes.

5 Q And I'm saying is it not correct that that word
6 has the added connotation, or the added meaning let us say,
7 of being a religious group, a congregation as we would call
8 it here?

9 A It could be congregation, but I think in Islam it
10 could also mean political religious also.

11 Q That is because it is your understanding that in
12 Islam the political and the religious are not very far
13 separated?

14 A That is right. Yes, ma'am.

15 Q As indeed they may be one in Islam?

16 A That's right. Yes.

17 Q Turning now to page 25, the third attribution
18 from the bottom where Dr. Abdel Rahman is talking about
19 jihad in Egypt?

20 A Yes.

21 Q You put that in quotation marks there?

22 A Yes.

23 Q Is that right?

24 A Yes, ma'am, I did.

25 Q And why?

1 A I think because the whole subject here is
2 emphasizing on jihad. The word jihad is both here as a name
3 and as an action I would say.

4 Q But it could fairly be translated in the English
5 to say, "Struggle in Egypt is firm." In other words, the
6 notion of conflict or struggle is firm?

7 A Well, ma'am, if I -- I mean it's not wrong to say
8 that. I could. But going with the spirit of the text, and
9 he is emphasizing jihad as it stands, and he has emphasized
10 this all along. I felt compelled that it is jihad and not
11 the Islamic struggle, but whatever jihad is known to be, or
12 he's trying to make out of it.

13 Because when we refer to struggle, you refer to
14 the religious struggle, to praying and to fasting and paying
15 alms. But when you refer to jihad, and he's making a point
16 here that jihad is fighting, and then I have to use the word
17 "jihad," not "struggle."

18 Q But you are not a graduate of Al-Azhar?

19 A I beg your pardon?

20 Q You are not an Islamic scholar, is that correct?

21 A No, I'm not. I don't even claim to be. I just
22 go by the spirit and the letter of the document I'm
23 translating.

24 Q Where he says starting, "No, it's not," on that
25 page, 25 --

1 A Yes.

2 Q -- the very end of that you have translated, "And
3 if any branches exist, they will be sent back to their
4 origin."

5 A Right.

6 Q That is because the question asked if there had
7 been a split --

8 A Right.

9 Q -- in the political group in Egypt, the political
10 Islamic group?

11 A Yes, ma'am.

12 Q And you say, "They will be sent back to their
13 origin," but could that fairly be translated as, "They are
14 part of the original"?

15 A No, I think he says the word, "they will be sent
16 back."

17 Q In the last paragraph --

18 A Of 25?

19 Q Of 25.

20 A Yes, ma'am.

21 Q The last attribution.

22 A Yes.

23 Q You use the word "Ibrahim," is that right?

24 A Yes, ma'am.

25 Q And that is a reference, if it were translated,

1 to Abraham, is that right?

2 A Yes, ma'am.

3 Q That is the Abraham that also appears in the Old
4 Testament, is it not?

5 A Well, sometimes it is. But I think the Koran has
6 different -- not exactly what Ibrahim is in the Old
7 Testament. Like if you read the stories in the Old
8 Testament, it's not the same in the Koran. There are many
9 stories that are not the same. Besides I will not translate
10 a name, ma'am, because Ibrahim is a name, and in Arabic
11 somebody's name could be "Tawfiq" and I wouldn't translate
12 that into "success." So I use Ibrahim, the same thing, what
13 the name is.

14 Q With regard to your comment as to whether the
15 Koran and the Old Testament tell the same stories --

16 A Yes.

17 Q -- you, once again, are not an expert in this
18 field, is that correct?

19 A No, but I read the Old Testament, and I read many
20 of the Koranic texts about Abraham, and I have heard many of
21 the versions about Abraham. And the things I have heard
22 what the Islamic religion says about Abraham, I have never
23 read in the Old Testament, some of them I should say.
24 Especially in this quotation here, ma'am, there is nothing
25 like this in the Old Testament about Abraham.

1 Q But, once again, you are not a scholar of --

2 A I am an Old Testament, student, ma'am.

3 Q You are a translator, Mr. Feghali, isn't that
4 right?

5 A Ma'am --

6 Q And you're not a Muslim, isn't that right?

7 MR. KHUZAMI: Objection.

8 THE COURT: Can we move on to something else.

9 Q The next page, page 26 --

10 A Yes, ma'am.

11 Q -- the second attribution to Dr. Abdel Rahman,
12 where he says in your translation, "Saddam is an infidel
13 even before we judge him"?

14 A Yes, ma'am.

15 Q The question was: "Does the judgment of the
16 organization," meaning the PLO, the Palestine liberation
17 organization, "apply to Saddam because they had made him an
18 ally?" Is that not the question that was posed?

19 A Yes, ma'am.

20 Q And is not the correct answer, "they," meaning
21 the PLO, "are infidels even before we judged Saddam
22 Hussein"?

23 A No, I don't think so. He think he said the word
24 Saddam first.

25 Q So it would be your answer that that translation,

1 they, meaning the PLO, are infidels even before we judge
2 Saddam Hussein?

3 A No, I think "Saddam is an infidel" --

4 Q Your translation?

5 A Right.

6 Q In the next attribution to Dr. Abdel Rahman, he
7 is talking about the fields of jihad, is that correct?

8 A Yes, ma'am.

9 Q And he says, does he not, to form battalions in
10 the camps of the two fighting parties?

11 A Yes.

12 Q Is that right?

13 A Yes, ma'am.

14 Q He goes on to say, "the same with the Ba'thist
15 head of state" --

16 A Yes.

17 Q -- "in Iraq"?

18 A Yes.

19 Q That is Saddam Hussein, is that right?

20 A Yes.

21 Q So he is urging that as one of the camps of the
22 two fighting parties, is that correct?

23 A Yes, ma'am.

24 Q This is once again referring to the Gulf War?

25 A Yes, ma'am.

1 Q What is your understanding of the Ba'thist?

2 A The Ba'th party, you mean?

3 Q Yes.

4 A The Ba'th party is that which was formed by
5 Michel Aflaq, and it is secular in ideology, and it is now
6 that the people in Syria are Ba'thists of one part and the
7 others in Iraq. The ruling party in Iraq are Ba'thist.

8 Q And the Sunni Muslims consider them not to be
9 true Muslims, is that fair to say?

10 A Not all Sunnis. I would say the more
11 conservative or very religious Sunnis, yes. But Saddam
12 Hussein himself is a Moslem, and he is a Ba'thist. So not
13 all of them, ma'am, but you're right, the religious ones do
14 consider them infidels.

15 MS. STEWART: I have nothing further. Thank you.

16 THE COURT: Any other cross?

17 MR. NOOTER: Yes.

18 MR. STAVIS: I have some cross.

19 THE COURT: Mr. Stavis.

20 MR. STAVIS: May I have one moment with the
21 government.

22 (Pause)

23 CROSS-EXAMINATION

24 BY MR. STAVIS:

25 Q Good morning, Mr. Feghali.

1 A Good morning, sir.

2 Q I would like to draw your attention to
3 Government's Exhibit W2611T.

4 A Yes, sir.

5 Q Is that a translation summary that you prepared?

6 A Yes, sir.

7 Q You prepared that with -- withdrawn.

8 It says on the top of that that only the entries
9 selected below have been translated, is that correct?

10 A Yes, sir.

11 Q So there was a selection process that went on,
12 correct?

13 A I'm not sure I follow you, sir.

14 Q OK. I will rephrase the question.

15 Some names and telephone numbers that were in the
16 book --

17 A Yes.

18 Q -- designated W2611 were translated?

19 A Yes, sir.

20 Q Correct? Some names and entries in the book
21 designated as W2611 were not translated?

22 A By me, yes, sir.

23 Q How did you determine which entries to translate
24 and which entries not to translate?

25 A It was shown to me by the Assistant U.S.

1 Attorney.

2 Q Which Assistant U.S. Attorney?

3 A Pat Fitzgerald.

4 Q He told you which entries to take out of the book
5 that's designated as W2611 and translate in preparing this
6 document that's in evidence as W2611T, is that correct?

7 A No, sir, he didn't. He showed me these entries.
8 They are already translated. And he gave me the book with
9 the pages, and I looked them up and I verified them.

10 Q In other words, there was a translation already
11 of the entire book --

12 A Yes.

13 Q -- and then you took some of those and verified
14 that to create Government's Exhibit W2611T?

15 A There must have been.

16 MR. STAVIS: Your Honor, at this time, by
17 stipulation with the government, I offer into evidence
18 W2611T-1.

19 MR. KHUZAMI: No objection.

20 THE COURT: All right. W2611T-1 is received on
21 stipulation.

22 (Government's Exhibit W2611T-1 for identification
23 was received in evidence)

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

1 THE COURT: Yes.

2 Q I am showing you what is entered into evidence as
3 W2611T-1, and I ask you to take a look at that and compare
4 it with W2611T. Then I will ask you a question after you --

5 THE COURT: Can you pose a question. Do you want
6 him to focus on what the additional information on there is,
7 if there is additional information, or what the difference
8 is?

9 Q Well, is W2611T-1 the full summary from which you
10 verified the entries on W2611T?

11 A I'm not sure, sir. I didn't see the summary. I
12 told you that the AUSA gave me these translations and gave
13 me the book itself, and I verified these translations from
14 the book that were translated.

15 Q What kind of sheet of paper were the translations
16 on?

17 A This is it, sir. This is the original. I
18 verified them and initialed them.

19 Q In other words, 2611F was shown to you like it is
20 with those entries on it --

21 A Yes, sir.

22 Q -- and then you looked in the book and verified
23 them?

24 A Exactly.

25 Q Do you know who prepared W2611T?

1 A No, sir, I don't.

2 Q Do you have Government's Exhibit 2611 with you?

3 A Yes, sir.

4 Q Can you please take it out of the envelope.

5 A Sure.

6 Q Approximately how many address entries are there
7 in Government's Exhibit 2611?

8 A The whole book. You are talking about the
9 original, right?

10 Q Yes.

11 A I don't know how many entries there are.

12 Q Approximately how many?

13 A I couldn't guess. I don't know.

14 Q I am not asking you to guess. I am asking you if
15 you can approximate.

16 THE COURT: He said he can't. Pose a question.

17 MR. STAVIS: May I approach the witness and have
18 the book, your Honor?

19 THE COURT: Yes.

20 Q Mr. Feghali, would it be fair to say that there
21 are more entries in the book, Government Exhibit W2611, than
22 there are in the translation, W2611T?

23 A Oh, definitely, yes, sir.

24 Q I would ask you to examine page 47R of Government
25 Exhibit 2611T.

1 A 47?

2 Q R.

3 A OK.

4 Q Is there an entry on that page?

5 A Yes, sir, there is.

6 Q Can you translate that entry, please?

7 A Yes. Qadri Omar Mohammed Abu-Bakr, Baghdad. I
8 think it's the Al-Hadra Street, the area is 637, and the
9 street or alley would be No. 24. It says house No. 8.

10 Q Is that the only entry for Baghdad?

11 A On this page?

12 Q On that page.

13 A No, there is an entry right underneath it. It
14 says Qadri Abu-Bakr, Baghdad, Al-Iraq.

15 THE COURT: Would you spell those words for the
16 reporter, please.

17 THE WITNESS: Spell it?

18 THE COURT: Please.

19 THE WITNESS: Q-A-D-R-I, A-B-U B-A-K-R, Baghdad
20 B-A-G-H-D-A-D, Al-Iraq, A-L I-R-A-Q, and the telephone
21 number in English is 964-1-555-9170.

22 Q And it indicates in that entry that Baghdad is a
23 city in Iraq, is that correct?

24 A Yes. It doesn't say city, but it says
25 Baghdad-Iraq, yes.

1 Q Do you know, of your own knowledge, whether
2 Baghdad is a city in Iraq?

3 THE COURT: I will take judicial notice of the
4 fact that Baghdad is a city in Iraq. Let's proceed.

5 Q What's listed under W2611T, that entry for
6 Baghdad, Iraq is in the Salameh calendar and appointment
7 book, is that correct?

8 A Yes, it is.

9 MR. STAVIS: Your Honor, I would also introduce
10 by stipulation W Exhibit 2602T-1, and I have no further
11 questions.

12 MR. KHUZAMI: No objection.

13 THE COURT: W2602T-1 is received without
14 objection.

15 (Government Exhibit W2602T-1 for identification
16 was received in evidence)

17 THE COURT: Mr. Nooter, representing Mr. Wahid
18 Saleh.

19 CROSS-EXAMINATION

20 BY MR. NOOTER:

21 Q Sir, I am going to be questioning you about
22 Exhibits 170, 177, 179, and the corresponding T exhibits,
23 and I would ask if the jury would be permitted to look at
24 these exhibits if they wish to during the questioning.

25 THE COURT: Go ahead.

1 It is in the volume marked 152 to 299.

2 We will be starting with 170. I don't know how
3 the books are arranged. I assume that 170 is followed by
4 170T and so forth, is that correct, Mr. Khuzami?

5 THE COURT: I believe the only exhibits in there
6 are the transcripts.

7 MR. NOOTER: Not a Xerox of the original?

8 MR. KHUZAMI: That's correct, your Honor.

9 THE COURT: That's correct.

10 Q OK. In that case let me direct your attention to
11 the top of Exhibit 170T --

12 A Yes, sir.

13 Q -- the words appear "Matarawy Mohammed Sayyid
14 Saleh - document translation," is that correct?

15 A Up here?

16 Q Yes.

17 A Yes, sir.

18 Q Am I correct?

19 A Yes, sir.

20 Q In fact, those same words appear on the top of
21 each one of the exhibits I've just numbered for you that end
22 with a T, is that right?

23 A Yes.

24 Q Your translations. Now, those words, of course,
25 were not on the original document, is that right?

1 A No, they were not.

2 Q They also do not signify that Mr. Saleh wrote the
3 document, is that correct?

4 A No, sir.

5 Q It simply identifies where the document came
6 from?

7 A Right.

8 Q Is that right?

9 Now, Exhibit 170, could you hold it up, please?

10 A Could I?

11 Q Could you hold up Exhibit 170?

12 A Yes, sir. The original you mean?

13 Q Yes. The original is a scrap of newspaper, is
14 that correct?

15 A Yes, sir, it is.

16 Q The newspaper writing itself is in the Spanish,
17 is that right, or some of it is?

18 A Yes, in a foreign language, yes, sir.

19 Q And on it --

20 A Maybe Italian, I'm not sure.

21 Q Spanish or Italian?

22 A Yes, a foreign language.

23 Q It appears to be a corner from a newspaper, is
24 that right?

25 A Yes, it is.

1 Q And there's handwriting on it in between the
2 words, is that correct?

3 A Yes.

4 Q And that's what you translated?

5 A That's what I translated.

6 Q Because that handwriting was in Arabic, is that
7 right?

8 A Yes, sir.

9 Q And it's a little note, and it makes reference to
10 Ramadan, is that right?

11 A Yes.

12 Q And Ramadan is a month in the Muslim calendar, is
13 that correct?

14 A Yes, sir.

15 Q And it generally falls in February in our
16 calendar?

17 A Well, it changes because the lunar year is like
18 ten days or eleven less than ours. So it moves backward all
19 the time. So sometimes it's in summer. But nowadays, yes,
20 it is about that time.

21 Q OK. Assuming 1993, was it about in February?

22 A I guess so, yes.

23 Q Now, I would like to ask you to take a look at
24 the original document, which the jury doesn't have, of 174.

25 A Are we done with this, sir? Shall I put it away?

1 Q Yes. You can just set that down. Do you have it
2 there?

3 A Yes, I do.

4 Q Could you just hold that up so the jury can see
5 it. The original document is a flyer, is that right?

6 A Yes, sir.

7 Q It's like a leaflet that's handed out at mosques?

8 A Yes.

9 Q And look at the original. Can you see that it
10 has some folds, folds as if it had been previously folded
11 up?

12 A Yes, it does.

13 Q Could you remove it from the plastic?

14 A You bet.

15 Q If you can, could you carefully fold it the way
16 it appeared to have been folded before, based on the folds
17 that are currently on the paper.

18 All right. Now, when you do that, do you see
19 some handwriting, I guess not on the last fold, but the
20 second to last fold, do you see some handwriting?

21 A Around the last fold there is "review condos."

22 Q Is that "Riverview" perhaps?

23 A And 791-4503 in English.

24 Q OK. Is there also some Arabic writing?

25 A Yes, sir.

1 Q Did you translate that Arabic writing?

2 A I don't think I did. I don't think this was
3 presented to me.

4 Q OK. It is on the document, though, right, on the
5 back?

6 A Yes. But usually, sir, when I work, I don't work
7 from the original.

8 THE COURT: He didn't ask you why, he just asked
9 whether you had been asked to translate it. The answer is
10 no?

11 Q You did not translate it?

12 A No, I did not.

13 Q You think maybe it's because you had been given a
14 Xerox copy, is that the reason?

15 A Right.

16 Q So even though on 170, which was the scrap of
17 newspaper, you didn't try to translate the Spanish or
18 Italian, but you translated the handwriting?

19 A Right.

20 Q On this document you translated the printed
21 material, but not the handwriting that someone had put on
22 it, is that right?

23 A That's right.

24 Q So it is as if this was perhaps a piece of scrap
25 paper that somebody used to just write some handwriting on,

1 but you did not translate the handwriting?

2 MR. KHUZAMI: Objection.

3 THE COURT: Sustained.

4 Q Would you please translate it for me now.

5 A It says 1, it's 250, I think "dam" -- I can't
6 really read it right.

7 Q Is that possibly a name?

8 A What's that?

9 Q Is that word possibly a name?

10 A Name?

11 THE COURT: No. Is the word itself a name?

12 THE WITNESS: No -- well, it could be, but it's
13 illegible.

14 "No. 2, 250, half cart.

15 "No. 3, a hundred dollar. The middle word is
16 kind of unintelligible there. Then, a cart.

17 "No. 4, 200, telephone."

18 Q Telephone?

19 A Yes, maybe.

20 "No. 5, hundred video.

21 "No. 6, 800, the camera and the apparatus.

22 "No. 7, hundred eighty. I think 'dular' and
23 food.

24 Q Lodging and food maybe?

25 A Yes, maybe. They are all added to 1,900, and

1 underneath there is 1200. And another line, and the sum,
2 the total sum is 3100.

3 Q So --

4 A There is another entry there, it says 14,
5 something like Simmons, to that effect.

6 Q Perhaps an address?

7 A It's not very clear.

8 Q I see. Could that perhaps be an address from the
9 way it looks?

10 A I don't think so. I am not sure.

11 Q OK.

12 A It's not legible.

13 Q Otherwise, it looks like a list, to the degree
14 you can read it, of items and money prices?

15 A Yes.

16 Q And expenses perhaps, is that correct?

17 A It could be, yes, sir.

18 Q Now, if you would look at Exhibit 171 --

19 A Are we done with this, sir? Shall I put it away?

20 Q Yes. You may put it back.

21 A 174 you said?

22 Q 171.

23 A Oh, 171.

24 Q T, page 3. That's not the original. That would
25 be your translation. In other words, the translation now.

1 A 171T?

2 Q Correct.

3 A Yes, sir.

4 Q In the last full paragraph --

5 A Page 1?

6 Q On page 3. I'm sorry.

7 About two-thirds of the way through the
8 paragraph, you have written, "God almighty says, 'Beware.
9 Do not disregard whoever is creating plots,' and so forth,
10 to the end of that quote, is that correct?

11 A Yes.

12 Q That is a Koranic quote, is that correct?

13 A Yes, it is.

14 Q You've testified that you went to a Koran and
15 read what the English was and used that English, is that
16 correct?

17 A Usually, yes, sir. If I suspect that it is, I
18 look it up in the cross-reference, and it tells me what
19 soura, so I go and look it up.

20 Q OK. Now I would like to direct your attention to
21 your translation, Exhibit 172.

22 A Shall I put this away, sir?

23 Q Yes, you can set that down.

24 That will be the first page so you don't actually
25 have to remove it.

1 A Yes, sir.

2 Q Third paragraph.

3 A Yes.

4 Q Last sentence.

5 A Yes.

6 Q That starts out, "And fear tumult or oppression,"
7 and then continues to the end of that sentence.

8 A Yes, sir.

9 Q Is it not a fact that that is the same Koranic
10 verse that we just looked at in 171?

11 A It could be, but if I looked it -- when I wrote
12 this document, I might have used one translation of the
13 Koran and used, you know, one edition. At another point
14 there was another Koran ready, so I used it for this. It
15 could be.

16 Q Without taking the time now, you could check that
17 by, of course, looking at the original to see if the
18 original Arabic is identical in the two documents?

19 A Yes, I can, if I need to.

20 Q I would also like you to look at Exhibit 179.

21 A Are we done with this?

22 Q Yes. 179T, and I will direct your attention to
23 the very last sentence of that document, the last full
24 sentence.

25 A Yes, sir.

1 Q Again, is that not the same verse from the Koran?

2 A You want me go back to the original?

3 Q If you could.

4 A 174 was it?

5 Q 171, 172 and 179 are the three that I have asked
6 you to look at.

7 A I am referring to 171, could you please indicate
8 to me where that verse is.

9 Q On the English it's on your page 3. For the
10 Arabic, I would have to approach to show you where I think
11 it may be.

12 A All right.

13 MR. NOOTER: May I approach, your Honor?

14 THE COURT: Yes, you may.

15 Q This would be the second page of the Arabic, and
16 I'm pointing to a position about two-thirds of the way down
17 the page.

18 A All right.

19 Well, the first part, sir, is -- the second part
20 is; the first part is not.

21 Q OK. So there's some portion of it --

22 A Right.

23 Q -- which is the same?

24 A Yes.

25 Q Nevertheless, the English words you've selected

1 are different from the way you did it in 171, is that
2 correct?

3 A Yes, I would say. If it is -- I haven't looked
4 at each word, but if it is slightly different, I don't get
5 the credit for it. It's the Koran translation.

6 Q OK. So the fact is you must have used at least
7 three different translations of the Koran in preparing these
8 documents?

9 A I would say yes, sir. Not the particular one.
10 When I use a certain version, I use it throughout the whole
11 document because that copy would stay with me. But then, on
12 another document, at another point of time, I may use
13 another edition.

14 Q Was there any particular reason why you used all
15 three different versions?

16 A No. Just what's available. Not everyone has all
17 the references. There is a reference desk, and whoever
18 needs some can borrow it.

19 Q Now, directing your attention to 174T again,
20 meaning your translation?

21 A Yes, sir.

22 Q I myself seem to have gotten it out of order. In
23 any event, at the top you've written the word, somewhere
24 near the top, *communiqué*?

25 A Yes.

1 Q That means like sort of an official message, is
2 that right?

3 A Yes.

4 Q And the document itself ends with a list of names
5 of mosques, is that correct?

6 A Yes, sir.

7 Q In one of them you were not able to determine
8 what the actual name of the mosque is, and you wrote
9 something that has the word "emir" in it. Do you see that
10 in your translation?

11 MR. KHUZAMI: Your Honor, may I have a moment
12 with Mr. Nooter.

13 (Counsel conferred)

14 MR. NOOTER: I will withdraw the question.

15 Q In any event, that is a list of names of mosques?

16 A Yes, sir, it is.

17 Q Now, directing your attention to 176 for a
18 moment, this was another translation of a flyer, is that
19 right?

20 A Just give me a chance to put the first one away.

21 Q Certainly.

22 A Yes, sir, it is.

23 Q In fact, most of these things are flyers, all but
24 three let's say?

25 A I would say, yes.

1 Q This is a rather extensive one, is that right?

2 A Yes.

3 Q Indeed, a whole passage of it is quoted, is a
4 translation directly out of the "Los Angeles Times," is that
5 correct?

6 A Yes.

7 Q It's quoting a former ambassador of the United
8 States, is that correct?

9 A Yes. I recollect that, yes.

10 Q It's a discussion about policy issues in the
11 Middle East, is that right?

12 A Yes.

13 Q And the whole document is dated in 1991, is that
14 correct?

15 A You mean this document?

16 Q Yes. The original?

17 A Yes, sir.

18 Q And that's 176?

19 A Yes.

20 Q Now, looking at Exhibit 175 --

21 A Yes, sir, I have it.

22 Q Yes. This is a one-page flyer, is that correct?

23 A One-page flyer, yes, sir.

24 Q And it appears to be a call to all Muslims, is
25 that right, it says, "To all Muslim brothers"?

1 A Right.

2 Q And it asks people to come to some sort of
3 demonstration, is that correct?

4 A I think so, either a demonstration or a lecture.

5 Q Well, does it not tell people on to come to the
6 immigration courthouse in Newark, New Jersey?

7 A Yes, I think it does, yes, sir.

8 Q And it has to do with something having to do with
9 the deportation of Dr. Rahman, is that correct?

10 A Yes.

11 Q But this appears to be a flyer that is handed out
12 on the street, is that right?

13 A I'm not sure. It appeared to be, but I mean, I
14 can't swear by it.

15 Q OK. Let me just ask you to quickly look at the
16 end of your translation of 171, which is 171T, and tell me,
17 is that not also a document that appears to have been
18 written in 1991? It would be the last or fourth page, I
19 believe.

20 A Thank you.

21 Yes. March 7, 1991.

22 Q Now, if I can draw your attention to Exhibit 177
23 and 177T, both the original and the translation.

24 A All right.

25 Q Looking a moment --

1 A Hold on a second.

2 Q -- at the original.

3 A Just give me a second to find it, if you don't
4 mind.

5 Q Yes. Of course.

6 A Yes, sir, 177, 177T, yes.

7 Q Now, this is a handwritten letter, is that
8 correct?

9 A Yes, it is, except for the letterhead, which is
10 in English.

11 Q Exactly right. The letterhead is a business
12 letterhead, is that right?

13 A Yes, sir, it is.

14 Q Now, on the translation, 177T, it notes, "in
15 English, letterhead" and then says, "illegible."

16 Can you tell me what it is that's illegible?

17 A The "Du Caire" guess.

18 Q A little lower in English you say "Bank du
19 Caire," which appears to be a French-name bank, is that
20 right, but you do have that on your translation?

21 A Yes, you're right.

22 Q At the very top, above the words 361 Port Said
23 Street, the name of the trading company appears.

24 A Yes, I think it wasn't right. It wasn't clear to
25 me.

1 Q Perhaps it's because you were working from a
2 Xerox again.

3 A Yes, sir.

4 Q But it is clear on the original now?

5 A Yes, it is. It's initial S.A., comma, S-H,
6 period, Trading, period, Co., C-O, comma.

7 Q OK. And that appears to be a normal business
8 letterhead for this trading company?

9 A Yes.

10 Q Is that correct?

11 A Yes, it is.

12 Q Indeed, did the government show you some other
13 documents also with the same letterhead and ask you to
14 translate them or review them?

15 A I don't recall anything like that, sir.

16 Q So you don't know whether several other letters
17 on the same letterhead were also --

18 A Yes, I'm not aware of any.

19 Q All right. Your translation does not indicate
20 that the date is stated, but, in fact, is not the date and
21 location stated on the original?

22 A Yes, there is Cairo, 15/10/91. That would be
23 October 15, 1991.

24 Q So this is another 1991 document, is that
25 correct?

1 A Yes, it is.

2 Q It appears to be a letter about shipping cars, is
3 that correct?

4 A Yes, shipping cars.

5 Q And does it in fact appear to not be finished?
6 In other words, we don't see the end of the letter, it seems
7 to cut off abruptly at the bottom of the page?

8 A You're right.

9 Q So it's part of a letter?

10 A Yes, sir.

11 Q One final thing. In the Arabic text of that
12 letter, after the greeting to the recipient Wahid Saleh --

13 A Yes.

14 Q -- what is the very first word that appears in
15 the text?

16 A The first word?

17 Q Yes.

18 How would you translate the very first Arabic
19 word which appears in the text?

20 A Like "brother"? Is that what you're looking for,
21 sir?

22 Q Well, the first line under Cairo and the date
23 says what?

24 A Right.

25 Q "Dear Brother Wahid" or something?

1 A Right. And then right after, it says, "Brother,
2 Dear Brother, Wahid Saleh."

3 Q And then what is the next thing it says?

4 A "Greetings. I would like to inform you the
5 requested vehicles are" --

6 Q OK.

7 A And then he named them all.

8 Q You did not put the word "greetings" in your
9 translation, is that correct?

10 A No, I did not.

11 Q You just didn't think it was important?

12 A Yes -- no, I think I just faked. Sometimes I am
13 human.

14 Q Sometimes you make a mistake?

15 A Yes, sir.

16 Q Thank you.

17 Now I would like to direct your attention to
18 Exhibit 173, if you would have both the original and the
19 translation.

20 A Yes, sir.

21 Q Directing your attention to the original
22 document, first of all, Arabic is written from left to
23 right, is that correct?

24 A From right.

25 Q I'm sorry, from right.

1 A Yes.

2 Q The opposite way from whatever we do?

3 A Yes.

4 Q And this document is all in handwriting, is that
5 correct?

6 A Yes, it is.

7 Q But it's not all in the same color ink, am I
8 right?

9 A No.

10 Q So there's a list of names and then several
11 columns of numbers that are in one color ink, black ink, is
12 that right?

13 A Yes, sir.

14 Q And then, at the end, several more numbers and
15 sometimes the letter X in red ink, is that right?

16 A Right, yes.

17 Q If you can tell, is it the same handwriting?

18 A I think it is by looking at the numbers, because
19 the ones in the red are only numbers. There are no words.
20 I think they are the same handwriting.

21 Q OK. But it is a different color ink?

22 A Yes, it is.

23 Q Now, this is a document in which perhaps you were
24 also working again from the Xerox?

25 A Yes, but I think I was -- I had little problems

1 with some of the words and then I asked to see the original,
2 and I did.

3 Q All right. Well, the first thing is that the
4 list going in the first column --

5 A Yes.

6 Q -- appears to be titles of books or pamphlets or
7 something, is that correct?

8 A Yes, they are.

9 Q I seem to have misplaced my English version of
10 it.

11 Several lines down you have translated something
12 as using the words "The great terror," is that correct?

13 A Yes.

14 Q Now, that Arabic word could also mean
15 "frightened" or "scared" or something like that, is that
16 correct?

17 A Yes.

18 Q In fact, in the context of a book title like
19 that, doesn't it in fact imply the day of judgment?

20 A They have a judgment?

21 Q Day of judgment.

22 A Yes.

23 Q Like Judgment Day in the religious sense?

24 A Yes, it does.

25

1 Q On the upper --

2 A May I just point out something concerning this
3 particular entry there.

4 Q Sure.

5 A I had some doubts to the title of the book
6 myself, and then I looked it in the Koran and see how it is,
7 and I quote this exactly from the Koran.

8 Q But the Koranic reference is to judgment day,
9 correct?

10 A Right.

11 Q If you look at the original document 173, in the
12 upper left-hand corner, do you see that there is what
13 appears to be a number 3 that is either a little bit
14 scribbled or written device?

15 A Yes.

16 Q That does not appear on the translation 173T,
17 does it?

18 A No, it does not, sir.

19 Q Just looking quickly at the numbers on the first
20 line, do you see a 4 and then a 1.5, and then equals 6, and
21 indeed 4 times 1.5 does equal 6, is that correct?

22 A I am sorry.

23 Q Very top of -- we can look at either the original
24 or --

25 A Yes, yes.

1 Q So 4 times 1.5 is in fact 6, is that correct?

2 A That is correct.

3 Q This appears to be 4 as an item of quantity and
4 1.5 meaning dollars and cents, 1.50, is that correct?

5 A Could be.

6 Q Because then the 6 is written 6.00, like dollars,
7 am I right?

8 A Yes.

9 Q Indeed if a dollar fifty was the price, then two
10 of them would be 3, which is the last number which you did
11 not put in the translation, am I correct?

12 A Yes. You may be right, sir, but I think I wasn't
13 sure what that letter is, because I think there are more
14 than one things written on top of each other there.

15 Q It does look as if two things have been written
16 on each other, but one of them seems clearly to be a 3 in
17 Arabic, is that right?

18 A Yes.

19 Q You did not indicate unintelligible or something
20 for that?

21 A No, I didn't.

22 Q In the next line after the number number 9.00,
23 you have written the letter X, is that correct?

24 A Yes.

25 Q That is an English X, is it not, as it appears on

1 the Arabic document? There is no Arabic letter per se?

2 A No, there is no Arabic letter for X.

3 Q So it is just X for nothing or something like
4 that?

5 A Yes.

6 Q Which is true of the third line as well?

7 A Yes.

8 Q In the fourth line we see 9 and 4 equals 36, and
9 then 6 and 24.

10 A Right.

11 Q So if indeed the price of this book is \$4, six of
12 them would be indeed \$24, is that correct?

13 A Grammatically yes, but I am not --

14 Q Numerically.

15 A No.

16 Q You are just translating the numbers as you see
17 them, am I correct?

18 A Exactly.

19 Q Would you look at line 13, and look at the
20 original that corresponds, which unfortunately is not
21 numbered, so it may take you a minute to find it. But it is
22 right in the middle of the original document. You have
23 written a 6 and a T. Perhaps from looking at the xerox,
24 when you look at the original, is it not fair to say that
25 both of those figures should just be the number 1?

1 A Maybe so.

2 Q There is no T on the original?

3 A No.

4 Q Perhaps there was --

5 A Looked like --

6 Q A mark or something on the xerox?

7 A I guess so.

8 Q Looking at line 17, at the numbers at the very
9 end, is it not true that -- well, on your translation you
10 have written the number 17.

11 A Yes, I did.

12 Q But doesn't the original reveal that it is
13 actually 17.5 or 17.50?

14 A I think it says 17 -- no, one seven comma zero.
15 That's all.

16 Q You don't see a 5?

17 A The 5 is right before it, sir, which I have
18 indicated.

19 Q There is a 5 before it, right?

20 A Yes, I have put the 5 before it.

21 Q You don't see a very small 5 after the point?

22 A No. In Arabic this is a zero. If it is a dot,
23 that's the zero.

24 Q On the very next line, which would be line 18 on
25 the translation, you have put in the X. But indeed on the

1 original there is an X, but the X is all scratched out, is
2 that right?

3 A Yes.

4 Q On the second-to-last line, where you have
5 written -- there is 4 and then there is 1.5 which equals 6,
6 then there is a 1, you have written point 5. Indeed, should
7 it not be 1.5, based on the original?

8 A Yes, it should have been 1.5.

9 Q That would make it consistent with the way we
10 have been talking about the quantities and prices of these
11 books, am I correct?

12 A Yes, sir.

13 MR. NOOTER: I have no further questions.

14 THE COURT: Any other cross? Any redirect?

15 MR. KHUZAMI: None, your Honor.

16 THE COURT: You are excused, Mr. Feghali.

17 (Witness excused)

18 MR. KHUZAMI: The government calls Gamal
19 Abdel-Hafiz.

20 GAMAL ABDEL-HAFIZ,

21 called as a witness by the government,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FITZGERALD:

25 Q Good afternoon, Mr. Abdel-Hafiz.

1 A Good afternoon, sir.

2 Q Placed before you are Government Exhibit 467, an
3 audio cassette, and Government's Exhibit 467T should be a
4 transcript, as well as Government's Exhibit 550, a video
5 cassette, and 550T.

6 Have you listened to the audio cassette marked as
7 Government's Exhibit 467?

8 A Yes, sir.

9 Q And looking at the transcript before you,
10 Government's Exhibit 467T, have you reviewed that
11 transcript?

12 A Yes, sir, I have.

13 Q Is that a fair and accurate translation of what
14 is contained on the audio cassette, Government's Exhibit
15 467?

16 A Yes, sir, it is.

17 Q With regard to the video cassette, Government's
18 Exhibit 550 before you, have you reviewed that videotape or
19 the first half of the videotape at least?

20 A Yes, sir, I reviewed the first half.

21 Q And have you reviewed through from pages 1
22 through near the end of page 14 on the transcript,
23 Government's Exhibit 550T?

24 A Yes, sir, I have.

25 Q Are the first 14 pages up to the word "third" on

1 page 14 a fair and accurate translation from Arabic into
2 English of what took place on the videotape marked as
3 Government's Exhibit 550?

4 A Yes, sir, it is.

5 MR. FITZGERALD: Your Honor, the government would
6 offer Government's Exhibit 467T.

7 MS. STEWART: No objection, Judge.

8 THE COURT: 467T is received without objection.
9 (Government's Exhibit 467T received in evidence)

10 MR. FITZGERALD: No further questions.

11 THE COURT: Cross, Miss Stewart. Mr. Jacobs?

12 MR. JACOBS: I reserved some cross from the day
13 before but Miss Stewart will cross-examine.

14 MS. STEWART: May I have the jury turn to 550 in
15 their notebooks, Judge?

16 THE COURT: Yes. This is in a book marked 500 to
17 699.

18 CROSS-EXAMINATION

19 BY MS. STEWART:

20 Q This is perhaps my final good morning, Mr.
21 Abdel-Hafiz. How are you?

22 A How are you?

23 THE COURT: Good afternoon.

24 Q Looking at Government's Exhibit 550 in evidence,
25 you translated through page 14, is that correct?

1 A Yes, ma'am, that is correct.

2 Q Almost to the bottom.

3 A Yes.

4 Q You translated it from the videotape you were
5 provided with, is that right?

6 A No. When I reviewed the translation, it was done
7 on an audiotape, and after that I looked at the videotape.

8 Q When you said it was done on an audiotape, the
9 translation was done on the audiotape or it was an audiotape
10 of the videotape?

11 A No, on audiotape of the videotape.

12 Q This translation was done completely by yourself,
13 though --

14 A No, it was not.

15 Q I am sorry -- from pages 1 through 14?

16 A No, it was done by other people and I made the
17 final review and the final changes.

18 Q Do you know who those other people were?

19 MR. FITZGERALD: Objection -- withdraw the
20 objection to that question.

21 THE COURT: I guess you can answer yes or no to
22 that.

23 Q Were those other people employed by the
24 government?

25 A Yes.

1 Q Were they employed by the Justice Department of
2 the government?

3 A Yes.

4 Q So in essence, this is their translation and your
5 review of it, is that right?

6 A My review and final corrections, yes.

7 Q Do you have a copy of that previous tape at all?

8 A Which previous tape?

9 Q Strike that. Do you have a copy of the drafts
10 they submitted to you?

11 A No, they give it to me on a disk and I do the
12 corrections straight on the computer.

13 Q When you say they gave it to you on a disk, that
14 means that it was in written form when you received it then,
15 is that right?

16 A In a written form on the computer disk, yes.

17 Q On the computer disk?

18 A Yes.

19 Q Do you have a copy of that disk?

20 A Not -- I don't have a copy.

21 Q Did you give it back to the government?

22 A I give the disk to the government after my
23 corrections, but the final one, the only one that I have,
24 and I give it to the government.

25 MS. STEWART: Judge, could we be heard at the

1 side bar?

2 THE COURT: No.

3 Q Mr. Abdel-Hafiz, how extensive were the
4 corrections that you made in this final version?

5 A There were corrections done on some of the
6 Islamic expressions that were used, and there were some
7 style corrections that were done.

8 Q Some -- I didn't catch the words.

9 A -- style corrections, and I cannot really say
10 they were very extensive.

11 Q Can you tell us, was it done by a person or a
12 group of persons, this previous translation, to your
13 knowledge?

14 A To my knowledge, there were several people.

15 Q Can you tell us who they are?

16 MR. FITZGERALD: Objection.

17 THE COURT: Sustained.

18 Q Mr. Abdel-Hafiz, this videotape was of a sermon
19 given in Denmark, is that correct?

20 A That is correct, ma'am.

21 Q There is a date on the video that says 12/9/1990,
22 is that correct?

23 A That is correct.

24 Q It begins with the chanting of the Koran on page
25 1, is that correct?

1 A That is correct.

2 Q Who is doing this chanting?

3 A I am not sure.

4 Q Did you review the videotape?

5 A Yes, but I don't know the person.

6 Q When you use the word chanting, is that the same
7 as sort of a rhythmic recitation?

8 A Reciting the Koran.

9 Q You then go on to what you term in the middle of
10 page 1 or the top part of page 1, "Introduction by unknown
11 male," is that right?

12 A Yes.

13 Q Did it appear to you in the video that this
14 unknown male was a religious personage associated with this
15 mosque? Was he dressed in a certain way?

16 A Well, it appeared to me that he was a religious
17 person. He was dressed regular like anybody else.

18 Q Would it be fair to say that he appeared to be
19 the imam of this mosque, if you know?

20 A I am not sure of that.

21 Q On that first page, he reviews, does he not, in
22 the second paragraph from the bottom and the last paragraph,
23 the questions that were asked on a previous occasion, is
24 that right?

25 A That is correct.

1 Q And when he says near the bottom of the second
2 paragraph from the bottom, "Then we turn to the
3 administrative matters, the means of change," he is
4 referring, is he not, to three series of questions, isn't
5 that right?

6 A That is right.

7 Q On page 2, the first attribution on that page,
8 this is the person who is making the introduction speaking,
9 is it not?

10 A That is right.

11 Q Do you see where it says "It was obvious that
12 those who asked the questions were zealous for the Allah's
13 religion"?

14 A Do you see that? That would be the second line
15 of the first paragraph on page 2.

16 THE COURT: Before the attribution, right at the
17 top of the page, the second line from the top.

18 THE WITNESS: OK.

19 MS. STEWART: Thank you, Judge.

20 A Yes.

21 Q The word that was translated for zealous, is it
22 also possible that it is jealous?

23 A No.

24 Q In this instance, you translated Allah as Allah,
25 but Allah, as we have discussed many times, means God, isn't

1 that correct?

2 A That is true.

3 Q Also on this page, the sheik begins the sermon by
4 quoting from the Koran, is that correct?

5 A That is correct.

6 Q The fourth paragraph from the bottom he says,
7 does he not, "O ye who believe take not the Jews and the
8 Christians for your friends and protectors, they are but
9 friends and protectors to each other." That is a quote from
10 the Koran, is that right?

11 A That is a quote from the Koran.

12 Q You indicated that you made some additions or
13 corrections to the quotes as originally given to you.

14 A Not to the quotes.

15 Q Not to the quotes but to the translations.

16 A Yes, ma'am.

17 Q The official translation of the Koran into
18 English was done -- it is called the Yousef Ali version of
19 the Koran. Are you familiar with that?

20 A Yes, ma'am.

21 Q Is this from the Yousef Ali version?

22 A Yes, ma'am.

23 Q There are notes in connection with that version,
24 is that right?

25 A There are footnotes.

1 Q Footnotes?

2 A Footnotes.

3 Q Yes. And the footnotes explain some of the
4 translated words, is that correct?

5 A That is correct.

6 Q If you know, Mr. Abdel-Hafiz, the word "friends"
7 in this particular quote, in the footnote does it not
8 indicate friends meaning ally?

9 A I am not aware of that. I did not read the
10 footnotes.

11 Q Turning to page 3, the third paragraph where it
12 reads "Dear honorable brothers."

13 A Yes, ma'am.

14 Q In this Sheik Omar says, he explains that the
15 verses are talking about taking the enemies of Islam for
16 allies, is that correct?

17 A That is correct.

18 Q And he goes on to talk about allies in the
19 political sense of countries and groups taking upon
20 themselves allies, is that right?

21 A That is right.

22 Q In the translation of this document, is it not
23 true that sometimes you translated the word for friends or
24 allies as friends and sometimes you translated it as allies?

25 A If it is from the Koran as friends, I took it as

1 friends.

2 Q Right.

3 A If it's my own translation, it can be allies or
4 protectors.

5 Q Let me turn to the next paragraph on that page.
6 Do you see where you say -- strike that. It's the next
7 page. Turn to the next page, page 4, the fourth paragraph
8 in that page. In that paragraph, you use the translation
9 "friends" on four different occasions.

10 A Yes.

11 Q But he is still talking about alliances with
12 Christians and Jews, is he not?

13 A He did not mention the word allies.

14 Q Is not the word then, and once again I am going
15 to ask you to forgive me for my pronunciation, but isn't the
16 word for alliance and friends the same word, virtually? Is
17 it not --

18 THE COURT: Do you mean alliance or do you mean
19 allies?

20 Q The root of the word for ally, friend,
21 friendship, alliance, does it not all come from the same
22 word, which is willaya, W-I-L-L-A-Y-A?

23 A Yes, but he did not, the sheik did not mention
24 the word willaya, he mentioned the word awalya', which means
25 the plural of waly, which is the singular of awillaya.

1 THE COURT: Can you spell for the reporter the
2 words that you used.

3 THE WITNESS: Yes, I will spell also. Willaya,
4 W-I-L-L-A-Y-A. Awalya', A-W-A-L-Y-A apostrophe; waly,
5 W-A-L-Y.

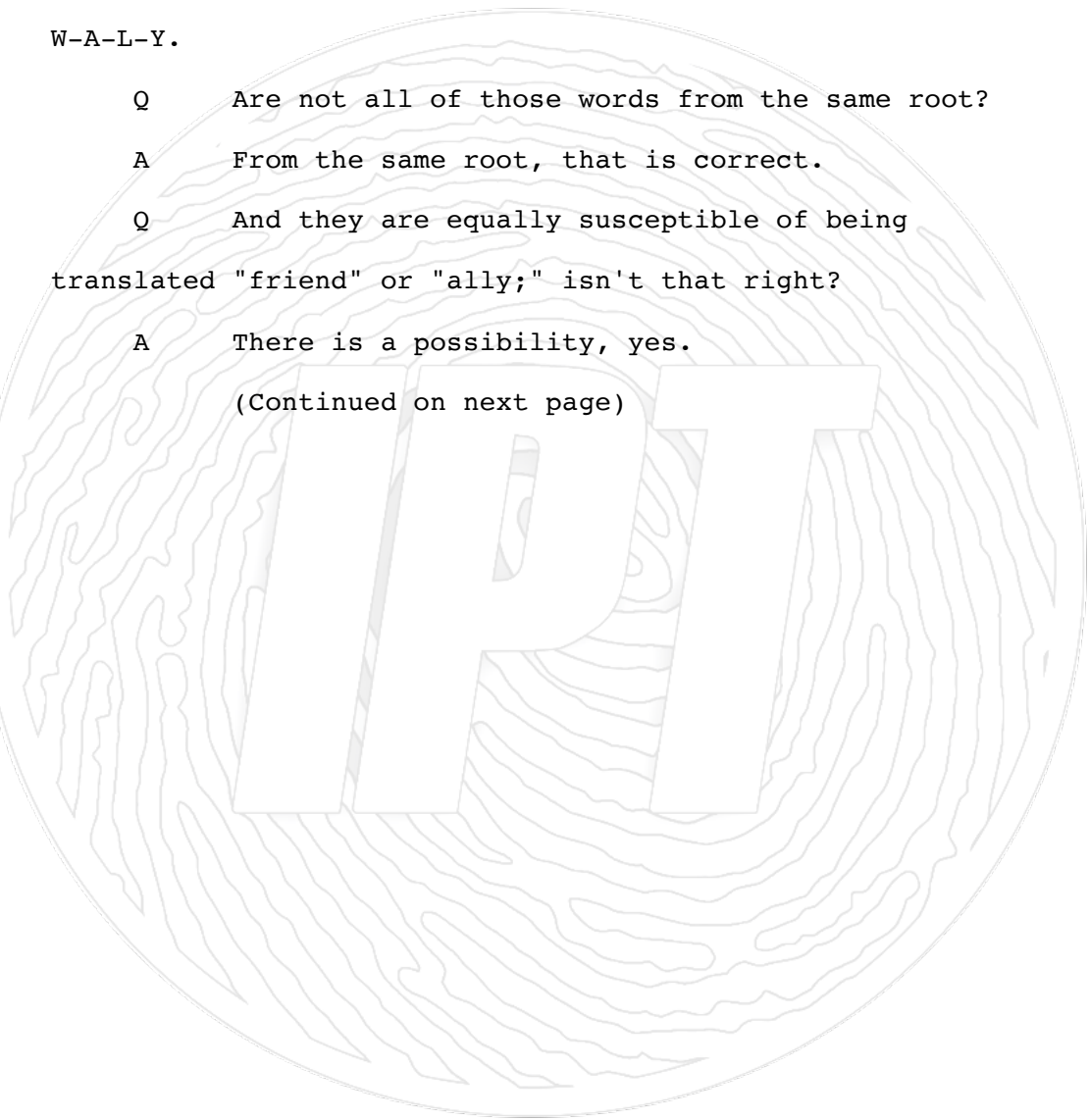
6 Q Are not all of those words from the same root?

7 A From the same root, that is correct.

8 Q And they are equally susceptible of being
9 translated "friend" or "ally;" isn't that right?

10 A There is a possibility, yes.

11 (Continued on next page)



1 THE COURT: Would you come to a convenient break
2 point in the next five minutes.

3 MS. STEWART: Yes, Judge, this will be a good
4 point, while I try to think of the next question.

5 THE COURT: Ladies and gentlemen, we are going to
6 break for lunch. Please leave your notes and other
7 materials behind. Please don't discuss the case, and we
8 will resume this afternoon. Have a pleasant lunch.

9 (Jury excused)

10 THE COURT: Just out of curiosity, is the
11 government going to wrap up today or not?

12 MR. MCCARTHY: We thought so, your Honor.

13 THE COURT: That sounds like past tense.

14 MR. MCCARTHY: We thought we were able to today.
15 We are at least 90 minutes behind where we thought we would
16 be today.

17 THE COURT: Sounds like not.

18 May I see Mr. Nooter and the government at the
19 side a briefly.

20 (At the side bar)

21 THE COURT: Speaking out to the material that was
22 seized at Mr. Wahid Saleh's residence, I assume you would
23 want, and if you did I would give, an instruction at the
24 time that material is read just to make sure that it is
25 entirely clear that there is no claim that he authored this

1 material but that it was simply found at his residence and
2 that it is offered with respect to him and that they can
3 give it whatever weight if any that they think it deserves
4 in determining his state of mind.

5 MR. NOOTER: It is the last four words I am not
6 sure of. Everything up until then was great.

7 THE COURT: You can take that out.

8 MR. NOOTER: Because then we get into the whole
9 issue of whether he even read it.

10 THE COURT: Then take it out.

11 MR. NOOTER: If you could take just those words
12 out.

13 THE COURT: It is offered only with respect to
14 him, there is no claim that he authored it and they can give
15 it whatever weight it deserves.

16 THE COURT: Any view?

17 MR. McCARTHY: That is fine.

18 THE COURT: Also, are you going to work out a
19 stipulation with everybody with regard to the witness most
20 of whose testimony was wrong yesterday -- I forget her
21 name --

22 MR. KHUZAMI: About Emad Salem, right.

23 MR. McCARTHY: Not Emad Salem. About Emad Salem.

24 THE COURT: The one from ATF.

25 MR. KHUZAMI: Right.

1 THE COURT: Now we understand why everybody
2 doesn't like ATF.

3 (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 p.m.

3 MR. LAVINE: May I briefly bring something to
4 your attention?

5 THE COURT: Sure.

6 MR. LAVINE: Later on this afternoon and tomorrow
7 I have some personal matters that I must attend to.
8 Rosemary Olsen from my office, who is an associate who has
9 worked on this case almost from the beginning, is prepared
10 to stand in my position. I have spoken to my client about
11 this. He consents to me being away and she being here in my
12 presence. Should Rule 29's arise, I have written out --

13 THE COURT: They are bound to, I would think.

14 MR. LAVINE: Hopefully they will, your Honor, at
15 some point, soon. I have written out exactly my position
16 which she will deliver to the court. As I said, I have
17 discussed this with my client and he consents.

18 THE COURT: All right. If in my estimation there
19 has to be any sort of exchange in the sense of, you know,
20 question and answer, I may simply reserve and wait until you
21 come back. I mean, I understand she can read. I don't
22 think it would really be appropriate for me to engage her in
23 a discussion on details of evidence if it comes to that.

24 MR. LAVINE: Very good. Thank you, your Honor.

25 THE COURT: Is that satisfactory to you,

1 Mr. Abdelgani?

2 DEFENDANT FADIL ABDELGANI: Yes.

3 THE COURT: Thank you very much.

4 MS. STEWART: Judge.

5 THE COURT: Ms. Stewart.

6 MS. STEWART: I wanted to bring to your
7 attention, I know yesterday the question of the attempted
8 assassination of Mubarak was raised while I was out of the
9 courtroom, and what we thought was appropriate at that point
10 to do. Our intention was to do nothing, and, indeed, I
11 would say responsible journalists did not report anything
12 with regard to this case or Sheik Omar or anything else.

13 However, I understand the headline in the "Post"
14 today says, "Followers of Sheik Omar Attempt to Assassinate
15 Mubarak." I have not seen it. I don't read the "Post" --

16 THE COURT: I have seen a copy of the "Post."

17 I think I would have recalled that headline.

18 MS. STEWART: I think so. We will hold off,
19 then, until we are able to verify it.

20 THE COURT: OK.

21 MS. STEWART: The "Times" actually told us that.

22 THE COURT: It may have been another edition.

23 All I can say is the one that I looked at did
24 not, I believe, have that headline in it.

25 MS. STEWART: We will see what the story is.

1 THE COURT: Let's at least find the paper. I did
2 instruct them at the end of the day yesterday not to read
3 anything about the Middle East, but we will see.

4 GAMAL ABDEL-HAFIZ, resumed.

5 (Jury present)

6 THE COURT: Good afternoon, ladies and gentlemen.

7 JURORS: Good afternoon.

8 THE COURT: Ms. Stewart?

9 MS. STEWART: Yes.

10 THE COURT: Are you ready to resume?

11 Go ahead.

12 CROSS-EXAMINATION (continued)

13 BY MS. STEWART:

14 Q I think when we left, Mr. Abdel-Hafiz, that we
15 were in Exhibit 550 and on page 4, I believe.

16 A That's correct.

17 Q I just direct your attention to the second
18 paragraph from the bottom of the page where Dr. Abdel Rahman
19 is talking about "he who seeks the friendship of the
20 Americans and asks for their protection and backing and
21 extends a place for them in his land and makes them part of
22 his system or his Army, then he is one of them."

23 Do you see that line?

24 A Yes.

25 Q Is it not true that "friendship" there could, or

1 should be translated as "alliance"?

2 A It can go either way.

3 Q I'm sorry?

4 A It can go either way.

5 Q Moving to page 7, the last paragraph on the page,
6 starting with "well," do you see that?

7 A Yes, ma'am.

8 Q And that sentence says, "Well, if we do not take
9 the Jews, the Christians and the enemies of Islam as
10 supporters, who do we take?"

11 Do you see that?

12 A Yes, ma'am.

13 Q Do you note that "Jews" is not capitalized,
14 Christians is capitalized and Islam is capitalized?

15 A Well, that's just a typo error.

16 Q That's just a typo?

17 A Yes, it's not --

18 Q It is not intentional?

19 A It's not anything intentional, no.

20 Q Going on in that paragraph to the quote from the
21 Koran, starting with "your."

22 A Yes, ma'am.

23 Q Did you add the words in that line or were they
24 there when you received on the computer disk the translation
25 of this particular videotape?

1 A I don't recall. I believe they were there.

2 Q The words in the parentheses are added, though,
3 is that right? In other words, it reads, "Your," and then
4 add "real friends are," and then --

5 A This is copied from the translation of the
6 meaning of the Koran of Yousef Ali, the one that you
7 mentioned before lunch. It's exactly copied from there.

8 Q But it could well -- it says really, "Your ally
9 is God."

10 A Is that Yousef Ali's version?

11 Q Yes. You're saying that these words are the
12 words of Yousef Ali, is that right?

13 A Yes, yes.

14 Q Well, the meaning of it, though, and this is the
15 sheik's answer from the Koran, "Your ally is God"?

16 THE COURT: Is that a question?

17 A It could be, yes.

18 Q Moving to page 10 --

19 A Again, excuse me.

20 Q Pardon me.

21 A I believe we established several months ago that
22 when it's coming from the translation of the meaning of the
23 Koran just to be on the safe side to leave it as is.

24 Q Right.

25 A That's where I got it from, from the translation

1 of the meaning of the Koran.

2 Q And in the Yousef Ali Koran, then, they add those
3 extra words for emphasize, is that right?

4 A I believe so, for further explanation you can say
5 it.

6 Q OK. On page 10, the second paragraph from the
7 bottom --

8 A Yes, ma'am.

9 Q -- at this point in his sermon Dr. Abdel Rahman
10 is talking about a person who attempts to join the Prophet
11 Mohammed in a battle that is going on between the Moslems
12 and others, is that right?

13 A That's correct.

14 Q This particular part of the Koran talks about
15 how, does it not, that this man who is known for his courage
16 and for his skill --

17 A Excuse me. That's not a part of the Koran.

18 Q No? Tell me what it's a part of. I will ask
19 you.

20 A That is a part of the speech of Dr. Omar.

21 Q OK.

22 A Yes.

23 Q As it has been translated here, the translation
24 says that when this hero showed up to fight along with the
25 Muslims, he was asked the question, "Do you believe in Allah

1 and his Messenger?" Is that right?

2 A That's correct.

3 Q And they claim in this translation, or you claim
4 in this translation that he was asked that by a mujahid, a
5 soldier, is that right?

6 A Yes.

7 Q But isn't it true that in the original version
8 the Prophet himself asked these questions?

9 A Not what I -- that's not what I heard. The way I
10 heard it that a mujahid asked the man this, and he said, no,
11 the man replied no. Then the mujahid told him, then move
12 on. I have no business -- whatever the meaning is -- I have
13 no business fighting along with a person who does not
14 believe in Allah and his Messenger.

15 Q If I could just ask you, I would like this to be
16 marked Abdel Rahman V for identification.

17 A Yes, ma'am.

18 (Counsel conferred)

19 MS. STEWART: May I approach, Judge?

20 THE COURT: Yes.

21 Q I just ask that you read that over. The top is
22 the government translation. Then I will ask you a few
23 questions.

24 A I noticed on --

25 Q Have you read that over?

1 A Yes.

2 Q Do you agree with the translation there that is
3 different from the one that is offered here or not?

4 A That's what I was trying to make a comment on.

5 Q OK.

6 A I notice that here you put between the brackets,
7 "to the Prophet, the Prophet," and during the sermon, the
8 word "prophet" was not repeated. It was added.

9 Q But to --

10 A So --

11 Q Excuse me. Sorry.

12 A So whoever translated, they assumed that the
13 Prophet asked. The way I heard it, a mujahid, one of the
14 fighters with the Prophet, peace be upon him, asked that.
15 But the person who wrote this, because it was not in the
16 text, he put it in the brackets, assuming that the
17 Prophet -- when it says "he," brackets, "the Prophet asked,"
18 he assumed the Prophet asked.

19 Q Did you hear the word "mujahid" in the tape when
20 you were translating it?

21 A Yes, ma'am, I believe I did.

22 Q You didn't hear just he said?

23 A No, I heard the word "mujahid."

24 Q And are you familiar with this particular point
25 in the Prophet's life as recounted in the Sunna?

1 A About this particular incident?

2 Q Yes.

3 A No.

4 Q You are not familiar with the incident itself,
5 then?

6 A No.

7 Q So you're just translating by what you hear
8 rather than anything you know, is that right?

9 A Exactly, yes.

10 Q To the next page, page 11. The paragraph that
11 begins, "They want to buy the consciences and the hearts."

12 Do you see that line?

13 A Yes.

14 Q The sheik says that he went to the holy mosque in
15 Mecca, that is in Saudi Arabia, is that true?

16 A That is correct.

17 Q And that is a place where every devout or every
18 Moslem is to make a pilgrimage at some point in his life, is
19 that right?

20 A That's correct.

21 Q In this, you translated "encompassing" --

22 A Yes.

23 Q -- the sheik said, "I made the farewell
24 encompassing. I said: I'll kneel twice after the
25 encompassing."

1 A Yes.

2 Q Could you just explain what "encompassing" means.

3 A Encompassing, that's when the person who's
4 performing the pilgrimage goes around the kab'a seven times.
5 They call it encompassing around the kab'a.

6 Q It means going around?

7 A Going around, yes, seven times.

8 Q And he here is recounting how he was being
9 followed by some kind of surveillance or security, is that
10 right?

11 A That's correct.

12 Q I think we can move to Exhibit 467.

13 A If I can have a copy of it, please.

14 Q This is a sermon by Sheik Omar Abdel Rahman, is
15 that correct?

16 A That's correct, ma'am.

17 Q And in the third paragraph on the first page he
18 speaks about the Torah and the Bible, is that correct?

19 A Yes, ma'am.

20 Q That's quoted from the Koran, for which the
21 interpretation was "in the Law and the Gospel," is that
22 correct?

23 A That's correct, ma'am.

24 Q That is the same Old Testament that is known to
25 the Jewish and the Christian faiths, is that right?

1 A I believe so, yes.

2 Q In the next paragraph where it says, "This is the
3 prophesy of Jesus," that is the same Jesus of the New
4 Testament, is that right?

5 A Yes, ma'am.

6 Q On page 2 -- let me just backtrack a little.

7 The sheik here is giving a sermon on the
8 relationships between Moslems and Christians and Jews, is
9 that right, that's the tenor of this particular sermon?

10 A That's correct.

11 Q In the first full paragraph on the next page,
12 where he is talking about conflicts between the Muhajreen,
13 Al-Ansar, the Awos and Khazrag, do you see that?

14 A Yes.

15 Q These were conflicts between Moslems during the
16 time of Mohammed, is that right?

17 A Yes.

18 Q And that would have been sometime in the 7th
19 century, 610 A.D., 630, A.D., is that right?

20 A That's correct, ma'am.

21 Q In that same paragraph where they talk about the
22 third Khalifa, or where he speaks about the third Khalifa --

23 A At the third paragraph?

24 Q No, that same paragraph.

25 A The same paragraph.

1 Q Sorry.

2 A Yes, ma'am.

3 Q That word could be translated into English as
4 caliph, is that right?

5 A I read it before as caliph. But the word
6 "Khalifa" is, is much more known than "caliph."

7 Q Much more known where?

8 A To the people who write and read about Muslim
9 religion.

10 Q It refers, though, to the time in which all
11 Moslems were ruled by a single entity, though, is that
12 right?

13 A That's correct.

14 (Continued on next page)

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1 Q That person was known as the Khalifa or the
2 caliph, is that right?

3 A That's right, ma'am.

4 Q And the government or the lands which he ruled
5 was the caliphate, is that right?

6 A Yes.

7 Q In the next paragraph, the word "hadeeth" is
8 used?

9 A Yes.

10 Q Could you just tell us what is meant by that.

11 A These are the sayings of the Prophet, peace be
12 upon him. Anything that he said it was called the hadeeth,
13 which is a saying of his.

14 (Continued on next page)

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1 Q And do those sayings form part of the basis of
2 Islamic law?

3 A That is true.

4 Q In the next-to-the-last paragraph on that page,
5 the sheik is talking about to fight Islam in Andalusia.

6 A Yes.

7 Q If you know, is that another name for Spain and
8 Portugal where at a certain point in time the Muslims were
9 in control?

10 A Yes.

11 Q Also in that same line, it says the same was done
12 in the east where Bait El-Magdis -- capital B-A-I-T, capital
13 E-L hyphen capital M-A-Q-D-I-S -- existed.

14 A Yes.

15 Q Would that be a reference to Jerusalem?

16 A Yes, ma'am.

17 Q The next page, the third paragraph on the page,
18 beginning "At the present time."

19 A Yes.

20 Q In this paragraph Sheik Omar speaks about the
21 fact that communism and capitalism are no longer fighting
22 each other and the enemy has become the Muslims, is that
23 correct?

24 A That is correct, ma'am.

25 Q It is not unusual to have this kind of politics

1 in a sermon, is that right, in the Muslim religion?

2 A No, it is not unusual.

3 Q And that is because there is no separation
4 between church and state as such. In other words, it is all
5 a unity, so to speak, is that right?

6 A It is considered, yes.

7 Q On to page 5. The second full paragraph, there
8 is a reference starting with "Brothers, why are we keeping
9 silent when the jihad fields are calling us?" Do you see
10 that line?

11 A Yes.

12 Q And they are talking about women being raped and
13 it goes on for a number of paragraphs about the rape of the
14 women and the killing of children. Is that reference, if
15 you know, to Bosnia, where that was happening?

16 A Yes.

17 Q And on the last paragraph, where it starts out
18 "You are superiors in your faith and superior in your
19 shar'ia," do you see that?

20 A Yes.

21 Q Would you tell us what the shar'ia is.

22 A Shar'ia, capital S-H-A-R apostrophe I-A, that's
23 the rules and the laws of the Muslim religion.

24 Q And that also forms part of the Islamic legal
25 system as such, is that right?

1 A That is what is called the Islamic --

2 Q It is?

3 A Yes, ma'am, yes.

4 Q Page 6, second full paragraph, middle of that
5 paragraph, do you see the reference, "How many did they kill
6 in Zingbar," capital Z-I-N-G-B-A-R?

7 A Zingbar.

8 Q Yes.

9 A Yes.

10 Q Is that what was known as Zanzibar off the coast
11 of Africa, now known as part of Tanzania?

12 A I believe so.

13 Q And now at the very end on page 8, the first
14 paragraph on that page where he says "They are tortured with
15 the most vicious means of torture, such as electric chocks."

16 A Yes.

17 Q That is a typographical error. It should be
18 shocks, not chocks?

19 A That is true, yes.

20 Q And the next paragraph, where it starts "He
21 lightened them with the truth, he lightened them with the
22 truth and the Koran, which is light."

23 A Yes.

24 Q Would that be better translated as he enlightened
25 them?

1 A It should have been enlightened them, yes.

2 Q And then in the third line it also is, "God
3 complete his enlightening," is that correct?

4 And finally in the very last paragraph, this is
5 the da'wa, is that correct?

6 A Which part of the paragraph, please?

7 Q Where it starts "O God we ask for your mercy and
8 forgiveness."

9 A Yes.

10 Q That is the prayer at the end of the sermon, is
11 that right?

12 A Yes.

13 Q And in that Sheik Omar says, you have translated,
14 "Make the mujahideen victors in Yugoslavia, make the
15 mujahideen victorious in Palestine, make the mujahideen
16 victorious in Afghanistan."

17 A Yes.

18 Q "Make the mujahiden victorious in every Islamic
19 country."

20 A Yes.

21 MS. STEWART: No further questions.

22 THE COURT: Mr. Jacobs, representing Mr. Mohammed
23 Saleh.

24 MR. JACOBS: Your Honor, I reserved yesterday an
25 opportunity to ask a few questions on V5, V8, this with the

1 government's question. I think I had let your Honor know.

2 THE COURT: The corresponding exhibit numbers
3 are?

4 MR. JACOBS: 383T2. That is the videotape that
5 was played and read yesterday. We are going to be looking
6 at page 45 and 46.

7 THE WITNESS: Excuse me. Can I have a copy of
8 that, please.

9 MR. JACOBS: 383T2, page 45.

10 CROSS-EXAMINATION

11 BY MR. JACOBS:

12 Q If we could take a look at page 45, where Siddig
13 Ali says, and I think you were questioned by Mr. Bernstein
14 yesterday about this because there was some question about
15 an earlier transcript, the question, Siddig Ali says what
16 are you scared of? Do you see that on page 45?

17 A Yes.

18 Q And you have Amir Abdelgani saying Mohammed
19 Saleh. Do you see that, sir?

20 A Yes, I see that.

21 Q At that point I asked you to take another look at
22 the actual tape as to what Siddig Ali's words were, is that
23 correct?

24 A That is correct.

25 Q And you translated again to have Siddig Ali

1 saying, I mean maybe, is that correct?

2 A That is correct.

3 Q Let me ask you a question. Do you believe that
4 was in response to the words Mohammed Saleh, that he is
5 still on the same subject when Siddig Ali says I mean maybe?

6 A Yes.

7 Q Would you agree with me that at this particular
8 point Emad Salem switches the subject and says aren't the
9 brothers coming? Is that fair to say?

10 A That is fair to say.

11 Q Would you agree with me, then, as we move on down
12 the page, Salem makes a statement, quote, When they come let
13 us finish our talk, and when they come let's start our work
14 for an hour and then with God. Siddig Ali says shall we
15 rely on God, and Amir Abdelgani says Mohammed Saleh,
16 question mark, correct?

17 A Yes.

18 Q Then you have Siddig Ali saying hm, with
19 something unintelligible. You have Amir Abdelgani saying,
20 Mohammed Saleh, unintelligible, Salem saying hm, Siddig Ali
21 saying but we are, four dots, and Salem saying I don't
22 believe Mohammed Saleh would talk.

23 Let me ask you this, sir.

24 A Yes, sir.

25 Q When Siddig Ali said but we are, did Emad Salem

1 cut him off and speak?

2 A I believe he did.

3 Q If we could take it the next page. Amir
4 Abdelgani says, brother, why did he send us to the other
5 one? Siddig Ali says hm. Amir Abdelgani says, then how
6 come he sent us over to a place which he is not comfortable
7 with? Siddig Ali says, why, frankly speaking, I do not know
8 what the problem was --

9 A I did not know.

10 Q I did not know -- sorry, thank you -- what the
11 problem was. Why did he send us to the other gas station?
12 Then you have, he could have, three dots. Do you see that?

13 A Yes, I do see.

14 Q Did I ask you to listen to the Arabic and
15 actually translate those underlined words he could have, and
16 did you do that for me in Defendant Saleh Exhibit Y for
17 identification -- number 5, Mr. Fitzgerald?

18 A Yes, sir.

19 Q Would you take a look at that.

20 A Yes, sir.

21 Q Am I correct it included all the other lines but
22 number 5 is the "he could have" is that correct?

23 A Correct.

24 Q And that is your handwriting, correct?

25 A That is my handwriting.

1 Q And I asked you to do it out of the presence of
2 the jury to save time?

3 A That is true.

4 MR. JACOBS: I would offer that as Defendant
5 Saleh Exhibit Y for identification.

6 MR. FITZGERALD: No objection.

7 THE COURT: Defendant Mohammed Saleh Exhibit Y
8 received without objection.

9 (Defendant Mohammed Saleh Exhibit Y received in
10 evidence)

11 Q I don't speak Arabic and I am going to ask you if
12 you can -- you have, why did he send us to the other gas
13 station, question mark, he could have. Would you agree with
14 me, before we discuss what was exactly again, that Salem
15 again interrupts and says the man doesn't have diesel?
16 Would you agree with me as to that?

17 A I don't believe it was actual interruption.
18 Siddig stopped his thought and Emad did not give him the
19 chance to continue it. So we cannot say it is actual
20 interruption.

21 Q So what you are saying is, Siddig Ali was
22 speaking, he hadn't finished his thought and Salem then made
23 a statement, correct?

24 A That is correct.

25 MR. FITZGERALD: Objection.

1 THE COURT: Sustained, and stricken.

2 Q In the Arabic that you listened to -- by the way,
3 it is cued up if you would like to listen to it again -- is
4 there a negative in that statement, and could it read he
5 couldn't have? You have he could have. I would like you to
6 look at your Arabic again and I ask you to take a look at it
7 again and see if there is a negative in that as opposed to
8 he could have.

9 A Not on my Arabic.

10 Q Not in your Arabic?

11 A Not in my Arabic and that --

12 Q Sorry, please.

13 A Sorry. That means I didn't hear it.

14 MR. JACOBS: With the court's permission may the
15 witness hear it again briefly, your Honor?

16 THE COURT: Yes.

17 MR. JACOBS: I think we have it all cued up, I
18 hope.

19 (Pause)

20 A I don't think we are on the right one.

21 Q I am sorry.

22 A I don't think we are at the right spot. Can I
23 look at the tape, please.

24 MR. JACOBS: I have no objection.

25 Wrong side.

1 MR. FITZGERALD: I'd blame it on Mr. McCarthy,
2 but he would get even.

3 (Tape played)

4 THE WITNESS: If you could forward it about 15
5 counts.

6 (Tape played)

7 A There is no negative there.

8 Q There is no negative?

9 A There is no negative there.

10 Q And the words that you hear are number 5 in the
11 exhibit?

12 A Yes.

13 Q So you hear he could have, and you say there is a
14 pause? Why don't you explain what you think occurs at that
15 point.

16 A There was a short pause. Emad didn't let him
17 continue.

18 Q I am sorry.

19 A There was a short pause and Emad did not let him
20 continue his thought.

21 Q Emad did not let him continue his thought?

22 A He start to talk before Siddig continued or maybe
23 Siddig wouldn't have continued at all.

24 Q And what Salem says is the man doesn't have
25 diesel, correct, is what you interpreted?

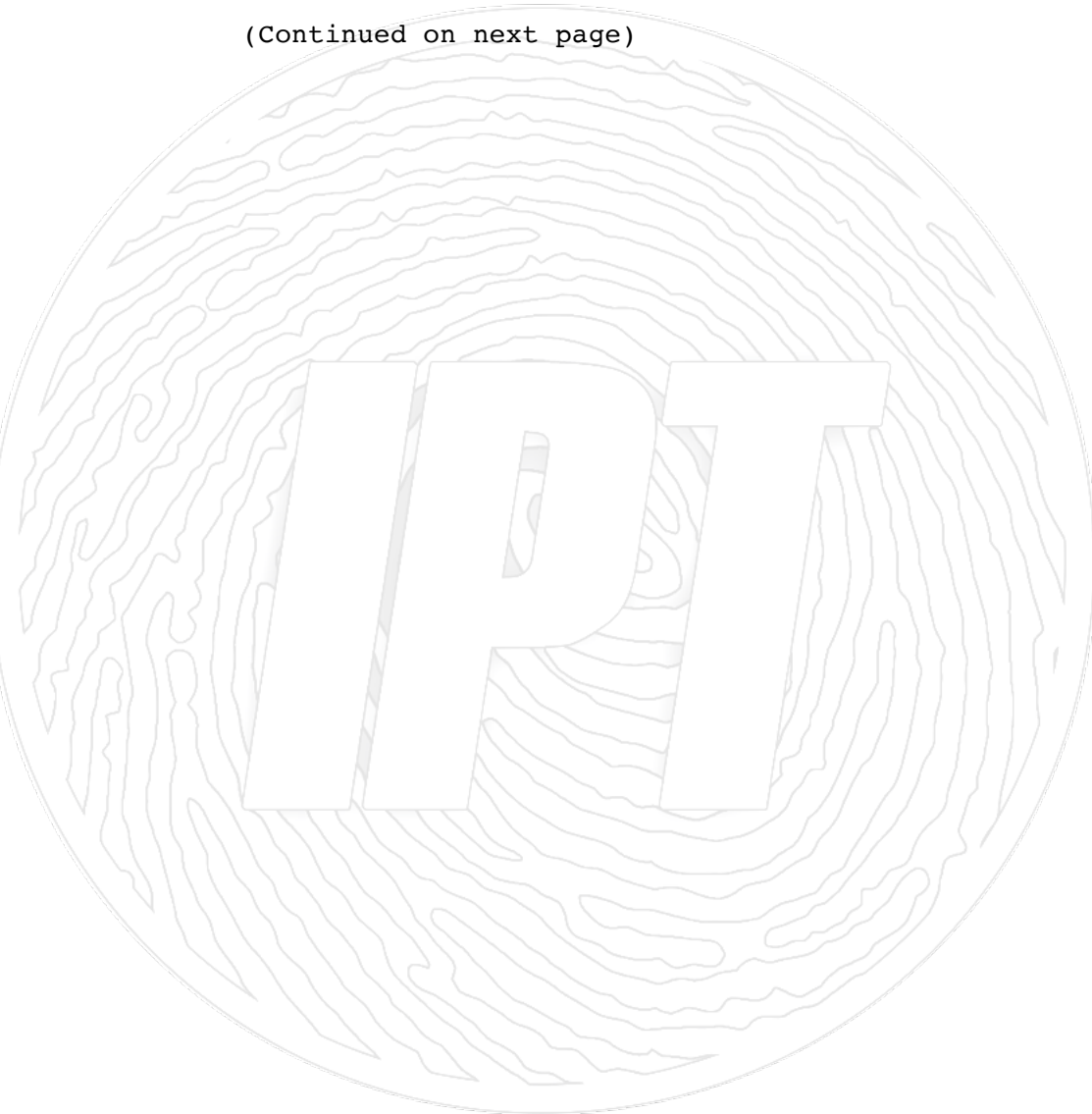
1 A Yes.

2 Q And then Amir Abdelgani says O brother by God I
3 personally saw diesel written on it, correct?

4 A That is correct.

5 (Continued on next page)

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

3 THE COURT: Any other cross? Any redirect?

4 MR. FITZGERALD: No, Judge.

5 THE COURT: You are excused. Thank you.

6 (Witness excused)

7 MR. MCCARTHY: Your Honor, at this time the
8 government offers into evidence a chart marked Government's
9 Exhibit 521.

10 MR. BERNSTEIN: Judge, may we approach?

11 (At the side bar)

12 MR. STAVIS: Your Honor, I would revisit an
13 objection I made earlier at pages 9650 and 9792 of the
14 record. This Government's Exhibit 521 is in effect a
15 summation chart which culls together various exhibits and
16 various telephone records, to make a point to the jury on
17 the interrelationship between them. Also, the exhibit is
18 approximately 10 pages, and it conveys to the jury at this
19 early stage of the proceedings a weight of government
20 evidence against the defendants before the defendants have
21 had an opportunity to present evidence on their behalf.

22 As I told the judge earlier, Judge Weinstein in
23 his treatise at page 1006-21 says that such charts should
24 ordinarily wait until summation. This particular one, for
25 example, does not include source tape 8-1 which I included

1 in my cross-examination of Emad Salem. That is a minor
2 inaccuracy. The main point of my objection is that it is a
3 summation chart and we are not up to summations yet.

4 MR. MCCARTHY: That objection is utterly without
5 merit. This chart is a dry chronology without commentary
6 about the substance of the conversations of electronic
7 surveillance and other interception evidence that came in
8 during the trial. With all due respect to Mr. Stavis and
9 his casting of what Judge Weinstein says in his treatise,
10 the Second Circuit in Casamento permitted --

11 THE COURT: I believe it says that charts of this
12 kind summarizing what is otherwise voluminous evidence are
13 permissible. Other people can put in other charts as long
14 as they are accurate.

15 MR. STAVIS: In Casamento the chart went into the
16 jury room, I believe, your Honor, and I distinguished it
17 earlier.

18 MR. MCCARTHY: It also came in during the trial.

19 As far as Mr. Stavis' other point about the
20 conversation we left out is concerned, I have been
21 distributing drafts of this chart for nearly a week and if
22 he had asked me to include that I would have. He simply
23 didn't ask. This is the first time I am hearing this.

24 MR. STAVIS: I may be remiss. The first time I
25 am seeing it is this afternoon.

1 MS. STEWART: I have the same problem. It is the
2 first time I am seeing it.

3 I would have one problem, that the foreign calls
4 on the sheik's FISA list, some of them are identified as to
5 where they are from or going to and some are not. It is
6 clear from the country code that you can always tell where
7 they are going to when you have the number, and yet some of
8 them are identified as being Peshawar, Pakistan, or Denmark,
9 but others have no identifying at all.

10 MR. McCARTHY: We took the information that was
11 nonargumentative and easily available by laying one's hands
12 either on the transcripts themselves or what came out in the
13 evidence. If amendments need to be made to it for those
14 purposes, I have no objection to doing that. all I want to
15 do is get it in. I think there are two entries we need for
16 the next witness. That is my only purpose.

17 THE COURT: Fine.

18 MS. STEWART: That is fine.

19 THE COURT: The chart eventually will be received
20 when whatever alleged inaccuracies in it have been
21 corrected, but otherwise, to the extent there is an
22 objection to it qua chart, that objection is overruled.

23 MR. McCARTHY: Your Honor, one other thing. I
24 made an agreement with Mr. Serra that the Mohammeds referred
25 to in the chart prior to June 19 are not Mr. Alvarez. Until

1 we are going to present the chart I guess it is not timely.

2 THE COURT: There is no point in pointing it out
3 to the jury when they don't have it.

4 MR. BERNSTEIN: We have an Abdelgani objection of
5 similar note which is a stipulation when the phone call is
6 not one of these Abdelganis or ---we will have to work it
7 out in the language.

8 (In open court)

9 THE COURT: The general objection to that chart
10 is overruled. The chart itself will be received when
11 whatever corrections and/or additions have to be made to it
12 have been made. That is 521?

13 MR. McCARTHY: Yes, your Honor, 521.

14 Your Honor, the government calls Avril Fugger,
15 A-V-R-I-L, F-U-G-G-E-R.

16 (Continued on next page)

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1 AVRIL FUGGER,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q Ms. Fugger, are you still employed as a paralegal
7 at the U.S. Attorney's Office?

8 A Yes, I am.

9 Q I have placed before you two exhibits, one of
10 which is Government's Exhibit 520, if I could ask you to
11 pick that up.

12 Is that a chart you have reviewed prior to coming
13 to court to testify?

14 A Yes, it is.

15 Q So we are clear, is that a chart that you
16 yourself prepared or was it handed to you in substantially
17 this form and were you asked to review it?

18 A It was given to me in a similar draft form and I
19 reviewed it.

20 Q Did you review this chart for accuracy?

21 A Yes, I did.

22 Q Does it list a government exhibit number and
23 describe what that Government's Exhibit is, in the first two
24 columns?

25 A Yes, it does.

1 Q Then does it list the phone numbers contained on
2 those various items and in particular phone books?

3 A Yes.

4 Q Did you review the exhibits described to make
5 sure that those phone numbers were contained in those items?

6 A Yes, I did.

7 Q In the other columns did you list other exhibits
8 where those particular phone numbers appear?

9 A Yes, I did.

10 Q Are the entries in the various columns fair and
11 accurate?

12 A Yes, they are.

13 MR. FITZGERALD: Your Honor, I would offer
14 Government's Exhibit 520.

15 MR. STAVIS: Brief voir dire, your Honor?

16 THE COURT: Go ahead.

17 VOIR-DIRE EXAMINATION

18 BY MR. STAVIS:

19 Q Good afternoon, Miss Fugger.

20 A Hello.

21 Q This Government's Exhibit 520, you were handed in
22 basically this form that it is in at the moment?

23 A Yes, similar.

24 Q Who handed you the form?

25 A Mr. Fitzgerald.

1 Q When did he do that?

2 A Last Wednesday?

3 MR. STAVIS: Your Honor, I have an objection to
4 the introduction of Exhibit 520, if I may be heard at the
5 side bar.

6 THE COURT: Is it the same as 521?

7 MR. STAVIS: Substantially, your Honor.

8 THE COURT: The resulting is substantially the
9 same, which is to say it is received.

10 MR. STAVIS: Your Honor has overruled my
11 objection?

12 THE COURT: I have.

13 (Government's Exhibit 520 received in evidence)

14 MR. FITZGERALD: Your Honor, the government will
15 seek to publish that at a later time.

16 Q I would like Ms. Fugger to look at Government's
17 Exhibit 522. Is that a chart that you looked at prior to
18 coming to court today?

19 A Yes?

20 A Yes, it is.

21 Q Is that a chart that you prepared or something
22 that you reviewed?

23 A I was given a draft and I reviewed the draft.

24 Q At the top it says key, and it lists phone
25 numbers and identifies a name or location?

1 A Yes.

2 Q At the bottom of the chart it lists four
3 different telephones and the number of calls placed from a
4 particular telephone to the numbers listed in the key above.

5 A Yes, it does.

6 Q Did you look at the phone records of the listed
7 telephones to make sure the entries were accurate?

8 A Yes, I did.

9 Q If you found corrections did you make the
10 corrections?

11 A I made corrections, yes.

12 Q Just so we are clear, you don't list all calls
13 made by all those telephones, just the listed ones on the
14 chart?

15 A That is correct.

16 Q And you don't know who spoke to whom on those
17 telephone calls?

18 A No, I don't.

19 MR. FITZGERALD: Your Honor, I would offer
20 Government's Exhibit 522.

21 THE COURT: Absent objection, 522 is received --
22 I am sorry. Mr. Jacobs, you had a voir dire?

23 MR. JACOBS: I have no objection. I will do it
24 on cross-examination.

25 THE COURT: 522 is received.

1 (Government's Exhibit 522 received in evidence)

2 MR. FITZGERALD: No further questions, Judge.

3 THE COURT: Cross. Ms. Amsterdam?

4 MR. FITZGERALD: I do have one stipulation, which
5 I agreed with Ms. Amsterdam. We can do that now. 522,
6 which I believe has been handed out to the jury -- for once
7 I'm correct -- in 522 there are a list of calls, including
8 calls to an Ahmed Yousef, and the stipulation the government
9 has with Ms. Amsterdam is that an earlier exhibit,
10 Government's Exhibit 737, was an intercepted phone call from
11 Siddig Ali to an Ahmed last name unknown. The person in
12 that phone call, Ahmed last name unknown, is not Ahmed
13 Yousef from the Sudanese Mission. That will be Government's
14 Exhibit 737. I believe it came up on June 1. I would note
15 that there was a call 11 minutes earlier by Siddig Ali to
16 the Ahmed Yousef, but the call in which Amir Abdelgani and
17 Fares Khallafalla were discussed was not Ahmed Yousef.

18 MS. AMSTERDAM: That is correct, your Honor, and
19 if the jurors would have an opportunity at some point to
20 refer to their notes on June 21, if they have any notes
21 about that incident, and to make the appropriate
22 corrections --

23 MR. FITZGERALD: June 1.

24 MS. AMSTERDAM: I am sorry, June 1 -- there are
25 two consecutive phone calls to Ahmed. One is to an Ahmed

1 Yousef and one is Ahmed last name unknown.

2 THE COURT: To the extent the notes relate to
3 June 1, Exhibit 737, they should indicate that the Ahmed
4 there is not Ahmed Yousef.

5 MS. AMSTERDAM: Thank you, sir. That is well
6 said. Thank you.

7 THE COURT: Aw shucks.

8 Mr. Jacobs.

9 CROSS-EXAMINATION

10 BY MR. JACOBS:

11 Q Ma'am, if we can, let's take a look at this.

12 MR. JACOBS: Do the jurors have it in front of
13 them?

14 THE COURT: They have it available. 522?

15 MR. JACOBS: I think it would help us a lot if
16 they have it, Judge.

17 THE COURT: If you have a book of Exhibits 500 to
18 699, that should include 522.

19 Q 522, I think it says at the top key, telephone
20 numbers, name, location, telephone activity. Am I correct,
21 ma'am, that at the top we have some sort of identification
22 of some of the phone numbers that come from some of the
23 various government exhibits? In other words, 201-222-7804
24 is a number that is either listed or registered to Siddig
25 Ali and it comes from a particular government exhibit, is

1 that correct?

2 A Yes.

3 Q And the same for this Ahmed Yousef, in
4 parentheses home, that comes from Government's Exhibit 167.

5 A Yes.

6 Q That happens to be, I believe, some items seized
7 from Mr. Saleh's person.

8 MR. JACOBS: Mr. Fitzgerald, am I correct?

9 MR. FITZGERALD: Yes.

10 Q With respect to the next two numbers, Sudanese
11 Mission to the UN, I believe that that is actually what the
12 number is but I think in the actual exhibit, I don't think
13 that is identified as Sudanese Mission to the UN --

14 MR. JACOBS: Mr. Fitzgerald, did we agree on
15 that?

16 MR. FITZGERALD: Yes, we are agreeing on that.

17 MR. JACOBS: We are not disputing that that is
18 what the number comes back to, those two items.

19 Q The next number is listed to somebody named Siraj
20 El Din. Again that comes from Government's Exhibit 167, one
21 of the papers found on my client. Ebru Trading 914, is that
22 is the gas station, ma'am, is that correct, to your
23 knowledge?

24 A That is the name that is listed on the toll
25 records. I don't know if it is a gas station.

1 Q And of course Mohammed Saleh's home number is
2 listed 914.

3 Let's take a look, if we can, at your next
4 portion of the chart. You list a total -- and I do
5 apologize if my mathematics are wrong, but I have listed 69
6 calls from Mohammed Saleh's home in your first batch of
7 calls, either to Ahmed Yousef's home, Siraj, Sudanese
8 Mission and the fax, if I added up 29, 29, 11 and 1, I added
9 it up to 69 calls, is that correct?

10 THE COURT: It comes 70.

11 MR. JACOBS: Thank you, Judge. That is why I am
12 a lawyer and not a mathematician.

13 Q Would you know if any of those 70 calls that have
14 been recorded have been entered into evidence before the
15 jury?

16 A I have no knowledge of that.

17 MR. JACOBS: Would it be possible, Mr.
18 Fitzgerald, to agree that none of those 70 calls are in
19 evidence?

20 MR. FITZGERALD: Agreed, stipulated.

21 Q Would you take a look at the next 11 calls from
22 Ebru Trading to the three telephones that are listed. Those
23 11 calls, to your knowledge have those been recorded and
24 been entered into evidence before the jury?

25 A I don't know.

1 Q And I would be fair to state, and I think you did
2 it on your direct examination, that you really don't have
3 any knowledge of who made the call at the particular time
4 and place, correct?

5 A That is correct.

6 Q You wouldn't know if Mohammed's wife knew
7 somebody else's wife or somebody at the gas station called
8 somebody else, correct?

9 A That is correct.

10 Q One way of knowing, of course, whether people
11 spoke is if the conversation had been recorded, either by
12 somebody wearing a recording or there being some
13 court-ordered interception, correct?

14 A Yes.

15 Q Now, if we look at the third items, Siddig Ali
16 telephone, on those the government, to your knowledge, did
17 have a wiretap on Siddig Ali's phone, correct?

18 A I didn't know that.

19 Q Let me, for example, show you in evidence 799T,
20 call on June 14, 1993, which is in evidence, which is fully
21 recorded between Siddig Ali and my client, correct, ma'am?

22 A Yes, it is a transcript of a telephone call.

23 Q So at least as to the one before you, we do have
24 in evidence before the jury a number of actual recorded
25 calls between Siddig Ali and some of the parties, is that

1 correct?

2 A Yes.

3 Q At least the one that is before you, correct?

4 A Yes.

5 (Continued on next page)

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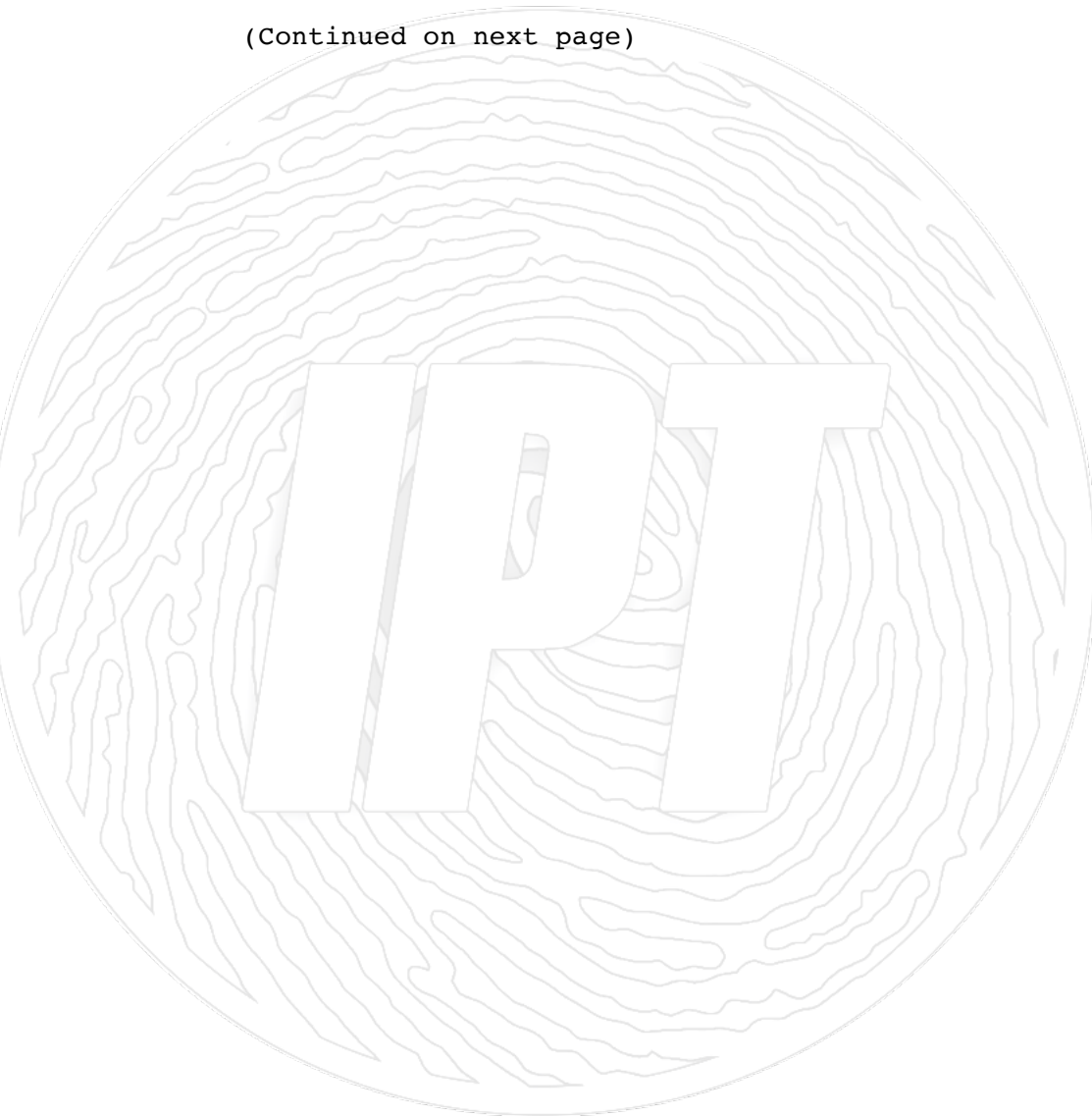
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1 Q OK. Would you know if all the recorded calls
2 between Siddig Ali and my client are in evidence in this
3 case at this time? Would you know that?

4 A No.

5 Q You list three calls from Siddig Ali to Mohammed
6 Saleh's home, and eight calls from Siddig Ali to Ebru
7 Trading. Can you tell us whether those 11 calls are in
8 evidence before this jury?

9 A I don't know.

10 MR. JACOBS: I have no objection to the chart,
11 your Honor.

12 THE COURT: Any other cross?

13 Mr. Serra, representing Mr. Alvarez. Go ahead.

14 CROSS-EXAMINATION

15 BY MR. SERRA:

16 Q Good afternoon, Ms. Fugger.

17 A Good afternoon.

18 Q You and I have only met a hundred or so times, is
19 that right?

20 A That's correct.

21 Q Ms. Fugger, referring you to Government Exhibit

22 520 --

23 MR. SERRA: Your Honor, I believe that that
24 exhibit is not in the jurors' books, and the government will
25 distribute it later.

1 THE COURT: Right.

2 Q First of all, Government Exhibit 520 is a chart
3 which you checked which relates to various numbers from
4 Mr. Alvarez' phone books, is that correct?

5 A That's correct. From phone books and from, I
6 think, one business card.

7 Q And a business card.

8 Directing your attention to the chart, four of
9 the entries on that chart are for someone by the name of
10 Mustafa Assad, is that correct?

11 A Yes. That's correct.

12 Q Let's go through briefly, if we could, those one
13 by one.

14 There is a column on this chart called "Name," is
15 that correct?

16 A Yes.

17 Q When you wrote down, or when you checked the name
18 on this chart, the way it is written on the chart is the
19 same way that it was written in the phone book which was
20 recovered from Mr. Alvarez' home, is that correct?

21 A Yes.

22 Q So let's go through the Mustafa Assad references
23 if we could. There are two on the first page of the chart,
24 is that right?

25 A Yes.

1 Q The first of two --

2 THE COURT: Mr. Serra, for some reason you're off
3 the air. You are back on.

4 MR. SERRA: I think I'm back on the air, your
5 Honor.

6 Q Ms. Fugger, in the first of those two references
7 the name Assad is spelled A-S-S-A-D, is that correct?

8 A Yes.

9 Q And that is the way as you've just testified that
10 it appeared in Mr. Alvarez' phone book, is that correct?

11 A Yes.

12 Q In the second of those references, the name Assad
13 is spell A-S-A-D, is that correct?

14 A Yes.

15 Q On to the second page, please.

16 There is one reference on the second page of the
17 chart to Mustafa Assad, is that correct?

18 A Yes.

19 Q And the last name there is spelled A-Z-A-D, is
20 that correct?

21 A Yes.

22 Q Are you aware, Ms. Fugger, that a native Spanish
23 speaker from North America would pronounce A-Z-A-D as Assad?

24 A I don't know that.

25 Q But we have three entries and three different

1 spellings so far, is that correct?

2 A That's correct.

3 Q Let's go to the last page, the final reference to
4 Mustafa Assad? There it's Mustafa Assad Rodriguez, is that
5 correct?

6 A That's correct.

7 Q So in the four entries in your chart for Mustafa
8 Assad, there are four different spellings or four different
9 versions of the name, is that correct?

10 A That's correct.

11 Q Referring you one more time to the third of
12 those, which is the one on the second page --

13 A Yes.

14 Q -- the A-Z-A-D, do you see that?

15 A Yes.

16 Q There are two letters in parentheses after the
17 name, is that correct?

18 A Yes, there are.

19 Q Those two letters after the name were present in
20 the Victor Alvarez phone book from which that reference
21 came, is that right?

22 A Yes.

23 Q And those two letters are P as in "Puerto" and R
24 as in "Rico," is that right?

25 A That's correct.

1 Q I think you previously testified that you did not
2 make the selections of the names that appear on this chart,
3 is that right?

4 A That's correct.

5 Q So, for example, on the first page there is a
6 reference to someone by the name of Ibrahim spelled,
7 E-B-R-A-H-I-M, is that correct?

8 A Yes.

9 Q Do you know who that is?

10 A No, I don't.

11 MR. SERRA: Thank you, Ms. Fugger.

12 I have nothing further, your Honor.

13 THE COURT: Any other cross?

14 Any redirect?

15 MR. FITZGERALD: Just one question, Judge.

16 REDIRECT EXAMINATION

17 BY MR. FITZGERALD:

18 Q Ms. Fugger, Mr. Jacobs asked you about the calls
19 from Siddig Ali to Mohammed Saleh and showed you a
20 transcript of a tape-recorded call. Do you know when in the
21 period from January '93 to July '93 the government began
22 tape recording calls from Siddig Ali?

23 A No, I don't.

24 MR. FITZGERALD: Thank you.

25 THE COURT: Anything else? Thank you. You're

1 excused.

2 THE WITNESS: Thank you.

3 (Witness excused)

4 MR. KHUZAMI: Your Honor, pursuant to stipulation
5 with Mr. Lavine and Mr. Bernstein, the government offers
6 Government Exhibit 812B, which is an enlargement of a
7 photograph already in evidence which is Government Exhibit
8 812.

9 THE COURT: All right. By stipulation 812B is
10 received.

11 (Government's Exhibit 812B for identification was
12 received in evidence)

13 MR. KHUZAMI: Next, your Honor, another
14 stipulation with defense counsel concerning yesterday's
15 testimony by Joyce Reddy, the witness from the Bureau of
16 Alcohol, Tobacco & Firearms who testified that she was given
17 certain names and checked those against ATF records to
18 determine if any of those persons were licensees or
19 permittees.

20 She was asked by Ms. Amsterdam whether or not she
21 was given the name Emad Salem and asked to check whether he
22 was a licensee or permittee, and she answered that she had.
23 That testimony was in error, and she had not been given the
24 name Emad Salem to check.

25 THE COURT: All right. So that check was not

1 made?

2 MR. KHUZAMI: That's correct.

3 MR. FITZGERALD: Your Honor, at this time the
4 government would also --

5 THE COURT: Before you do that, why don't you
6 wait until Mr. Khuzami finishes with Mr. Ricco.

7 MR. FITZGERALD: OK.

8 (Counsel conferred)

9 MR. FITZGERALD: Your Honor, yesterday when I
10 offered the phone records, I offered 516 and neglected to
11 include Government Exhibit 516A, which were some additional
12 pages of the Siddig Ali phone records, which I offer now.

13 THE COURT: All right. Without objection, 516A?

14 MR. FITZGERALD: 516A.

15 THE COURT: 516A is received as well.

16 (Government's Exhibit 516A for identification was
17 received in evidence)

18 MR. KHUZAMI: Your Honor, the next item is that
19 the government would request permission to read documents or
20 portions thereof of the items, some of the items entered
21 into evidence this morning by Mr. Feghali.

22 THE COURT: All right. Why don't we take our
23 break now, and we will do that after the break.

24 Ladies and gentlemen, we are going to take a
25 break. Please leave your notes and other materials behind.

1 Please don't discuss the case and we will resume in a few
2 minutes.

3 (Jury not present)

4 THE COURT: Do you have any idea of when you will
5 be ending?

6 MR. SERRA: I'm sorry. I can't hear.

7 THE COURT: I asked if the government had any
8 idea when they will end, which is to say when you will rest.

9 MR. FITZGERALD: Tomorrow morning. I believe,
10 that, subject to your Honor's ruling on the Yousuf Hussein
11 matter, which triggers into a few exhibits, then we had some
12 exhibits to read and then some items to read. I think it
13 would spill over into the morning, but we would safely rest
14 in the morning.

15 THE COURT: What I would like to be able to tell
16 them at the end of the day or the end of the break is that
17 they will have some substantial part of tomorrow on their
18 own because we have things to deal with. That's what I plan
19 to do.

20 OK. Thank you. Also with regard to the Yousuf
21 Hussein matter, I looked at the file, Mr. Jacobs.

22 MR. JACOBS: Yes. I am coming up.

23 THE COURT: I want to make sure what it is I am
24 supposed to be looking for. As I understand it, Mr. Jacobs
25 suggested in words or substance that to the extent the

1 government had anything on, or any information with respect
2 Mr. Hussein, the question was whether he had given money to
3 some other group or other entity, correct?

4 MR. JACOBS: I am not really a hundred percent
5 sure how the government is going to handle this argument on
6 summation. I don't think it's really the question of proof
7 at this point. They are going to, I suppose, have potential
8 argument that somehow this either corroborates Siddig Ali,
9 this was a real money person, or the like. They seem to
10 have additional information on this individual that we don't
11 have. How we would use it without knowing what it is, is a
12 difficult position for us to be in.

13 I suppose you are asking us to say -- I mean if I
14 had something that we saw that we thought would perhaps
15 negate an argument they would make, we would use it. If it
16 had no effect on our argument, then we wouldn't use it. I
17 had asked your Honor out of an abundance of caution to take
18 a look at it. Money seems to be a rather significant factor
19 for the government in this case as to how this conspiracy
20 moves both for the sheik and a lot of the other defendants
21 in this case.

22 I don't know how Yousuf Hussein plays into their
23 single conspiracy theory as far as money is concerned. I am
24 sort of at the mercy of the court, I guess, to take a look
25 to see what is there and to see if there is anything there

1 that might hopefully, or helpfully, be allowed for the
2 defense to use on their case -- perhaps, I don't know.

3 As I said, I haven't heard their argument on
4 summation. I just don't want them to get up there in
5 summation and make an argument about money and us not having
6 had the ammunition or the documents and later come up with
7 something a year later that we could have used.

8 THE COURT: To the extent that there is anything
9 in there about money, it is not inconsistent with anything
10 they have suggested so far. There is only one matter that I
11 want to ask them about, and I would like to ask them about
12 that ex parte.

13 MR. JACOBS: Fine. As I said, I mean, as long as
14 your Honor knows that we're dealing with money and we are
15 dealing with someone that at least Siddig Ali and this
16 fellow Salem I guess reached out for. And if there is
17 something that is going to knock their credibility down, I
18 think we should get it or if this person is a real person
19 that did something, we may want to use that as well to show
20 that it is a different conspiracy. I don't know because we
21 don't have it.

22 THE COURT: OK.

23 MR. PATEL: Your Honor, on this same issue, I'm
24 somewhat concerned about the time frame in which any
25 information that they have about this individual exists.

1 There is an allegation that my client had his name on a slip
2 of paper in his house in 1990. All the other connections
3 are three years later. I would argue that if the
4 information that your Honor has or the government has
5 relates to '93, that the fact that my client has something
6 on a slip of paper where there is no allegation of him
7 soliciting funds for anything is irrelevant.

8 THE COURT: I will see the government in the
9 robing room.

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1 (Pages 12920 to 12923 sealed)

2 (In open court)

3 (Jury not present)

4 MR. FITZGERALD: Judge, on the Yousuf Hussein
5 matter, we were going to deal with it this afternoon if your
6 Honor was going to rule. I just didn't want to bring it up
7 in front of the jury.

8 THE COURT: I am prepared to rule. There is
9 nothing in the material that I was shown that is in any way
10 inconsistent with the theory propounded so far with respect
11 to Mr. Hussein's role or potential role. To the extent that
12 there is any information, it is consistent. So the
13 telephone numbers will be received with respect to
14 Mr. Hussein.

15 MR. FITZGERALD: As to the documents, we have
16 worked out a stipulation with counsel. The only remaining
17 issue was a document seized from Mr. Nosair's house had his
18 name and address. I will offer that.

19 (Jury present)

20 THE COURT: Mr. Fitzgerald?

21 MR. FITZGERALD: Yes, your Honor. At this time
22 the government would read in certain stipulations with
23 counsel.

24 First, it is stipulated that during Government
25 Exhibit 311T, which for counsel's benefit is also known as

1 CM10, at pages 33 through 34 Siddig Ali described to Emad
2 Salem an assassination he claimed to have committed in
3 Chicago. There was also cross-examination of Emad Salem by
4 Ms. Amsterdam concerning two other tapes where Siddig Ali
5 discussed the murder he claimed to have committed in
6 Chicago, and during one of those conversations, Siddig Ali
7 identified the victim as Francis Dane. It is stipulated
8 that in fact Francis Dane was not murdered. I would note
9 for the record that, if the jurors wanted to make a note on
10 the exhibit, it is GX311T, and it's pages 33 to 34. The
11 cross-examination by Ms. Amsterdam was on April 3 and 4 of
12 this year, if their notes are dated, before I proceed to the
13 next stipulation.

14 MS. AMSTERDAM: Thank you, Mr. Fitzgerald.

15 MR. FITZGERALD: The next stipulation: It is
16 stipulated between the government and defendant Clement
17 Hampton-El that the five SKS rifles and one AK-47 rifle and
18 other items purchased from Bilal Numan Harun in Virginia in
19 November of 1992 were purchased by Abu Ubaidah, in part with
20 money he obtained from Mr. Hampton-El. This stipulation
21 does not provide that the money was obtained for that
22 purpose by Abu Ubaidah.

23 MR. WASSERMAN: Thank you.

24 MR. FITZGERALD: It's further stipulated between
25 the government and counsel that Yousuf Hussein had an

1 apartment in the United States at 401L, Eagle Heights,
2 Madison, Wisconsin 53705, during the period from June 1989
3 to August 1, 1990, during which time his telephone number
4 was area code 608-233-3511.

5 Yousuf Hussein had an apartment in the United
6 States at 942A Eagle Heights, Madison, Wisconsin 53705
7 during the period from August 1, 1990 through July 1, 1992,
8 during which time his telephone number was area code
9 608-238-5788.

10 During this time his mailing address in the
11 United Arab Emirates, was PO Box 29, Fujairah, United Arab
12 Emirates, and his telephone contact number in the United
13 Arab Emirates was 011-971-544-300 and fax 011-971-635-4728.

14 (Continued on next page)
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1 It is further stipulated that Yousuf Hussein's
2 wife was a student at the University of Wisconsin during the
3 period from June 1989 to July 1, 1992. Sometime after July
4 1, 1992, Yousuf Hussein and his wife returned to the United
5 Arab Emirates.

6 Your Honor, at this time the government --

7 MR. JACOBS: That was a correct stipulation with
8 the exception of the matter that we discussed outside the
9 presence of the jury that your Honor is still reviewing.
10 The stipulation there is no objection to, but there was a
11 matter raised. I just wanted to make sure we haven't waived
12 that matter and your Honor is still reviewing it.

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

14 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I am sorry. I like to know what it
3 is I am still thinking about.

4 MR. JACOBS: Your Honor, we had asked -- you had
5 Hussein stuff that you were reviewing and you wanted to ask
6 the government about ex parte.

7 THE COURT: I did ask the government about it ex
8 parte and I am now satisfied that there are no
9 contradictions, as I indicated before, between the
10 information that you have and what is contained in there.

11 MR. JACOBS: Just for the record, the stipulation
12 there is no objection to by counsel. However, I want to
13 reserve the right, because I have not heard how the
14 government is going to argue this in summation, to make some
15 further application if I believe it is beyond the
16 stipulation that is here, because I haven't been privy to
17 what your Honor has seen. It may be much ado about nothing.

18 THE COURT: I think it is. I think this is
19 principally defensive on their part, but I may be wrong.

20 MR. PATEL: Your Honor, as long as we are here,
21 can we deal with another --

22 THE COURT: Yes.

23 MR. FITZGERALD: There is some confusion in the
24 record. 81 is an exhibit that was offered during the Nosair
25 search. The Arabic, Mr. Patel moved to strike. I had no

1 objection. It had to do with killing Kennedy. The back had
2 Yousef Hussein's address. To the extent it was only numbers
3 I wanted to include Mr. Hussein's address.

4 MR. PATEL: I believe Mr. Fitzgerald originally
5 wanted the telephone number. I have a relevance objection
6 because there is nothing -- first of all, we have no idea
7 when this document was created or what Mr. Yousef Hussein
8 was doing at that time. Your Honor having allowed the
9 telephone number in, I have no rational objection, since the
10 telephone number is part of the stipulation to the address
11 also coming in, but I would object to the documents coming
12 in on relevance grounds because there is nothing linking
13 Mr. Yousef Hussein to Mr. Nosair whatever.

14 MR. FITZGERALD: We are offering this to show
15 association, that Mr. Nosair knew this same Yousef Hussein.

16 MR. PATEL: He could have stuff about Abraham
17 Lincoln too.

18 THE COURT: It is one thing to have Abraham
19 Lincoln's name on a document, it is quite another to have
20 Yousef Hussein's name and address handwritten on a document.

21 MR. PATEL: By who?

22 THE COURT: It doesn't matter. If I have a
23 document handwritten by you, it shows that at some point --

24 MR. PATEL: You have many.

25 THE COURT: Right. In any event, to the extent

1 there is an objection, it is overruled.

2 (In open court)

3 MR. FITZGERALD: And, your Honor, I offer the
4 English portion of Government's Exhibit 81.

5 THE COURT: That is received over objection. Go
6 ahead.

7 (Government's Exhibit 81 received in evidence)

8 MR. FITZGERALD: I will just read one entry on
9 Government's Exhibit 81.

10 Yousef Hussein 401 L Eagle Heights, Madison WI
11 53705.

12 THE COURT: 81 is --

13 MR. FITZGERALD: May I have a moment with
14 counsel?

15 THE COURT: Yes.

16 MR. FITZGERALD: It was a document identified by
17 Lieutenant Kane as being recovered in the Nosair search.

18 THE COURT: Go ahead.

19 MR. FITZGERALD: Your Honor, at this point the
20 government would read Government's Exhibits 753T and 796T,
21 which should be in the jury's binders.

22 THE COURT: They should be in a binder marked 751
23 through 850.

24 MR. FITZGERALD: We will actually be reading 796T
25 first. It's an earlier date. 796T is the transcript of a

1 telephone call intercepted on the Siddig Ali FISA on June
2 11, 1993, at 10:42 in the morning. I will read the
3 statements attributed to Siddig Ali and Mr. Khuzami will
4 read the statements attributed to the unidentified female.

5 (Government's Exhibits 796 in evidence read to
6 the jury)

7 MR. FITZGERALD: Turning to Government's Exhibits
8 753T, 753T is a conversation recorded also on the Siddig Ali
9 FISA two days later on June 13, 1993, at 7:57 in the
10 evening. I will read the statements attributed to Siddig
11 Ali and Mr. Khuzami will read the statements attributed to
12 Yousef Hussein.

13 (Government's Exhibit 753 in evidence read to the
14 jury)

15 MR. FITZGERALD: Your Honor, at this time the
16 government would offer Government's Exhibits 673 and 673A, B
17 and C.

18 THE COURT: Absent objection, those are received.

19 (Government's Exhibits 673 and 673A through C
20 received in evidence)

21 MR. KHUZAMI: Your Honor, at this time the
22 government would request permission to read to the jury the
23 documents presented in evidence through Mr. Fighale.

24 THE COURT: Which?

25 MR. KHUZAMI: Exhibits 809T, 179T, 170T, 171T,

1 portions of 172T, 174, 175, portions of 176, and 177.

2 THE COURT: After 809T I will give an instruction
3 on the 170 series. Go ahead.

4 MR. KHUZAMI: Thank you.

5 COUNSEL: Your Honor, may we have a moment?

6 THE COURT: Yes.

7 (Pause)

8 THE COURT: Please proceed with 809T. Go ahead.

9 MR. KHUZAMI: Thank you, your Honor. This
10 document is in the binders marked 750 to the end.

11 Your Honor, testimony concerning this item was
12 offered in connection with the testimony of Abdel Rahman
13 Haggag. I will skip the portion at the top.

14 (Mr. Khuzami read to the jury from Government
15 Exhibit 809T in evidence)

16 MR. KHUZAMI: The next item will be in the 170
17 series, which will be in the binders marked 150 to 299.

18 THE COURT: You are going to start with which
19 document?

20 MR. KHUZAMI: 179T.

21 THE COURT: Before the government starts to read
22 from these documents I want to give you a particular
23 instruction with regard to them. The documents in the 170
24 series were seized in a search of Mr. Wahid Saleh's house.
25 First of all, they are to be received only with respect to

1 him and not with respect to any other defendant. You can
2 consider them only with respect to him.

3 Second, I want to remind you that there is no
4 claim that he wrote any of these documents. They were
5 simply found in his house. You may consider them and give
6 them whatever weight, if any, you believe they deserve,
7 knowing that.

8 Go ahead.

9 MR. KHUZAMI: Thank you.

10 (Mr. Khuzami read to the jury from Government's
11 Exhibit 179T in evidence)

12 MR. KHUZAMI: The next document is 170T.

13 (Mr. Khuzami read to the jury from Government's
14 Exhibit 170T in evidence)

15 MR. KHUZAMI: The next document is 171T.

16 (Mr. Khuzami read to the jury from Government's
17 Exhibit 171T in evidence)

18 MR. KHUZAMI: The next document is 172.

19 (Mr. Khuzami read to the jury from Government's
20 Exhibit 172T in evidence)

21 MR. KHUZAMI: Skipping ahead to page 4, the
22 paragraph starting "Arise O nation."

23 MR. NOOTER: Your Honor I am going to object
24 under Rule 106 and ask that they not skip ahead.

25 THE COURT: He wants you to read the whole thing,

1 read the whole thing.

2 MR. NOOTER: This is a collection of a bunch of
3 different articles and it seems to me --

4 THE COURT: No speeches. Your objection is
5 sustained. If you want him to read the whole thing, he will
6 read the whole thing.

7 MR. NOOTER: Thank you.

8 THE COURT: Let me see counsel at the side
9 briefly.

10 (At the side bar)

11 THE COURT: Are these separate articles?

12 MR. KHUZAMI: Yes, your Honor.

13 THE COURT: Then the objection is overruled.

14 MR. NOOTER: They are all articles in the
15 documents.

16 THE COURT: I know. Read them on your case.

17 (Continued on next page)

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1 (In open court)

2 THE COURT: Skip ahead.

3 MR. KHUZAMI: Picking up on page 4, starting,

4 "Arise, oh, Nation."

5 (Reading continued)

6 THE COURT: I will see you at the side.

7 MR. JACOBS: Your Honor, may I see you at side
8 bar, please.

9 (Continued on next page)

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1 (At the side bar)

2 MR. JACOBS: Your Honor, before the jury is
3 discharged, I would ask your Honor to give an admonition
4 again which your Honor previously gave before the jury
5 concerning this. Then I would like to make some
6 applications outside the presence of the jury. I would ask
7 for another further admonition that this only applies
8 obviously to Wahid Saleh, and then I would like to make some
9 further applications outside the presence of the jury.

10 THE COURT: Such as?

11 MR. JACOBS: For a mistrial.

12 THE COURT: Oh, please.

13 MR. JACOBS: Your Honor --

14 THE COURT: Look, you want to make it, you make
15 it. I am going to send them home.

16 MR. WASSERMAN: One clarification, but in this
17 part of the room, when he said Dr. Abdel Rashid, you
18 couldn't hear the end, just to clarify that the author of
19 that article is not the defendant.

20 THE COURT: OK.

21 MS. AMSTERDAM: I would join in Mr. Jacobs'
22 motion for a mistrial. I really think the probative value
23 of this evidence is so outweighed by the prejudice, and this
24 is the most extremely inflammatory rhetoric that we have had
25 in this case.

1 THE COURT: Ms. Amsterdam, did you hear --

2 MS. AMSTERDAM: Yes.

3 THE COURT: -- the opening for the lawyer who
4 represents the client in whose house that was found?

5 MS. AMSTERDAM: I understand, but I represent a
6 client who didn't open that way, and I am getting the
7 trickle-down effect of this. This shows motive, this shows
8 anger, it shows any number of things which the jury is
9 listening to in the context of this case.

10 THE COURT: We will end with the admonition, and
11 then we will send them home.

12 MR. JACOBS: Thank you.

13 THE COURT: OK.

14 (In open court)

15 THE COURT: Ladies and gentlemen, we are going to
16 end today for the day. Before you go home, I want to repeat
17 an instruction that I gave before these exhibits were read.
18 That is that, first off, they were found in Mr. Wahid
19 Saleh's house. He is the only defendant as to whom you may
20 consider them at all.

21 Also, there is no claim that he wrote any of
22 them. So you can simply give them whatever weight with
23 respect to him you believe they deserve, if any. With that,
24 I will tell you that we are ending for the day. Please do
25 not discuss the case. Please don't read anything about the

1 case or any related matter or event, and we will see you
2 tomorrow morning.

3 Good night.

4 MR. WASSERMAN: Judge, the other thing we talked
5 about?

6 THE COURT: Oh, one more thing: There was
7 reference in one of these flyers to an article authored by a
8 man named Dr. Abdel Rashid Saqr.

9 That is not Mr. Hampton-El, who is also known as
10 Dr. Rashid. It is somebody named Dr. Rashid Saqr who is not
11 at all related to Mr. Hampton-El.

12 With that, good night.

13 (The jury was excused)

14 (Jury not present)

15 THE COURT: Mr. Jacobs? You wanted to be heard?

16 MR. JACOBS: Just briefly, your Honor.

17 We understand your Honor's ruling with respect to
18 Wahid Saleh, and we don't represent him, but the nature of
19 the material is so inflammatory that while it may have a
20 valid point with respect to his opening, on behalf of the
21 other defendants we would move for a severance and/or a
22 mistrial.

23 I thank your Honor for the admonition, and I
24 think your Honor did everything your Honor probably could to
25 try to minimize what is there. But it is what it is.

1 The language is about as inflammatory as you can
2 ever get in a criminal case presented to a jury. I don't
3 think this jury can separate, with all due respect, and I
4 thank your Honor for trying, I am not faulting the court for
5 making an effort to do it, and balancing what your Honor
6 considers to be the opening of one lawyer, but when you have
7 language like killing an American is a favor to God, that
8 language should not be presented to this jury under any
9 circumstances in this case.

10 If it is a single defendant and he's on trial and
11 he wants to argue a particular position, that's one thing.
12 But language like "the Gulf problem will not be solved
13 unless we dig a grave for America in Saudi Arabia," that
14 type of language should not be presented to this jury under
15 any circumstances. And while I thank the court for the
16 admonitions both before and afterwards, I don't think they
17 are sufficient.

18 THE COURT: First off, I will respond in a
19 minute, but does anybody else want to be heard?

20 I assume everybody joins in the motion, is that
21 correct?

22 MR. STAVIS: Yes, your Honor.

23 MR. BERNSTEIN: Yes, Judge.

24 THE COURT: Good.

25 MR. NOOTER: Your Honor, I would just point out

1 that these documents I had moved to preclude before on Rule
2 403 grounds, and I also moved for a redaction of all this
3 inflammatory language, and so, of course, the court was on
4 notice on that those rulings apply for me separately from
5 the other defendants obviously.

6 THE COURT: Right.

7 MR. NOOTER: They are raising an issue on the
8 spillover.

9 THE COURT: Right.

10 MR. NOOTER: I would join the severance motion
11 and ask to continue with this jury with my client and let
12 everyone else be received.

13 (Laughter)

14 THE COURT: Ms. Amsterdam, did you want to be
15 heard, or do you simply join in that?

16 MS. AMSTERDAM: No, thank you.

17 THE COURT: Let me take the last part first.

18 Don't thank me for the admonition. If I didn't
19 think it was warranted, I would have just as cheerfully
20 denied it.

21 Secondly, if this were a stock fraud case, you
22 would have a point. It isn't. It is a case about violence,
23 extreme violence. I thought and think that the admission of
24 the documents was proportional and counteracted an
25 impression that was sought to be created in the opening.

1 That having been said, you are not reading any
2 more. There is such a thing as proportionality, and I think
3 it's been achieved.

4 MR. JACOBS: Your Honor?

5 THE COURT: Yes. If you want to argue it in
6 summation, argue it in summation, but we are not going to
7 sit here and listen to more of it.

8 Yes?

9 MR. JACOBS: Had a defendant or a co-defendant
10 made these statements in furtherance of the conspiracy, then
11 all's fair in a criminal case.

12 THE COURT: Mr. Jacobs, there were statements
13 that were -- I mean, it's hard to make fine distinctions,
14 but there were some statements in furtherance that in their
15 own way were comparable at least to these.

16 MR. JACOBS: I understand. The point is this:
17 when it's made --

18 THE COURT: I am sure you can recall them.

19 MR. JACOBS: I know exactly what they are. But
20 to have these things being read to the jury on a very
21 marginal point, even the government concedes that these were
22 just documents found in somebody's home, which there's no
23 question he has not formally adopted, there's no question he
24 didn't utter, there's no question they are not made in
25 furtherance of the conspiracy, and there's no question under

1 403 that the statements about killing the Americans, which
2 is one of the issues this jury has to decide, is there in
3 the back of the mind.

4 To me the government makes a tremendous gamble
5 when they put this kind of language before the jury not in
6 furtherance of the conspiracy, and not made by a defendant.

7 We'll live with the CM's. That's our problem,
8 and we'll go -- win or lose -- on the CM's. I don't mind
9 winning or losing on the CM's. But to see this kind of
10 stuff that's found on a toilet bowl, and that's really what
11 it is found on, and I don't mean it facetiously. Some of
12 the documents were found on the back of the toilet bowl in
13 his home.

14 THE COURT: I don't think there's been any
15 testimony to that effect. I think you are using a question
16 that was asked --

17 MR. JACOBS: But to have a statement "killing an
18 American is a favor to God" read to this jury, not by a
19 defendant in this case, with all due respect to your Honor's
20 admonition, I don't think it can be cured.

21 We should try the case on what the defendants say
22 and what the co-conspirators say and what the sheik is going
23 to say or not say, not on this kind of stuff.

24 I think it gives us a very difficult situation
25 where we now are faced with this type of -- I call the it

1 rhetoric that is now before the jury.

2 We don't mind dealing with the sheik's comments
3 and the CM's, but I don't know how we deal with this.

4 THE COURT: Or Mr. Siddig's Ali's or
5 Mr. Abdelgani's.

6 MR. JACOBS: That is our responsibility.

7 THE COURT: Understood.

8 As I said, there was an opening that made certain
9 statements about the defendant. In his home things were
10 found that I believe are at least arguably inconsistent with
11 his opening about the nature of his world view. Whatever is
12 to be proved, as far as I'm concerned, has been proved.
13 You're not reading any more. If you want to argue it
14 summation, argue it in summation.

15 MR. JACOBS: All I can say, your Honor, is that
16 if the government's going to stand up there in summation and
17 read some of this to the jury. All I am saying is they're
18 just compounding the problem. They have a right to do it
19 now, and that's part of the problem.

20 THE COURT: I seriously doubt that they are going
21 to spend valuable time reading.

22 MR. JACOBS: With all due respect, when the jury
23 calls for this exhibit to get sent into the jury room, what
24 do we do? We tell the jury, oh, by the way, we are giving
25 this limiting instruction again when they're sitting there

1 for a week with this kind of language in front of them. I
2 think that is the problem. The CM's are fine. That's fair
3 game. But I don't think we should have the CM's mixed up
4 with this business. It's really awful stuff, your Honor.

5 THE COURT: I understand your point. Your motion
6 is denied. Ms. Amsterdam?

7 MS. AMSTERDAM: Your Honor, I would just propose
8 an alternative. I join in Mr. Jacobs' application, but I
9 would ask at this time that the evidence be stricken, and
10 the jury be instructed to disregard it. I think that now
11 that we have heard it, I think we can revisit the issue of
12 whether or not its probative value is not outweighed by the
13 prejudice, and I think the court would be within its
14 discretion to strike it and instruct them to disregard it.

15 THE COURT: So what you're telling me is now that
16 Mr. Jacobs says that nobody is ever going to forget it, you
17 are getting up and asking me to unring the bell.

18 MS. AMSTERDAM: I am asking as an alternative --
19 I agree with them. I am asking that as an alternative. I
20 do believe they are not going to forget it. I think it
21 would be a stronger statement from this court to say upon
22 review we find that this evidence is not relevant to the
23 issues in this case, and it's being stricken, and we're
24 asking you to disregard it.

25 THE COURT: Do you want to be heard?

1 MR. McCARTHY: We would object to that.

2 The curative instructions are adequate to cure
3 the prejudice. I just want to note for the record that
4 these materials were circulated to counsel and counsel had
5 copies of them before any of this all happened, before they
6 were read to the jury.

7 These arguments that are being made now, there's
8 absolutely no reason that they the couldn't have been made
9 prior to the time that the stuff was read to the jury.

10 That's not to say that we think it was remotely
11 improper. It was absolutely appropriate rebuttal to the
12 misimpressions that counsel for Wahid Saleh sought to
13 create. But if the court was going to hear this kind of
14 argument, the time to hear it, I must say, was prior to the
15 time the stuff got read to the jury.

16 MR. JACOBS: I thought I read some of the
17 comments to the court out loud previously. I thought the
18 comments were particularly offensive about killing Jews.

19 I read it to the court and your Honor overruled
20 me. I thought I had no place in this case. To say I didn't
21 raise the subject is not correct. I found it particularly
22 offensive to be having this kind of stuff before this jury.

23 THE COURT: As I said, if this were a stock fraud
24 case, you would have a point. It isn't.

25 Yes?

1 MR. STAVIS: Just in 30 seconds, the statement
2 was purported to be introduced regarding religion. And yet
3 the portions -- yes, regarding the opening, concerning
4 Mr. Wahid's religion, how he isn't religious and this shows
5 his involvement in jihad and everything else, but the impact
6 of the statement, which is one of the things that Mr. Jacobs
7 is saying, is on the sedition aspect of the case regarding
8 America. That is one of the reasons why I join Mr. Jacobs'
9 application.

10 THE COURT: The presentation of Mr. Wahid Saleh
11 in his lawyer's opening was as a non-ideological person, a
12 person who is a high liver, a bit dishonest and shady in a
13 very conventional sense, but otherwise not at all into
14 ideology of any kind. That was what this was introduced to
15 rebut. That's all that it was. That's what it was
16 introduced to rebut, and that's all it was introduced to
17 rebut. That having been said, there won't be any more of it
18 read.

19 You needed a ruling, correct, with regard to --

20 MR. KHUZAMI: The one outstanding Attica call.

21 THE COURT: Right. I read your letter. I am not
22 persuaded. The prior ruling stands. It is out.

23 MR. KHUZAMI: Thank you.

24 MR. STAVIS: I just typed up a letter on the
25 computer while I was sitting here, Judge.

1 THE COURT: Do you want to send it?

2 MR. STAVIS: I have to be here anyway.

3 THE COURT: OK. Good. See you tomorrow.

4 MS. AMSTERDAM: Your Honor, could Mr. Jacobs and
5 I see you just on a personal matter for one brief moment.

6 THE COURT: With the reporter?

7 MR. JACOBS: No.

8 (Proceedings adjourned to Wednesday, June 28,
9 1995 at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

3 v.

OMAR AHMAD ALI ABDEL RAHMAN,
4 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,"

EL SAYYID NOSAIR,
7 a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

IBRAHIM A. EL-GABROWNY,
9 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

CLEMENT HAMPTON-EL,
11 a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

AMIR ABDELGANI,
13 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

FADIL ABDELGANI,
17 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.

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S5 93 Cr. 181 (MBM)

June 28, 1995
9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

25

APPEARANCES

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and
SALVATORE S. RUSSO

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. Where is the birthday
4 boy?

5 MS. AMSTERDAM: Our birthday boy is in front of
6 Judge Keenan, getting birthday regards, I am sure.

7 THE COURT: Will he be here?

8 MS. AMSTERDAM: Yes.

9 THE COURT: When will he be here?

10 MS. AMSTERDAM: He is going from judge to judge.

11 THE COURT: I can understand.

12 MR. BERNSTEIN: I will stand in for him, with
13 Mr. Saleh's permission.

14 THE COURT: Mr. Saleh, is that satisfactory to
15 you?

16 DEFENDANT MOHAMMED SALEH: Yes.

17 MR. BERNSTEIN: Without fee.

18 (Jury present)

19 THE COURT: Good morning, ladies and gentlemen.

20 JURORS: Good morning, your Honor.

21 MR. KHUZAMI: Your Honor, the government calls
22 Gamal Abdel-Hafiz.

23 GAMAL ABDEL-HAFIZ,

24 called as a witness by the government,

25 having been duly sworn, testified as follows:

1 THE COURT: Go ahead.

2 DIRECT EXAMINATION

3 BY MR. KHUZAMI:

4 Q Good morning, Mr. Abdel-Hafiz.

5 A Good morning, sir.

6 Q If you would please pick up the tape marked
7 Government's Exhibit 672 and the transcript marked
8 Government's Exhibit 672T, and let me ask if you recognize
9 those two items?

10 A Yes, sir, I do.

11 Q How do you recognize them?

12 A With my initial on them.

13 Q Did you listen to the tape marked Government's
14 Exhibit 672?

15 A Yes, sir, I have.

16 Q And did you translate the Arabic on Government's
17 Exhibit 672 into English and create the transcript marked
18 Government's Exhibit 672T?

19 A Yes, sir, I have.

20 Q Is that transcript a fair and accurate English
21 translation of the Arabic you found on Government's Exhibit
22 672?

23 A Yes, sir, it is.

24 MR. KHUZAMI: Your Honor, I would move
25 Government's Exhibits 672 and 672T into evidence.

1 MR. BERNSTEIN: No objection.

2 MR. STAVIS: No objection, your Honor.

3 THE COURT: 672 and 672T are received without
4 objection.

5 (Government's Exhibits 672 and 672T were received
6 in evidence)

7 Q If you would next pick up Government's Exhibits
8 673T and 673C1 in evidence and ask if you translated those
9 two items?

10 A Yes, sir, I have.

11 Q Are 673T and 673C1, which are also next to you,
12 the translation of those two documents that you did?

13 A Yes, sir, it is.

14 Q Are your initials on those items?

15 A Yes, sir, it is.

16 Q Are Government's Exhibit 673T and 673C1 fair and
17 accurate English translations of the corresponding Arabic
18 documents?

19 A Yes, sir, it is.

20 MR. KHUZAMI: Your Honor, I would move
21 Government's Exhibits 673T and 673C1 in evidence.

22 MR. STAVIS: May I have a moment with Mr.
23 Khuzami.

24 No objection.

25 THE COURT: 673T and 673C1 are received without

1 objection.

2 (Government's Exhibits 673T and 673C1 received in
3 evidence)

4 MR. KHUZAMI: Lastly, your Honor, we would
5 request permission to ask Mr. Abdel-Hafiz one question about
6 an exhibit that was placed in evidence yesterday.

7 THE COURT: Go ahead.

8 Q Next to you has been placed Government's Exhibit
9 647T, which was a translation of a tape in evidence 647 and
10 I asked if you did that translation?

11 A Yes, sir.

12 Q In the course of translating that document, did
13 you translate one of the phrases used by the speaker as
14 "non-mubarak"?

15 A Yes, sir.

16 Q Who is the speaker on that tape?

17 A It was Sheik Omar Abdel Rahman.

18 Q What does non-mubarak mean?

19 A It means the nonblessed.

20 MS. STEWART: Could we have a page reference?

21 THE WITNESS: It is on page 8, the seventh line
22 from the top.

23 Q Mr. Abdel-Hafiz, does the word mubarak, besides
24 being a formal name does it have a meaning in the Arabic,
25 other than being a formal name?

1 A Mubarak means blessed, other than being a formal
2 name.

3 MR. KHUZAMI: No further questions.

4 THE COURT: Cross? Mr. Ricco, representing Mr.
5 El-Gabrowny. Go ahead.

6 CROSS-EXAMINATION

7 BY MR. RICCO:

8 Q Good morning, Mr. Hafiz.

9 A Good morning, sir.

10 Q Mr. Hafiz, Government's Exhibit 672 and 672T is a
11 telephone conversation, is it not, between Mr. Nosair, Mr.
12 El-Gabrowny, and then Mr. Salem, isn't that correct?

13 A That is correct, sir.

14 Q And the complete conversation is in Arabic, isn't
15 that right?

16 A Yes, sir.

17 Q The way the telephone call is initiated is that
18 Mr. El-Gabrowny is responding to a telephone call from Mr.
19 Nosair, isn't that correct?

20 A Well, I am not sure how it start because the
21 phone call was in progress on the tape already.

22 Q From the telephone call itself you are able to
23 determine, however, that Mr. Nosair is incarcerated
24 somewhere, isn't that correct?

25 A Yes, sir.

1 Q And he appears to be speaking to Mr. El-Gabrowny
2 at his home.

3 A Yes, sir.

4 Q Then at some point during the conversation, Mr.
5 El-Gabrowny telephones Mr. Salem, who then joins in the
6 conversation, isn't that correct?

7 A That is correct, sir.

8 Q And then Mr. Salem and Mr. Nosair have a
9 telephone conversation together, isn't that correct?

10 A That is correct, sir.

11 Q And then Mr. Salem drops out of the conversation
12 and the conversation ends with Mr. Nosair and Mr.
13 El-Gabrowny, isn't that correct?

14 A That is correct, sir.

15 Q I would like to go to the first page of that
16 document with you -- does the jury have those exhibits, Mr.
17 Khuzami?

18 MR. KHUZAMI: Yes.

19 THE COURT: That is in a binder marked 500
20 through 699, and it is 672T.

21 Q At the beginning of the conversation, Mr. Nosair
22 asked Mr. El-Gabrowny about an interview that took place at
23 the FBI, isn't that right?

24 A If you just guide me to which attribution.

25 Q Bottom.

1 A The bottom of the page. Yes, sir.

2 Q Mr. Nosair asked El-Gabrowny did he hear a taped
3 conversation between himself, Mr. El-Gabrowny and Mr. Salem.
4 He asked Mr. El-Gabrowny about that, isn't that correct?
5 Bottom of the page.

6 A He asked him if he heard the tape of the
7 conversation between Mr. El-Gabrowny and the brother, our
8 brother.

9 Q And later in the conversation we find that the
10 person he is referring to is Emad Salem, isn't that correct?

11 A You can guess that. I am not sure.

12 Q But what Mr. El-Gabrowny responds is that no, it
13 was Emad Salem who heard the conversation, isn't that
14 correct?

15 A That is correct, sir.

16 Q Mr. Nosair then says to him, well, tell Emad to
17 write me a letter explaining everything that happened at
18 this interview. Isn't that what he says to Mr. El-Gabrowny?

19 A Yes, sir.

20 Q And he says to Mr. El-Gabrowny to give Emad a
21 message that he can file a complaint against the FBI.
22 That's what Mr. Nosair says to Mr. El-Gabrowny, correct?

23 A Yes, sir, that is correct.

24 Q And what Mr. Nosair says to Mr. El-Gabrowny, tell
25 him that he has a right to file some type of claim, isn't

1 that correct?

2 A Yes, that is correct.

3 Q Then Mr. Nosair says to Mr. El-Gabrowny that he
4 can file a claim himself.

5 A Yes, later on he told him that he is planning on
6 filing a lawsuit himself, yes.

7 THE COURT: Wait a second. He, who, is planning
8 on filing a lawsuit?

9 THE WITNESS: Mr. Nosair.

10 THE COURT: Mr. Nosair is planning on filing a
11 lawsuit?

12 THE WITNESS: Yes, sir.

13 THE COURT: I don't know that that was the
14 question, but go ahead.

15 THE WITNESS: Yes, your Honor.

16 Q He also gave some advice to Mr. El-Gabrowny,
17 isn't that correct?

18 A If you can clarify what kind of advice, please.

19 Q He tells Mr. El-Gabrowny that Mr. El-Gabrowny can
20 file a suit himself, isn't that right?

21 A At which page and which attribution?

22 Q I'll get to it, I'll get to it. I just want to
23 move.

24 At this point of the conversation -- this is the
25 beginning part of the conversation -- Mr. Nosair is

1 primarily discussing with Mr. El-Gabrownny this interview
2 that took place, an interview that took place, isn't that
3 correct?

4 A What kind of interview?

5 Q We are not really sure from the conversation, are
6 we?

7 A If you just guide me which page and which
8 attribution, I can follow with you, please.

9 Q All right. Go to the third page, first
10 attribution to Mr. Nosair, the large paragraph.

11 A Yes, sir.

12 Q And you see a second attribution where he says to
13 Mr. El-Gabrownny, we have the right to file a lawsuit in
14 federal court, you will get compensation, I assure you?

15 A Yes, sir.

16 Q He is telling Mr. El-Gabrownny that if he files
17 some type of complaint he can be compensated for it, isn't
18 that correct?

19 A That is correct.

20 Q And this is based on this interview that took
21 place that they were referring to in this conversation,
22 isn't that correct?

23 A I believe that they were referring to taping
24 phone conversations, not interview.

25 Q OK, fair enough.

1 And then Mr. Nosair asks about his wife and his
2 children at the bottom of that same page that you are on,
3 page 3?

4 A Yes, sir.

5 Q And he starts asking Mr. El-Gabrowny about a
6 delay in the ordering of a ribbon from some type of company,
7 isn't that correct?

8 A That is correct, sir.

9 Q And then they discuss the issuance of a subpoena
10 to a person named Emad Abdou, isn't that correct?

11 A That is correct.

12 Q Mr. El-Gabrowny discusses with him what he knows
13 about the issuance of that subpoena, isn't that correct?

14 A That is correct, yes.

15 Q And then there is a conversation that follows
16 about the Mubarak government and about Sheik Omar Rahman,
17 isn't that correct? That would be on page 6.

18 A Yes.

19 Q And they talk about on page 7 the Egyptian army
20 going into a Sudanese village, isn't that correct?

21 A That is correct.

22 Q And then at some point shortly thereafter, a
23 small child gets on the telephone with Mr. Nosair, isn't
24 that correct?

25 A Yes, sir, that is correct.

1 Q And the child is identified as Jana, or Nan,
2 isn't that correct?

3 A Jana, J-A-N-A.

4 Q And then shortly thereafter, Mr. El-Gabrowny
5 asks -- I am sorry -- Mr. Nosair asks to speak with
6 Mr. Salem and Mr. Salem is telephoned and brought into the
7 conversation, isn't that correct?

8 A That is correct.

9 Q We don't have the benefit of the language, so I
10 want to ask you a question about the tone of the
11 conversation, if you recall. Do you recall when Mr. Salem
12 was speaking to Mr. Nosair whether or not it was a calm
13 conversation or whether or not it was a loud or boisterous
14 conversation?

15 A If you can clarify.

16 Q Were they speaking to each other as you and I are
17 asking questions and answers back and forth, or was it a
18 high level of emotion in the conversation? Was it rowdy?

19 MR. KHUZAMI: Objection.

20 THE COURT: Overruled. I will allow it.

21 A It was not rowdy. Mr. Nosair was calm, Emad was
22 a little excited during his conversation.

23 Q Emad kept praising Allah, he seemed happy to
24 speak with Mr. Nosair?

25 A That's a fact, yes.

1 Q When Mr. Nosair spoke to Mr. Salem directly, he
2 said to Mr. Salem that he can file a lawsuit in federal
3 court, and that would be at the top of page 11.

4 A Yes, sir.

5 Q Mr. Nosair also tells Mr. Salem to write to him
6 everything, that he, Nosair, will be the one that will file
7 a lawsuit on Emad's behalf.

8 A That is correct.

9 Q And Emad Salem responds praise God or Allah
10 willing, these types of statements that are to these
11 statements that are being made by Mr. Nosair, isn't that
12 correct?

13 A Yes, sir.

14 Q Then Nosair says to Mr. Salem that we will show
15 them that we can use the legal system, isn't that correct,
16 that we can use the legal process?

17 A Which page are we on now?

18 Q Bottom of page 11.

19 A I don't believe he said that we can show them
20 that we can use the system. What I see here, the last
21 attribution, he said so that we show them that we are better
22 law-abiding people than them.

23 Q OK, and what he is explaining to Mr. Salem is, if
24 you send me these papers I will file a lawsuit in federal
25 court, isn't that right?

1 A That is correct.

2 Q Mr. Nosair explains to Mr. Salem to write
3 everything down as to what happened, isn't that correct?

4 A That is correct.

5 Q He tells him that if you send him the papers he
6 will rewrite it in a legal form and then send it it back to
7 Mr. Salem for him to have it notarized, isn't that correct?

8 A That is correct.

9 Q At any point in this conversation does Mr. Nosair
10 say to Mr. Salem that he will get Mr. Salem a lawyer?

11 A No, that didn't happen.

12 Q In fact, Mr. Nosair says that he is going to play
13 the role of the lawyer in a sense, isn't that right?

14 A That was not mentioned. Mr. Nosair said I will
15 rewrite the papers in a legal form, I will file it for you.

16 Q Right, and he never uses the word lawyer, isn't
17 that correct?

18 A He never used the word lawyer.

19 Q Even by his own actions, correct?

20 A That is correct, yes.

21 Q Or by hiring a lawyer for Mr. Salem, isn't that
22 correct?

23 A That is correct.

24 Q And Emad's response to that is praise God, Insha
25 Allah, isn't that correct?

1 A That is correct, yes.

2 Q And then after this, Mr. Nosair asks Mr. Salem,
3 you know, may God bless you, and they exchange praises to
4 God back and forth to each other, and Mr. Salem says that,
5 you know, please tolerate my lack of courtesy, it is the
6 circumstances of these days, you know. And Nosair says
7 don't forget us in your prayers, sheik, and then that's it
8 and Mr. El-Gabrowny comes back on the telephone; isn't that
9 correct?

10 A That is correct, sir.

11 Q The remainder of the conversation with Mr.
12 El-Gabrowny, there is a discussion about an article that Mr.
13 Nosair wants published, isn't that correct?

14 A That is correct.

15 Q Nosair seems a little annoyed at Mr. El-Gabrowny
16 because Mr. El-Gabrowny didn't get an immediate response,
17 isn't that correct?

18 A That is correct.

19 Q Mr. El-Gabrowny explains to him that he would
20 feel uncomfortable by imposing himself on a person for a
21 response, isn't that right?

22 A I believe what he meant here, that he feels
23 uncomfortable imposing himself on the people that were
24 assigned to take care of this article.

25 Q That is what I mean. I am sorry.

1 A Not the people that will publish it.

2 Q OK. And Mr. Nosair says to him, well, you know,
3 you are falling asleep. I think he says, you seem to have
4 dozed, isn't that right?

5 A Yes.

6 Q And Mr. El-Gabrownny explains --

7 A But --

8 Q -- he hasn't dozed, just he's got a little more
9 class, isn't that right?

10 A If you can guide me to where is this exactly,
11 please.

12 Q When he explains to Mr. El-Gabrownny --

13 A Which page?

14 Q I am sorry. I am going back and forth from two
15 different copies, so give me one second.

16 A All right.

17 Q OK, page 14, second attribution to Mr. Nosair,
18 the last sentence Mr. Nosair explains to Mr. El-Gabrownny, I
19 don't know, you have completely gone asleep, frankly
20 speaking.

21 A Yes.

22 Q And then later on Mr. El-Gabrownny says well, I
23 can't impose myself like this, right or wrong. And then
24 there is some further conversation about the publication of
25 the article, isn't that correct?

1 A Yes.

2 Q And then the conversation then goes into a
3 subject of Mr. El-Gabrownny asks Mr. Nosair if he can tell
4 him who are the people who think he is not fit to work on
5 Mr. Nosair's case.

6 A The question was not that he is not fit, that he
7 is not good for the case.

8 Q That Mr. El-Gabrownny --

9 A -- is not good for Mr. Nosair's case, yes.

10 Q Mr. El-Gabrownny wants to know, well, who are the
11 people who are saying that he is not good to work on Mr.
12 Nosair's case, and Mr. Nosair says to him don't worry about
13 it, these are small-minded people, just do the best you can,
14 in sum and substance, isn't that correct?

15 A That is correct, yes.

16 Q In fact Mr. El-Gabrownny says that he asked Mrs.
17 Nosair about it and she told him that she wasn't telling him
18 anything, isn't that correct?

19 A That is correct, yes.

20 Q And then essentially the conversation ends, isn't
21 that right?

22 A That is correct, sir.

23 Q During the conversation, Mr. Hafiz, did Nosair
24 direct Emad Salem to go to the Abu Bakr Mosque at any time?

25 A No, I don't recall that.

1 Q Did Mr. Nosair tell Emad Salem, I want you to
2 come up to Attica to see me because we have something to
3 discuss?

4 A No, that didn't happen.

5 Q Since you listened to the conversation and you
6 listened to the tone that was used, can you tell us whether
7 or not when Mr. Nosair was speaking to Mr. Salem, is it your
8 opinion whether he was putting pressure on him to do
9 something?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q Was there any urgency in Mr. Nosair's voice?

13 MR. KHUZAMI: Objection. Objection to form.

14 THE COURT: I will allow it.

15 A I don't believe so.

16 Q And when Mr. Nosair suggested to Mr. Salem that
17 he write everything down in a letter and send it to him,
18 Mr. Salem's response to that was that he would do that,
19 isn't that correct?

20 A That is correct.

21 MR. RICCO: I have no further questions. Thank
22 you very much.

23 MR. STAVIS: I have just a few brief questions,
24 your Honor.

25 THE COURT: Mr. Stavis representing Mr. Nosair.

1 Go ahead.

2 CROSS-EXAMINATION

3 BY MR. STAVIS:

4 Q Good morning,.

5 A Good morning, sir.

6 Q I would like to draw your attention and the
7 jury's attention to the bottom of page 11 of the transcript.
8 Mr. Abdel-Hafiz, I believe you testified that during this
9 portion of the conversation between Mr. Nosair and
10 Mr. Salem, that they are discussing the filing of a lawsuit,
11 is that correct?

12 A That is correct, sir.

13 Q And that lawsuit was to be against the FBI, is
14 that correct?

15 A That is correct, sir.

16 Q In relation to that lawsuit, on the bottom of
17 page 11 of the last attribution, Mr. Nosair said to Emad
18 Salem, so that we show them that we are better law-abiding
19 people than them, eh, eh, eh, despite all their false
20 allegations, is that correct?

21 A That is correct.

22 Q And Emad Salem responded to that on the top of
23 page 12, that's exactly right.

24 A That is correct.

25 Q This conversation took place, drawing your

1 attention and the jury's attention to the first page of the
2 transcript, Government's Exhibit 672F in evidence, this
3 conversation occurred on December 28, 1992, is that correct?

4 A That is correct.

5 Q And the World Trade Center bombing occurred on
6 February 26, 1993, is that correct?

7 A That is correct, as I can recall.

8 MR. STAVIS: I have no further questions, your
9 Honor.

10 THE COURT: Any other cross of Mr. Abdel-Hafiz?
11 Any redirect?

12 MR. KHUZAMI: Yes, your Honor.

13 THE COURT: Go ahead.

14 REDIRECT EXAMINATION

15 BY MR. KHUZAMI:

16 Q Mr. Abdel-Hafiz, if you would please turn to page
17 11 of the transcript, bottom of the page concerning the
18 passages that Mr. Stavis asked you about.

19 A Yes, sir.

20 Q Prior to that, on page 10 at the bottom of the
21 page, is it the case that right after Mr. Salem gets on the
22 phone Mr. Nosair says, you know that all the calls are
23 monitored? Do you see that?

24 A Yes, sir.

25 Q If you would turn to page 8, the bottom of page

1 8, please.

2 A Yes, sir.

3 Q Do you see at the bottom of the page that Mr.
4 El-Gabrowny indicated to Mr. Nosair that Mr. El-Gabrowny
5 wanted to talk to him about a subject? Do you see that?

6 A Yes, sir.

7 Q And that Mr. Nosair said that he can't talk over
8 the phone about too many things, is that right?

9 A That is correct.

10 Q And then Mr. El-Gabrowny says that he would come
11 to him so that we know what we are going to do exactly, do
12 you see that?

13 A Yes, sir.

14 Q And if you would please turn to page 14 of the
15 transcript, about four attributions down Mr. Ricco referred
16 to the passage where Mr. Nosair indicated to Mr. El-Gabrowny
17 that, I don't know, you have completely gone to sleep. Do
18 you see that?

19 A Yes, sir.

20 Q About four more attributions down, is it the case
21 that Mr. El-Gabrowny told him there is nothing that you have
22 asked of me and I didn't do, you gave it to me and told me
23 that have Shawkat send it?

24 A Yes, sir.

25 MR. KHUZAMI: No further questions.

1 THE COURT: Mr. Ricco.

2 RECROSS-EXAMINATION

3 BY MR. RICCO:

4 Q I would like to go back to the subject that Mr.
5 Khuzami just covered on page 8, please.

6 A 8.

7 Q And I would like to start with the second
8 attribution from the bottom of the page. When Mr.
9 El-Gabrownny says to Mr. Nosair, of course I want to talk to
10 you about a subject, do you see that?

11 A Yes.

12 Q And Mr. Nosair says yes, of course, I can't talk
13 over the phone about too many things, you see. And Mr.
14 El-Gabrownny says no, I will come to you God willing, Sayyid,
15 so we know what we are going to do exactly. And Nosair says
16 yes, God willing, correct?

17 A Yes, sir, that is correct.

18 Q And at the top of the next page Mr. El-Gabrownny
19 says, because I am uncertain now. And Nosair says, fine,
20 God willing. Mr. El-Gabrownny says I am completely
21 uncertain. Nosair says, fine. Mr. El-Gabrownny says, and
22 the amount that will be paid. And Nosair says, this amount
23 will not be paid and I'll tell you why. Mr. El-Gabrownny
24 says, yes, I agree with you, I agree, but we see. Nosair
25 says, yes. El-Gabrownny says, where we stand exactly. Mr.

1 Nosair says yes, ah, of course, I am the one who prepared
2 all the papers, all the papers, you see. I am, they are
3 supposed to thank God for the money we paid, you see, and
4 they will present these papers as if they are the ones who
5 prepared them, you see, unless they want to place an
6 argument or two or something, you see. And then Mr.
7 El-Gabrownny says, and I will tell them, may God be gracious
8 to you, that we don't have the rest of their money. And Mr.
9 Nosair says, I understand.

10 Mr. Hafiz, do you know whether or not they are
11 talking about attorneys' fees in connection with the filing
12 of an appeals brief?

13 A I believe it was.

14 MR. RICCO: Thank you. No further questions.

15 THE COURT: Anything else? Anything else?

16 MR. KHUZAMI: No, your Honor.

17 THE COURT: Thank you, Mr. Abdel-Hafiz. You are
18 excused.

19 THE WITNESS: Thank you, your Honor.

20 (Witness excused)

21 MR. McCARTHY: Your Honor, I have an application
22 with respect to the 300 series of exhibits which counsel
23 know as the CM's or consensually monitored calls, and the
24 700 series of exhibits, which are the FISA calls. For the
25 record, the government has offered the portions of the tapes

1 with respect to all of those that are reflected on the
2 transcripts. I think that we sort of haphazardly made that
3 application as we got to particular tapes but I want to make
4 sure for the record that we have done that with respect to
5 all the tapes reflected on all the transcripts.

6 THE COURT: Those portions of the underlying
7 tapes that are reflected on the transcripts are received.

8 MR. McCARTHY: Thank you, your Honor.

9 THE COURT: That are reflected on the transcripts
10 that have been received.

11 MR. McCARTHY: Yes, your Honor. Thank you.

12 MR. KHUZAMI: At this time the government would
13 request permission to read the one page that is reflected on
14 673T entered by Mr. Abdel-Hafiz.

15 MS. AMSTERDAM: Your Honor, may I see you at side
16 bar, please?

17 THE COURT: Yes.

18 (Continued on next page)

19

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1 (At the side bar)

2 MS. AMSTERDAM: Mea culpa. I am very sorry. I
3 did not realize that this document went in through the
4 interpreter, and I had a few questions to ask him. I
5 apologize. It just happens, I'm sorry.

6 THE COURT: That's OK

7 MS. AMSTERDAM: I'm embarrassed.

8 THE COURT: Why? It is a long trial. You made a
9 mistake. Fine.

10 (In open court)

11 THE COURT: We are just going to re-call
12 Mr. Abdel-Hafiz briefly.

13 MR. FITZGERALD: Judge, we can read one exhibit
14 while we are waiting for Mr. Abdel-Hafiz to be located.

15 MS. AMSTERDAM: While we are waiting for Mr.
16 Hafiz, it might be a good use of the time, I need to refer
17 to Government Exhibit 339T. So we can either read the
18 exhibit or we can use this time for the jurors to locate
19 that. Whatever the court wants.

20 THE COURT: Why don't we find 339T. I can't
21 imagine he's gotten very far.

22 (Pause)

23 THE COURT: Ms. Amsterdam, I think you better sit
24 down.

25 MS. AMSTERDAM: I'm sorry, your Honor.

1 THE COURT: Why don't you let them read the
2 exhibit, and then we will get to you.

3 MS. AMSTERDAM: Fine.

4 THE COURT: OK.

5 MR. FITZGERALD: Your Honor, the government would
6 read from Government Exhibit 467T.

7 THE COURT: That is in the book marked 371
8 through 499.

9 MR. FITZGERALD: Sorry about that.

10 THE COURT: You are testing everybody's manual
11 dexterity this morning.

12 MR. FITZGERALD: For counsel's benefit,
13 Government Exhibit 467T is also known as 122-62 in that
14 other language we have.

15 THE COURT: Go ahead.

16 MR. FITZGERALD: Thank you, Judge.

17 By agreement with counsel we will read the entire
18 document, starting at page 1.

19 (Government Exhibit 467T was read to the jury)

20 MR. KHUZAMI: The government calls Gamal
21 Abdel-Hafiz.

22 GAMAL ABDEL-HAFIZ, resumed.

23 THE COURT: Mr. Abdel-Hafiz, you are still under
24 oath.

25 THE WITNESS: Thank you.

1 THE COURT: Ms. Amsterdam.

2 CROSS-EXAMINATION (Continued)

3 BY MS. AMSTERDAM:

4 Q Sorry to bring you back. Thank you, sir.

5 A You're welcome.

6 Q I just have a few questions to ask you about
7 Government Exhibit 673. I have it here. I will hand it up
8 to you in one moment.

9 A OK.

10 Q Sir, Government Exhibit 673 is a handwritten
11 letter or fax, would I be correct? It's a handwritten piece
12 of paper?

13 A That's correct, yes.

14 Q At the top of the Government Exhibit 673 it is
15 addressed to "Beloved brother, Yousef Hussein," am I
16 correct?

17 A That's correct, yes, ma'am.

18 Q Were you ever asked to translate a response from
19 Yousuf Hussein?

20 A No.

21 Q Now, is this the only copy of the writing that
22 you were ever given to translate?

23 A That's the only copy, yes.

24 Q Were you ever given a copy of a draft or another
25 copy of this writing in a different handwriting?

1 A No, ma'am.

2 Q Do you know, sir, whether or not this was written
3 by Siddig Ali or Emad Salem?

4 A I have no way of knowing. It just looks like
5 Siddig is the one who's sending it. He's saying, "You can
6 send the money to me," then he wrote his name.

7 Q It's written in the first person, correct? "You
8 can send the money to me"?

9 A Yes, ma'am.

10 Q At the bottom it has Siddig Ali's name on it,
11 correct?

12 A That's correct.

13 Q But you personally don't know if it was written
14 by either Siddig Ali or Emad Salem or anyone else for that
15 matter, correct?

16 A I have no way of knowing.

17 MS. AMSTERDAM: Thank you.

18 THE WITNESS: You're welcome.

19 MS. AMSTERDAM: May I hand this to the witness?

20 THE COURT: Yes.

21 THE WITNESS: Thank you.

22 Q Now, as you said, sir, you reviewed, did you not,
23 the transcripts of the CMs, the consensual-monitor
24 transcripts, correct?

25 A Yes, ma'am. That's correct.

1 Q I would like to turn your attention -- and I'll
2 come up because you don't have a copy there -- to CM37,
3 which is in the jurors' notebooks as Government Exhibit
4 339T.

5 MS. AMSTERDAM: May I approach the witness, your
6 Honor?

7 THE COURT: Yes.

8 Q Directing everyone's attention to page 26.
9 While the jury is finding that, perhaps you could
10 just take a look at these passages. I believe we've seen
11 them.

12 THE COURT: Is it 339T or T2?

13 MS. AMSTERDAM: My copy is T, your Honor, and my
14 copy is dated 6/6. There may have been a subsequent copy,
15 but there were no changes in this section, so if it's T2,
16 that's fine.

17 THE COURT: I think the one that was received is
18 T2.

19 MS. AMSTERDAM: I am on page 26.

20 (Pause)

21 Q OK. On page 26, would I be correct, sir, in
22 saying that in the middle of page -- not at the middle,
23 towards the top half of the page, there's a passage in which
24 Siddig Ali is dialing the telephone?

25 A That's correct.

1 Q In that passage thereafter it begins with, "It's
2 a five o'clock there, may peace be upon you, is Brother
3 Yousef there."

4 A That's correct.

5 Q And a little bit further down Siddig Ali says, in
6 what is still the phone conversation, "I wanted to send you
7 a fax. Do you have a fax there."

8 A That's correct.

9 Q And towards the bottom of the page, the last
10 attribution attributed to Siddig Ali, Siddig Ali says, "Is
11 it possible that you will be there two or three hours from
12 now?

13 "OK, sheik. Great. God willing. Because I
14 don't want anyone else to read it. I want you to read it by
15 yourself. OK, sheik?

16 A "Yes, sheik, there are no secrets. I am sorry
17 for waking you up so early. Hussein, the engineer. It is a
18 benevolent act concerning some brothers who intend to go on
19 a trip." And then it goes on. Would I be correct in saying
20 that that is what was in CM37?

21 A That's correct, yes.

22 Q At my request yesterday you reviewed a draft
23 translation of the fax that is in evidence, correct?

24 A That's correct.

25 Q And there were some bracketed portions in the

1 first draft that made reference to what the translator
2 thought was the speaker's thoughts or intentions, correct?

3 A I believe that was correct, yes.

4 Q And directing your attention to -- it begins
5 with, "Beloved Brother Hussein," and then there are some
6 greetings with peace, and then thereafter, "Please accept
7 our very warm greeting, and we are looking forward to seeing
8 you." Right?

9 A Yes.

10 Q Thereafter, two sentences later, it says,
11 "Anyway, my beloved brother, here is a group of the fighting
12 brothers who wish to go, with the exalted God's permission,
13 to the fields of redemption and the defense of the sacred
14 places," did you see that?

15 A Yes, ma'am, I see it.

16 Q Would I be correct in saying that the reference
17 to the fighting brothers might also be fairly translated as
18 the volunteers?

19 A I don't think the word "volunteers" was very
20 accurate. That's why I did not use that word.

21 Q You thought that it --

22 A It was not a very accurate translation.

23 Q OK. But assuming for this purpose that you
24 regard this as a more accurate translation, would I be
25 correct in stating that it is a possible translation of that

1 passage to indicate "the volunteers"?

2 MR. KHUZAMI: Objection.

3 THE COURT: Unless you can first distinguish an
4 accurate translation from a possible translation, the
5 objection is sustained.

6 Q When you said you didn't think that it was
7 sufficiently accurate, you were not, were you, saying that
8 it was flat-out wrong, were you?

9 A No, there's a big difference between saying
10 flat-out wrong and not accurate, and it is my opinion that
11 it's not accurate for my style to be able to testify to it.
12 It can be -- if I call the street, "street" or I call it
13 "road," it gives the same meaning. They are both correct.
14 But whether I feel more comfortable calling it "street" or
15 more comfortable calling it "road," that's the way I use my
16 own translation.

17 Q OK.

18 A So it's a difference of style, difference of the
19 structure of the translation itself.

20 Q So, for example, in a dictionary, if you look up
21 a particular meaning of the word, you may have three
22 meanings of the word.

23 A Yes.

24 Q And the first one might be the preferred meaning,
25 but two and three may be alternative, although less

1 preferred, meanings, would that be correct?

2 A That's correct.

3 Q In this context, sir, would I be correct in
4 saying that even though "volunteer" was not your preferred
5 meaning, that "volunteer" would be an alternative meaning to
6 this passage?

7 A It could be, yes.

8 Q Now, sir, turning to pages 28 through the balance
9 of the transcript, through 30 of CM37, I apologize, which is
10 Government Exhibit 339T, --

11 THE COURT: T2.

12 MS. AMSTERDAM: T2, thank you, sir.

13 Q -- there is a conversation that continues between
14 Siddig Ali and Emad Salem, correct?

15 A That's correct, yes.

16 Q Beginning at about the sixth line down Siddig Ali
17 mentions Yousuf Hussein.

18 A That's correct.

19 Q And Emad Salem says, "According to the telephone
20 call took place between me and you."

21 And Siddig Ali says, "No, there is no need to
22 this," quote, unquote "according," correct?

23 A Yes.

24 Q Now, I ask you to look at your translation of
25 government 673T, and despite the fact that Siddig Ali says,

1 "No, there is no need to this according," would I be correct
2 in saying that the letter that was written or the writing
3 that was written does in fact say "Brother, according to our
4 telephone conversation this morning"?

5 A That's correct.

6 Q Continuing down one, two, three, four, five, six
7 more passages below that, Siddig Ali says, "My warm regards,
8 as well as the regards of the brothers here, ha. Full
9 stop." From your reading of this, would I be correct in
10 saying that it appears that Siddig Ali is dictating to Emad
11 Salem?

12 A It seems like it, yes.

13 Q He continues on to say, "And as I told you, we
14 are in very urgent need very much for an amount of money,
15 ah, around 5,000, 5,000 dollars," correct?

16 A That's correct.

17 Q And Siddig Ali indicates "very urgent need,"
18 correct?

19 A Yes.

20 Q Would I be correct in saying that in the writing
21 that was eventually produced at the very bottom of that,
22 right before Siddig's name, the last sentence is, "And we
23 ask the exalted God to put in the scale of your good deeds
24 in the day after" -- I'm sorry. I apologize. Right before
25 that sentence, "And we are in need of \$5,000, if you can

1 afford it." That's the translation of the final document,
2 correct?

3 A That is correct. Yes.

4 Q There is no mention of "we are in urgent need,"
5 is that correct?

6 A That's correct.

7 Q At 29, at the bottom of 29, one, two, three --
8 page 29, one, two, three, four, five, six lines up, Siddig
9 Ali says, "That's it. Write it again."

10 Do you see that?

11 A Yes, ma'am, I see it.

12 Q And on the next page, page 30, Siddig Ali says,
13 "Your handwriting is very poor."

14 And Salem says in Arabic, "Very poor."

15 And Siddig Ali says, "Do you have a good
16 handwriting?"

17 Now, from this context, sir, would I be correct
18 in saying that it would have appeared that Emad Salem was
19 writing either this document or a draft of this document,
20 correct?

21 A It seems like it, yes.

22 Q All right. At Almost the conclusion of that
23 Siddig Ali says, well, continuing on, Siddig Ali says, "I
24 have a computer."

25 Salem says, "It writes Arabic?"

1 Siddig says, "Yeah."

2 And Salem says, "Why you mess me up brother," and
3 laughs.

4 And Siddig says, "God willing, I will write it
5 now. Shall we pray first, then we will write it."

6 Do you see that?

7 A Yes, ma'am, I see it.

8 Q All right. The document that you have here is
9 the only copy of this writing that you have, correct?

10 A That's correct, yes.

11 Q And you do not know as you sit here now whether
12 or not there was a draft of this, correct?

13 A Not that I am aware of.

14 Q You were not asked to translate a draft?

15 A No, ma'am, I was not.

16 Q And as you sit here now you do not know whether
17 that was written by Siddig or Emad Salem, correct?

18 A No, I have no way of knowing.

19 MS. AMSTERDAM: Thank you, sir.

20 I'm sorry, your Honor. I have no further
21 questions.

22 THE COURT: Thank you. Anything else?

23 MR. KHUZAMI: No redirect, your Honor.

24 THE COURT: You're excused.

25 THE WITNESS: OK.

1 (Witness excused)

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

6 (Jury not present)

7 MR. NOOTER: Your Honor, I would like to raise a
8 point about Government Exhibit 521. The exhibit was brought
9 up yesterday, and it was admitted but subject to certain
10 revisions.

11 I noticed something about it yesterday afternoon
12 that I spoke to Mr. McCarthy about, but I would like to
13 bring it up for the record and make an objection. On the
14 last page of the document, it lists the exhibits related to
15 the safe house video, V5 through 8, which is Exhibit 383T2
16 and all the related tapes.

17 Under the column "Participants," it lists all
18 seven of the people who were present at one time or another
19 on those tapes, and on the column after that it says the
20 word "meet," M-E-E-T.

21 The problem with this exhibit is, or the way that
22 that is phrased is that if the jurors pick it up later in
23 order to use it as a guide for what this is all about, it
24 does not distinguish the fact that the people, the seven
25 people listed as participants on that set of exhibits were

1 not all together at the same time as each other. The word
2 "meet" implies that they met each other. My client in
3 particular only met some of the people. He never met others
4 who are listed that list of participants, and certainly he
5 was not present during all of the time, as well as others in
6 that that were no present during all of the time that that
7 exhibit or group of exhibits covers.

8 I understand why they did it this way, because it
9 comes off the caption of the video exhibit, but I am afraid
10 that at some later point, when this can't be explained to
11 the jury, if the jurors have it available and they pull it
12 out and they are a little confused about who was here or
13 there at what times, they will look at it and draw the
14 conclusion that my client was, for example, present during
15 the mixing of the bomb, which was not correct, or present
16 during a time when Fadil Abdelgani or Tarig Elhassan were
17 present, which is not correct.

18 He simply was not there and never in fact met
19 them. So I am concerned just about the way that that
20 particular exhibit is laid out in this chart.

21 MR. McCARTHY: Your Honor took the exhibit
22 subject to my commitment to revise it in connection with Ms.
23 Stewart's request about some phone numbers; Mr. Stavis I
24 think wants another conversation added; Mr. Bernstein wants
25 some reflection of the fact that the Abdelgani referred to

1 on the first page is not Amir Abdelgani; Mr. Serra wants a
2 commitment that, or a representation that Mohammeds referred
3 to prior to June 19 are not Mr. Alvarez.

4 Mr. Nooter mentioned this problem to me
5 yesterday. My suggestion to your Honor is, since it was
6 received subject to my representation that those
7 accommodations would be made, that you let me take another
8 crack at it.

9 THE COURT: Fine. I don't understand why you
10 didn't do this privately, but anyway --

11 MR. NOOTER: I am sorry. When I raised it with
12 Mr. McCarthy, we did discuss possible alternatives, but it
13 didn't seem to include actually changing the exhibit. That
14 is why I rose.

15 THE COURT: It does now.

16 MR. NOOTER: Thank you.

17 (Recess)

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1 (In open court; jury present)

2 THE COURT: Mr. Fitzgerald.

3 MR. FITZGERALD: Yes, your Honor. At this time,
4 for the record, an exhibit previously received, Government's
5 Exhibit 406, were some items seized during the search of 115
6 Fairview, and by agreement with Miss Stewart some additional
7 pages are being added to Government's Exhibit 406, which are
8 designated but need not be published now. We are offering
9 those by agreement.

10 MS. STEWART: That is correct.

11 THE COURT: Those by agreement are received.

12 MR. FITZGERALD: Secondly, Government's Exhibit
13 509, which consists of 509A through 509E, certain banking
14 records, are being offered by the government but we are
15 going to work out with Miss Stewart which particular pages
16 will be received. They are not being published. They are
17 509A through E, with the pages to be designated with Miss
18 Stewart.

19 THE COURT: That exhibit is received subject to
20 the designation of those pages.

21 (Government Exhibits 509A through E received in
22 evidence)

23 MR. MCCARTHY: At this time I would ask to read
24 from the portions of Government's Exhibit 461R which were
25 previously agreed to with Miss Stewart, and those are in the

1 books. 461R.

2 THE COURT: It is the volume marked 371 to 499.

3 MR. McCARTHY: We will be beginning with the
4 first two paragraphs on page 1 of that document. Beginning
5 with the first two paragraphs on page 1.

6 (Mr. McCarthy read to the jury from Government's
7 Exhibit 461R in evidence)

8 MR. McCARTHY: Turning next to page 5, at the
9 bottom.

10 (Reading continued)

11 MR. McCARTHY: Turning to page 10, the first full
12 paragraph of that page, following the brackets "In a louder
13 voice."

14 (Reading continued)

15 (Continued on next page)

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1 MR. McCARTHY: That concludes the reading.

2 MR. KHUZAMI: Your Honor, at this time the
3 government offers Government Exhibit 163R2, and we would ask
4 permission to read it to the jury.

5 MR. PATEL: Your Honor, may I have a moment with
6 Mr. Khuzami.

7 MR. KHUZAMI: This has been subject to the
8 court's prior rulings.

9 (Pause)

10 MR. KHUZAMI: May I have a moment with Mr. Ricco.

11 THE COURT: Yes.

12 (Counsel conferred)

13 THE COURT: 163R2 is received. Go ahead.

14 (Government Exhibit 163R2 for identification was
15 received in evidence)

16 MR. KHUZAMI: Your Honor, pursuant to stipulation
17 with counsel for Mr. Nosair and Mr. El-Gabrowny, we
18 stipulate that the underlying tape, Government Exhibit 163,
19 there were a number of copies of that tape that were seized
20 during the search of Mr. El-Gabrowny's home.

21 THE COURT: Go ahead.

22 (Government Exhibit 163R2 in evidence was read to
23 the jury)

24 MR. McCARTHY: Your Honor, the last government
25 exhibit is Government's Exhibit 550T.

1 THE COURT: Go ahead.

2 MR. McCARTHY: Thank you, your Honor.

3 Government's Exhibits 550T is a transcript. I will read the
4 statements attributed to defendant Abdel Rahman; Mr.
5 Fitzgerald will read the attributions to the unknown males
6 and the person identified as MC; and Mr. Khuzami will read
7 the other passages.

8 (Government Exhibit 550T in evidence was read to
9 the jury)

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1 MR. McCARTHY: The government rests.

2 MR. STAVIS: I had asked the court concerning a
3 specific instruction yesterday with regard to the exhibit
4 that has just been read, and your Honor indicated that you
5 would give one.

6 THE COURT: Right. The exhibit that was just
7 read may be considered by you only with respect to Dr. Abdel
8 Rahman and not with respect to any other defendant.

9 Thank you for reminding me.

10 Ladies and gentlemen, as you heard, the
11 government has rested, and you rest, at least briefly. We
12 are going to break now, from your standpoint, for the
13 remainder of the day, and for tomorrow morning because I
14 have some matters to talk to the lawyers about. So that you
15 won't be back here until tomorrow afternoon, and we will
16 make arrangements for you to come back, I think in time for
17 lunch. You can have your lunch here and we will resume
18 tomorrow afternoon. Please don't discuss the case. Please
19 don't read, see or hear anything about the case or anything
20 related to it, or read any articles related to the Middle
21 East. Have a pleasant rest of the day and tomorrow morning.
22 We will see you tomorrow afternoon.

23 (Jury excused)

24 (Continued on next page)

25

1 (Jury not present)

2 THE COURT: OK. I think we should reconvene at
3 3:15, if we can all make it.

4 I have received a submission, I think from Ms.
5 Stewart and Mr. Jabara, a written submission on a Rule 29
6 motion. I am interested this afternoon in hearing
7 principally sufficiency arguments. You can make whatever
8 record you think you have to make in addressing legal
9 issues, but I am not going to have an extended discussion
10 with respect to that unless it is necessary to let everybody
11 know what the remaining issues are in the case, but I will
12 see you this afternoon.

13 MR. JACOBS: Your Honor, are the defendants
14 coming back or not?

15 (Continued on next page)
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1 THE COURT: This goes under the category of a
2 legal argument, so I don't see that it is necessary.

3 MR. NOOTER: If they want to come back, they can?
4 It is in their interest.

5 THE COURT: It is, indeed. But again, it is a
6 legal argument, and that is all it is.

7 MR. NOOTER: My client doesn't specifically want
8 to be here.

9 MR. SERRA: I assume we can work that out with
10 the marshals.

11 THE COURT: Yes, you may.

12 (Luncheon recess)

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1 AFTERNOON SESSION

2 3:30 p.m.

3 (In open court; jury not present)

4 MS. STEWART: Your Honor, before we begin, it
5 came to some of our attention that you ordered the jury to
6 be here tomorrow at around noontime.

7 THE COURT: I did.

8 MS. STEWART: In the spirit of open inquiry, we
9 just would like to know what you have in mind in terms of
10 scheduling. Some of us have what we thought were fairly
11 lengthy Rule 29 motions to make. We all have many questions
12 about how the defense case will proceed, especially given
13 the number of letters we have received from the government,
14 asking questions, and the affair Ramzi Yousef that we are
15 all involved in.

16 So I am rising in the spirit of interest here,
17 not with the intent to push anything around.

18 THE COURT: Or anyone for that matter.

19 MS. STEWART: Or anyone.

20 THE COURT: What I had in mind was to start the
21 defense case, and what I had in mind for this afternoon was
22 to talk about Rule 29 motions, that is, to have them made.
23 I said I was interested principally in hearing about
24 sufficiency arguments. You made some legal arguments in
25 your memo, which I guess I could hear about briefly but I

1 don't see the need for extended discussion on those issues.

2 I also thought we should talk about the order of
3 proof and some of the correspondence that I have been copied
4 on between the lawyers and the government. I thought that
5 the remainder of this afternoon and tomorrow morning would
6 provide time for that. If I am wrong, then obviously I will
7 deliver my apologies to the jury and we will take the
8 remainder. But I was hoping we could accomplish it in that
9 time.

10 MS. STEWART: I think most of the defense, at any
11 rate, that I speak for, feel that it probably can't be
12 accomplished.

13 THE COURT: I just don't want anybody to turn it
14 into a self-fulfilling prophesy.

15 MS. STEWART: No, I am sure that won't happen.

16 THE COURT: Do you want to go in the order of the
17 indictment? What do you want to do?

18 MS. STEWART: We have agreed that Mr. Stavis, who
19 has to some degree worked very assiduously on the seditious
20 conspiracy count -- he submitted the written instruction --
21 that he would speak first on the seditious conspiracy first,
22 on the sufficiency.

23 MR. BERNSTEIN: Before we start, can we ask
24 whether or not the government's letter which was received
25 today has been received by the court --

1 THE COURT: It has.

2 MR. BERNSTEIN: And to get a ruling that the
3 government agrees what should not be submitted to the jury
4 so we can get that out of the way?

5 THE COURT: Fine. Mr. McCarthy.

6 MR. McCARTHY: Your Honor, I don't have anything
7 more to say on the subject other than what I said in the
8 letter, which is that we didn't seek to prove those counts
9 and would not object to a motion -- I guess under Rule 29 it
10 could be made by the court -- simply dismissing the counts.

11 THE COURT: In that event, the prong in Count 1
12 that charges opposing by force any law is dismissed. Which
13 was the obstruction count against Mr. El-Gabrownny?

14 MR. RICCO: Count 19.

15 THE COURT: Count 19 is dismissed.

16 MR. McCARTHY: 17 and 18.

17 THE COURT: Counts 17 and 18 are dismissed. I
18 think that takes care of what was covered in the
19 government's letter.

20 With that cleared out of the way, Mr. Stavis, do
21 you want to go forward?

22 I don't mean to stop you before you begin, but is
23 your sufficiency argument based in the main on the position
24 you took in the charge request that you submitted to me?

25 MR. STAVIS: No, your Honor. It is based on the

1 evidence, and I will in candor tell your Honor that how you
2 view the evidence is based on an interpretation of the
3 statute. But I am not arguing what I have submitted --

4 THE COURT: I understand that, but if your
5 argument depends on my agreeing with your view of the
6 statute, I will allow you to make the factual argument, but
7 I do not agree with your view of the statute.

8 MR. STAVIS: I understand that, your Honor. As a
9 matter of fact, what I was going to state to your Honor,
10 your Honor, in your preliminary instruction on sedition at
11 page 1926 of the record, you told the jury that the
12 government must prove beyond a reasonable doubt that the
13 particular conspiracy the defendants are charged with
14 participating in existed, and, your Honor, this particular
15 conspiracy as alleged by the government, the jihad
16 organization and the conspiracy to commit the 106 overt acts
17 with the objective of waging a war of urban terrorism
18 against the United States and opposing by force the
19 authority of the United States of America has not been
20 proven.

21 The government alleged, concerning this jihad
22 organization, that it had a structure. It alleged in
23 paragraph 4 on page 3 that Sheik Omar Abdel Rahman is the
24 emir, that my client Mr. Nosair played a key role in
25 establishing the jihad organization in the United States and

1 organized paramilitary training for jihad acts both in the
2 United States and overseas.

3 Count 1, the conspiracy alleged goes person by
4 person through the men seated at the table, gives each one a
5 role in the jihad conspiracy -- Saleh is the money man,
6 Nosair is the emir of training -- and claims that this one
7 organization, that this one conspiracy is responsible for
8 all the seemingly disparate acts that have been alleged,
9 those 106 acts.

10 The testimony that has come out over the last
11 five and a half months, your Honor, shows no relation
12 between these acts and no relation between the members, the
13 alleged members and their roles, the emir of training Mr.
14 Nosair, the emir Dr. Abdel Rahman, in a single conspiracy.

15 Your Honor also charged in your preliminary
16 charge on seditious conspiracy at page 1934 to 1935 of the
17 record:

18 "If you find that there was simply an agreement
19 to attack people or places without an intention to attack
20 the United States, functioning through its government, then
21 the conspiracy charged in Count 1 would not be proved."

22 As Mr. McCarthy's letter of today states, and we
23 have to all agree, the evidence on a Rule 29 motion must be
24 viewed in the light most favorable to the government. Even
25 if you view the evidence in the light most favorable to the

1 government, you come out with an agreement to attack people
2 or places without an intention to attack the United States.
3 There is no single agreement, your Honor, among these men
4 here at these tables to attack the United States of America.

5 It requires an expansive reading of the statute
6 in order for your Honor to analyze the evidence, and if you
7 will permit me -- I understand the constraints that I am
8 under and I won't belabor the record on this point. But one
9 of the objectives of the conspiracy in Count 1, under 18
10 U.S.C. Section 2384, is to levy war against the United
11 States of America. I don't believe that if levying war is
12 given its ordinary meaning, that it has been shown by the
13 proof that has been elicited in this courtroom over the last
14 five and a half months, that there is one single agreement
15 to levy war against the United States.

16 I think that, as I had argued previously, Section
17 2384, the levy war prong, fits within the definition
18 contained in Article 3, Section 3 of the Constitution, the
19 treason clause, and when that treason clause was enacted
20 with the Constitution it was intended to have a very limited
21 meaning, and that is why those requirements of the overt act
22 testified to by the witness was included in the treason
23 clause. There is no difference between treason as defined
24 in the Constitution and Section 2384.

25 THE COURT: I have to tell you what I assume you

1 know, that that is the part I don't agree with.

2 MR. STAVIS: I do, and that is why I am not
3 belaboring the point.

4 THE COURT: Thank you.

5 MR. STAVIS: Although reasonable minds can differ
6 as to what belaboring means.

7 But it is important to raise it at this point,
8 your Honor, because levy war should not be given a meaning
9 other than levy war. What does it mean to levy war? Go
10 back in history. Pearl Harbor, the Japanese levied war
11 against the United States of America. 1861, a time that
12 gave birth to the statute that is right before us right now,
13 Confederate forces fired on Fort Sumpter. I don't believe,
14 your Honor, that it has been shown that these men were
15 involved in a conspiracy to levy war against the United
16 States.

17 THE COURT: Part of going on about that theory is
18 that it invites a response, which is simply to point out
19 that by your logic, an atomic bomb set off in the middle of
20 Manhattan, or the V2 rocket attacks on London during World
21 War II were not acts of war because they were directed at
22 civilian targets. That is not an argument that I am going
23 to buy, so why don't you move on to something else.

24 MR. STAVIS: I have construed the statute
25 narrowly and I believe --

1 THE COURT: You have argued that it requires an
2 attack on military targets, and we differ. Somebody else
3 may see it differently some day, but today is not the day.

4 MR. STAVIS: The government has -- actually your
5 Honor has just before I stood up here, dismissed the prong
6 opposing by force the execution of laws. We are also left
7 with the second prong, in addition to the levy war prong, of
8 opposing the authority, opposing by force the authority of
9 the United States of America. That particular prong was
10 evaluated in the Baldwin v. Franks case, and that has to be
11 directed at the government as a government. There has been
12 no proof elicited in this courtroom that there was a single
13 conspiracy among these men to oppose the authority of the
14 United States of America by force. As I stated, the Baldwin
15 case, the formulation there is you have to resist some
16 positive assertion of authority by the government. There
17 has been no proof of resistance to some positive assertion
18 of authority by the government.

19 If the government here has some sort of expansive
20 reading, I suppose we will hear about it. Perhaps under
21 their theory, if I came around the lectern and punched Mr.
22 McCarthy in the nose maybe that would be opposing the
23 authority of the United States of America by force. Don't
24 worry, Mr. McCarthy, I am not about to do that. It was just
25 hypothetically.

1 I know your Honor is not entertaining legal
2 arguments but there is a vagueness argument concerning that
3 which I will, with the court's indulgence, make at some
4 other time.

5 THE COURT: Or adopt. It was made in Miss
6 Stewart's papers.

7 MR. STAVIS: I believe the theory of the
8 government on the oppose authority prong of the seditious
9 conspiracy count contained in Count 1 is that the actions of
10 the conspiracy were aimed at influencing United States
11 foreign policy. That is the kind of indirect impact that
12 the Supreme Court said would not fit within the oppose
13 authority prong of 18 U.S.C. 2384 when they evaluated it in
14 the Baldwin case.

15 And in any event, your Honor, there has been no
16 evidence adduced that all of these people in a conspiracy, a
17 single agreement came together to oppose the authority of
18 the United States by changing the policy of the United
19 States toward Israel or Egypt or what have you. There has
20 been no evidence that Mr. Nosair joined any illegal
21 agreement to change the policy of the United States of
22 America. There was evidence regarding Mr. Nosair's
23 political opinions concerning the United States of America.
24 At one point Emad Salem was asked a question, over my
25 objection, page 9671 of the record, Emad Salem was asked

1 what Mr. Nosair said about -- that is page 4519 of the
2 record -- can you tell us, please, what Mr. Nosair said
3 generally about the United States and Israel. That, your
4 Honor, is not sufficient proof even in the light most
5 favorable to the government that Mr. Nosair entered into an
6 illegal agreement to change United States foreign policy or
7 to levy war against the United States of America. There is
8 no evidence of him joining a conspiracy. There is no
9 evidence of a single conspiracy as alleged in Count 1, and
10 therefore I would move for a Rule 29 on Count 1.

11 I would also move for a motion to dismiss under
12 Rule 29 as to each and every count but I want to draw the
13 court's attention specifically to several counts in the
14 indictment which are specific to Mr. Nosair.

15 Counts 7 through 9 in the indictment allege
16 murder in aid of racketeering activity under 18 U.S.C.
17 Section 1959. Those counts refer back to Count 1 and state
18 that the jihad organization, which I have already submitted
19 to your Honor has not been proven, is the racketeering
20 enterprise, which is an element of that murder count. That
21 gets back to -- the structured and stratified jihad
22 organization now has to double as a structured and
23 stratified racketeering enterprise, and that evidence has
24 not been admitted at this trial. The definition of
25 racketeering activity in 18 U.S.C. 1959B1 refers forward to

1 Section 1961(1) and lists the crimes that constitute
2 racketeering. The only difference in the definition of the
3 enterprise, I believe, is that a 1959 enterprise has to
4 include an interstate commerce requirement and 1961 does
5 not. It is in the statute, but also as construed by Judge
6 Kearce in United States versus Concepcion, 983 F.2d 569.

7 There hasn't been a racketeering enterprise
8 proven in this case, your Honor, and that element, even in
9 the light most favorable to the government, has not been
10 proved. In the light most favorable to the government,
11 there has been evidence introduced concerning the murder,
12 but there has not been any evidence concerning a
13 racketeering enterprise or Mr. Nosair's membership in a
14 racketeering enterprise.

15 I would refer your Honor to the case last year
16 from the Second Circuit, United States against Thai,
17 T-H-A-I, 29 F3d 785, at page 818 to 819, where the court
18 stated:

19 "While a defendant's Section 1959 conviction is
20 to be affirmed if a motivation to maintain or increase his
21 position may be reasonably inferred from the evidence, such
22 a conviction may not be affirmed where, as here, the
23 inference is based on no more than guesswork."

24 Your Honor, when it comes to the racketeering
25 enterprise and Mr. Nosair's role in that enterprise, we are

1 dealing with guesswork, and in the Thai case, the issue was
2 that it was not proven that the murder that took place in
3 that case was done in conjunction with the enterprise, or
4 with the racketeering enterprise, it was done for another
5 purpose. The person was a member of what was concededly in
6 that case, the Born to Kill gang, a criminal enterprise, but
7 the murder that was committed was a side endeavor, as it
8 were, and the motive was profit and not maintaining,
9 increasing or enhancing the defendant's stature.

10 There has been no evidence in this case, your
11 Honor, of Mr. Nosair's motive even assuming that he
12 committed this murder, which we vigorously contest, there
13 has been no evidence in a light most favorable to the
14 government as to what that motive was, as to his membership,
15 as to whether it related to his membership in what we claim
16 is not a racketeering enterprise and is not a conspiracy.

17 This argument based on nothing but guesswork that
18 he was involved in a racketeering enterprise -- for example,
19 from some of the statements that were made and introduced
20 into evidence, perhaps, in the light most favorable to the
21 government, Mr. Nosair was motivated by extreme
22 anti-Semitism. But there is nothing, the record is barren,
23 your Honor, with regard to the jihad organization and that
24 this related to that and the motivation for this was to
25 enhance or even maintain under Concepcion his position in

1 the enterprise. This argument, which I have made with
2 regard to Count 7, which is the murder in aid of
3 racketeering count, also applies to Count 8 and Count 9,
4 which concern Irving Franklin and Carlos Acosta, because it
5 is an element as well. The government has alleged that
6 those crimes as well were in aid of racketeering activity,
7 and that element must be proven, or the evidence at this
8 point must be evaluated in the light most favorable to the
9 government with regard to that element as to those counts,
10 and the evidence has not been proven.

11 (Continued on next page)

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1 MR. STAVIS: Your Honor, I believe it's Count
2 Nine that alleges --

3 THE COURT: That is the 1959 count with regard to
4 Acosta, I believe.

5 MR. STAVIS: I was going to move on to Count
6 Eight. Count Nine I am moving to dismiss, and I would state
7 it based on that same ground.

8 Count Eight I have an additional ground for the
9 dismissal. That is the attempted murder of Irving Franklin.
10 18 U.S.C. 1959(a) talks about in aid of racketeering
11 activity, crimes "in violation of the laws of any state or
12 the United States."

13 Now, the government has indicted this crime in
14 Count Eight where they've stated in Count Eight, "and
15 attempted to murder Irving Franklin in violation of the laws
16 of New York State."

17 THE COURT: That is one of three theories under
18 that count.

19 MR. STAVIS: That is the only theory. It says,
20 "Count Eight, attempted murder of Irving Franklin."

21 THE COURT: That is the title of it.

22 MR. STAVIS: That is correct.

23 THE COURT: But if you read the charging language
24 in the indictment, it says, "assaulted with a dangerous
25 weapon, committed assault resulting in serious bodily

1 injury, and attempted to murder."

2 MR. STAVIS: Now, assault is 1959(a)(3) of the
3 statute. That is a 20-year count. Attempted murder is
4 section 1959(a)(5), which is a ten-year count. And since I
5 am defending this at this late stage, I think that a choice
6 has to be made, or else this is a duplicitous count. Those
7 are separate subdivisions, your Honor, which is why I
8 interpreted it and construed it as the title says,
9 "Attempted Murder of Irving Franklin."

10 We can argue about that at another time.

11 THE COURT: I guess we can. I think the time to
12 move to dismiss this count for duplicitousness was before
13 the trial.

14 MR. STAVIS: This is a superseding indictment, as
15 well, your Honor. You know there were extensive motions to
16 dismiss on S3.

17 THE COURT: I know there were.

18 You may be arguing over an empty bag because -- I
19 mean, I would like to put it to the government right now as
20 to whether they are going to press the attempted murder
21 theory with regard to Irving Franklin.

22 MR. MCCARTHY: It is our intention to do that,
23 yes.

24 THE COURT: I will be interested to hear it,
25 because I don't see it. But we'll get to that later.

1 MR. STAVIS: I suppose I'm not wasting the
2 court's time in arguing then, your Honor.

3 THE COURT: When you stick to sufficiency, you're
4 not.

5 MR. STAVIS: I am.

6 THE COURT: I didn't say you were wasting my
7 time.

8 MR. STAVIS: No, I was just making an attempt at
9 humor, your Honor.

10 This case was indicted, in my view, as an
11 attempted murder case, as a state attempted murder case,
12 which is something that the state of New York did not do,
13 your Honor. The first time around they didn't do it.

14 THE COURT: Whatever they did, they did.

15 MR. STAVIS: Well, it relates to the facts of the
16 case. The injury is to the leg of Irving Franklin.

17 THE COURT: I know.

18 MR. STAVIS: The evidence is that the gun was
19 never raised, there were no threats that were ever made, the
20 shot came from between the two men. I'll just give your
21 Honor the citations to the record. It is page 2574, which
22 is Mr. Gottesmann's account of what occurred:

23 "He had picked up his arms and he put them in a
24 bear hug wrapped around Mr. Nosair.

25 "Q When was it that you heard a shot at that

1 point?

2 "A When they were struggling.

3 "Q. Do you know where the shot came from?

4 "A. Yes, it came from between the two men.

5 "Q. Did you see the gun at that point?

6 "A. No, I did not."

7 Then Irving Franklin testified at pages 2803 to
8 2805 on that, and he never saw a gun eat either. The gun
9 went off during a struggle. There is no proof of the intent
10 to kill. Under *Braxton v. U.S.*, 111 S.Ct. 1854, a 1991 case
11 from the Supreme Court, it has to be shown, and the Second
12 Circuit case is *U.S. v. Kwong*, 14 F.3d 189, at page 194,
13 "the fact that a deadly weapon was used does not ipso facto
14 prove the specific intent."

15 So I move to dismiss those counts. I also move
16 to dismiss Count Fourteen, which is the defaced weapon
17 moving in interstate commerce.

18 I understand that the law is, as the Sand charge
19 is, that the movement in interstate commerce must precede
20 the possession. I believe that's what the government
21 submitted. But the law is also, as I understand it, that
22 all that they have to do is what they did, "they" being the
23 government, which is show that it moved at some time because
24 the possession I think referred to is the term of art of the
25 possession that's being charged on that date and not the

1 general possession.

2 But I believe that in light particularly of the
3 recent Supreme Court case of U.S. v. Lopez, No. 93-1260 --
4 that was the school gun case, and the reevaluation of the
5 commerce clause, that there must be a showing that the gun
6 moved in interstate commerce. If Ms. Pritula, who testified
7 on this issue, had shipped the gun to New York prior to
8 possession, that would be made --

9 THE COURT: The gun has to have moved in
10 interstate commerce at some point because the only places
11 where they manufactured that weapon were outside New York
12 State, and the crime charged was committed in New York
13 State.

14 MR. STAVIS: Yes. But if Mr. Nosair possessed
15 the gun in the state of Connecticut, where it was
16 manufactured, and at some point moved it across New York
17 State without a commercial aspect to that movement, which is
18 possible in the record as it stands, I believe that the
19 statute should be interpreted that those elements have not
20 been made out.

21 I previously stated that I was joining in Ms.
22 Stewart's vagueness and overbreadth argument concerning 18
23 U.S.C. 2384. I will make a submission, and I will not
24 burden the court except to say that my research has revealed
25 only one case under the levy war prong, your Honor, and that

1 is U.S. v. Bryant, 257 F. 378. That is a Fifth Circuit case
2 from 1919. The levy war prong was not involved in the
3 Baldwin v. Franks case. This is virtually a case of first
4 impression.

5 While I will have a submission, I ask your Honor
6 to consider a motion to dismiss the levy war prong on the
7 grounds that the wording, "levy war against them," is the
8 same wording as in the statutory definition under Article
9 III, Section 3, except the levy war prong of 18 U.S.C. 2384
10 does not include the overt act and witness requirement.
11 And, in addition to the vagueness and overbreadth, I think
12 that the levy war prong has to be struck down.

13 In effect, 2384 charges conspiracy to commit
14 treason and I know for a 371 conspiracy you need an overt
15 act, and I don't see why the constitutional requirement of
16 an overt act should be taken out. The last time I argued
17 this, your Honor referred to the case concerning the
18 narcotics conspiracy statute, the recent Supreme Court case
19 which said the statute doesn't have an overt act
20 requirement, so then there is no overt act required in this
21 court.

22 But the difference -- and I am about to sit
23 down -- the difference, your Honor, is the definition is not
24 in the statute; it's in the Constitution. I am not reading
25 something into the statute that doesn't belong there. I am

1 reading the Constitution, Article III, Section 3. The
2 definition is the same, and for that reason I would ask the
3 court to dismiss Count One as unconstitutional, the levy war
4 prong of Count One is unconstitutional, and otherwise join
5 in Ms. Stewart's application and ask at a subsequent date to
6 have full briefing on that issue, which I believe is an
7 important one of first impression.

8 THE COURT: Thank you.

9 Ms. Stewart?

10 MS. STEWART: Your Honor, I am not going to
11 repeat everything that was in our memorandum of law which
12 was delivered this morning, but I do want to just address,
13 however briefly, the notion that the government has failed
14 to prove that Dr. Abdel Rahman ever formed an agreement to
15 do anything. The essence of conspiracy, whether it is a
16 seditious conspiracy or a conspiracy to murder President
17 Mubarak, is an agreement, a meeting of the minds. I don't
18 believe that they have in specific terms proven that.

19 They have in their letter of this morning listed
20 the cases that deal with this, and they are talking about
21 common unlawful endeavors, conspiracy where he knew the
22 existence of the scheme alleged, the essential nature of the
23 plan. I base this upon the fact that their main item of
24 proof against Dr. Abdel Rahman is CM10, Exhibit 311T, in
25 which he is asked by Emad Salem, a government informant,

1 whether or not he will give them the go-ahead by saying that
2 the United Nations is a licit target. He says it is licit,
3 but it is bad for Muslims, and goes on to tell them twice,
4 or tell him twice not to do it. He then gratuitously
5 mentions American military bases. Salem goes on to talk
6 about 26 Duane Street, at which point Dr. Abdel Rahman is --

7 THE COURT: I think it is 26 Federal Plaza.

8 MS. STEWART: 26 Federal Plaza. It's on Duane
9 Street.

10 THE COURT: Fine.

11 MS. STEWART: The failure of agreement is that,
12 although Dr. Abdel Rahman says no twice, indicating his
13 disagreement with doing the UN, if the evidence most
14 favorable to the government is taken as it comes in, Siddig
15 Ali and Emad go right ahead with the UN. If if he says do
16 American military bases, if that is their basis, they don't
17 agree with that. They don't do anything with regard to
18 American military bases. It is not taken as an agreement.

19 If we are talking about 26 Federal Plaza, he
20 says, "Stop, wait. Put it off. Don't do it now. Take your
21 time." So he clearly is not in agreement with that as an
22 immediate target. So I fail to see where --

23 THE COURT: What you are saying is you have to
24 have a contract that you could sue on for specific
25 performance.

1 MS. STEWART: No, I don't say that. I say they
2 have to prove an agreement, a meeting of the minds. I don't
3 see that there is any agreement here. It is not a
4 generalized agreement to go out and do bad stuff.

5 I mean, to use your analogy, Judge, if this was a
6 drug conspiracy in which some person came to someone who's
7 deemed to be the godfather and says, "I want to start
8 selling crack," and the godfather says, "No, crack is bad,"
9 and then the person says, "Well, how about I sell heroin,"
10 and he says, "Wait a while," that does not seem to me to
11 make out a conspiracy between those two persons. It would
12 have to in this case because if they are alleging, and I
13 know I use an old terminology, a linked conspiracy, where
14 Dr. Abdel Rahman is linked because he is at the top and the
15 links are then forged down to the least, I don't see that it
16 exists.

17 I intend also to go through the overt acts, but I
18 think that that is the main gravamen that ties him to this
19 conspiracy, and that that failure of agreement mandates that
20 that count be dismissed against him.

21 I will do it by counts, and then I would like to
22 come back to the overt acts, or if you would prefer me to
23 just mention the ones that I don't think are proven.

24 THE COURT: Do it in whatever order you find
25 convenient, whatever order you prepared it in.

1 MS. STEWART: Under Count One, Judge, actually,
2 the first overt act, which refers to a dispute at Kennedy
3 Airport on January 3, 1989, and allegedly reported to my
4 client, I don't think there is any proof of that anywhere.

5 MR. McCARTHY: Stipulated.

6 MS. STEWART: Calverton in July 1989, there is,
7 on the telephone conversation, as I recall it, there is some
8 reporting of training, but I don't think it's any specific
9 training or any time and place. This is b, under 21.

10 MR. McCARTHY: B is proved. We put on
11 surveillance agents who testified that the surveillances
12 were --

13 THE COURT: You can respond afterwards.

14 MR. McCARTHY: I'm sorry. I thought you were
15 asking me.

16 THE COURT: No, I wasn't.

17 MR. McCARTHY: I'm sorry.

18 MS. STEWART: U, just that portion of it that
19 refers to details being discussed with Ibrahim El-Gabrowny.

20 TT: This deals with following the bombing of the
21 World Trade Center people that he did not know, I do not
22 believe there was any statement made with regard to Nosair
23 or Ibrahim El-Gabrowny or Nidal Ayyad.

24 UU: I don't think there was any indication of
25 surveillance of the Waldorf-Astoria conducted by Siddig.

1 The same is true of WW.

2 I'm sorry, Judge, AAA, a telephone call May 10,
3 1993, I don't believe there is any evidence of that.

4 MR. MCCARTHY: Stipulated.

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1 MS. STEWART: And in line with my prior argument,
2 Judge, the entire HHH which deals with -- and JJJ, which
3 deals with permission and advice on bombing, I think
4 misstates what the evidence is, although I cannot say there
5 is an absence of proof, obviously.

6 THE COURT: That is HHH and --

7 MS. STEWART: HHH and III -- I take that back.
8 It is JJJ. Let's start with HHH.

9 That would be all that I would have under Count
10 1, Judge.

11 THE COURT: I don't mean to interrupt, but, Mr.
12 Jacobs, was there anything specific that you wanted to
13 cover? Because I know that you needed to leave at some
14 point.

15 MR. JACOBS: No.

16 THE COURT: Go ahead.

17 MS. STEWART: We spoke on the solicitation,
18 Judge, in our brief.

19 THE COURT: One second. Ms. Amsterdam, did you
20 have something specific that you wanted to --

21 MS. AMSTERDAM: I do, your Honor. I can wait
22 till after Miss Stewart has completed.

23 THE COURT: Go ahead.

24 MS. STEWART: I know that there is a boat
25 leaving, Judge, and I am mindful of that.

1 THE COURT: That is not going to control.

2 MS. STEWART: OK.

3 THE COURT: As long as we understand each other.

4 MS. STEWART: Judge, we recounted in our memo the
5 reason we think the solicitation fails. I also want to
6 point out that because of the time constraints we were under
7 in the beginning of the case, or perhaps we did not realize
8 it until after Mr. Emad Salem testified, I think the
9 solicitation also fails under a venue question. I recognize
10 that the law of this circuit is that venue must be raised
11 pretrial. My predecessor did not raise those issues
12 pretrial, but it seems to me under any circumstances it
13 would seem that all of the, quote, solicitations occurred
14 either in the district of New Jersey or someplace between
15 New Jersey and Detroit, and none of them occurred in the
16 Southern District --

17 THE COURT: I am not as current on that venue
18 issue as I should be, but let me ask you whether if you
19 solicit an act that is to occur in another district, can it
20 be prosecuted in the district in which the act prospectively
21 would occur?

22 MS. STEWART: I will say the solicitation of Emad
23 Salem was to just point his rifle at the chest of Mubarak,
24 without giving any place, time, or anything else, and was
25 clearly done between Jersey City, New Jersey, and Detroit,

1 if one is to accept the statement of the witness, that there
2 is nothing else about that particular solicitation, and as
3 far as Siddig Ali, we don't know whether that even occurred.
4 There is no testimony except a secondhand hearsay where
5 Haggag says that in order to satisfy the sheik's desires we
6 are going to plan to do this murder or assassination of
7 Mubarak, but there is no clear solicitation, certainly under
8 the law as it is stated, of Siddig Ali, and, as I said in
9 our brief, that at the time Haggag was allegedly solicited,
10 he was at that point unable -- well, I take that back. He
11 testified that he was not intending to do it, he had no
12 intention of doing it, and that it was clearly impossible as
13 a matter of law, because he was already cooperating, he had
14 already turned in Siddig Ali --

15 THE COURT: That is not a defense. I mean, if
16 you solicit somebody as a government agent, it remains
17 solicitation. The other issues regarding solicitation I
18 understand, but that one I don't think is correct, that
19 point is correct.

20 MS. STEWART: On the conspiracy to murder
21 Mubarak, which is the next count, I would just again allege
22 that there is no agreement here, that they never reached
23 agreement and that the overt acts, while listed, really do
24 not go to anything the sheik may have done or said. There
25 is no proof whatsoever that he was -- these all date back to

1 before that period of time of late March and April 1993.
2 Talking about paramilitary training in Pennsylvania, there
3 is no indication that he was ever informed or knew about
4 that or intended that to be part of.

5 THE COURT: Are you sure about that? Are you
6 sure that he was not informed about the training?

7 MS. STEWART: There is supposedly one
8 conversation in Brooklyn where he talks to Emad about
9 training, but I don't think he ever says that he is aware of
10 any training that is going on in Pennsylvania between Siddig
11 Ali's people. That is a completely separate and distinct
12 place. If I am wrong I have no doubt Mr. McCarthy will
13 correct me.

14 Finally, Count 4, the solicitation to attack
15 military installation -- of Emad Salem -- to damage and
16 destroy by fire and explosives an American military
17 installation, it seems to me that the government is hard
18 pressed on the view of why not look at American military
19 installations to make out that as a solicitation with a
20 serious intent to be accomplished. Notwithstanding the
21 conversation or the sermon that was read into the record
22 today, it seems that there just is not enough to make out
23 that portion of it that is strongly corroborative of an
24 intent to make it succeed.

25 Count 5, the bombing conspiracy itself, we would

1 allege the same lack of agreement, Judge.

2 That's it.

3 THE COURT: Thank you.

4 Ms. Amsterdam.

5 MS. AMSTERDAM: Good afternoon, your Honor.

6 THE COURT: Good afternoon.

7 MS. AMSTERDAM: My remarks are brief. I did
8 address the bombing conspiracy count under separate cover to
9 your Honor. However, I do want to point out several things.
10 In Count 1 of the indictment, I joined in counsel Stewart's
11 and Stavis' applications in terms of the Rule 29.

12 THE COURT: I am assuming that everybody does.

13 MS. AMSTERDAM: I would assume so, but I was the
14 first person after Mr. Stavis and Miss Stewart, so I wanted
15 to make sure that the record was clear that we all joined in
16 those arguments.

17 In the first count of the indictment, however, I
18 would move to strike the following overt acts as being not
19 proved. Overt act BB, which indicates that Mr. Khallafalla
20 attended paramilitary training in Pennsylvania, as to which
21 the record is devoid of any allegation that that in fact
22 happened.

23 MR. MCCARTHY: That is stipulated.

24 May I just have a moment, your Honor?

25 It is stipulated to the extent of striking Fares

1 Khallafalla.

2 MS. AMSTERDAM: That was my request.

3 THE COURT: Go ahead.

4 MS. AMSTERDAM: Additionally, overt act FFF,
5 which indicates that on or about May 23, Siddig Ali made a
6 series of phone calls seeking to arrange a meeting where
7 Siddig, Mohammed Saleh, Amir Abdelgani, Fares Khallafalla
8 and others could get together. This is the situation, your
9 Honor, where there are two back-to-back phone calls. One
10 was to an Ahmed Yousef and it turned out that the second
11 phone call was to an Ahmed last name unknown, where there is
12 a conversation about mosque politics and at the end Siddig
13 Ali says have you seen Fares Khallafalla. But originally I
14 believe that the government thought that the conversations
15 were to the same Ahmed, both being to Ahmed Yousef, and that
16 it was an attempt to get all parties together, when in fact
17 that does not appear to be the case.

18 THE COURT: So that Mr. Khallafalla's name, in
19 your view, would be stricken from that.

20 MS. AMSTERDAM: Actually, I believe both
21 Mr. Khallafalla and Mr. Abdelgani's name would be stricken
22 from that.

23 MR. MCCARTHY: We would stipulate to that, your
24 Honor.

25 THE COURT: Both?

1 MR. McCARTHY: Both.

2 THE COURT: All right.

3 MS. AMSTERDAM: Lastly, overt act JJJ, which is
4 the first night in the safe house. The last line of that
5 paragraph indicates that they, meaning Ali, Mr. Abdelgani,
6 Mr. Khallafalla and Salem, also conducted a test of a timing
7 device for detonating a bomb. I believe that the evidence
8 at trial which was adduced indicated that the device that
9 was tested was a light bulb that had been hooked up to a
10 circuit board, and they were told to assume for purposes of
11 this demonstration that when the light bulb lit up it was as
12 if the bomb had exploded. But indeed there was no evidence
13 that they in fact conducted a test of a timing device for
14 detonating a bomb, and I would ask that that language be
15 stricken from that overt act of the count.

16 THE COURT: You essentially you are asking to
17 strike one word, which is timing.

18 MS. AMSTERDAM: No, I am asking to strike -- no.
19 I am saying that there was no device whatsoever that was
20 tested which was for purposes of detonating a bomb. What
21 they tested was a light bulb that went on and off, and it
22 was clear during the course of the conversation that they
23 were supposed to pretend that when the light bulb went on it
24 was as if a bomb had exploded, but there was no allegation
25 that the light bulb itself was capable of detonating a bomb.

1 So I ask that the sentence be stricken.

2 MR. McCARTHY: We don't agree with that, your
3 Honor. Do you want me to address it at this point?

4 THE COURT: No. Do it later.

5 MS. AMSTERDAM: Lastly, your Honor, I will for
6 the record -- Mr. Serra is going to address more fully the
7 argument regarding Count 6 of the indictment on the
8 attempted bombing. I am aware, of course, that it is an
9 aiding and abetting charge. I did, however, place in my
10 letter the factual context in which the evidence came out
11 against my client, and I believe that my client's position
12 in regard to this charge is even more attenuated than the
13 other defendants' in this case, and I believe under United
14 States versus Ivic, where the Second Circuit was concerned
15 about imposing liability for remote preparatory acts, that
16 Mr. Khallafalla's action in this case is the most
17 attenuated, and accordingly under Rule 29 I ask for a
18 dismissal of that count against him, and I join in
19 cocounsel's remarks, specifically Mr. Serra's with regard to
20 that act.

21 Thank you, sir.

22 THE COURT: Mr. Ricco.

23 MR. RICCO: Good afternoon, your Honor.

24 THE COURT: Good afternoon.

25 MR. RICCO: With respect to Count 1, in order to

1 prove this count the government must prove that Mr.
2 El-Gabrownny conspired with two or more people to either levy
3 war or to hinder or delay the execution of the laws of the
4 United States.

5 THE COURT: That is not their theory any longer.
6 They have dropped that and it is either levy war or oppose
7 by force the authority of the United States.

8 MR. RICCO: I am sorry.

9 So the question simply is which two or more
10 people did the government prove that Mr. El-Gabrownny
11 conspired with to levy war against the United States?
12 Principally, the government rested only on the testimony of
13 Mr. Emad Salem, and in viewing the evidence in the light
14 most favorable to the government, the only person that Mr.
15 El-Gabrownny conspired with was Emad Salem. And then you ask
16 yourself which two or more people did Mr. El-Gabrownny
17 conspire to oppose by force the authority of the United
18 States?

19 THE COURT: What do you make of his address on
20 Salameh's license and his possession of the passport?

21 MR. RICCO: Viewed in the light most favorable to
22 the government?

23 THE COURT: Yes, as you have to.

24 MR. RICCO: His address on the driver's license
25 does not in and of itself prove anything. Without any other

1 participation of Mr. El-Gabrowny in the planning and the
2 execution or the preparation of the World Trade Center it is
3 meaningless, particularly in view of the other evidence in
4 the case, which shows that Mr. Salameh used different
5 addresses at different times, including his visits to Attica
6 and his possession of different documents with different
7 addresses on them.

8 THE COURT: But he gets a phone call that there
9 has been an arrest in the World Trade Center case, and he
10 leaves his apartment carrying the passports.

11 MR. RICCO: He leaves his apartment and in his
12 possession are five passports amongst other documents, with
13 Mr. Nosair's and his family's pictures on it. He doesn't
14 leave the apartment with his passports, which would indicate
15 that he was in flight or it was some act in furtherance of
16 the World Trade Center bombing.

17 I think what the government has argued to the
18 jury is that the possession of the passports somehow relates
19 to an escape claim. I don't think that the government has
20 taken the position that the possession of the passports
21 related at all to the bombing of the World Trade Center.

22 I think what is happening is that the government
23 has not established that Mr. El-Gabrowny has reached an
24 agreement for the purposes of levying war against the United
25 States or opposing United States authority by force. The

1 government has argued that Mr. El-Gabrowny did in fact
2 possess the passports. However, there has been no evidence
3 that shows that Mr. El-Gabrowny reached any type of
4 agreement whatsoever to engage in any conduct of a forceful
5 nature or any conduct that would come close to levying war
6 against the United States. If Mr. El-Gabrowny's actions
7 indeed speak louder than Mr. Salem's words, then Mr.
8 El-Gabrowny's actions are entirely consistent with conduct
9 that Mr. Salem himself testified to, which was voting,
10 getting a license, writing to a judge, rejecting an escape
11 plan, using the lawful system to challenge the conviction of
12 Mr. Nosair, and asking the FBI agents themselves if they
13 could help them with getting a license for his gun.

14 If the government must prove that Mr. El-Gabrowny
15 agreed to participate and planned to carry out violent and
16 unlawful acts against the government, where are they? His
17 possession of the passports themselves is certainly not
18 evidence that he participated or had the intent to
19 participate in violent or forceful acts against the
20 government, particularly in view of the fact that Mr. Salem
21 testified that when he approached Mr. El-Gabrowny with the
22 escape plan that was supposedly given to him by Mohammed
23 side, Mr. El-Gabrowny rejected the plan and refused to
24 participate, and according to Mr. Salem, Mr. El-Gabrowny
25 said why don't we wait and see what happens to the appeal.

1 Certainly that evidence rejects the plan, and at best is an
2 invitation for him to come back to him again at some time,
3 at some uncertain time in the future, to reassess it.

4 I think if we realistically look at sufficiency
5 arguments and we begin to really look at the record and ask
6 ourselves where is the evidence that is sufficient,
7 Mr. Salem's proffer of the carpenter nails as evidence of
8 Mr. El-Gabrowny's -- the notion that he wanted to
9 participate in the bombing of a synagogue is insufficient,
10 particularly since the government hasn't established through
11 any testimony that this plan to bomb this synagogue went
12 beyond anybody other than Ibrahim El-Gabrowny and Emad
13 Salem. In fact, I believe Mr. Salem testified that Mr.
14 El-Gabrowny said let's just keep this between me and you and
15 we're not going to let anyone else know about this. The way
16 I view that in the light most favorable to the government is
17 that it is insufficient to prove that he conspired with
18 anyone other than Emad Salem.

19 When the court looks at the evidence that Mr.
20 El-Gabrowny participated in this conspiracy that is charged,
21 essentially you have Mr. El-Gabrowny visiting Nosair. The
22 government did introduce at least one telephone conversation
23 between Mr. Nosair and Mr. El-Gabrowny from the state
24 prison, and I think the only spin on that telephone
25 conversation that one can reasonably draw from it is that it

1 was a conversation about the status of his appeal, filing a
2 complaint against the FBI, a conversation with his daughter,
3 and some other incidental conversation that had nothing
4 whatsoever to do with the planning, preparation or execution
5 of any violent acts.

6 So the basic question is, did Mr. El-Gabrowny
7 join in the charged conspiracy in Count 1, and did he
8 participate in it, and in order for him to participate he
9 would have to participate with an awareness of at least one
10 of its basic purposes and aims, which would be either
11 levying war or opposing the United States authority by
12 force, and the answer to that question is where is the
13 evidence, and the answer is there is none.

14 Based on that, your Honor, I would ask that the
15 court dismiss the sedition count against Mr. El-Gabrowny.

16 With respect to the bombing conspiracy, which is
17 Count 5, again I believe that the evidence that the
18 government is resting upon in this argument is Mr. Salem's
19 testimony that Mr. El-Gabrowny wanted to bomb a synagogue in
20 Brooklyn. Again I would remind the court that Mr. Salem's
21 testimony on this subject was that Mr. El-Gabrowny wanted to
22 keep this between himself and Mr. Salem, and in order for
23 Mr. El-Gabrowny to be convicted under this count, the
24 government must prove that two or more persons conspired or
25 agreed with one another to execute this bombing claimed. So

1 I would ask the court to dismiss Count 5, your Honor.

2 With respect to Counts 21 and 22, the assault
3 upon a federal officer, the gravamen of the assault count is
4 that Mr. El-Gabrownny acted willfully, and I think that when
5 the court reviews the evidence of the so-called assault
6 against Detective Corrigan,, the gravamen is that Mr.
7 El-Gabrownny acts willfully. The assault means that Mr.
8 El-Gabrownny had to act in such a way that he could instill
9 fear of personal violence into the person assaulted, that he
10 resisted, opposed, intimidated, he sought to frighten,
11 inspire fear, that he forcefully intermeddled or that he
12 resisted by means of physical force, and I think that one of
13 the benefits that your Honor has with respect to reviewing
14 this count that is essentially lost on appellate review is
15 that the court has had an opportunity to look at the
16 demonstration in the courtroom of what constituted the
17 assault against Agent Corrigan.

18 THE COURT: He said he elbowed him in the face.

19 MR. RICCO: Yes, he did, he said that he elbowed
20 him in his face, but when he demonstrated that to the jury
21 in front of your Honor, the question becomes the way in
22 which that was demonstrated before your Honor, whether or
23 not that conduct constituted willful conduct or whether or
24 not it was an incidental act that happened while the
25 officers were trying to keep Mr. El-Gabrownny against the

1 wall.

2 THE COURT: The testimony, I thought, was that
3 that happened when the patdown got to the passports.

4 MR. RICCO: That was Mr. Khuzami's opening, but
5 that is not the testimony that Detective Corrigan gave on
6 that subject, and I don't think any view of the evidence
7 suggests that the way in which Detective Corrigan
8 demonstrated that he claims he was injured or struck by Mr.
9 El-Gabrownny was done in such a way to inspire fear into
10 Detective Corrigan or to intermeddle with the execution of
11 the warrant that was taking place up in his apartment.

12 THE COURT: How about the oppose by force part?

13 MR. RICCO: We have the oppose by force, but what
14 we don't have is the willful part that is necessary. The
15 part that shows that Mr. El-Gabrownny intentionally acted
16 with a bad purpose, a purpose to do something that the law
17 forbade, and I think that that part of the government's
18 evidence is deficient, and because of that I would ask the
19 court to dismiss Count 20.

20 With respect to Count 21, which is the assault,
21 so-called assault against ATF Agent Burke, I would ask the
22 court to adopt the same arguments and point out to the court
23 that I believe that Detective Corrigan's testimony in and of
24 itself is insufficient to establish the assault against ATF
25 Agent Burke.

1 With respect to Count 22, I would essentially
2 adopt the same argument. The gravamen of Count 22 is that
3 Mr. El-Gabrownny forcefully assaulted and resisted or
4 imposed, impeded and interfered with the agents executing
5 the warrant. Again that requires that Mr. El-Gabrownny acted
6 willfully and I would ask the court to adopt the same
7 arguments with respect to Counts 20 and 21 to Count 22, and
8 that that count be dismissed.

9 With respect to Count 23, your Honor, the
10 possession of false documents, simply I would argue that the
11 government has failed to establish that Mr. El-Gabrownny
12 intended to use those documents unlawfully or that he
13 intended to transfer them unlawfully and that he merely
14 possessed the documents and that the government has failed
15 to prove anything more than mere possession of the
16 documents.

17 With respect to Count 24, Counts 26 through 28,
18 which would be the individual violations of 18 U.S.C. 1546,
19 I would ask the court to dismiss this count because the
20 government had to establish that these passports were
21 documents that come under the purview of the statute, and I
22 argue that these passports are not documents intended for
23 entry into the United States or evidence of an unauthorized
24 stay or employment in the United States.

25 Congress did not intend passports to be included

1 in this statute. I am very much aware that there is a case
2 in the Fifth Circuit called Osiemi that takes a contrary
3 view. I simply feel that the Fifth Circuit is wrong. I
4 think if the Second Circuit has an opportunity to review the
5 facts in this case and Mr. El-Gabrowny's possession in the
6 facts of this case, I don't believe that the Second Circuit
7 would adopt the holding and reasoning of the Fifth Circuit
8 in the Osiemi case. Mr. El-Gabrowny merely possessed these
9 documents without any other evidence indicating that he
10 intended to use them or transfer them or, more importantly,
11 that he intended to use them for the unlawful entry into the
12 United States or that anyone else was going to use them for
13 unlawful entry into the United States. The government's
14 theory is that somehow these passports were going to be used
15 as part of an escape plan for Mr. Nosair from the Attica
16 Correctional Facility. The government has failed to
17 establish any connection between possession of those
18 passports and their theory of escape.

19 Thank you very much.

20 THE COURT: Thank you.

21 Mr. Serra.

22 MR. SERRA: Thank you, your Honor.

23 Your Honor, by agreement with successor counsel
24 and with the court's permission, I will go out of turn,
25 because I will be making an argument addressed to Count 6,

1 which applies to the following counsel who will be heard.
2 Before I do that, however, as the court already noted, I
3 adopt arguments as to Count 1 made by Mr. Stavis and Miss
4 Stewart. I would like to add one thing that I think perhaps
5 is uniquely applicable as far as Mr. Alvarez is concerned.

6 As the proof in this during the last five months
7 came down, the proof as far as Count 1 and Count 5, the
8 bombing conspiracy, as far as it relates to Mr. Alvarez is
9 identical. Whatever proof there is goes to both counts.
10 However, in order to prove Count 1, the government, of
11 course, has to prove that he conspired to levy war of -- I
12 won't quote the indictment -- to levy war against the
13 government or to oppose by force the authority of the United
14 States. I would draw the court's attention to what
15 Mr. Stavis alluded to and I would like briefly -- it will
16 take a couple of seconds -- to do more fully, namely the
17 language that your Honor charged, I think quite correctly,
18 to the jury in your preliminary charge as far as what the
19 proof would require. It is page 1934 to 1935. Your Honor
20 charged that the question for you to consider -- I will
21 paraphrase a little so I don't read everything. It was what
22 was in the minds of the people who planned the use of the
23 force, and basically that the government must prove -- here
24 I will quote -- "that two or more people agreed to use force
25 for the purpose of attacking the United States functioning

1 through its government, as I have explained that concept to
2 you."

3 Your Honor goes on to state that if what the jury
4 found was merely that two or more people conspired to commit
5 bombings but not by that act conspired to oppose by force
6 the authority of the United States, then they were not
7 guilty of seditious conspiracy.

8 Your Honor, I will make a motion to dismiss Count
9 5 in a few minutes, but for the purpose of this moment,
10 conceding for the sake of this argument that Mr. Alvarez
11 committed the acts charged in Count 5, I point to the
12 court -- and it is difficult, Judge, with all of the proof
13 and all the speeches and all the conversations referred in
14 this case, but as far as Mr. Alvarez is concerned, there is
15 not a word in this record that supports a jury conclusion
16 that he intended to oppose by force the authority of the
17 United States.

18 THE COURT: What view do you take as to that
19 element, whether you have the will?

20 MR. McCARTHY: Your Honor, I didn't hear your
21 question.

22 THE COURT: Can that element be covered by a
23 willful ignorance charge or not?

24 MR. SERRA: Your Honor, as a matter of abstract
25 law, a willful ignorance charge, if supported by evidence,

1 can supply any element. But on the facts of this case,
2 willful ignorance of what?

3 For the sake of this argument, we can assume that
4 the willful ignorance charge would establish that
5 Mr. Alvarez knew that people around him were building bombs
6 and planning to bomb things. For Count 1 argument let us
7 concede. I know of nothing in this record, however, that
8 would support the additional inference that that intent was
9 to oppose by force the authority of the United States, and I
10 will be perfectly happy to answer anything the government
11 cites, anything the court cites as to what willful ignorance
12 of what that was going on should have supplied that
13 knowledge. I don't think that on this record -- I am sorry,
14 your Honor. Conscious avoidance are the words that I am
15 used to hearing.

16 THE COURT: Right, and those are the words that I
17 should have used.

18 MR. SERRA: -- conscious avoidance of what that
19 is going on here. Certainly conscious avoidance for the
20 sake of this argument could supply knowledge that bombs were
21 being built and perhaps the inference that bombs were going
22 to be used, even bombs were going to be used in New York
23 City. But where is it anywhere in this record that a
24 conscious avoidance charge, conscious avoidance of what that
25 was going on around him that would have given him knowledge

1 that the purpose was to oppose the authority of the United
2 States by force? Your Honor, I can't go further than that
3 argument because I am arguing that the record is barren.

4 I would also point out to the court -- I won't
5 read this, but, your Honor, in the course of defining to the
6 jury in the preliminary charge what oppose the authority of
7 the United States means used very similar language, that
8 there must be proof that the purpose -- we had a dispute
9 earlier before the preliminary charge as to whether a
10 sufficiently severe attack on civilian targets would
11 establish this. I am sure the court remembers. But even so
12 there has to be proof that the purpose of that severe attack
13 on civilian targets was to oppose by force the authority of
14 the United States. That is simply lacking as far as
15 Mr. Alvarez is concerned, and Count 1 on either prong, the
16 levy war prong or the oppose authority prong should be
17 dismissed as far as Mr. Alvarez is concerned.

18 (Continued on next page)

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1 MR. SERRA: I would point out, your Honor, on not
2 only the tapes in the case, but Emad Salem, who testified
3 for four weeks, five weeks, never said that any conversation
4 he had or anyone else had with Victor Alvarez -- Emad Salem,
5 God knows has conversations with Siddig Ali and perhaps
6 other people, in which he talked about facts which would
7 satisfy this argument beyond any doubt. But he never
8 testified that he had any conversation or any conversation
9 was had in Victor Alvarez' presence about opposing by force
10 the authority of the United States. Your Honor, continuing,
11 the next count which would I like to address is Count Six,
12 which is the attempted bombing count, which charges various
13 of the defendants, including Mr. Alvarez, with the attempt
14 to bomb "buildings, vehicles, and real estate."

15 Specific to Mr. Alvarez, again, I would point out
16 that there is no discussion of targets whatsoever with
17 Mr. Alvarez. Now, perhaps the conscious avoidance argument
18 has more strength there, as I alluded to in my argument on
19 the seditious conspiracy. But nonetheless, I would still
20 point out to the court that there is no discussion
21 whatsoever with Mr. Alvarez of any targets at all. No
22 tunnels, no bridges, no 26 Federal Plaza -- those are all
23 quotes from the seditious conspiracy count, but no targets
24 whatsoever.

25 It is black letter law that an attempt is

1 basically proven, here taking inferences in the government's
2 favor, where the government proves the intent to accomplish
3 the substantive crime and a substantial step in the
4 completion of that of that crime.

5 I think on the present record it is difficult to
6 argue that intent is not shown -- taking all inferences in
7 the government's favor, that the government has not shown
8 intent.

9 There have certainly been enough conversations,
10 and the court raised the issue of conscious avoidance.
11 However, whether or not the government has shown that a
12 substantial step towards the completion of a bombing was
13 proven I would submit is a matter of -- well, it's not a
14 matter of doubt. The government hasn't done it for the
15 following reasons.

16 Your Honor, this can be a relatively brief and
17 will be a relatively brief argument, because I submit to the
18 court that there is one case which Ms. Amsterdam already
19 cited which is so much more important to this court's
20 decision than any other case, in part because it is a Second
21 Circuit case, in part because it's very close to these
22 facts, that looking beyond that case becomes almost
23 unnecessary. That case is U.S. v. Ivic, which is to be
24 found at 700 F.2d 51, decided by the Second Circuit in 1983.
25 Ivic concerned two attempted bombings, one of which the

1 Second Circuit concluded there wasn't any issue as to, the
2 government has clearly made out a sufficient case, and on
3 the second one the Second Circuit did rule that they had
4 made out a sufficient case, but, in the phrase of the court,
5 "but barely so."

6 The facts of the one which was clear to the
7 circuit was that the defendants had actually obtained
8 dynamite, which, needless to say, is a completed explosive
9 which will blow up, that and other bombing paraphernalia,
10 that they had constructed a fully operational time bomb,
11 that they had inspected the building to be bombed, picked a
12 precise time for the bomb to explode, and actually
13 transported the bomb to the site which was to be bombed.
14 That wasn't a particularly close issue.

15 The facts of the attempted bombing which the
16 Second Circuit held sufficient, but, again, they stated it,
17 sufficient, although "barely so," were as follows, and I'll
18 pause comparing the facts of the present case.

19 Your Honor's questions show that the court has a
20 command of the record in this case. If you have additional
21 questions as to the facts, I encourage the court to ask me.
22 But otherwise I won't go into this record in great detail.

23 The second bombing in Ivic which the Second
24 Circuit found barely sufficient, the evidence proved that
25 the defendants had discussed the bomb site.

1 Well, surely in this case there was discussion of
2 bomb sites. I would point out to the court that, as Mr.
3 Haggag testified, Siddig Ali changed plans basically every
4 day. That is relevant as to whether there was a substantial
5 step towards the completion of a crime, because there were
6 dozens of sites discussed at one point or another in this
7 case. It does appear from the record that some were focused
8 on, but there were many sites discussed.

9 THE COURT: There were many sites discussed. On
10 the other hand, there is the videotape of the tunnel that
11 was shown at the safe house.

12 MR. SERRA: Yes, your Honor. There were
13 certainly some that were focused on more than others.

14 THE COURT: Go ahead.

15 MR. SERRA: I would point out in passing that
16 Mr. Alvarez was not part of any such discussions, and that
17 the best means of planting such a bomb -- that was the
18 second factor in Ivic. There were discussions in this case
19 about means of planting bombs. Once again, there were
20 discussions of hundreds of different means of planting
21 bombs, including a particularly picturesque discussion by
22 Siddig Ali of how on the day that the bomb goes off they
23 would communicate by Woolworth ducks quacking into
24 walkie-talkies. But there were discussions, again, whether
25 or not there was a substantial step. I submit to the court

1 it is relevant that there were many discussions, although,
2 once again, the plan for the tunnels did appear in the proof
3 to be further advanced than the other plans.

4 Getting back to Ivic, the defendants had acquired
5 and had readily available the explosives needed to carry out
6 the bombing. I don't think it will come as a shock to
7 anyone, particularly after the government dismissed Count
8 17, the 924(c) bomb count, that in the present case they
9 weren't close to constructing an explosive.

10 In terms of the court's examination of the
11 record, I direct the court to my examination of Agent
12 Williams, the FBI bomb technician who testified as to the
13 Trade Center bomb, and Ms. London's examination of Special
14 Agent Burmeister, the forensic chemist who testified as to
15 similar matters.

16 I will take a dismissal of a count anytime I can
17 get it, your Honor, but the proof as to the bomb count, I
18 submit the court would have dismissed it on its own. There
19 was simply no way that what was in the safe house came close
20 to being anything other than what would grow grass and power
21 trucks. I think the government probably gave up the ghost
22 on that fairly early.

23 In any event, what the Second Circuit held barely
24 sufficient on that particular attempted bombing were facts
25 which alleged the possession of explosives readily available

1 to carry out the bombing. There's nothing resembling that
2 here, and I don't think the government contends otherwise.

3 The next factor in Ivic is that someone had
4 reconnoitered the site. I think probably, again, there were
5 many sites, but as the court pointed out, the tunnel
6 video -- I don't remember the exhibit number -- the tunnel
7 video certainly does appear to say that Siddig Ali had
8 reconnoitered the site.

9 The Second Circuit goes on to cite as their final
10 factor something which also is true here, of course, the
11 defendants never actually transported a bomb to its
12 contemplated site. Well, of course, in the present case not
13 only was no bomb ever transported, no bomb ever existed.

14 Your Honor, there is, as in virtually every
15 appellate case which has a serious issue on an attempt,
16 virtually every appellate court faced with a serious attempt
17 issue states if there is one area of law in which cases are
18 sui generis, maybe even more than Fourth Amendment law, it's
19 an attempt, because every fact pattern is different.

20 It is difficult -- were the case on all fours, I
21 would not be standing here making this argument because
22 either the government would have dismissed the count or I
23 would make a pro forma Rule 29(n) motion. However, I submit
24 to the court that when you examine the facts of Ivic, that
25 what was barely sufficient in the second of the attempted

1 bombings in Ivic is much less than that here.

2 There's no factor here that was not present
3 there, and there is the major factor which was present
4 there, namely, a completed, ready bomb which the facts of
5 this case are not close to.

6 Your Honor, I would point out to the court one
7 other Second Circuit case, which the court, I would suggest,
8 take a look at. It is not a bomb case, and, therefore, the
9 facts are somewhat more removed. But it's U.S. v.
10 Delvecchio, which is to be found at 816 F.2d 859 (2nd Cir.
11 1987)

12 Delvecchio is a drug case. But, as the circuit
13 noted, the proof in Delvecchio established that the
14 defendants had sought out someone that they knew to be a
15 supplier of narcotics, had phone calls with him, and
16 attempted to establish a relationship with him in other
17 ways, such as by sending flowers. In fact, had spoken to
18 him, had agreed on the amount of drugs to be purchased, on
19 the date it was to be purchased, the time, and the amount of
20 money to be paid. The purchase never happened. That's why
21 it was an attempt. But the only thing that did not happen
22 in Delvecchio was the actual purchase. Other than that, the
23 negotiations and in preparatory steps were complete.

24 Your Honor, I would submit on the proof in this
25 case that the proof in this case is preparation, if

1 anything, that it is not a substantial step, and, therefore,
2 that Count Six should be dismissed because, as a matter of
3 law, the government has not presented sufficient evidence
4 from which the jury could find an attempt.

5 Your Honor, as to Count Five, the attempted
6 bombing, the object -- I've already alluded to it briefly --
7 the object of that count as stated in the indictment are the
8 bombing of buildings, vehicles, and real estate and the
9 transport of explosive materials interstate.

10 I have already observed to the court that there
11 is a complete absence of evidence that anyone, anytime
12 discussed with Mr. Alvarez what was to be bombed or how it
13 was to be done or whether materials for the making of a
14 bomb, explosive materials, were going to be transported
15 interstate. As far as he is concerned there's simply no
16 evidence that he shared in the objects as alleged in the
17 indictment.

18 Finally, both Counts 15 and 16, Count 15 being
19 shipping a firearm interstate in aid of a crime punishable
20 by more than a year, and Count 16 being using and carrying a
21 firearm in relation to a crime of violence. Both of those,
22 your Honor, relate to the bombing conspiracy. Count Five is
23 their predicate, and the court will, of course, charge the
24 jury that if the jury does not believe that Mr. Alvarez
25 joined the bombing conspiracy, or, for that matter, the

1 bombing conspiracy existed that he as a matter of law cannot
2 be guilty of those counts.

3 Since I have argued to the court already that the
4 court pursuant to Rule 29 should dismiss the bombing
5 conspiracy count as to Mr. Alvarez, I would move to dismiss
6 Counts 15 and 16 as well.

7 With the court's indulgence for just a second
8 while I check my notes, please.

9 THE COURT: All right.

10 (Pause)

11 MR. SERRA: Thank you, your Honor.

12 THE COURT: You're welcome.

13 MR. BERNSTEIN: Your Honor, I am concerned about
14 the time constraints of some of us because we did not plan
15 to be here past five o'clock. I am just concerned as to
16 what the court's schedule is. We have appointments and
17 obligations we made to other courts and clients for late
18 today.

19 THE COURT: Sorry about that, but I had thought
20 to hear at least from all the defendants.

21 MR. BERNSTEIN: Judge, if possible I would ask to
22 be allowed to make my truncated argument and go.

23 THE COURT: Go ahead.

24 MR. BERNSTEIN: Thank you.

25 With respect to Mr. Abdelgani, obviously with

1 respect to Counts One, Five and Six, I move under Rule 29
2 for a dismissal.

3 I can do it all from back here, Judge.

4 THE COURT: OK.

5 MR. BERNSTEIN: Under the prevailing standard, I
6 obviously adopt and join the arguments made by cocounsel,
7 specifically with respect to the attempted bombing count as
8 laid out by Mr. Serra, I rely upon Ivic.

9 I don't know whether or not this is the moment
10 where we need on to spend the court's time with respect to
11 overt acts that are pleaded in the indictment. That can be,
12 so to speak, cleaned up later on because they don't
13 necessarily go, with respect to my client, to particularly
14 making a difference as to whether they're stricken now or
15 later. So I would just point --

16 THE COURT: I will let you reserve on that. If
17 there's no proof, there's no proof.

18 MR. BERNSTEIN: Right. I think that's relevant
19 to the arguments already. Other than to at least let the
20 court know, and we can raise it again later on, there are
21 certain overt acts that may be deficient in their proof. I
22 would point out UU, WW, XX -- FFF, I think you have already
23 deemed the government stipulated should be out -- RRR. I
24 think there are questions with respect to FFFF and NNNN.

25 THE COURT: Thank you.

1 MR. BERNSTEIN: Your Honor, I am going to -- with
2 Mr. Abdelgani's permission -- leave at this time. If there
3 is no objections from co-counsel, I would rely upon the
4 arguments that counsel make in my absence.

5 THE COURT: Is that all right, Mr. Abdelgani.

6 DEFENDANT AMIR ABDELGANI: Yes.

7 THE COURT: Ms. Stewart.

8 MS. STEWART: I just want to mention, because I
9 feel very strongly, that the lawyers in this case, we all
10 try our best to comport with whatever the court asks us to
11 do. I just feel we weren't told that we were going to stay
12 late today. We were not informed of that. We sat through
13 lunch, and we weren't informed of that either.

14 We come prepared in the morning; very rarely is
15 someone late. Mr. -- Chuck anyway, took off today and had
16 someone sit in, for his daughter's graduation. He is not
17 here for the Rule 29 arguments. We all do our best. But to
18 sit here after 5 o'clock when none of us had any idea of
19 this, I mean, we attempt to act as professionals, and I wish
20 we could be treated that way. We are not here to disrupt or
21 impede the court's progress.

22 THE COURT: I had not thought it to be a gross
23 departure from professional standards to sit after 5
24 o'clock.

25 MS. STEWART: It is not, but it would be nice if

1 we had a little notice. We have other professional
2 obligations. We do have things that we do after 5 usually,
3 most of us I would say.

4 THE COURT: You did make your argument earlier
5 on.

6 MS. STEWART: Yes, but I wouldn't leave in the
7 midst of this. Who knows what will develop that may need a
8 word from Lynne Stewart. I don't know that. I wouldn't
9 walk out. I don't think any lawyer would willingly walk out
10 of Rule 29 arguments.

11 MR. BERNSTEIN: If there is going to be a break
12 in the proceedings shortly, Judge, I will sit in my place
13 and stay for the end of the proceedings; if there is not, I
14 feel uncomfortable leaving just because we did not have
15 notice that we were going to be working late. We could have
16 all made the appropriate arrangements. I don't mind working
17 until 7 o'clock, if I have advance notice.

18 THE COURT: That is not what I have in mind. I
19 did not think that it would take that much longer to hear
20 from the remaining defendants unless I am laboring under a
21 misconception.

22 MR. BERNSTEIN: I don't know how long Mr. Nooter
23 might be and/or other counsel or Mr. Wasserman.

24 MR. WASSERMAN: Or Ms. London.

25 THE COURT: Or Ms. London.

1 MS. LONDON: Ms. Olsen.

2 THE COURT: Or Ms. Olsen.

3 MR. BERNSTEIN: Frankly, I would rather just
4 start earlier in the morning and know we could all be here
5 rather than have many of us sitting and feeling like -- even
6 though I don't think any harm will come to my client in my
7 absence, under the circumstances it is just an uncomfortable
8 feeling at this stage of the proceeding.

9 THE COURT: We will sit until 5:30.

10 We will start tomorrow at 9.

11 MR. BERNSTEIN: Judge, I am just going to make a
12 phone call.

13 THE COURT: Go ahead.

14 Ms. London?

15 MS. LONDON: Your Honor, with respect to Count
16 One of the indictment, the seditious conspiracy count, I
17 would like to adopt the arguments of co-counsel, but add,
18 however, specifically with respect to Overt Act HHHH, which
19 charges that on or about June 19 Siddig Ali and others,
20 including Mr. Elhassan and Emad Salem, met at the residence
21 of Siddig Ali in New Jersey, there was no testimony
22 proffered by the government that Mr. Elhassan was present at
23 that meeting.

24 In fact, the tape recording known to me as CM48,
25 the recording of that conversation had Mr. Amir Abdelgani

1 making a telephone call to Mr. Elhassan telling him to come
2 over, but there is no indication on that tape recording that
3 he came over, no words uttered by him, and, in fact, June
4 19, outside of any testimony by Mr. Haggag about
5 Pennsylvania, is the first testimony about Mr. Elhassan.
6 And Mr. Salem testified how he first met him and drove him
7 to the safe house at a different location. So I would ask
8 that Mr. Elhassan's name be stricken from that overt act.

9 MR. MCCARTHY: Your Honor, we agree that
10 Mr. Elhassan was not at Mr. Siddig Ali's house.

11 MS. LONDON: With respect to the other two counts
12 remaining for Mr. Elhassan, Counts Five and Six, the
13 conspiracy count and the attempt count, I again adopt
14 arguments of co-counsel with respect to the sufficiency of
15 the evidence, specifically with respect to Count Six --
16 which Mr. Serra covered, I believe, as fully as I would have
17 covered it myself.

18 I would just like to emphasize to the court that
19 in Ivic, where the court held in the second attempted
20 bombing that the evidence was barely sufficient, the only
21 thing left to do in that attempted bombing was transport the
22 completed bomb.

23 THE COURT: I will read Ivic again.

24 MS. LONDON: I would remind the court here that
25 not only do we not have materials to make the bomb, there

1 was no booster, there was no detonator, there were no cars
2 to transport the bomb, there were no queek toys or no
3 walkie-talkies. They were far from meeting the legal
4 standard of a substantial step. I ask that that count be
5 dismissed, your Honor.

6 THE COURT: Mr. Wasserman?

7 MR. WASSERMAN: If it is OK, Judge, I would like
8 to wait until my client comes down.

9 THE COURT: Pardon?

10 MR. WASSERMAN: Can I wait until my client comes
11 down? He should be down shortly.

12 THE COURT: Ms. Olsen?

13 MS. OLSEN: I want to join in the pertinent
14 arguments of co-counsel, in particular, the argument of
15 Mr. Serra, with particular respect, however, to the
16 seditious conspiracy count as it applies to Fadil Abdelgani,
17 who arrived on the scene, arrives on the scene and is first
18 observed during the late afternoon of June 23 at the Yonkers
19 gas stations. There is no proof that he was ever present at
20 any meetings or during any conversations where any seditious
21 discussions and/or agreements took place.

22 The evidence against him is essentially that he
23 transported the diesel fuel to, and unloaded it in the
24 Queens safe house, and that he later mixed that fuel with
25 fertilizer, with no indication that he knew of any plan or

1 plot to wage war against or challenge the authority of the
2 United States. This charge must fall.

3 This is especially the case when we note that in
4 V5-V8, which is Government Exhibit 383T2, Siddig expresses
5 anger at Victor Alvarez for talking to another in Fadil's
6 presence and comments that Fadil has nothing to do with that
7 matter, page 39.

8 Later, Fadil's name is mentioned when Siddig
9 says, "Let us account for those who have knowledge of this,"
10 the response about Fadil is, "He's not going to know," page
11 40.

12 For these reasons, we respectfully ask that your
13 Honor grant this Rule 29 motion and dismiss the seditious
14 conspiracy count as against Fadil Abdelgani.

15 One other matter, please. In Count One, Overt
16 Act MMMM refers to Fadil Abdelgani being present on June 20,
17 1993. There was no evidence that he was present at that
18 meeting or present anywhere before June 23, 1993, and I ask
19 that that be stricken.

20 MR. McCARTHY: We don't agree to that, your
21 Honor. I will address it.

22 THE COURT: OK. He says they don't agree and he
23 will address it in the morning.

24 MS. OLSEN: He will not agree?

25 THE COURT: He will not agree.

1 MS. OLSEN: That particular overt act refers to
2 some conversations that were mismarked as June 20, 1993 that
3 were later marked June 19, 1993, and he's not listed as one
4 of the participants.

5 THE COURT: We will hear how they propose to
6 prove it.

7 MS. OLSEN: OK. Thank you.

8 THE COURT: Mr. Wasserman?

9 MR. WASSERMAN: Yes, your Honor.

10 Your Honor, it is always easier to follow
11 Mr. Serra, and briefer. On Count One, the issue for my
12 client is whether there was an agreement to levy a war of
13 urban terrorism against the United States or to oppose by
14 force the authority of the United States.

15 I suggest to your Honor that the record is not
16 sufficient to go to the jury on that count. In fact, I
17 believe that the testimony is that the target at most that
18 could be argued by the government was the United Nations,
19 and I am not in any way conceding that point because there
20 was no agreement, both with regard to Count Five and Count
21 Six, there is no agreement about the United Nations, but
22 that is the most that the government can argue.

23 THE COURT: You mean with respect to your client?

24 MR. WASSERMAN: Yes, your Honor.

25 In fact, when the subject of the tunnels comes

1 up, in CM25, there was specific discussion in which my
2 client states that, "If you do something like that, innocent
3 people will be killed, ordinary citizens will be drowned,"
4 and in both the tone and content of the conversation he
5 clearly is not agreeing to anything that would involve the
6 loss of civilian life, nor is there any discussion about
7 taking action against the United States military or against
8 the United States government.

9 There is no evidence that he agreed to any of the
10 constituent elements that would comprise sufficient evidence
11 to go to the jury on Count One.

12 THE COURT: Wasn't there something in that
13 conversation later on about, we'll do it in the middle of
14 the night or something when there is nobody there, or when
15 traffic is light or something like that? I'm sorry. I
16 thought it was --

17 MR. WASSERMAN: I think there was conversation
18 before, your Honor. There was definitely a shift in the
19 conversation, but it preceded the point at which Siddig Ali
20 brought up, as the tape was played, brought up the subject
21 of the tunnels.

22 THE COURT: I may be misremembering. I am sorry.

23 MR. WASSERMAN: I believe that is correct, your
24 Honor. After that, both the tone and the content of the
25 conversation shifted, but I think that my client's

1 statements are so broad and definitive concerning the taking
2 of ordinary citizens' lives that it obviates the sufficiency
3 of the government's proof on Count One.

4 With regard to one overt act that is charged in
5 Count One, I would like to just take that up if I may, at
6 this time, Judge, and that is Overt Act W, which deals with
7 the gun that is allegedly sold to Emad Salem by Ali Shinawy
8 in late June, June 28, 1992.

9 I raise two points: One, that the government's
10 proof is so tenuous in terms of the connection that it
11 should not go to the jury; and, second, and more basically,
12 it has nothing to do with the seditious conspiracy charge.
13 The sale of the Saturday night special as alleged by the
14 government on June 28 by Ali Shinawy to Emad Salem, I can't
15 conceive of its connection to the seditious conspiracy.
16 Secondly, the government's effort to prove this involved the
17 following: That this gun is sold to a gun store in
18 Philadelphia, purchased there by the wife of someone who
19 ultimately is convicted of bank robbery, who testifies that
20 he sells it to a man named Asim Muhammad, who he identifies
21 in a picture and says that's Asim Muhammad, and the
22 government plays some conversations to show that will Asim
23 Muhammad is a friend of my client.

24 There's absolutely no discussion in those
25 conversations, or any other way that evidences that my

1 client's supplies the client through Asim Muhammad or to
2 Asim Muhammad or from Asim Muhammad. I think the
3 tenuousness of that, together with the fact that the
4 connection of the sale of that gun by Ali Shinawy,
5 allegedly, is too tenuous to connect it to the sedition
6 count to be presented to the jury.

7 As far as Counts Five and Six are concerned,
8 there's very little that I want to add to the arguments that
9 have been advanced by Mr. Serra to both Counts Five and Six,
10 but I want to point out that with regard to the attempted
11 bombing, the oddity of the situation that my client is in is
12 that even if your Honor finds sufficient the attempt by
13 others in that count, the most that the government has in
14 terms of its sufficiency to go to the jury is an allegation
15 that my client tried to obtain something to aid the other
16 people named in Count Six. It is an attempt to attempt, and
17 although there is no case that says that that is not
18 sufficient to be an aider and abettor, I just point that out
19 to your Honor in terms of the tenuousness overall of the
20 government's proof against my client.

21 THE COURT: There were conversations showing the
22 attempt. He makes the phone call, he comes back, "Nothing
23 doing."

24 MR. WASSERMAN: The government is alleging that
25 those conversations have to do with what they are suggesting

1 it has to do with. But my only point is that you have -- it
2 is an attempt in aiding and abetting, although there is no
3 legal cubbyhole to put that in to further an attempt.

4 Thank you, your Honor.

5 THE COURT: Thank you.

6 Mr. Nooter?

7 MR. NOOTER: Your Honor, my client is charged in
8 three counts: Count One, Count Five and Count Six.

9 Counts One and five are conspiracy counts, the
10 seditious conspiracy and the conspiracy to bomb; Count Six
11 is the attempt and aiding and abetting.

12 With respect to the seditious conspiracy and the
13 conspiracy to bomb or conspiracy to transport bombs, the
14 record is completely devoid of proof that my client knew
15 that the conspiracy involved explosives or bombs. If you go
16 back through the testimony, starting with Haggag, who
17 testified later in the trial, but about the earliest events
18 of the case, up through the V5-V8 videotape segment, 383T2,
19 it is a hundred percent clear that there is no mention of
20 bombs, no mention of targets, no mention of explosives, no
21 mention of detonators, no mention of anything that would
22 involve explosives, and that his presence in the safe house,
23 at the time he was present, the devices that were sitting
24 there were not assembled as something that could even look
25 like a bomb. They consisted of ordinary barrels and pieces

1 of electronic equipment, most of which he couldn't see, but
2 ordinary pieces of electronic equipment. Not even a bomb
3 expert could sit there at that stage and know that those
4 pieces would be a bomb.

5 So Emad Salem's own testimony as well as the
6 transcript itself showed that the words "bomb, explosive,
7 tunnel," etc. were never used in his presence.

8 Jumping back a minute to Mr. Haggag's testimony,
9 because that is the first in the sense appearance of my
10 client in the chronology of the case, he said that in late
11 1992 that he -- or while in the presence of Siddig Ali had a
12 conversation with my client involving first the question,
13 "What have you done for jihad lately?" Addressed to Siddig
14 Ali, secondly, a discussion about shipping RPG's, which is
15 some sort of weapon, from Jordan into Egypt, and, thirdly, a
16 discussion that any assistance in a project like that would
17 be conditioned on obtaining weapons for Siddig Ali.

18 First of all, the discussion of weapons as
19 described by Mr. Haggag, the weapons for Siddig Ali, did not
20 determine the purpose of the weapons or the location of the
21 weapons. It is not even clear that, for example, it's
22 domestic because the whole balance of the conversation was
23 about activities in the Middle East.

24 Secondly, chronologically speaking, the
25 discussion predated either any conversations about an

1 assassination of President Mubarak, and predated by quite a
2 few months any conversation or discussions by any alleged
3 co-conspirators concerning plans to do bombing or anything
4 else that local weapons might be for.

5 So all of that might have shown some kind of
6 predisposition and would have been used to counter things I
7 might have said in my opening about my client's mentality,
8 but it did not show the element of the case, that is,
9 knowledge that there was a domestic war of urban violence
10 being considered for which my client was being asked to
11 participate with respect to the testimony of Mr. Haggag.

12 Then you move up to the testimony of Emad Salem.
13 The only thing he added to the videotape transcript itself
14 was that he had met my client sometime earlier when there
15 was a completely innocuous discussion that had nothing to do
16 with any jihad or plans of any kind related to the
17 conspiracy. It was about going to the Caribbean and a hot
18 dog truck.

19 So the only other thing that Emad Salem could add
20 was his own interpretations of what was happening at the
21 safe house, and he gave those interpretations at a time when
22 we did not, from the point of view of the trial, have a
23 finalized transcript of the conversations, and in some
24 instances it is now shown in the transcript that we have --
25 even though portions are disputed, and even though I have to

1 give the disputes to the government for the purpose of this
2 argument, it is a hundred percent clear that, before my
3 client comes into the safe house, Emad Salem asks Siddig
4 Ali, "Have you explained to Wahid?" and the answer now is,
5 "No, no, no."

6 In addition to that, coupled with my cross of
7 Emad Salem, which went through extensively the CM
8 discussions about my client, all of which pointed in the
9 direction of saying that they had no intention of telling my
10 client anything because they didn't trust him.

11 Once they're in the safe house, although at times
12 Siddig Ali says, "I'm going to explain to him," or, "I will
13 explain," or Emad Salem says, "Please explain it to him,"
14 they, indeed, never do.

15 For the jury I'll argue the motivations for that,
16 but for the point of this motion, the fact that it is not
17 discussed, and Mr. Salem himself admitted it in his
18 testimony, the bombing, explosives, even the word "timer"
19 was not mentioned, although he picked up a plastic box which
20 the videotape shows my client could not have seen inside of
21 it. It had a lid. He lifted the lid for Siddig, but my
22 client was sitting lower down than any position where he
23 could see inside the box.

24 So he saw a plastic box and heard a conversation
25 about it being set at a quarter of an hour and that it was

1 for a big house.

2 Now, we know that in other contexts people knew
3 that "big house" was supposed to mean the United Nations,
4 but there's no evidence that that was ever explained to my
5 client, and Mr. Salem himself said that the words were
6 picked so they would be innocuous and that people who heard
7 them would not understand what it was about.

8 Indeed, "big house" is innocuous. If my client
9 happened to notice that there were ordinary kitchen timers
10 sitting there or that this might be some kind of timer,
11 timers are used in houses for any number of things, such as
12 turning lights on and off. There was nothing to show that
13 it related to the detonation of an explosive device. The
14 word "detonator" was not used and "explosive" was not used.

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1 MR. NOOTER: (Continuing) So with respect to the
2 seditious conspiracy, the urban warfare aspect was never
3 explained to my client, and it is clear from the transcript
4 itself and how it goes that my client has not been told
5 about it before and is not told about it then, and although
6 initially he starts asking some questions about it, he is
7 told we will not tell you, and later he does say never mind,
8 don't tell me. I would say that is not a question of
9 conscious avoidance at that point because he has already
10 been told several times by Siddig Ali not to ask and we are
11 not going to tell you, it's secret.

12 Therefore, although he, giving the light most
13 favorable to the government he may have ultimately said I'll
14 get you some cars, which is a disputed portion of the
15 transcript, but again on this standard, giving it to the
16 government, the purpose of the cars is never -- there is
17 simply no evidence that the purpose of the cars has been
18 shown, even for the transportation of the explosives or for
19 the use of them in exploding anything. That applies to both
20 Count 1 and Count 5.

21 With respect to Count 6, the attempt, of course I
22 join in Mr. Serra's argument, but in addition to that, my
23 client clearly himself, there is no evidence that he took
24 any substantial step himself toward the completion of an
25 attempt project. However, he is charged under Section 2 as

1 an aider and abettor. Although words can sometimes
2 constitute participate by taking some action, such as
3 importuning a crime or commanding a crime, which is
4 specifically mentioned in Section 2, I would argue that no
5 words that my client said meet the standard of what the
6 court would have to charge the jury to complete the aiding
7 and abetting, whether he sought by some action to make the
8 criminal venture succeed, that he willfully and knowingly
9 sought by some act to help make the crime succeed. There
10 simply was no act. What there was was talk.

11 I would suggest that if the talk is to order a
12 crime or command a crime, then that is a verbal act which
13 satisfies the requirement. But if the talk is simply to say
14 I'll see what I can do, which is the way it is left when he
15 leaves the safe house, 75 percent in four days, let me try,
16 in effect I will see what I can do, that is not what is
17 meant by an act showing that he willfully and knowingly
18 associated himself with the venture.

19 Of course, in addition to that you have to know
20 enough about the venture itself, so the arguments I made
21 previously concerning the bombing purposes of Count 6 would
22 apply here as well. But in addition to that, I am focusing
23 on the requirement of aiding and abetting that he revealed
24 himself by some act the willful participation.

25 If I could just have one moment, your Honor.

1 I would make a motion to specifically strike the
2 first sentence of overt act ZZZZ, because it makes
3 references twice to the word bomb and it seems to be
4 conceded at this point that there was no bomb. I don't feel
5 that simply redacting the word bomb in the two places from
6 that sentence would be sufficient because that is not what
7 the grand jury indicted him for. The grand jury indicted
8 him in a sentence stating that he was involved in an overt
9 act of coming to the safe house where bombs were being
10 prepared, and agreeing to provide cars for the
11 transportation of bombs. Those are the two uses of the word
12 bomb and I think the whole sentence should be stricken.
13 That leaves a sentence related to cleaning up the traces.

14 Thank you.

15 THE COURT: We are going to stop now.

16 I am sorry, Mr. Stavis.

17 MR. STAVIS: I know the hour is late, your Honor,
18 but I wanted to give the court, if it is now or for your
19 Honor to state a time, an idea of some of the issues to be
20 dealt with tomorrow. Mr. Patel and I are most directly
21 affected by them.

22 THE COURT: Fine. I am happy to hear you. I
23 wasn't the one pressing to leave.

24 MR. STAVIS: The government has asked for an
25 offer of --

1 THE COURT: Do you want to step to the microphone
2 because the translator can't hear you.

3 MR. BERNSTEIN: Judge, with the court's --

4 THE COURT: You are excused.

5 MR. STAVIS: The government has asked for an
6 offer of proof regarding the federal agents that we have
7 asked them to produce. I believe that everyone, all of my
8 cocounsel have something to say regarding an offer of proof.
9 That is one thing that we have to do tomorrow. That is
10 something that has to be addressed tomorrow, and that
11 directly impacts on who, either Mr. Patel or myself, will be
12 questioning, should your Honor order us to go ahead.

13 But we think that there are so many unresolved
14 issues and I will just give your Honor some idea of them,
15 that we would request that we not go forward with
16 testimonial evidence tomorrow. But I will go through my
17 list of things and then ultimately that is your Honor's
18 decision.

19 We have an outstanding request for discovery with
20 regard to the agents after we resolve the proffer, and who
21 is coming and when. As your Honor is aware, I am
22 dependent -- I, we are dependent upon the government for
23 producing our first eight or nine witnesses. By letter to
24 the government I have advised them of the order of my
25 preference for the calling of those witnesses, but I don't

1 know what the availability is of those witnesses, and a lack
2 of communication leaves me not knowing who is going to be
3 coming.

4 MR. McCARTHY: Can I respond to that now?

5 THE COURT: Sure.

6 MR. McCARTHY: Two weeks ago, actually more than
7 two weeks ago, I asked from Mr. Stavis and his colleagues
8 compliance with the federal regulations and a proffer with
9 respect to what it was that he wanted these people to
10 testify to. I repeated the request in another letter to
11 counsel after that. We have gotten nothing from him.

12 It was he who chose this kind of brinksmanship.
13 It was he who chose to wait until the government rested to
14 spring this on us -- I would say spring it on the court --
15 given the lateness of the hour and the time of the defense
16 case for tomorrow. This is not a situation that is of the
17 government's making. We asked, he hasn't complied.

18 I suggest to your Honor that other than Mr.
19 Wasserman, who at least gave me a little bit more idea of
20 what it is that he wants to talk to Detective Napoli about,
21 there are behind Mr. Stavis probably a good number of his
22 colleagues who also intend to examine some or all of these
23 witnesses if they are permitted to testify, and we have
24 absolutely no idea about what their intentions are.

25 MR. STAVIS: Your Honor, it was my intention to

1 deal with procedures and not substance, and I would refer
2 Mr. McCarthy to my June 14 letter to him, which I will
3 address tomorrow. I am just going through the schedule. I
4 believe his remarks were unfair but I will deal with the
5 substance tomorrow.

6 THE COURT: Do you believe that the June 14
7 letter was sufficient?

8 MR. STAVIS: It was not sufficient as a proffer,
9 your Honor. It did state my position that I need not
10 proffer till the government rests, because if I proffered
11 prior to their resting, it would give them an opportunity to
12 call my witnesses before. That is the adversary process but
13 I will address that tomorrow. I am just dealing with the
14 scheduling.

15 THE COURT: Go ahead.

16 MR. STAVIS: So I suppose another agenda item for
17 tomorrow is whether we will be precluded from calling the
18 witnesses we wish to call, and we will argue about that
19 tomorrow.

20 We have requested discovery with regard to the
21 agents. That is unresolved. My letter of June 19 asking
22 the government what their position is with regard to
23 stipulations concerning specific items which I intend to
24 introduce in evidence which were previously given over under
25 Rule 16 is unresolved. I believe we have a meeting of the

1 minds with regard to a stipulation under the Classified
2 Information Procedures Act, but the ink has not been placed
3 upon whatever it is and we don't have that in final form
4 yet. Obviously that is an integral part of the defense of
5 Mr. Nosair, and that is something that has to be done before
6 we can commence our case.

7 There is the issue as well of Mr. Yousef and
8 whether he will or will not assert his Fifth Amendment
9 privilege.

10 THE COURT: There was a letter from his lawyer
11 saying he will.

12 MR. STAVIS: Yes, there was a letter from his
13 lawyer saying he will, and there was a letter from me to his
14 lawyer saying, as is my client's right, I would ask that he
15 be required to do so on the witness stand in open court
16 outside the presence of the jury.

17 I would also request, since Mr. Yousef has been
18 unavailable to me and he is my witness, that prior to my
19 putting him on the witness stand at a hearing, that I have
20 an opportunity to speak with him.

21 THE COURT: That is his lawyer's choice.

22 MR. STAVIS: In consultation with his lawyer,
23 your Honor.

24 THE COURT: You look at me as if expecting me to
25 produce him. I can't.

1 MR. STAVIS: No, through subpoena, but I and Miss
2 Stewart and Mr. Jabara wish to speak with him prior to his
3 testimony.

4 THE COURT: Did you tell his lawyer that?

5 MR. STAVIS: I haven't spoken to Mr. Yousef.

6 THE COURT: Did you tell his lawyer that you
7 wanted to talk to him?

8 MR. STAVIS: I don't believe so, your Honor. Did
9 I? Mr. Patel advises me that I am incorrect, in an
10 overabundance of caution. I didn't remember but Mr. Patel
11 advises me that I had.

12 THE COURT: And the response was?

13 MR. STAVIS: I don't think we got one because at
14 the time I spoke to Mr. Kulcsar he hadn't yet spoken to his
15 client, and then last Friday --

16 THE COURT: I suggest --

17 MR. STAVIS: It is a matter to be addressed.

18 THE COURT: I know, but Alexander Graham Bell did
19 not live in vain. Call up the man and find out his
20 position.

21 MS. STEWART: Judge, we did that, and Mr. Kulcsar
22 has not returned any of our calls.

23 MR. STAVIS: Depending upon the outcome of
24 whether or not we speak to Mr. Yousef, whether or not he
25 asserts his Fifth Amendment privilege, we have the 804(b)(3)

1 issue and the issue under Rule 104(a) as to the preliminary
2 finding, and how your Honor will make that determination.
3 In that regard, I would ask your Honor if you would consider
4 altering your previous order where I was provided with an
5 individual copy of the Ramzi Yousef 302 materials, as I
6 understood it, to remain at my office. There it has
7 remained, but I would ask that I be permitted to bring those
8 materials to court tomorrow.

9 MR. MCCARTHY: No objection to that.

10 THE COURT: So ordered.

11 MR. STAVIS: And I believe that there are
12 additional, my colleagues may have additional arguments
13 concerning discovery of Mr. Yousef. I believe the computer
14 tape was given over this afternoon to Mr. Serra and has not
15 yet been analyzed.

16 THE COURT: I think what I said about that was I
17 wasn't going to wait on that.

18 MR. STAVIS: I believe Mr. Jacobs, who is not
19 here, had additional arguments on that, and I was raising
20 that as an agenda item.

21 MR. MCCARTHY: Could I have a second with
22 Mr. Stavis, your Honor?

23 THE COURT: Sure.

24 MR. WASSERMAN: Your Honor, may I just inquire as
25 to whether the defendants will be produced tomorrow?

1 THE COURT: Those who want to be will be.

2 MR. WASSERMAN: Are we starting at 9, your Honor?

3 THE COURT: No. I am going to move it back to
4 9:30. Would you rather start at 9?

5 MR. WASSERMAN: You are asking "moi"?

6 THE COURT: I am sorry.

7 MR. WASSERMAN: No, your Honor.

8 MR. STAVIS: Anyway, that is all that I could
9 conceive of as of midnight yesterday. You never know what
10 is going to happen when we show up tomorrow.

11 THE COURT: That is six things, but go ahead.

12 MR. STAVIS: I have no more things.

13 THE COURT: I am not expressing disappointment.
14 I am simply pointing out that what you said was a formidable
15 list of things to do looks doable.

16 MR. STAVIS: OK. I am going to be prepared to do
17 all those things, and Mr. Patel and I pride ourselves on our
18 preparation.

19 THE COURT: Justly.

20 MR. STAVIS: Whether or not it shows is another
21 story. I am going to shut up now and let Mr. Patel speak.

22 MR. PATEL: Can I make a practical suggestion?

23 THE COURT: Sure.

24 MR. PATEL: Item number 7 is that someone sits in
25 that chair and Mr. Stavis or I asks some questions. Right

1 now about 15 hours from that point happening, we don't know
2 who that is going to be. It might be better if we told
3 these folks in the jury box to stay home tomorrow, let us
4 resolve all that stuff, let us find out who that person is
5 going to be, and shoot through that.

6 MR. STAVIS: With the exception of Mr. Yousef.

7 MR. PATEL: Right, we can deal with him tomorrow.
8 I have been in this business long enough to know when that
9 happens, Mr. Kulcsar is probably the last person in the
10 world who knows what is going to happen. If he starts
11 talking, all bets are off. But I think bringing in the jury
12 tomorrow afternoon is really unkind to them.

13 THE COURT: I am not going to decide this based
14 strictly on kindness to them.

15 MR. PATEL: I just think we have a full day's
16 work to do. The government is entitled and we are prepared
17 to satisfy the CFR requirements as to the government agents
18 and when we know the bounds of that we are in a much better
19 position to say let's go, and I think that is better done on
20 Wednesday.

21 THE COURT: Anybody else want to be heard? Mr.
22 McCarthy?

23 MR. MCCARTHY: Your Honor, I think it is more
24 than a question of Mr. Nosair's counsel complying. I am not
25 looking to start a big argument now because I assume

1 tomorrow will be plenty of time to do that, but we have had
2 a trial up until now where if it was deemed by the court
3 that the government hadn't given sufficient notice of one
4 thing or another to the defense, we were told to go on with
5 something else that was prepared. I don't think that it is
6 our problem that this kind of brinksmanship takes place and
7 now we are at the point of beginning --

8 THE COURT: Come on folks. Let's go.

9 MR. MCCARTHY: The end of the government's case
10 was no secret to counsel and I would have told them chapter
11 and verse exactly what it was about. We sent out letters
12 about what we had left. Two weeks ago we asked for
13 discovery and we haven't gotten it, and I don't think it is
14 just discovery from for Mr. Nosair.

15 THE COURT: Let me stop this. Although I don't
16 think it was a realistic problem or danger, there is a
17 certain justification in not making a proffer, at least in
18 an abstract sense, before the government rests. That having
19 been said, the proffer has to be made and I have to decide
20 whether on what is proffered people should be made to
21 testify or not made to testify, and if so, who and how many.
22 So it may very well be foolhardy to believe that we can go
23 ahead tomorrow. What we are talking about is half a day.
24 Half a day is a lot of time but it is a half day before a
25 break, and I can see some justification for not going ahead

1 with testimony tomorrow. However, there are reciprocal
2 discovery obligations, and understand this. I will take a
3 pass on tomorrow as far as testimony is concerned. However,
4 if it happens again it will be made clear to the jury why it
5 happened and the fact that during the government's case it
6 didn't happen. I do not want it to happen again. I
7 expect -- there is nothing that is going to be gained by
8 anybody here, them or you, by requiring somebody to go ahead
9 when they are not prepared. That is part of the reason that
10 I won't concede to Mr. McCarthy's suggestion that I may make
11 somebody who is not fully prepared to go ahead in your
12 absence. However, it is not going to work in the reverse
13 either.

14 MR. PATEL: Understood.

15 THE COURT: No rabbits out of the hat. I don't
16 know how to make it any more explicit than I have already
17 made it and I don't want to hear somebody complain later on
18 that they have been made to look bad when they have done it
19 themselves.

20 MR. MCCARTHY: Your Honor, if I may, I just want
21 to temper what I said because I didn't mean to suggest that
22 my colleagues behind me are unprepared. What our interest
23 is, and it is in terms of the economy of time as well as
24 just doing things in an efficient manner, we think that if
25 these agents who Mr. Stavis wants to call are going to be

1 called, they ought to be called once.

2 COUNSEL: We agree.

3 MR. STAVIS: All counsel agree with that, your
4 Honor.

5 MR. McCARTHY: My point is, and I should have
6 made it more economically before, is that everybody --

7 MR. STAVIS: That is why I put it on the agenda.

8 THE COURT: Now I need clearance, I guess, for
9 want of a better word, from all of you -- really, I guess,
10 for Ms. Schwartz -- to call each of the jurors and tell them
11 that our plans have been canceled and we will not sit, and
12 wish them a happy 4th of July.

13 MR. STAVIS: Your Honor, I take my discovery
14 obligations seriously and I have done a lot under Rule 16.
15 I just ask your Honor to be more specific so that I have it
16 clarified in my own mind and I don't want to cross a line
17 where another line is. I understand the Rule 3500
18 obligation.

19 THE COURT: There is a reverse Rule 35 obligation
20 you know. Although 3500 itself requires neither for you nor
21 for them that it be turned over before testimony,
22 nonetheless we all know that as a practical matter, unless
23 there is very good reason for doing otherwise, people do
24 turn it over a reasonable time before.

25 MR. STAVIS: I understand.

1 THE COURT: Secondly, the proffers both with
2 regard to the government witnesses and with regard to
3 experts, have to be specific enough so that everybody can
4 make a judgment. There was a letter, and I don't mean to
5 single anybody out, which is assurance that I am about to,
6 but there is a letter from defense counsel for Dr. Abdel
7 Rahman telling me that somebody is going to testify in broad
8 brush strokes on a certain subject and may very well testify
9 to other things, and in essence asking me to agree that it
10 is impossible to be more specific than that. I don't agree
11 to that. I do not believe that any lawyer here is in fact
12 going to put a witness on the stand and wing it, with the
13 possible exception, I guess, of Mr. Yousef but obviously
14 lawyers know pretty much what we are going to ask and what
15 they are going to bring out from witnesses, expert or not,
16 and I expect them to show that in advance.

17 Yes, Ms. London.

18 MS. LONDON: Just so the record is clear, your
19 Honor, with respect to government agents that may be called
20 by the defense, I have spoken to Mr. McCarthy about calling
21 Agent Cantamessa with respect to the safe house. Mr.
22 McCarthy is aware of this, and although most of the
23 government agents we expect to call at the beginning of the
24 case, this is somebody that would not be called until we get
25 to the latter part of the defense case. I just don't

1 want -- or will be called only one time. I just don't want
2 an understanding that the government agents will be coming
3 right at the beginning and that this will be coming as a
4 surprise later.

5 MR. McCARTHY: Miss London has spoken to me about
6 that. I don't have any question about the admissibility of
7 it. I don't see the need to take it up.

8 THE COURT: Thank you all.

9 MR. STAVIS: I have a motion to adjourn, your
10 Honor.

11 MR. PATEL: Seconded.

12 THE COURT: Granted, and to the extent that we
13 sat too late, I am sorry.

14 MR. PATEL: Your Honor, 9 or the regular time
15 tomorrow?

16 THE COURT: 9:30.

17 (Proceedings adjourned until 9:30 a.m., Thursday,
18 June 29, 1995)

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

UNITED STATES OF AMERICA,

3 v.

OMAR AHMAD ALI ABDEL RAHMAN,
4 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,"

EL SAYYID NOSAIR,
7 a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

IBRAHIM A. EL-GABROWNY,
9 SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

CLEMENT HAMPTON-EL,
11 a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

AMIR ABDELGANI,
13 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

FADIL ABDELGANI,
17 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)

June 29, 1995
9:45 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

25

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SALVATORE S. RUSSO

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning.

4 COUNSEL: Good morning, your Honor.

5 THE COURT: Mr. Jacobs, good morning.

6 MR. JACOBS: Good morning.

7 THE COURT: I think you are the only person I
8 didn't hear from specifically yesterday, although I assumed
9 that you joined in -- I think you did say that you joined in
10 the motions of the others.

11 MR. JACOBS: Relative to the Rule 29's I have
12 nothing further to add other than comments made by counsel,
13 whatever their comments.

14 THE COURT: Many happy returns of yesterday.

15 MR. JACOBS: Thank you.

16 THE COURT: Mr. McCarthy.

17 MR. MCCARTHY: Thank you. Your Honor, what I
18 propose to do this morning is to touch on a couple of
19 matters that came up yesterday, quickly, that we have
20 changed our position about in thinking about them overnight,
21 and then what I propose to do after that is move on to what
22 the government, at least, regards as the most serious of the
23 Rule 29 claims, and answer any questions your Honor has
24 about the other counts.

25 THE COURT: All right. Why don't you tell me

1 what you have changed your position on first and then we can
2 talk about the rest.

3 MR. McCARTHY: It is not substantial, your Honor.
4 I think that Miss Olsen yesterday was correct with respect
5 to the overt act that she called to my attention. At the
6 time that she did it I was actually focused on a different
7 issue.

8 THE COURT: You said that you disputed what she
9 said.

10 MR. McCARTHY: Yes, I think it was MMMM, if I
11 remember correctly.

12 THE COURT: Yes, that was the one.

13 MR. McCARTHY: And the government does believe
14 that at least the name of Mr. Fadil Abdelgani should be
15 stricken from that overt act.

16 THE COURT: OK.

17 MR. McCARTHY: That having been said, with
18 respect to the rest of the overt acts it would be our
19 position that this is not the appropriate time to be
20 striking overt acts. I think that what a Rule 29 motion is
21 a forum for is to attack the sufficiency of counts, not to
22 attack what may be surplusage in the indictment. If things
23 are not supportive to the extent, other than what we have
24 already conceded they are not supportive to, certainly
25 counsel haven't waived their right by failing to bring those

1 to the court's attention to have them stricken before any
2 indictment ever got submitted to the jury as not
3 sufficiently proven.

4 My suggestion with respect to the rest of the
5 counts in the indictment is, assuming we move on with the
6 rest of the case, that at the conclusion of the case those
7 things which are not supported by the evidence should be
8 stricken from the indictment. That would be our application
9 with respect to that.

10 MS. AMSTERDAM: Just for clarification, what you
11 stipulated to yesterday, however, you do agree at this
12 point --

13 MR. MCCARTHY: Yes.

14 THE COURT: He agrees that is the state of the
15 proof. It is just a question of when the scissors get
16 applied to the indictment.

17 Go ahead.

18 MR. MCCARTHY: Secondly, with respect to the
19 question that your Honor specifically put to me yesterday
20 about the attempted murder count --

21 THE COURT: Correct.

22 MR. MCCARTHY: There are three theories of
23 liability, as your Honor pointed out, with respect to that
24 count. I do not agree that the attempted murder theory of
25 liability is not a viable theory. I do agree, however, that

1 it is a weaker theory than the other two.

2 THE COURT: I don't want to debate an abstract
3 issue, but I don't see the attempted murder theory with
4 regard to either Franklin or Acosta, and if you want to
5 debate it, now is the time.

6 MR. McCARTHY: As far as it goes, then, I think
7 that the theory is twofold and it is supported either way.
8 Number one, there is a theory of specific intent to effect
9 the crime of murder, and that is based on the doctrine of
10 transferred intent.

11 THE COURT: I thought the transferred intent had
12 to do with position within the racketeering enterprise.

13 MR. McCARTHY: The fact that it works with
14 respect to that element doesn't mean it does not work with
15 respect to transferred intent element.

16 THE COURT: That would mean while you ran down a
17 pedestrian while driving a vehicle, there would be
18 transferred intent as to that, too?

19 MR. McCARTHY: In an immediate flight from a
20 homicide?

21 THE COURT: Yes.

22 MR. McCARTHY: Yes. I think, your Honor, that
23 the actor, with respect to any activity that he commits,
24 certainly recklessly and certainly tied intimately to the
25 course of conduct that he engaged in in the course of

1 committing a premeditated murder, he cannot escape liability
2 for the later acts of homicide --

3 THE COURT: There is no later act of homicide.

4 MR. MCCARTHY: I overstated my point. What I
5 should say is that, without going out on the far ranges and
6 trying to deal with the facts that are actually in front of
7 us, with respect to a situation where a man takes a gun in
8 the course of flight from a homicide which he committed in a
9 premeditated fashion, by definition, I guess, fires the gun
10 at one person in flight, aims and fires the gun at a second
11 person in flight, I think that the theory of transferred
12 intent, that is, intent transferred from the premeditation
13 of the first crime, carries into the second, too.

14 Leaving that aside, I also think that on the
15 standard that has to be applied here, that is, judging the
16 facts in the light most favorable to the government,
17 construing all inferences in favor of liability under the
18 counts, a rational fact finder could find that when you
19 grapple with a 76-year-old man and discharge a weapon in the
20 course of flight from a homicide, that that is sufficient to
21 make out attempted murder, that is, that the intent with
22 which the firearm was discharged could rationally be found
23 to be an attempt to commit murder.

24 THE COURT: I think the only rational inference,
25 the only rational inference is that the intent was to get

1 the 76-year-old man off him so that he could get away.

2 MR. McCARTHY: Your Honor, I think that when a
3 person who has committed a murder with a firearm and has
4 intended to commit a murder with a firearm, and thereby must
5 be understood as knowing that he would commit a murder with
6 a firearm, discharges a firearm in the course of flight
7 intentionally -- and I think the facts support that -- he
8 can be deemed to have intended to murder, and while with
9 respect to Franklin the exchange is a brief one --

10 THE COURT: Well, I am going to have to instruct
11 the jury on this at some point and I don't think jury
12 instructions are about deeming anything.

13 MR. McCARTHY: I understand your Honor's point.
14 I think with respect to Acosta, certainly the facts support
15 an opportunity for premeditation that was -- I shouldn't say
16 premeditation -- at least an opportunity for consideration
17 that was broader than the facts allow for Franklin.

18 THE COURT: Who saw a man pointing a gun at him,
19 knowing that it was going to be one or the other, and so he
20 arguably, on your view of the evidence, discharged his
21 weapon and shot Acosta first.

22 MR. McCARTHY: Right.

23 THE COURT: Again, I don't see the intent to
24 kill.

25 MR. McCARTHY: I think that the facts support --

1 and obviously your Honor will rule. I think that when a man
2 points a gun at a person and fires --

3 THE COURT: The Second Circuit says specifically
4 the opposite.

5 MR. McCARTHY: Pardon me.

6 THE COURT: The Second Circuit said, did it not,
7 in the case that Mr. Stavis -- I think it was Mr. Stavis --

8 MR. STAVIS: Yes, I think it was the Kwong case.

9 THE COURT: Kwong -- that simply pointing or
10 discharging a deadly weapon at somebody does not in and of
11 itself show an intent to kill. Not my words, theirs.

12 So that theory will not be charged. Let's move
13 on.

14 MR. McCARTHY: What I would like to address at
15 this point is the attempt count, which the government
16 regards as the most colorable of all the Rule 29 claims but
17 one that should not succeed. With respect to that count,
18 your Honor, I would like to make two arguments to the court,
19 or at least base this argument on two different points. One
20 is what the law requires, and the other is the factual
21 discussion of the Ivic case which counsel rely on.

22 First with respect to what the law requires, in
23 Ivic the Second Circuit acknowledged that its precedence at
24 that time, and I don't think the law has changed since then,
25 indicated that whether a particular conduct constitutes a

1 substantial step for purposes of an attempt charge is, and
2 this is the words of the court, "so dependent on the
3 particular facts of each case that of necessity there can be
4 no litmus test to guide the reviewing courts."

5 What I would suggest to your Honor from that is
6 that regardless of what counsel attempt to derive from the
7 sweep of Judge Friendly's remarks in the ruling section of
8 the opinion -- and I will get to that in a little more
9 detail in a couple minutes -- it is important to recognize
10 that notwithstanding the position they take here, the Ivic
11 court certainly did not see itself as setting up a paradigm
12 or standard for future attempt cases. In fact the opposite
13 is true. The lesson of Ivic is that the inquiry from
14 attempt to attempt to attempt is sufficiently fact-specific
15 that there can be no litmus test.

16 What Ivic did do for the purpose of instructing
17 future courts is acknowledge a guiding principle, and it is
18 a guiding principle that we contend argues very much in
19 favor of allowing this very fact-specific question of
20 whether there has been a substantial step to be decided by
21 the jury, and that principle is this: Is the conduct which
22 is alleged to constitute a substantial step, in the court's
23 words, "strongly corroborative of the actor's criminal
24 purpose?" Put another way, again in Judge Friendly's words,
25 not mine, "Did the defendants unequivocally set out upon a

1 criminal course?"

2 In the course of acknowledging that rubric, the
3 court also set forth its rationale, or the rationale, I
4 should say, for the rule, which is, as Judge Friendly put
5 it, "The design of this premise liability was to shift the
6 emphasis from what remains to be done in order to complete
7 the crime, to what the actor has already done."

8 I would suggest to the court that two things
9 inevitably flow from that. First, the issue on any attempt
10 is not the amount of activity in furtherance of the scheme
11 that has been accomplished but rather what the quality and
12 the circumstances of that activity say about the mind set of
13 the actor. Has he committed himself sufficiently?

14 Second, it remains the law that factual
15 impossibility of the ultimate crime that is the design of
16 the attempt is not a defense to the charge, and I would
17 suggest to your Honor that that principle flows comfortably
18 from a scheme that concentrates on what the circumstances
19 say about the mind set of the actor rather than how far
20 along the trail of completing the crime he has gotten.

21 THE COURT: For the notion that factual
22 impossibility is not a defense to intent, you are not
23 relying on Ivic. There are other cases that establish that.

24 MR. MCCARTHY: Yes, your Honor. My only point
25 was that given that that is the law, I think that the

1 principle fits comfortably, if Ivic is understood as
2 concentrating on the mind set of the actor rather than the
3 extent of the activity.

4 THE COURT: I don't mean to cut you short in
5 mid-flight, but my view of Ivic is that the only way that
6 the nonexplosive quality of the material present here could
7 be seen to undermine an attempt charge is if that -- and I
8 guess I should be talking to Mr. Serra, since he is the one
9 who made the argument -- is if that fact suggested a lack of
10 commitment by the defendants. That is my view.

11 MR. SERRA: Your Honor, I would be happy to
12 answer but I don't want to interrupt Mr. McCarthy.

13 THE COURT: You may get a chance. But Ivic, I
14 think, made it clear that the factors present there were not
15 by any means to be considered a laundry list or a checklist
16 or a set of requirements. They were a list of what was
17 there and what was not there in that case. But again I
18 think he is right that under Ivic the issue is the mind set
19 of the people who are doing whatever it is that they are
20 doing, from which you can judge by what it is that they have
21 done.

22 MR. SERRA: Your Honor, if the court is
23 addressing me, I can summarize what my answer would be to
24 that in about 30 seconds. If the court prefers, I will
25 wait.

1 THE COURT: Fine, take 30 seconds.

2 MR. SERRA: Thank you, your Honor, and thank you,
3 Mr. McCarthy.

4 Your Honor, first of all, while that certainly is
5 said in Ivic, right after the principle quoted by the court
6 and cited by Mr. McCarthy is language that it is easy to say
7 and hard to apply.

8 THE COURT: It is lucky for us none of us have to
9 apply. They have to apply.

10 MR. SERRA: For Rule 29 purposes your Honor has
11 to apply.

12 THE COURT: My only question is whether a
13 fair-minded jury properly instructed could find beyond a
14 reasonable doubt whether the mind set was there.

15 MR. SERRA: Yes, that is your question. But on a
16 somewhat more analytical level than simply quoting from the
17 case level, Ivic says and every other attempt case says that
18 the first thing you look at is is the attempt there to
19 commit the completed crime. In the other attempt cases note
20 how that particular formulation of the substantial step
21 requirement, namely, saying that it has to be strongly
22 corroborative of the intent, can be seen as reducing what is
23 a two-step, two-element crime to a one-element crime,
24 because intent in virtually every case is proven by
25 circumstantial evidence. I assume that is what cases mean

1 when they say that the acts of people involved are strongly
2 corroborative of intent. That sounds a lot like saying
3 there is circumstantial evidence that the defendants' intent
4 was in fact to commit the crime and there has been analysis,
5 albeit not in Ivic, that what that analysis does if you take
6 it at literal face value is to eliminate the substantial
7 step requirement and only focus on whether the defendants
8 intended to commit the crime.

9 So, your Honor, I recognize that that is language
10 in the cases, that language in Ivic, but on the other hand
11 that can't be the end of it, that what the defendants did
12 indicated a commitment towards the intent to commit the
13 crime, because then that's the only test, that they intend
14 to commit the crime.

15 In essence, that would be my answer.

16 THE COURT: Then your argument yesterday is
17 addressed strictly to the substantiality of the steps they
18 took.

19 MR. SERRA: Yes, your Honor. I make a Rule 29
20 motion, your Honor, addressed to every element of every
21 count against my client, but surely 99 percent of my time
22 was addressed to this substantial separate crime.

23 THE COURT: And the substantiality of the steps
24 we are talking about here.

25 MR. SERRA: Yes.

1 MR. McCARTHY: Your Honor, rather than directly
2 respond to that, let me try to incorporate it into what I
3 intended to say next, which was the factual discussion in
4 Ivic, which I think ultimately goes to directly to the nub
5 of the point here. The factual discussion that Mr. Serra
6 highlighted in his argument yesterday was the rather
7 conclusory way in which Judge Friendly gave his rationale
8 for his conclusion that the troublesome attempt of Ivic was
9 adequate but barely adequate to be sustained.

10 The more pertinent and complete factual
11 discussion in Ivic is actually at page 55 of that opinion,
12 and I think that taking that in a more exhaustive fashion
13 shows that Ivic actually supports the notion that the
14 attempt here should be decided by the jury.

15 With respect to the troublesome attempt count in
16 Ivic, which the circuit nonetheless found to be adequate,
17 the target of that was a travel agency that was discussed in
18 the opinion. But up to the point where that attempt came to
19 be, the defendants had discussed bombings that were not
20 designed to take out huge structures but were rather
21 designed to take out smaller targets. They apparently had
22 at their disposal, five days at least before the attempt
23 that was found troublesome in Ivic ever came into being, the
24 makings of a small but concededly dangerous time bomb that
25 was described by the court as consisting of three cartridges

1 of 80 percent gelatin dynamite connected to an electric
2 blasting cap and a clock. The bomb had apparently been
3 transported but never planted at the other bombing that the
4 court found to be sufficiently proven not even to be in the
5 category of troublesome. I should say another attempt, not
6 another bombing. Now we get to the more troublesome part.

7 Five days after the first attempt, one of the
8 defendants, apparently for the first time, conducted
9 surveillance of the travel agency that was the target. The
10 opinion does not indicate that at the time that that
11 surveillance was conducted there was any plan among the
12 schemers or the conspirators to take out that particular
13 travel agency target. The next day for the first time, the
14 surveilling defendant reported to his superior that that
15 travel agency could probably be successfully bombed by
16 planting a bomb in a garbage can outside the display window.
17 At that point for the first time, the superior in the
18 organization gave the approval for the go-ahead. So for the
19 first time after the surveillance there is something of an
20 agreement to bomb this target.

21 Within hours of that happening, the defendants
22 began to suspect that one of their number was the target of
23 electronic surveillance. The plan was then abandoned and
24 the circuit in its description of it categorically says that
25 the plan had been abandoned.

1 THE COURT: The question was whether what went on
2 in those few hours was an attempt.

3 MR. McCARTHY: Yes, your Honor.

4 In other words, what you had under the
5 circumstances were people who had a demonstrated capacity to
6 engage in this kind of behavior who agreed to a plan only
7 hours before they abandoned it, never took a single
8 affirmative step besides agreement in the few hours between
9 the time they agreed to the plan and abandoned it, and
10 nonetheless the circuit found that under the circumstances
11 that, albeit barely, and I think when you consider the facts
12 as I've cited them, you can understand why albeit barely,
13 but the circuit did find that that was a sufficient attempt.

14 I think that the facts of this case, and
15 remembering what the standard is on a Rule 29 motion, but
16 also that attempt is a very fact-specific crime, even
17 allowing for the fact that the defendants in this case had
18 not yet constructed what would be defined as an explosive
19 under the statute, because of the course of conduct that
20 they engaged in in this case, particularly compared to the
21 course of conduct that was found adequate in Ivic, does
22 unequivocally show their intention to complete the act.

23 The defendants in this case planned bombings on a
24 scale that actually dwarfs what was planned and conceived in
25 Ivic. They never abandoned their plan. Indeed, they

1 assiduously pursued it, in spite of a number of obstacles in
2 their way, including financial, and the difficulties they
3 had in getting their supplies.

4 It can be said that they engaged in elaborate and
5 elongated preparations for days after the plan had actually
6 been completed. In that view of the facts, we would suggest
7 to the court that, given the that standard that applies here
8 and given the fact-specific nature of the crime, that this
9 is an attempt count that should go to the jury. Unless your
10 Honor wants to ask me anything more about that, I am going
11 to move on to the next thing.

12 THE COURT: I don't.

13 I don't know whether you plan to respond to the
14 claim or to the arguments that there was no evidence to show
15 the existence of the organization, no evidence to show its
16 goals and so on, but did you plan to respond to that?

17 MR. MCCARTHY: I planned to respond to it in this
18 fashion, your Honor. I think what we need to be clear on is
19 not just what the indictment says, but what the charges are
20 in the case.

21 A lot of the arguments that were made to your
22 Honor yesterday sort of paid lip service to what the
23 standard is, or evaluating the sufficiency of the
24 conspiracy, and then got around that, or at least attempted
25 to, by mischaracterizing the agreement that has to be

1 proved.

2 So you have Dr. Abdel Rahman arguing that he
3 can't be guilty of seditious conspiracy because he didn't
4 appear to agree on any specific detail in his meeting with
5 Salem. You have Mr. Stavis arguing that a conspiracy is not
6 proven because the umbrella organization that is charged in
7 the indictment is more multi-faceted than the seditious
8 conspiracy that is charged in Count One, therefore, so it
9 goes, what's been proved is a multiple rather than a single
10 conspiracy.

11 I think what needs to be highlighted for these
12 purposes are what the charges are in this case. The charge
13 in Count One is whether the defendants agreed to levy war on
14 the United States or to oppose the authority of the United
15 States by force. The question whether a single agreement or
16 multiple agreements have been proved is -- in this circuit
17 at least, and I think in every circuit -- one which is held
18 to be one for properly instructing the jury. Whether the
19 overarching conspiracy that forms an umbrella for the
20 agreement that we contend was proved with respect to Count
21 One, whether that larger organization is more multi-faceted,
22 does more things, has more interests, conducts other
23 agreements, may be an interesting academic question, but it
24 is not one that creates a multiple conspiracy out of the
25 single conspiracy charged in Count One.

1 The question for your Honor on Rule 29 and the
2 question ultimately is whether a rational person could find
3 beyond a reasonable doubt the agreement defined by Section
4 2384 and the prongs of that statute that remain in Count One
5 has been proven. On the evidence that has been submitted
6 and has been elicited in the testimony and proved in the
7 exhibits in this case, clearly a rational person could come
8 to that conclusion, notwithstanding the factual question of
9 whether multiple conspiracies have been proven.

10 Let me address the overall agreement, because --
11 the organization as defined in the indictment because it is
12 pertinent to the 1959 count. Mr. Stavis made a number of
13 arguments about the umbrella, what we call the umbrella
14 organization, or the umbrella conspiracy within which the
15 other acts of the indictment are proven, alleging that it
16 was susceptible of a multiple-conspiracies attack.

17 What's required in Section 1959, which contains
18 its own definition of enterprise, is proof of an association
19 in fact. The question for your Honor on a Rule 29 challenge
20 to these counts is whether the proof is susceptible of a
21 finding by a rational person that we have proved the
22 existence of an association in fact. The association in
23 fact that is pertinent for purposes of Counts Seven through
24 Nine is in fact the umbrella organization that is charged in
25 the indictment.

1 I think that the proof is certainly susceptible
2 of a rational conclusion that we have proved an association
3 in fact for purposes of the 1959 count.

4 The fact that that organization may have done
5 other things and, indeed, we would allege did do other
6 things besides commit the seditious conspiracy charged in
7 Count One does not serve to turn it into, or does not serve
8 to convert it from one entity into several entities such
9 that the 1959 counts are not proved.

10 I want to say a few words with respect to the
11 solicitation count against Dr. Abdel Rahman with respect to
12 the venue argument that was made for the first time
13 yesterday. I think there is a fair argument to be made on
14 the merits that solicitation is sufficiently a continuing
15 offense as the cases construe continuing offenses for
16 purposes of venue that it could be argued that venue lies in
17 the Southern District of New York.

18 For purposes of this case, that is reduced to an
19 interesting academic question that is not one the court
20 needs to decide. The indictment in this case explicitly
21 states that the solicitation count occurred in the District
22 of New Jersey.

23 THE COURT: Right.

24 MR. MCCARTHY: Also, counsel, who filed a lengthy
25 memo of law on the eve of trial attacking the charges in the

1 indictment, certainly were on notice of that fact. Under
2 Rule 12 of the Federal Rules of Criminal Procedure that kind
3 of a challenge, the venue challenge should have been raised
4 prior to trial. I think what's happened here is best
5 understood and wisely understood as a strategic choice --

6 THE COURT: Don't spend time on that.

7 MR. McCARTHY: OK.

8 Your Honor, with respect to the passport counts
9 against Mr. El-Gabrownny --

10 THE COURT: She argued the seriousness of the
11 solicitation.

12 MR. McCARTHY: Pardon me, your Honor?

13 THE COURT: She argued the seriousness of the
14 solicitation.

15 MR. McCARTHY: The solicitation with respect
16 to -- you mean both, your Honor?

17 THE COURT: Right.

18 MR. McCARTHY: I think the evidence is absolutely
19 replete with respect to Dr. Abdel Rahman both in terms of
20 his association with violence, from which a rational person
21 could conclude that when he spoke of violence he certainly
22 was serious about it, and the fact that he has said, again
23 and again and again -- indeed, cross-examined on it to Mr.
24 Haggag and I believe also to Mr. Salem, that his -- as he
25 would almost put it, his single goal in life is to do away

1 with the Egyptian regime by any means necessary, to borrow
2 Ms. Stewart's phrase.

3 THE COURT: That's the Mubarak count.

4 MR. McCARTHY: Yes, your Honor.

5 THE COURT: All right.

6 MR. McCARTHY: I understood your Honor to tell me
7 to address both.

8 THE COURT: I did.

9 MR. McCARTHY: With respect to the United States
10 military count, again, the evidence is replete with
11 statements from Dr. Abdel Rahman, particularly some of the
12 ones that we heard at the end of the case yesterday,
13 speaking about operations against the American military,
14 urging his followers that a choice number of operations
15 against the American military, timed and directed in the
16 correct fashion, could effect a change in American policy in
17 the Gulf as early as 1990 and, I think rationally, other
18 American policy as well.

19 Dr. Abdel Rahman again and again and again in the
20 evidence points to the American military as the enemy of
21 Islam. That's his position.

22 Certainly taking those statements together, and
23 particularly considering them in conjunction with the
24 circumstances of what occurred in his kitchen on May 23,
25 1990, when he was speaking in the wake of the bombing of the

1 World Trade Center with somebody he understood to be about
2 to conduct a massive bombing, clearly a rational fact finder
3 could find circumstances corroborative of the intention that
4 that was a serious solicitation.

5 With respect to Mr. El-Gabrownny on the passport
6 counts, my argument is brief. With respect to the viability
7 of the group of counts at the end of the indictment, the
8 government relies entirely on the Fifth Circuit case of U.S.
9 v. Osiami, and I would concede that if your Honor found that
10 precedent to be a viable accurate statement of the law,
11 those counts have to stand.

12 If your Honor does not agree -- and I would again
13 concede that this is persuasive authority, not binding
14 authority on your Honor -- the counts go.

15 Your Honor raised the question yesterday in
16 connection with both Mr. Alvarez's Rule 29 motion and
17 Mr. Wahid Saleh's Rule 29 motion if conscious avoidance
18 could supply the knowledge element that is an essential
19 component of the crimes that they are charged with.

20 THE COURT: I did, although I will raise the
21 question also obviously to you as to whether it is
22 necessary.

23 MR. MCCARTHY: I think with respect, your Honor,
24 to -- to be perfectly frank, I do. I would concede that it
25 is a much more serious issue with respect to Count One on

1 Mr. Wahid Saleh than I think it is with respect to any of
2 the other counts against Mr. Saleh and Mr. Alvarez.

3 I think that a rational fact finder could
4 certainly find from the circumstances under which Mr. Saleh
5 was operating on -- let me deal with Mr. Alvarez first. A
6 rational fact finder could certainly find in conjunction
7 with the seizures from his house, but certainly based on the
8 conduct in which Mr. Alvarez engaged from June 19 through
9 the early morning hours of June 24 and the conversation that
10 took place around him, conversation that included Mr. Tarig
11 Elhassan making some mention on June 20 and June 21 about
12 how the American people had to learn and that how America
13 had to change in the midst of discussions about bombing
14 plans -- circumstances under which it was clear that a
15 massive domestic bombing was underway. A rational fact
16 finder --

17 THE COURT: That's 362T?

18 MR. MCCARTHY: I'm sorry, your Honor?

19 THE COURT: That is 362T?

20 MR. MCCARTHY: Yes, your Honor.

21 Circumstances under which Mr. Siddig Ali, when he
22 was mentioning to Mr. Alvarez and basically grilling
23 Mr. Alvarez about people fleeing hither and yon after the
24 bombing took place, that Mr. Alvarez was in a different
25 position from the other people in the conspiracy because

1 this, meaning America, was his country, he being a native
2 American.

3 I think there were certainly circumstances proved
4 with respect to the four-day, five-day course of conduct
5 between June 19 and June 24 from which a rational fact
6 finder could deduce that Mr. Alvarez was acting with a
7 sufficient knowledge of the purposes of the conspiracy in
8 Count One and in Count Five.

9 With respect to Mr. Wahid Saleh, I think that,
10 leaving aside entirely the question of conscious avoidance,
11 a rational fact finder could find that he had sufficient
12 knowledge on the basis of the activities that were taking
13 place around him and the conversation that he had with Salem
14 and with Siddig Ali that what was going on around him was a
15 bombing conspiracy, that he knew that, and that he agreed to
16 assist it.

17 I am not as comfortable making that argument with
18 respect to the question of whether he knew that the ultimate
19 purpose of the bombing was married to the idea of exerting
20 force against the United States, and I think with respect to
21 that the conscious avoidance doctrine has more application
22 and more important application than it does --

23 THE COURT: But it has to be conscious avoidance,
24 doesn't it?

25 MR. MCCARTHY: I'm sorry, your Honor.

1 THE COURT: It has to be conscious avoidance
2 rather than simple ignorance, doesn't it?

3 MR. McCARTHY: Right. It certainly does. And
4 the conversation that Mr. Wahid Saleh has with Siddig and
5 Salem in that safe house on June 23 into June 24 we would
6 submit to your Honor is classic conscious avoidance.

7 THE COURT: All right.

8 Which transcript are we talking about?

9 MR. McCARTHY: Let me get an exhibit number.

10 MR. LAVINE: Your Honor, with this break in the
11 action, may I -- short break in the action, may I just
12 interject for a moment that I think on this issue of
13 sufficiency of the evidence with respect to Wahid Saleh and
14 Victor Alvarez vis-a-vis the seditious conspiracy and the
15 bombing conspiracy that my client ought to be included in
16 that for lack of a better word, mix, as well, because his
17 involvement --

18 THE COURT: That is an unfortunate metaphor.

19 MR. LAVINE: I'm sorry. Excuse me.

20 But his temporal involvement --

21 THE COURT: Why don't we just ask Mr. McCarthy to
22 fold him in, OK?

23 MR. LAVINE: Yes.

24 THE COURT: All right.

25 MR. McCARTHY: Let me deal, first, your Honor,

1 with what I was dealing with, and then I will try to swing
2 back to that.

3 THE COURT: Fine. Go ahead.

4 MR. McCARTHY: What I am relying on here is
5 Government Exhibit 383T2. Specifically, page 21 of that
6 transcript, where there is a discussion between Mr. Siddig
7 Ali and Wahid Saleh about the substance of what is going on
8 at the moment where Siddig Ali, the second attribution on
9 that page, says, "I will explain everything to you."

10 And Mr. Wahid Saleh responds, "I don't want to
11 understand, whatever you are, leave me the way I am.

12 "All right," responds Siddig Ali.

13 Saleh continues, "Just explain to me the mission
14 of the cars."

15 That is, I think, the clearest indication of it.
16 I think there are other suggestions of it throughout --

17 THE COURT: What about, as long as we're on the
18 subject of Wahid Saleh, the point of attempt, how his
19 conduct can be construed as an attempt?

20 MR. McCARTHY: Well, I think that Mr. Nooter's
21 argument of yesterday confuses two different concepts.
22 First of all, what he's charged with in the attempt is
23 either as a principal or as an aider and abettor. I would
24 suggest to your Honor that he's either an aider or abettor
25 or he's not guilty of the charge.

1 THE COURT: OK. An aider and abettor has to do
2 something.

3 MR. McCARTHY: An aider and abettor has to both
4 associate himself with the venture and take some action
5 to --

6 THE COURT: To help make it succeed.

7 MR. McCARTHY: Right.

8 THE COURT: OK.

9 MR. McCARTHY: Agreeing is an action. Agreeing
10 to help get cars to people who are about to conduct bombings
11 is an action. It's been held time and time and time again
12 with respect to conspiracy that agreement is not just a
13 bunch of words.

14 THE COURT: Yes. But, I mean, if that's true,
15 you ought to be able to cite something for the principle
16 that any conspirator is also an aider and abettor as to any
17 crime that proceeds to the level of attempt.

18 MR. McCARTHY: Well, I suppose if that question
19 had been put to me and I had to research it, I should be
20 able to find cases that say that.

21 THE COURT: You should.

22 MR. McCARTHY: I am not making a suggestion to
23 your Honor that aiding and abetting liability is the
24 equivalent of conspiracy liability.

25 THE COURT: It isn't.

1 MR. McCARTHY: There are cases that clearly say
2 that they are different forms of intent.

3 THE COURT: Right.

4 MR. McCARTHY: But I don't think what Saleh is
5 charged with doing here is conspiring. What I am trying to
6 move on to is what your Honor asks, which is: What
7 additional thing did he do?

8 THE COURT: Right.

9 MR. McCARTHY: I would suggest to your Honor that
10 an agreement to obtain stolen cars is not simply an
11 agreement to be a part of a venture. It is an affirmative
12 act. It is an agreement to supply the plan with an
13 essential ingredient to having it go forward. When he walks
14 out the door, the ball has been advanced. It's been
15 advanced only as far, I suppose, as the zealousness with
16 which he goes forward with his commitment, but the fact of
17 the matter is they need cars, he agrees to get them. That
18 is an act in furtherance.

19 That's also not the only thing he does.

20 With respect to that conversation on the 23rd
21 into the 24th, other than agreeing to supply them with cars,
22 he also gives them advice.

23 THE COURT: His advise is to clean up. That is
24 sort of like saying you practice medicine if you tell a
25 surgeon to wash his hands before he operates.

1 MR. McCARTHY: If you do, there is an awful lot
2 of case law out there that says degree of participation is
3 not dispositive. He's either in or he's out. Telling a
4 surgeon to wash his hands, I agree with you, it's not brain
5 surgery, but if it's something that contributes to the
6 venture, he's in. And the degree of his --

7 THE COURT: It is not even podiatry.

8 MR. McCARTHY: I'm sorry, your Honor?

9 THE COURT: It is not even podiatry.
10 Go ahead.

11 MS. AMSTERDAM: I'm sorry?

12 THE COURT: It was a feeble attempt at levity.
13 Forget it. Go ahead.

14 MR. McCARTHY: I think if your Honor is going
15 to -- I think it's impossible to apply a rule where your
16 Honor is going to make a value judgment of what the degree
17 of participation has to be before somebody is considered to
18 be in the loop.

19 THE COURT: But a phrase like "in the loop" is
20 not what's appropriate here. I think you know it.

21 The question is not the conspiratorial loop; it's
22 the aiding and abetting loop, which requires him to do
23 something to help make it succeed. I understand the
24 argument that telling people who are concerned about getting
25 vehicles, "Don't worry, I'll be your source of vehicles,"

1 may be considered an act, and I would like to think that one
2 through and look at some cases on that. But the part about
3 the advice I don't think passes the straight-face test.

4 MR. McCARTHY: It's certainly made conscious of
5 the straight-face test, and let me try to compound it with
6 other things. He doesn't just tell them to clean up. They
7 actually have a discussion about what cleaning up
8 constitutes under the circumstances --

9 THE COURT: Is this also in 362?

10 MR. McCARTHY: I'm sorry, your Honor?

11 THE COURT: Is this also in 362?

12 MR. McCARTHY: Yes.

13 THE COURT: Whereabouts?

14 MR. FITZGERALD: 383T2, Judge.

15 THE COURT: 383, I'm sorry.

16 MR. McCARTHY: Your Honor, so I don't get too
17 bogged down in the clean up, can I move on to a couple of
18 other things?

19 THE COURT: Sure.

20 MR. McCARTHY: There isn't just a conversation
21 about cleaning up so that their physical plant is not the
22 subject of later tracing to them. There is also a fairly
23 elaborate discussion about what the best way to obtain cars
24 is. This isn't just a situation where Wahid Saleh agrees to
25 go out and obtain stolen cars for them. They actually have

1 a conversation about the relative merits of obtaining cars
2 with false identification.

3 Now, can we go from factor to factor to factor
4 and discount every one as not very overpowering? We sure
5 could. We could probably do that for the rest of the day.
6 But taken in conjunction, they bespeak a course of behavior
7 which not only evinces agreement with the plan, but some
8 degree of activity -- albeit not overpowering -- which is
9 designed to make the overall plan succeed under
10 circumstances where a rational person could conclude that he
11 knew what the overall plan was. I can't stand here with a
12 straight face --

13 THE COURT: It is not knowledge again that I am
14 talking about. It is doing something to advance the ball.

15 MR. MCCARTHY: You are quite correct, and I'm
16 sort of moving on to my next point prematurely.

17 THE COURT: OK.

18 MR. MCCARTHY: But to try to stay with the
19 subject, I am not standing here telling your Honor this is
20 the strongest attempt in the history of attempts, or the
21 strongest aiding and abetting of an attempt in the history
22 of such cases. The burden here is to say that it is legally
23 sufficient that a rational person can take all of these
24 things into account, tie them together, and find aiding and
25 abetting liability. That is our argument.

1 Since I am in the business this morning of
2 listing less than overwhelming factors for your Honor to
3 consider, I would also point out that Mr. Saleh also lent
4 advice, according to the transcript, about where the best
5 place to store the stolen cars until they are necessary is.
6 There is conversation about storing the cars at the airport,
7 which is also another --

8 THE COURT: Right. The long-term parking lot.
9 OK.

10 MR. MCCARTHY: I think that, if I can move on, I
11 really wish there was more to say about aiding and abetting.

12 THE COURT: There isn't. Move on.

13 MR. MCCARTHY: If I could move on to conscious
14 avoidance, and I will try to be brief with respect to that.

15 It is undoubtedly the law of this circuit that
16 conscious avoidance cannot supply the intent element of a
17 crime. It can only inform or supply a required element of
18 knowledge.

19 I would say that construing every inference of
20 the government's proof in favor of the government for these
21 purposes that there is evidence in the record that Wahid
22 Saleh knew what Siddig Ali and his confederates were about
23 when he got into that safe house. Now, I say that mindful
24 of the fact that the transcript clearly says that Siddig Ali
25 did not inform Wahid Saleh about the specific nature of what

1 they were about to do on the way there. I am not trying to
2 suggest otherwise.

3 What I am suggesting is that there is evidence in
4 the record from the testimony of Haggag where Haggag
5 testified that Wahid Saleh discussed with Siddig Ali and
6 Haggag the possibility of supplying weapons into the Middle
7 East with the quid pro quo that Mr. Wahid Saleh would assist
8 Mr. Siddig Ali in obtaining handguns and, I believe it was
9 machine guns, certainly automatic weapons.

10 So that notwithstanding all the stuff about the
11 hot dog truck and the other things that we have heard about,
12 there is evidence in the record, construing Mr. Haggag's
13 testimony in the light most favorable to the government,
14 that at the time Mr. Wahid Saleh got to the safe house on
15 June 23, he knew what Siddig Ali was about and --

16 THE COURT: He knew that Siddig Ali wanted
17 weapons.

18 MR. MCCARTHY: Well, I think, your Honor, taken
19 in conjunction with the type of seizures that were made from
20 Wahid Saleh, it is a fair inference, particularly when it's
21 considered that those are things that allegedly came from
22 the mosque, and that is the New Jersey mosque, and that
23 Siddig Ali and Wahid Saleh, according to the testimony of
24 Salem, who had met Saleh once before June 23, were
25 associated together in that connection, it is a fair

1 inference that Wahid Saleh understood that Siddig Ali was
2 involved in jihad activities. Not just guns, but guns for a
3 more informed purpose than just the fact that he --

4 THE COURT: In the United States for the purpose
5 of opposing the United States government?

6 MR. McCARTHY: I wasn't trying to suggest that
7 you could make out intent from the moment that he got in the
8 door.

9 All I am trying to say is that when he got in the
10 door, there was more that could be inferred from his
11 presence there than merely that Siddig Ali was bringing
12 somebody who knew absolutely nothing about the reasons that
13 he might be there into the safe house.

14 What was discussed with Wahid Saleh in the safe
15 house was, I believe it's a fair inference, a bombing plan,
16 and a bombing plan that involved substantial damage, a
17 bombing plan that involved bombs that were going to be
18 planted in cars, that obviously were going to be detonated
19 at targets and cause massive damage and a bombing plan that
20 was taking place in the wake of the World Trade Center,
21 which is a factor I don't think that can be completely
22 ignored in this connection.

23 THE COURT: Is there any indication that's
24 discussed with Wahid Saleh?

25 MR. McCARTHY: No, your Honor.

1 THE COURT: Or mentioned in any conversation with
2 him?

3 MR. McCARTHY: No, your Honor.

4 (Continued on next page)

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1 MR. McCARTHY: No, your Honor the seizures from
2 Wahid Saleh's residence with their anti-American content
3 were primarily admitted at trial to counter the positions
4 taken in Mr. Nooter's opening. However, they are admitted
5 against Mr. Saleh and they lend whatever it is they lend to
6 a construction of whatever it is his intent was in
7 connection with the crimes that are charged in the
8 indictment.

9 Mr. Khuzami reminds me, and I should have pointed
10 this out to the court, that Mr. Haggag testified that in
11 connection with the transactions, if I can just call it that
12 for this purpose, between Mr. Saleh and Siddig Ali that
13 Haggag was present at where the exchange of weapons was
14 discussed, Wahid Saleh said you guys are doing nothing and
15 yet you call yourselves jihad. So there is certainly more
16 going on there than just the knowledge that Siddig Ali
17 wanted weapons. The quid pro quo was about weapons in the
18 Middle East and the subject matter in the discussion was
19 jihad activities. I think that can be taken into account by
20 your Honor in terms of what was in Wahid Saleh's mind at the
21 time he entered the safe house.

22 To move back for a moment to the seizures from
23 Mr. Wahid Saleh's home, they are, as we heard in the reading
24 of them, replete with anti-American rhetoric. It is
25 obviously true, as your Honor charged the jury, that there

1 is no allegation that he wrote those things. They say
2 whatever it is that they say about his intent. We would
3 suggest that taken in conjunction with everything else that
4 has been proved at the trial, they shed light on what his
5 intent was at the time that he was in the safe house, aware,
6 construed in the light most favorable to the government,
7 that a bombing plan was under way and that bombings
8 involving massive damage were about to occur.

9 THE COURT: How do you connect that material of
10 his mind with what he sees around him in the safe house?

11 MR. McCARTHY: The connection can be only the
12 association with Siddig Ali and the association with the
13 mosque in New Jersey. I cannot say to your Honor that there
14 is an explicit conversation in which the goal of attacking
15 the American military is discussed -- I should say the goal
16 of attacking the United States is discussed. It is strictly
17 an inference on the basis of all of the evidence.

18 The final thing that is added to it is the
19 flight, but again I would not suggest to your Honor that the
20 flight speaks specifically to this issue.

21 THE COURT: It doesn't.

22 MR. McCARTHY: I would say one final thing on
23 that and that is this. When you get yourself involved with
24 a bunch of people who are by all apparent purposes, to your
25 knowledge, under the facts that are available to you, about

1 to embark on basically a bombing campaign that will involve
2 indiscriminate damage, there is an argument to be made, I
3 would suggest to your Honor, that if you in dealing with
4 those people tell them I don't want to know what you are
5 doing, just tell me what you need, you do become responsible
6 for what they are about to do.

7 THE COURT: But you started your argument by
8 saying that conscious avoidance can't provide the intent
9 element, right?

10 MR. McCARTHY: I do agree, that is correct.

11 THE COURT: And that specific intent is an
12 element of seditious conspiracy. Bombing conspiracy is a
13 whole different thing.

14 MR. McCARTHY: Right. I don't disagree with that
15 point, your Honor, but I would say this. There is clearly
16 enough evidence from which it could be argued that there was
17 specific intent to undertake forcible conduct. What it
18 comes down to, I suppose, is the question whether it is
19 sufficient to say that the fact that the force has to be
20 exerted against the United States is a knowledge element or
21 a specific intent element. If it is a specific intent
22 element, we are obviously on much shakier ground than if it
23 is a knowledge element.

24 I think that it is not a very strong inference
25 but it is a rational inference that can be drawn that given

1 the tenor of the discussion, given the character of the
2 seizures from the home, given the prior conversation with
3 Haggag, there is an inference to be drawn that when Wahid
4 Saleh knew that a bombing campaign was about to be
5 undertaken, knew the kind of damage that that was likely to
6 entail, that the argument of that jihad was the United
7 States. I cannot argue to your Honor that it is a very
8 strong inference, but that is what we seek to draw.

9 Fadil Abdelgani.

10 THE COURT: Right.

11 MR. MCCARTHY: I think, your Honor, with respect
12 to Fadil Abdelgani the argument is different and the
13 character of the evidence is different. Fadil Abdelgani, it
14 should be understood, is not a person who like Wahid Saleh
15 most of the critical conversation he has in the case is on
16 tape. In fact Fadil Abdelgani made the trips with Amir
17 Abdelgani to obtain the fuel oil and spent that time with
18 Amir Abdelgani en route to the safe house. At the safe
19 house he participated in the mixing of the bombs. There is
20 a fair inference that the nature of the plans were explained
21 to him. The transcript that we cite to for that particular
22 day, which again, I think, is 383T2, contains fairly
23 elaborate discussion not only about what they are doing but
24 mentioned the word tunnels a number of times.

25 I think taking all of the evidence in the light

1 most favorable to the government, there is sufficient
2 evidence even absent whatever knowledge elements can be
3 supplied by conscious avoidance, if any, that a rational
4 juror could find that he joined the seditious conspiracy
5 charged in Count 1, given the nature of the discussion that
6 took place in his presence while he was mixing bombs in the
7 safe house, aware that what was about to occur was an
8 attack, a bombing attack with commensurate loss of life in
9 the New York area, and that would be my argument with
10 respect to him.

11 Your Honor, I don't have any other counts that I
12 was planning to address specifically unless your Honor has
13 other questions of me.

14 THE COURT: There was an argument raised by
15 Mr. Stavis under Lopez. I don't know that this is the time
16 to deal with it.

17 MR. McCARTHY: You are correct, and I apologize
18 for forgetting that one. I was so overwhelmed by some of
19 the other evidence, it slipped my mind.

20 I went back and looked at our requests to charge
21 last night and I wish this is one I could blame Mr.
22 Fitzgerald and Mr. Khuzami for.

23 THE COURT: What you put in your charge doesn't
24 interest me as much as what the rules really are.

25 MR. McCARTHY: The rule is that the guns have to

1 move at some point if interstate commerce. There is no
2 requirement of law that the obliteration of the -- let me
3 say it more simply. The gun has to move at some point in
4 interstate commerce. The requests to charge -- I realize
5 your Honor is not asking me to correct that at the moment,
6 but the statement, the isolated statement in the requests to
7 charge isn't even consistent with the discussion of it on
8 the next page.

9 The state of the law, and I think this is only
10 supported by what the Supreme Court said in Lopez, is that
11 there has to be an interstate nexus. There is not a timing
12 requirement that is on it, at least as Mr. Stavis argues,
13 with respect to this charge.

14 THE COURT: No, no. I thought what he was
15 arguing under Lopez was that Lopez suggests that mere
16 possession even of a weapon that has traveled in interstate
17 commerce can under no circumstances be prosecuted federally.

18 MR. MCCARTHY: Let me say what my understanding
19 is of Lopez. I don't think that is what --

20 THE COURT: Look, I don't want to have a seminar
21 here. Whether that is what Lopez means or not what Lopez
22 means is something that is going to be decided by minds a
23 lot subtler than mine. There is a distinction between this
24 case and Lopez, going to the nature of the act here, which
25 is the obliterated serial number, which potentially

1 interferes with the ability of the federal government to
2 control traffic of weapons, which it generally has a right
3 to do under the commerce laws. Whether that is enough to
4 separate this from Lopez, as I said, is not my problem at
5 the moment.

6 I also don't think that it is reasonable to
7 decide that now. Ideally, if Lopez were decided before this
8 case got started, that motion would have been made pretrial.
9 If I granted it, the government could have taken an appeal.
10 I invite you to renew the motion if there is an adverse
11 verdict. How I decide it then is something I will think
12 about then, and then it can go up and, as I said, minds far
13 subtler than mine and far more nimble will deal with it.

14 MR. MCCARTHY: Can I have one moment, your Honor?

15 THE COURT: Yes.

16 MR. LAVINE: Judge, can I just bring one thing
17 quickly to your attention. With respect to Fadil Abdelgani,
18 Mr. McCarthy had mentioned that he was present during a
19 portion of the transcript, V5, V8, where the word tunnel is
20 mentioned. I just had a chance to review the last few pages
21 of V5, V8, and it does appear that at some point Fadil is in
22 the garage when the word tunnel is mentioned, and that
23 appears at, I believe, 52. However, there is no indication
24 nor is there any way for us to know where Mr. Abdelgani was
25 at the time that Siddig and Salem are having the discussion

1 in which the word tunnels is mentioned, nor is there any way
2 to know whether Mr. Abdelgani was in position to be able to
3 hear or indeed understand the significance of that
4 reference, those references, rather.

5 It is not a point that I want to try to make a
6 major battle over, but I don't want the record to reflect
7 that Mr. McCarthy's assertion with respect to this was not
8 countered and was in fact conceded, because it was not.

9 THE COURT: The record reflects that it has been
10 countered.

11 MR. MCCARTHY: Your Honor, the only thing I want
12 to note, and then I will sit down, is that with respect to
13 the discussion that we just had, 922(k), unlike the statute
14 that I think the Supreme Court found deficient in Lopez,
15 actually contains an interstate commerce requirement, and I
16 think that the --

17 THE COURT: That wasn't the basis for the holding
18 in Lopez. The holding in Lopez assumed that --

19 MR. MCCARTHY: My recollection, your Honor, and I
20 could certainly be wrong --

21 THE COURT: I am sorry, I am wrong, you are
22 right. The statute in Lopez says simply possession of the
23 weapon regardless whether the weapon itself has traveled in
24 interstate commerce.

25 MR. MCCARTHY: I don't think that this case is on

1 the same footing.

2 Thank you.

3 MR. LAVINE: If it would be of any assistance to
4 the court, I am pretty confident that Mr. McCarthy and I
5 could locate the portion of the video that reflects and
6 tracks the transcript of V5, V8 where the word tunnels is
7 mentioned, if that would be of any assistance to the court
8 to try and determine where Mr. Abdelgani was in relationship
9 to where the conversation took place.

10 THE COURT: I suppose if that were the only piece
11 of evidence then it might, but it isn't. I am happy if you
12 want to locate it to make a particular point, fine. But the
13 fact is there were other things present in the safe house
14 including the diagram, at the time that he was there.

15 MR. LAVINE: Judge, there is a diagram there, and
16 yet the situation still with respect to him remains the
17 same. There is no indication that he was aware of that.
18 And were it not for the facts, your Honor, that at at least
19 two points shortly before he was arrested there are
20 references to him not knowing what is going on, not being,
21 paraphrasing, part of what was going on, which was brought
22 to your attention yesterday, I don't think I would stand
23 here and try to make these points.

24 THE COURT: So you say he stands on the same
25 footing as Mr. Wahid Saleh.

1 MR. LAVINE: I believe to a certain degree that
2 he does, your Honor.

3 THE COURT: Not with regard to the bombing
4 conspiracy but rather with regard to Count 1.

5 MR. LAVINE: The thrust of what I am saying goes
6 to Count 1.

7 THE COURT: Mr. Ricco?

8 MR. RICCO: Yes. Your Honor, my remarks will be
9 extremely brief.

10 I would note that with respect to the sedition
11 count, that the government announces participation and
12 agreement with the defendants stopped with the defendant
13 Nosair, and again I renew the question that was raised
14 yesterday. What then are the facts that the government
15 relies upon shows that Mr. El-Gabrowny participated in a
16 conspiracy to wage war against the United States or to
17 oppose United States authority by force?

18 There was testimony by Mr. Salem concerning Mr.
19 El-Gabrowny concerning making a bomb to bomb a synagogue,
20 and I can see your Honor's point that the target does not
21 necessarily have to be that of the United States embassy or
22 the United States government target. However, the target
23 itself and the destruction have to be of such a nature that
24 it would ultimately affect United States policy. I am
25 essentially relying upon the preliminary instructions given

1 to the jury by the court. With respect to Mr. El-Gabrowny,
2 the only evidence that we have about that so-called bombing
3 of the synagogue is Mr. Salem just saying that is what Mr.
4 El-Gabrowny said he wanted to happen.

5 The questions were further asked by Mr. McCarthy
6 as to, well, was there ever any further discussion about
7 that, and Mr. Salem testified sure, there were plenty of
8 conversations. And then Mr. Salem -- the evidence that was
9 introduced into evidence by Mr. Salem were the carpenter
10 nails and the question was asked by Mr. McCarthy, was there
11 ever any device built with these carpenter nails, and the
12 answer was no.

13 THE COURT: I didn't understand the government to
14 be relying principally or even substantially on what you
15 call the carpenter nails, but why don't I hear from them to
16 see what they are relying on.

17 MR. RICCO: Just one other point and I am
18 through. There was testimony about the 12 pipe bombs and
19 there can be an argument that if that evidence is accepted,
20 that these 12 bombs would have caused the type of
21 destruction that your Honor spoke of in the preliminary
22 remarks. However, when Mr. Salem was asked a question at
23 page 4916 of the transcript, was there any discussion about
24 who if anyone would help you build these bombs, Mr. Salem
25 testified that Mr. Nosair told him yes, Ali Shinawy and a

1 fellow named Emad Abdou. Then Mr. Emad Salem went on to
2 discuss the targets of that bomb, and clearly those targets
3 could be deemed to have an impact on United States policy.
4 It would be Dov Hikind in Brooklyn and the judge that
5 sentenced Mr. Nosair.

6 He also asked Mr. Salem -- this is Mr. McCarthy
7 asked Mr. Salem, who did Nosair say you could contact about
8 building the bomb, and he told him to contact a person by
9 the name of Abdou El Kasim, on page 4918 of the transcript,
10 about finding out whether or not American hostages could be
11 swapped. So there was evidence in the trial that would go
12 into the area of having an impact on governmental policy.
13 However, Mr. Salem never testified that Mr. El-Gabrownny was
14 ever a part of those plans or those conversations, and I
15 essentially invite the government to focus in on those facts
16 that they say satisfy the Rule 29 standard.

17 THE COURT: I don't mean to repeat myself, but I
18 will ask you again, as I did yesterday, what do you make of
19 his leaving his house right after the arrests in the World
20 Trade Center case, carrying the passports? Yesterday you
21 said you made nothing out of it. I mean, is it at least
22 inferable that when he heard about the World Trade Center
23 arrests he was well aware that Salameh was a direct link to
24 him, that with the arrest of Salameh somebody was likely to
25 show up at his house, that it was important to take the

1 passports out of the house lest that they be found and that
2 that is why he had them on his person, and that the
3 passports were connected to the bombing?

4 MR. RICCO: There was no evidence that the
5 passports were connected to the bombing.

6 THE COURT: Other than the fact that right after
7 the Salameh arrest your client walks out of his house
8 carrying of all things passports with Mr. Nosair's picture
9 on him and pictures of members of his family.

10 MR. RICCO: The only connection that could be
11 made, your Honor, if there was some testimony or evidence
12 that could link the possession or existence of those
13 passports to something that Mr. Nosair said or did or
14 something that was part of the conspiracy. The government
15 argued that there was an escape plan and there was testimony
16 about there was going to be some type of hostages swapping
17 and there was testimony about that. However, there has been
18 no evidence or testimony at all to link passports to hostage
19 swapping. If you follow the scenario out, if he is going to
20 be swapping himself for hostages --

21 THE COURT: You are saying there is not a
22 circumstantial inference that there is a connection?

23 MR. RICCO: If the circumstantial inference is
24 based upon the logic that there is going to be some type of
25 breakout or some type of situation where the government,

1 people are going to be held hostage, I say the inference
2 doesn't lie based on the evidence here, because when Mr.
3 El-Gabrowny was approached with this escape plan he rejected
4 it.

5 THE COURT: He rejected it at a time when the
6 appeals had not yet been heard. In essence he didn't say
7 no, he said not yet. I understand this is the government's
8 view of it but that is the standard under a Rule 29 motion.

9 MR. RICCO: The government's view is that Mr.
10 El-Gabrowny refused it and said let's see what is going to
11 happen with the appeal and maybe we will talk about that
12 after the appeal. Is that the nature of evidence that
13 survives a Rule 29?

14 THE COURT: But again, that doesn't stand alone,
15 it stands in relationship to the other facts that we have
16 been talking about.

17 MR. RICCO: However, your Honor, with the
18 exception of Mr. El-Gabrowny's possession of the passports
19 and Mr. Salem's testimony about the synagogue, there are no
20 other facts, and if the inference that is to be relied upon
21 to make a connection between the passports and the World
22 Trade Center --

23 THE COURT: Salem testifies that he solicits him
24 to become the trainer for the group, does he not?

25 MR. RICCO: Your Honor, that is an overt act in

1 the indictment.

2 THE COURT: Forget the indictment. It is in my
3 notes from Salem's testimony. He did testify to that.

4 MR. RICCO: Mr. Salem testified that Mr.
5 El-Gabrowny said to him who is the person who is giving the
6 arms training? He said it would be Ferguson. He said to
7 him, why don't you learn about that so that you can train
8 brothers in the mosque. What was the training that he was
9 talking about? It was a firearms safety training program.
10 It wasn't Calverton. Mr. McCarthy made a distinction
11 between dry arms training and going to the range, and Emad
12 Salem testified that he had never gone to a range -- well,
13 withdrawn. He testified that Mr. El-Gabrowny never
14 participated in any firearms training at a range, that Mr.
15 El-Gabrowny went to the class to get firearms training to
16 get a permit for his license, which he did. And if the
17 inference that is going to be relied upon to make the
18 connection between the possession of the passports and some
19 theory of escape, then it should be a strong inference, it
20 shouldn't be something that requires speculation, and it
21 requires great speculation.

22 THE COURT: Mr. McCarthy.

23 MR. MCCARTHY: Yes, your Honor.

24 MR. SERRA: Your Honor, I would like to briefly
25 be heard two minutes. I don't have any objection if Mr.

1 McCarthy speaks now.

2 THE COURT: On what issue, the attempt?

3 MR. SERRA: On the proof connecting Mr. Alvarez
4 to Count 1.

5 THE COURT: Go ahead.

6 MR. SERRA: Only the new matters that Mr.
7 McCarthy raised.

8 MR. MCCARTHY: Your Honor, it was not my
9 intention to try to state what the government's case is
10 against Mr. El-Gabrownny. It was simply to respond in a way
11 that I thought befit a Rule 29 motion. I think there is a
12 rational inference to be drawn from the proof in this case
13 that there was a jihad organization domestically based that
14 existed which had a virulent anti-American stripe, that Mr.
15 El-Gabrownny brought Mr. Salem into that organization. The
16 very fact that Mr. Ricco dwelled on a moment ago with
17 respect to the firearms training is actually evidence that
18 that organization existed, that it trained members in a
19 paramilitary sense. It talked about freeing the imprisoned
20 members of the organization. Mr. El-Gabrownny discussed with
21 Mr. Salem bombing attacks. He discussed with Mr. Salem
22 jihad and the organization's view of jihad. He was
23 intimately connected to Mr. Nosair, who the evidence and the
24 testimony show was very much wedded to that anti-American
25 stripe. He is linked, other than by Mr. Salem's testimony,

1 to the people who bombed the World Trade Center at the time
2 that they were constructing those bombs and immediately
3 thereafter. There is the use by Mr. Salameh of Mr.
4 El-Gabrowny's address not only in connection with the rental
5 transaction in which he obtained the van which was later
6 used to bomb the World Trade Center, Mr. Salameh also uses
7 Mr. El-Gabrowny's address when he goes up to Attica to visit
8 with Mr. Nosair. Mr. El-Gabrowny is shown by the visiting
9 records to have numerous visits with Mr. Nosair. There is a
10 rational inference from the evidence that Mr. Nosair is a
11 leading figure in this conspiracy and a leading proponent of
12 both its anti-American stripe and its terrorist plans.

13 All of those things inform the question whether
14 there is the existence of his membership in an agreement to
15 levy war against the United States and to oppose the
16 authority of the United States by force. It is not simply a
17 question of slicing and dicing fairly collateral parts of
18 Mr. Salem's testimony, it is taking all the evidence,
19 particularly evidence which links him to other
20 coconspirators during key times, taking all of that as a
21 whole and considering it under the standard that the court
22 has to apply under Rule 29.

23 MR. STAVIS: I just have 30 seconds to respond to
24 what Mr. McCarthy said concerning Mr. Nosair's anti-American
25 stripe. In five and a half months of testimony the only

1 thing that I heard concerning anti-American sentiments -- as
2 a matter of fact, I heard nothing concerning anti-American
3 sentiments. I believe what Mr. McCarthy may be referring to
4 is Emad Salem's testimony that at Attica prison Mr. Nosair
5 indicated that he was against United States policy toward
6 the Middle East, and I can't think of anything more American
7 than opposing American policy, but that is nothing of an
8 anti-American stripe and nothing that is seditious in nature
9 that came out at this trial.

10 MR. NOOTER: Your Honor, although I fear to tread
11 where fools may go, I wondered if I could just make a few
12 points in response to Mr. McCarthy.

13 THE COURT: As to which issue?

14 MR. NOOTER: On the Haggag testimony, on the
15 aiding and abetting, and on conscious avoidance. Just very
16 briefly.

17 I would just point out that the Haggag testimony
18 on the weapons exchange deal is all comprised on pages 9974
19 and 9975 of the transcript, and, as I stated before, the
20 conversation occurred in the latter part of 1992 and it was
21 established on cross that it was well before any plans to
22 assassinate Mubarak or any plans to blow up tunnels had been
23 discussed by any of the other coconspirators. The specific
24 discussion of the weapons which included something in the
25 Middle East included something called different weapons,

1 which were machine guns and handguns wanted by Siddig Ali,
2 but it was not discussed where those weapons were to be used
3 or provided or anything else. It was only established that
4 they were different weapons.

5 With respect to the attempt, I would just remind
6 the court that Mr. Serra cited the Del Vecchio case, which
7 talks about the role of discussion and planning with respect
8 to that amounts to the substantial participation, not the
9 substantial act but for the aiding and abetting the proof of
10 participation.

11 With respect to the conscious avoidance, I am not
12 going to, hopefully, undermine what the court's thinking is
13 on what the role of that is in here. I would simply like to
14 say that there are transcript references in 383T2 which
15 would, I would suggest, particularly when we get to the
16 point of discussing the charge, militate against even giving
17 a conscious avoidance charge and I bring it up in connection
18 with both conspiracy counts.

19 THE COURT: You better get your argument ready on
20 that because when your client is quoted as saying -- not
21 quoted -- says on the transcript don't tell me, I don't want
22 to know --

23 MR. NOOTER: He actually says it twice, I agree
24 with that. But prior to saying it he is told a number of
25 things by Siddig Ali --

1 THE COURT: Now is not the time to argue that.
2 That is really not --

3 MR. NOOTER: All I want to say is before he says
4 anything that sounds like consciously avoiding, he is told
5 not to ask any questions. He is told that he will be told
6 later. Also there is proof in the discussion that followed
7 that he was in fear.

8 THE COURT: Fine, then he has agreed not to know.
9 That is not helpful to you.

10 THE COURT: Thank you. Then I have nothing
11 further.

12 MR. NOOTER: Thank you. Then I have nothing
13 further.

14 THE COURT: Mr. Serra.

15 MR. SERRA: Thank you, Judge. Your Honor, as I
16 told the court, I appreciate a brief opportunity to respond
17 to the items which Mr. McCarthy raised which the government
18 claims connect Mr. Alvarez to the intent required by Count
19 1. Mr. McCarthy mentioned seizures from Mr. Alvarez's
20 house. I found it interesting, your Honor, that of all the
21 publications seized, I think the only one which the
22 government didn't read one word out of to the jury was --

23 THE COURT: I don't know that he was talking
24 about the publications.

25 MR. SERRA: Pardon me, sir.

1 THE COURT: I say, I don't know that he was
2 talking about the publications.

3 MR. SERRA: There was association stuff which I
4 will get to in a minute, but the publication I am referring
5 to, I guess the government liked the word jihad on the
6 cover, the next word is in Afghanistan. That is something
7 in evidence from Mr. Alvarez's house. It talks about jihad
8 in Afghanistan.

9 The association evidence is from phone books.
10 Half of the phone numbers of alleged coconspirators were
11 from a phone book dated 1991. In any event, none of the
12 references -- they show association. None of the references
13 even under any view of the evidence toward the government
14 have any relation to any anti-American plots. They are all
15 clearly people who were associated with one mosque or
16 another and there is no doubt Mr. Alvarez attended mosques.

17 The second thing and third thing --

18 THE COURT: Do you include with that
19 Mr. Abouhalima's telephone number?

20 MR. SERRA: You say telephone message?

21 THE COURT: Number.

22 MR. SERRA: The actual exhibit was a slip of
23 paper with the name Mahmoud and a telephone number, no date,
24 nothing. Yes, I accept that. There was testimony from Mr.
25 Haggag that Abouhalima attended mosques. I do include that.

1 It is association evidence, it is admissible, but how it
2 connects into Count 1 is an entirely different question.

3 Mr. McCarthy cited two references both to the
4 same conversation, what those of us who lived with numbers
5 for a year know as CM 58, Government's Exhibit 362T. As the
6 court just remarked in discussing with either Mr. Nooter or
7 Mr. Ricco, things don't stand on their own. I suppose the
8 government's most telling point is what the government
9 attributes to Mr. Elhassan as a comment about America, but
10 what Mr. McCarthy did not read to the court or tell the
11 court about was what appears to be Mr. Alvarez's response to
12 that comment, which comes immediately afterwards. Pages 46
13 and 47 of Government's Exhibit 362T, which, as I say, those
14 of us who dreamed about these numbers knew as CM 58, top of
15 page 47, Mr. Alvarez's response, what appears to be his
16 response, they, American people, they are getting the idea
17 they know that the Jewish people is the one that keep
18 influencing them, and your Honor, I can hear it in my head.
19 The transcript says influencing him. What Mr. Alvarez says
20 is influing, I-N-F-L-U-I-N-G. Influing them and influing
21 them and throwing things more and, uh, uh, talk so they
22 become more religious every day and become more influence
23 Arab people or Muslim people.

24 With all due respect to my client, I am not sure
25 what he meant when he said that, but it does not seem as

1 though he meant let's go bomb 26 Federal Plaza and some
2 tunnels. It does seem as though he is repeating a refrain
3 which he started in CM 48, namely if people say bad things
4 about us we will talk to them -- he uses the word talk --
5 and we will correct the misimpressions and maybe say bad
6 things about them, too.

7 Your Honor, if I start arguing inferences on a
8 Rule 29 motion, perhaps I am not in the best shape because
9 inferences are a matter for the jury, and that gets past a
10 Rule 29 motion. But I still submit to the court that there
11 is not an inference, if you read the entire conversation and
12 not just what the government wishes to quote, that this
13 shows an agreement on Mr. Alvarez's part to oppose by force
14 the authority of the United States government.

15 The other quote from this conversation which Mr.
16 McCarthy cited came from page 38. It is Siddig Ali
17 suggesting to Mr. Alvarez, this is your country, why don't
18 you take a vacation. I never argued to your Honor -- I
19 never claimed, your Honor, as to Count 5, the bombing
20 conspiracy -- my argument was as strong as it is as to Count
21 1. I specifically said yesterday it is not.

22 I can see where the government might argue from
23 that that Mr. Alvarez consciously avoided the inference that
24 there is going to be a bombing in the United States even
25 though he was not explicitly told that. But where the

1 government gets from that the intent to oppose by force the
2 authority of the United States government, which is required
3 by sedition, I didn't see yesterday and I don't see today.

4 Finally, Mr. McCarthy said that these statements
5 were made in the context of discussing bombing plans.
6 Perhaps there was some discussion in Arabic. I ask the
7 government where anyone discusses with Mr. Alvarez, in this
8 conversation or for that matter any other conversation in
9 English, plans to bomb anything.

10 Your Honor, respecting Mr. McCarthy's rhetorical
11 abilities, I don't see where this has added anything to the
12 proof before the court.

13 MR. MCCARTHY: Your Honor, I think what Mr. Serra
14 very persuasively but nonetheless in an exercise in
15 persuasion is asking your Honor to do is be a super juror.
16 What he is arguing is, the inferences that can be drawn from
17 the evidence. There is going to be a time and a place for
18 that but I suggest, your Honor, it is not this one.

19 With respect to the statement that he just read
20 from at 46 going over to 47 of the transcript that is marked
21 362T, what Mr. Elhassan says immediately before the remarks
22 that Mr. Serra quoted from is, one thing we have to do is
23 that we have to get the name of America. The people
24 understand America has to change. He goes on, they have to
25 understand America can break down, can come down, that's it.

1 That's what immediately precedes Mr. Alvarez's next remarks.

2 THE COURT: Miss Stewart.

3 MS. STEWART: Judge, I particularly wanted to
4 address Mr. McCarthy's remarks on the solicitation count as
5 to the American military installations and perhaps call to
6 your Honor's attention that the solicitation law as it
7 existed in the federal legal, I guess hierarchy of crime
8 indicates that it is not enough to show an intent to solicit
9 but it must be an actual solicitation. So when Mr. McCarthy
10 cites sermons in which a generalized, perhaps, invitation to
11 focus upon American military installations or indeed upon
12 America itself --

13 THE COURT: Let me ask you a very narrow,
14 particular question. Salem testified that he solicited him
15 to turn his weapon on Mubarak, I guess was the best way to
16 describe it. He also testified that when he didn't
17 immediately agree to do that, that your client then became
18 distant. Isn't it a fair inference that when he solicited
19 the same man to do other things, that that distance itself
20 bespeaks a seriousness? Otherwise, what is the point of
21 being distant if somebody doesn't agree? Secondly, doesn't
22 it suggest that he was being serious when he solicited as to
23 the other target?

24 MS. STEWART: I didn't catch the word in the
25 middle there. Doesn't it suggest --

1 THE COURT: That he was being serious when he
2 solicited him as to the other target.

3 MS. STEWART: Judge, I think, though, it has to
4 have some quality of a command. I think that is what is
5 involved here and I think that the case law speaks about
6 actually commanded, induced or otherwise endeavored to
7 persuade. It is not a mere suggestion thrown out to be
8 caught or not caught by that other person when that other
9 person, as in what your Honor is talking about on the trip
10 to Detroit, says no, I'm not interested in doing that.
11 Then, because he says that, it then becomes a serious issue?
12 I don't see that that necessarily follows. It might become
13 a serious issue if the person said how can you say that, you
14 just were asking me what could you do, in other words,
15 continuing to induce or persuade on that particular issue,
16 but the minute it is dropped, even assuming there are not
17 internal contradictions to what Emad Salem is saying is
18 going on during that weekend.

19 THE COURT: That is something to argue then on
20 that issue.

21 MS. STEWART: I also think that the references to
22 the sheik's other sermons and other press conferences
23 perhaps is inappropriate with regard to this count, and I
24 say that only because it seems to me that this is but again
25 another situation that there has to be some proof that the

1 person on the receiving end is indeed receiving that. There
2 is no proof that Salem was ever present during any of these
3 speeches, sermons or anything else, and it had to be he who
4 was solicited, either he, Siddig or Haggag on the Mubarak,
5 and he alone on the American military situation.

6 I would once again say, Judge, that the sheik's
7 speeches are in the long tradition and the great tradition
8 of America giving some kind of safe harbor to persons who
9 pursue their claims against the country they left, and I
10 would cite to the Marquis de Lafayette right down to Joe
11 Dougherty as providing examples of that.

12 THE COURT: If that were the only evidence in the
13 case, then I think we might have a more serious discussion
14 about a lot of other things including Count 1. However,
15 when you have added to it conversations about ferreting out
16 informants, checking to see what it is that Mahmoud said,
17 denials that he knows Mahmoud Abouhalima when the man was
18 his driver, is a cosignatory on a bank account, when you
19 have an approach which you dismissed yesterday as, you know,
20 is it permissible or is it not permissible to bomb the
21 United Nations and the reaction is not what kind of question
22 is that but rather yes, it's permissible but it might have a
23 downside why don't you turn on the military, there is at
24 least an argument that that is fairly eloquent evidence that
25 he was involved in more than the tradition of a Marquis de

1 Lafayette.

2 MS. STEWART: I think he may be more in the
3 tradition of Islamic scholars when he answered Mr. Salem,
4 and that is indeed as all religious people. When a
5 parishioner comes sobbing and in dire straits, you do not
6 say get away from me, I don't want to talk to you. All
7 counselors know and wise counselors know that you do
8 something to calm this person down first before you do
9 anything else.

10 (Continued on next page)

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1 THE COURT: When a parishioner comes to you
2 asking whether it is permissible to bomb the United Nations?

3 MS. STEWART: Yes, for an advisory opinion, I
4 would say, Judge.

5 THE COURT: OK. Your parish may have different
6 usages.

7 MS. STEWART: It may indeed.

8 MR. MCCARTHY: May I be heard on --

9 THE COURT: Go ahead.

10 MR. MCCARTHY: I was not seeking to respond to
11 Ms. Stewart. It is on a different issue.

12 THE COURT: Go ahead.

13 MR. MCCARTHY: I would just like to -- I have had
14 a chance in the last few minutes to take a look at Kwong,
15 which came up in the discussion of the attempted murder
16 counts. I am not pressing the issue with respect to the
17 counts that relate to Mr. Franklin, but I think with respect
18 to Mr. Acosta, I would like to be heard on that.

19 THE COURT: Go ahead.

20 There is just one count that relates to
21 Mr. Acosta.

22 MR. MCCARTHY: Two.

23 THE COURT: OK. There are two that relate to
24 him. There is the assault. I don't understand both counts
25 to charge, or to even include an element of the attempted

1 murder, do they? It's been a while since I looked.

2 MR. McCARTHY: They do, your Honor.

3 The 1959 count regarding Acosta is structured the
4 same way that it is with respect to Franklin.

5 THE COURT: That I know. But what about the --

6 MR. McCARTHY: The other one is an attempted
7 murder of a federal officer.

8 THE COURT: OK.

9 MR. McCARTHY: I think that having looked at
10 Kwong again, which I must say I had not looked at in a long
11 time, I think Mr. Stavis, and, your Honor, in some of your
12 comments, perhaps the court invest way too much in it as it
13 applies to the facts of this case.

14 The Second Circuit held clearly in Kwong that the
15 discharge of a weapon does not ipso facto make out specific
16 intent to commit murder. I don't contend otherwise. The
17 Second Circuit also held that specific intent to commit
18 murder is something that can be, is highly susceptible of
19 proof by circumstantial evidence, and is basically and
20 generally speaking an issue to be resolved on the facts by a
21 properly instructed jury.

22 In the case of the Acosta attempt what you have
23 is a person who not only is in immediate flight from having
24 committed an intentional murder, but also a person whom the
25 rest of the evidence shows both trained in firearms and

1 there is testimony to the effect that he in fact was the
2 group's leader for purposes of firearm training.

3 He had an opportunity to see Mr. Acosta. He
4 pointed a gun at him and he fired it. There is enough of a
5 basis in fact for a properly instructed jury to find that
6 when he took that action, when he pointed the gun at
7 Mr. Acosta and fired it, he did it with the intention that
8 Mr. Acosta would be murdered.

9 That is an issue that ought to be resolved by the
10 jury and certainly ought not to be resolved at this point.

11 THE COURT: You say "the circumstances." I don't
12 see anything in the circumstances that you have enumerated
13 that suggests that intent.

14 MR. McCARTHY: That?

15 THE COURT: That he be murdered as opposed to
16 disabled from the shooting.

17 MR. McCARTHY: That he pointed a gun at somebody
18 with an opportunity to fire at him and shot him is not, the
19 court doesn't believe that that is, that there is a rational
20 basis in fact that somebody who is trained in firearms,
21 trained to shoot to kill, in fact when he undertakes that
22 posture, discharges his firearm at somebody he's aiming at,
23 in fact intends to kill the person?

24 THE COURT: Then anybody with firearms training
25 who points a weapon is necessarily shooting to kill.

1 MR. McCARTHY: Maybe not anybody, but -- I mean,
2 I suppose you can always decide every case on the lowest
3 common denominator of facts. What we are talking about here
4 is somebody who was highly trained and who in fact trained
5 others.

6 I am not talking about everybody who ever took a
7 firearms lesson. I am talking about this specific defendant
8 here who not only did it, but did it in immediate flight
9 from an act where you could conclude he certainly was not
10 adverse to pointing his firearm at a person and killing him.

11 He also shot Mr. Acosta in the chest, for what
12 it's worth, given his training and what that says about him,
13 he certainly wounded him in a way that evinces an intent to
14 murder, or at least could rationally be deemed to do so.

15 THE COURT: Do you want to be heard on that last
16 point?

17 MR. STAVIS: I believe the testimony, viewed in
18 the light most favorable to the government, was that
19 Mr. Acosta came out of the shadows, and sort of a group of
20 people running, and he had drawn, Mr. Acosta had drawn his
21 weapon when his attention was focused on the group that was
22 running, and that's how the shooting occurred.

23 Mr. McCarthy has referred to, and he referred to
24 it obliquely just now, his notion of transferred intent.

25 THE COURT: That wasn't what he was arguing. I

1 don't take it to be what he was arguing. If what you are
2 saying is there is transferred intent because he had just
3 killed somebody, and arguably on their view of the facts --

4 MR. STAVIS: That is not my understanding of the
5 doctrine of transferred intent.

6 THE COURT: No, it's not mine either.

7 I don't think he was arguing it as a question of
8 transferred intent. I didn't take it that way.

9 MR. STAVIS: His argument was that Mr. Nosair was
10 a highly trained person and a weapons trainer and knew
11 exactly what he was doing. Viewed in the light most
12 favorable to the government, if that's true, then Mr. Acosta
13 has a lot to be thankful for because it didn't work out.
14 The facts of what occurred out on the street that night was
15 there was just frantic people running --

16 THE COURT: What he says is that's a jury
17 argument.

18 MR. STAVIS: What is not a jury argument, your
19 Honor, is that based on Kwong and based on Braxton, which is
20 the dicta in Braxton, 111 S.Ct., where somebody actually
21 fired at United States marshals or in the direction of
22 United States marshals who were entering to serve a warrant,
23 you cannot discern the intent to kill just from the firing
24 of the weapon.

25 If you add to the mix what Mr. McCarthy states,

1 which is that Mr. Nosair was highly trained and all this,
2 and I think he overstates the evidence in the case, that
3 still doesn't give the intent on which to present this to
4 the jury.

5 THE COURT: I understand your point.

6 MR. STAVIS: There is no statement by Mr. Nosair,
7 "I am going to kill you" or anything like that.

8 THE COURT: Understood. Can I it get a cite on
9 two cases. One is Osiemi.

10 MR. MCCARTHY: Yes, your Honor, Osiemi.

11 THE COURT: Right.

12 MR. MCCARTHY: I have it.

13 MR. STAVIS: That was the response that your
14 honor wished? You are on to something else now I take it?

15 THE COURT: Yes. Thank you.

16 MR. MCCARTHY: Osiemi is 980 F.2d 344.

17 THE COURT: And Delvecchio?

18 MR. SERRA: Your Honor, I can give you
19 Delvecchio, without my glasses it is 816 F.2d 859.

20 THE COURT: OK. I would like to take a short
21 break now -- by "short" I mean about ten minutes -- and then
22 talk about the list of things that Mr. Stavis raised
23 yesterday, as well as other things, or at least begin to
24 talk about them now.

25 I don't see Mr. Yousef's attorney.

1 MS. AMSTERDAM: I'm sorry, your Honor?

2 THE COURT: I said I don't see Mr. Yousef's
3 attorney, so I don't know whether he is here yet or not. He
4 said he was going to be late, but we will get to that when
5 we get to it.

6 MR. STAVIS: Is that number one on your Honor's
7 agenda? I don't know.

8 THE COURT: No, it's number N. "N" being
9 whenever it is we get to it. We can deal with other things
10 first. But I will see you in ten minutes, whether the
11 defendants are here or not. I think it's something that we
12 can begin to deal with. So ten minutes is ten minutes. OK.

13 (Recess)

14 (Pages 13157 to 13161 sealed)

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1 (In open court)

2 THE COURT: I was not aware that Mr. Kulcsar in
3 fact was here. So since he is here, there was something
4 that he wanted to put on the record, I believe. I should
5 say, Mr. Kulcsar and I had a conference in the robing room
6 that is recorded, but I have had sealed.

7 Mr. Kulcsar is going to report the substance of
8 that now, and then we will proceed. Mr. Kulcsar?

9 MR. KULCSAR: Thank you, your Honor. In response
10 to the subpoena that Mr. Stavis served on behalf of the
11 various defendants, I conferred with Mr. Yousef and,
12 following our meetings and conversations, advised Mr.
13 Stavis -- and obviously other counsel by letter through Mr.
14 Stavis -- that it is, or more appropriately was at the time
15 of my writing, the explicit intention of Mr. Yousef to
16 assert his Fifth Amendment privilege in response to any
17 inquiries that might be sought of him within the broad
18 penumbra of the language of that subpoena, and also to
19 decline to produce any documents or records that might be in
20 his possession that were responsive to that subpoena.

21 I obviously indicated as well that, given the
22 fact that Mr. Yousef has in his possession entire records
23 for the first World Trade Center case, I assume that that
24 was not part of what was being asked of him, and, more
25 particularly, documents of his own that he might have in his

1 possession.

2 Since that time I learned that certain
3 information in the documents had been made available to
4 defense counsel for inspection and review, not copying,
5 relating specifically to Mr. Yousef and his present
6 indictment. I obtained a copy of that after it had been
7 disclosed to defense counsel and met with Mr. Yousef and
8 discussed those matters with him and showed him those
9 documents.

10 At that time -- I guess it was in the last day or
11 two -- Mr. Yousef felt that it would best serve him in
12 making a final underlying decision to meet with a
13 representative number of defense counsel, whom he named, at
14 the MCC to answer certain questions that he had with respect
15 to making a final decision. I understand that that is not
16 possible in the sense of meeting at the MCC only because of
17 the time constraints with your Honor's trial.

18 THE COURT: Well,, I mean, the fact is he's here,
19 correct?

20 MR. KULCSAR: Yes, your Honor.

21 THE COURT: All right. He's in this building.
22 In any event, go ahead.

23 MR. KULCSAR: So Mr. Yousef, as of ten minutes
24 ago, has agreed that he would meet with those attorneys in a
25 room that the marshals are making available to us in the

1 back with an interpreter with the understanding that the
2 idea of the meeting is for counsel to respond to certain
3 areas of questioning that Mr. Yousef had to assist him in
4 making a final decision.

5 I emphasize that procedure because it is clearly
6 not the request of Mr. Yousef, nor is it his intention or
7 mine to create a situation where Mr. Yousef is going to be
8 pressured into responding to questions from the defense
9 counsel.

10 I just would suggest that that would be the
11 guideline Mr. Yousef would want to have understood in having
12 that meeting. If that guideline is not acceptable in some
13 manner, then I will certainly advise Mr. Yousef of that and
14 find out what his decision would be in that regard.

15 THE COURT: OK.

16 You say he named the defense lawyers he wants to
17 talk to?

18 MR. KULCSAR: Mr. Ricco, Mr. Abdeen, Lynne
19 Stewart --

20 THE COURT: I think you mean Mr. Jabara.

21 MR. KULCSAR: I'm sorry?

22 THE COURT: I think you mean Mr. Jabara.

23 MR. KULCSAR: I don't know. These are the names
24 that I received from Mr. Yousef. So I will tell him of
25 that.

1 THE COURT: Abdeen is his first name as I
2 understand it. You can correct me if I am wrong.

3 MR. KULCSAR: I apologize. That's Mr. Yousef's
4 choice. I will correct him on the last name.

5 THE COURT: Ms. Stewart, Mr. Jabara, Mr. Ricco --

6 MR. KULCSAR: John Jacobs, and Mr. Stavis has
7 asked to be present since he was the one that issued the
8 subpoena.

9 THE COURT: He is the issuer of the subpoena.

10 MR. KULCSAR: So I would indicate to Mr. Yousef
11 that there would be that addition.

12 THE COURT: You can work out with him, obviously,
13 whatever he wants to do and whoever he wants to talk to. My
14 suggestion is that in view of that that we break now, give
15 you an opportunity to meet and resolve whatever you have to
16 resolve.

17 I take it he doesn't. I mean, you said that one
18 of the terms here is that nobody going to pressure him to
19 answer questions. Obviously, there's no way to enforce
20 that. I suppose other than my being there, and I take it he
21 doesn't want that.

22 MR. KULCSAR: I don't object to that, but I
23 hadn't thought to impose on your Honor to be arbiter.

24 THE COURT: Good, because I hadn't thought to
25 volunteer. I just want to make sure that he understands

1 that it is not enforceable in the sense that nobody can
2 control what people are going to say, but I suppose he can
3 stop the meeting any time he wants.

4 MR. KULCSAR: Clearly that I think would be the
5 result, so that is why I am suggesting that this
6 circumstance not come to pass.

7 THE COURT: Fine.

8 MR. KULCSAR: The only other thing I would
9 discuss with your courtroom deputy is having the interpreter
10 available for maybe five or six minutes so Mr. Yousef and
11 the interpreter and I can just kind of get to know each
12 other and understand what we're going over.

13 THE COURT: Fine. Then we will break now.
14 Yes, Mr. Stavis?

15 MR. STAVIS: There is a minor matter. There is
16 an existing nondisclosure order with regard to the Yousef
17 materials. I would ask your Honor to amend that order so
18 that I can take the materials with me to the meeting.

19 MR. FITZGERALD: I'm sorry, your Honor. I
20 apologize. I missed the request.

21 THE COURT: The request was that the disclosure
22 order be amended to the extent of permitting Mr. Stavis to
23 take the materials to the meeting, those being presumably
24 materials that have already been turned over to Mr. Kulcsar.

25 MR. FITZGERALD: No objection.

1 THE COURT: It is amended.

2 OK. Good. I will see you then again at 2

3 o'clock.

4 (Recess)

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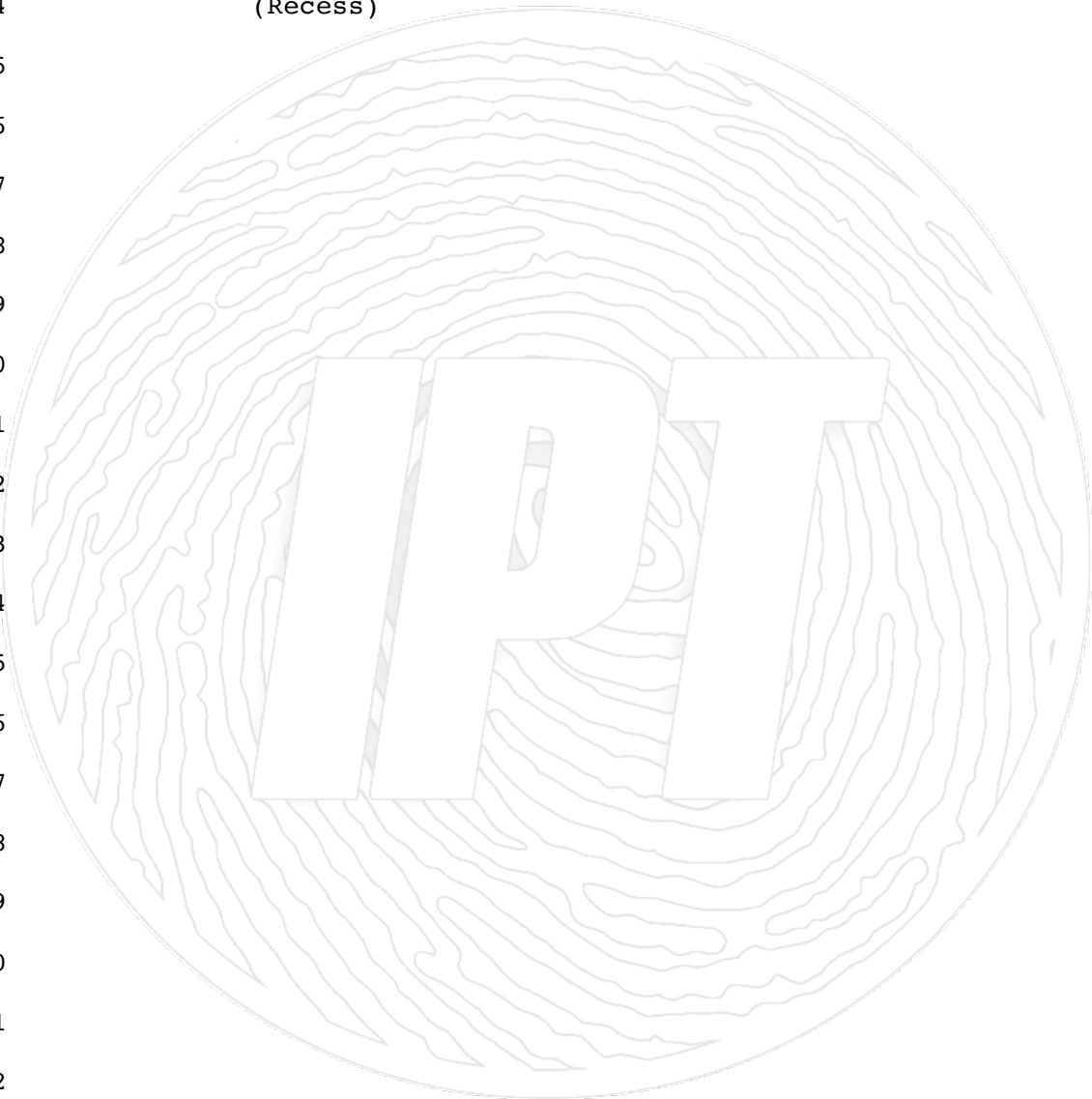
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1 A F T E R N O O N S E S S I O N

2 Time noted, 2:15

3 THE COURT: Mr. Kulcsar, I gather, is still
4 talking to his client, is that right?

5 MR. STAVIS: Yes. Ms. Stewart, Mr. Jabara,
6 myself, Mr. Ricco and Mr. Jacobs met briefly with Mr.
7 Yousef, and he wanted an opportunity to speak to his
8 attorney after meeting with us. We were waiting to go back
9 and speak with him when we were summoned to court for this
10 afternoon's proceeding.

11 THE COURT: OK. So I gather there is no outcome
12 to this yet?

13 MR. JACOBS: Not yet.

14 MR. STAVIS: I am not aware of any, your Honor.

15 MS. STEWART: I think he had matters he wished to
16 discuss with his own lawyer. It is sort of a back and forth
17 process.

18 THE COURT: I don't want to get in the middle of
19 something that is not in any realistic sense at this point
20 my business, but I trust that whatever else the discussions
21 included, they included also that he would not only have to
22 respond to questions on direct examination, but on cross as
23 well.

24 MR. JACOBS: Of course.

25 THE COURT: Good. I didn't want that detail

1 forgotten.

2 With respect to the Rule 29 motions, the
3 standard, as you know, is whether a properly instructed jury
4 could reasonably conclude that the elements of the various
5 counts have been proved beyond a reasonable doubt. In
6 answering that question, the evidence has to be viewed as a
7 whole, not in isolation, and drawing all reasonable
8 inferences in the government's favor.

9 To the extent that counsel's presentations -- and
10 I am not faulting you for this, it is part of what goes on
11 all the time -- but to the extent that the presentations
12 didn't do that, those arguments that isolated particular
13 pieces of evidence and focused exclusively on them to the
14 exclusion of everything else can't really be accepted.

15 Each and all of the motions to dismiss under Rule
16 29 are denied with the following exceptions:

17 First, as to Count One with respect to Mr. Saleh,
18 Wahid Saleh, that is, there is no evidence from which a
19 reasonable jury could conclude beyond a reasonable doubt
20 that he had the specific intent necessary for that count.
21 The items in his house do not supply the missing piece. So
22 that count is dismissed as to him.

23 With respect to Count Eight as to Mr. Nosair,
24 that is the Irving Franklin count, that part of it that
25 charges attempted murder is dismissed. Again, I don't see

1 any basis from which a reasonably instructed jury could
2 conclude that there was an attempted murder beyond a
3 reasonable doubt as to Franklin.

4 With respect to Counts Nine and Ten, to the
5 extent they charge -- Ten charges attempted murder
6 exclusively; Nine charges it as one element. I am going to
7 deny that now with an invitation to renew at the close of
8 the evidence. I would like to think about that a little bit
9 more.

10 With respect to Mr. Wahid Saleh as to Count Six,
11 the aiding and abetting theory, again, I think it is a close
12 question, but it is arguable that he gave a reassurance that
13 automobiles would be produced that permitted other people to
14 turn their efforts to matters at hand rather than to the
15 getting of automobiles and pursuing such alternatives as
16 Mr. Alvarez's contacts in the Bronx and whatnot. I would
17 cite, among other cases, U.S. v. Garguilo, 310 F.2d 249.

18 With respect to Mr. El-Gabrownny on the assault
19 count, Mr. Ricco is correct that it didn't happen precisely
20 the way I suggested yesterday that it happened. It happened
21 after he was moved rather than immediately when the
22 passports were located. On the other hand, I think a fair
23 inference from the evidence is that it was the location of
24 the passports that prompted the move and that that was
25 something that he knew and that it was traceable to that.

1 With respect to whether Mr. Nosair acted in aid
2 of racketeering, we didn't discuss that specifically this
3 morning, but there is evidence that he was accompanied by
4 other members of what the indictment alleges was the group
5 charged in Count One. There was the statement to Dr. Nunn
6 that whatever he had done he had done because he believed it
7 was his duty, plus his own statements, quoted as recently as
8 yesterday, saying that he wanted to return to jihad again.
9 Again, I am not saying what verdict I would reach, but it is
10 at least reasonable that a properly instructed jury could
11 infer that those items of evidence, including everything
12 else received, would justify a finding that he acted in aid
13 of racketeering.

14 So far as whether Dr. Abdel Rahman's statements
15 are pronouncements of the Marquis de Lafayette or whether
16 his advice is the advice of the parish cleric, that I think
17 is a jury argument. I don't think it is a legal argument.
18 There is ample evidence to conclude that he was the leader
19 of a group and that it was the group charged in Count One.
20 I would cite a list of exhibits, setting Salem's testimony
21 completely aside for a moment: 311, 639, 705, 728T, 852T,
22 801T2, 704A, 362T. They establish, among other things, that
23 he provided advice and direction, that he was concerned with
24 ferreting out informants, that people were told repeatedly
25 not to raise specifics with him, and that that was a matter

1 that was adopted as a strategic approach to his leadership
2 of the organization. Again, I am not obviously making my
3 own findings, I'm simply pointing out what a properly
4 instructed jury could find if they thought the inference was
5 warranted.

6 The solicitation, again, is a jury issue for the
7 reasons that we talked about this morning.

8 MR. BERNSTEIN: I'm sorry, Judge?

9 THE COURT: I said the solicitation is a jury
10 issue for reasons we talked about this morning, and I don't
11 think there is anything else substantial to discuss.

12 What I would propose is that we now turn to the
13 agenda, Mr. Stavis.

14 MR. STAVIS: Yes. I have a discrete point with
15 regard to the relief that your Honor has just granted me, if
16 you will permit me one minute.

17 THE COURT: OK.

18 MR. STAVIS: Count Eight, which has the heading,
19 "Attempted Murder of Irving Franklin," relies on two
20 different subsections of Section 1959(A). The attempted
21 murder is Subdivision 5. Your Honor has stricken that. The
22 assault is Subdivision 3. Subdivision 3, the assault, which
23 remains under your Honor's ruling, is a 20-year count, and,
24 as incongruous as this may seem, the attempted murder is a
25 ten-year count.

1 The statutory language of the different sections
2 was placed in the conjunctive in the indictment. It says,
3 and I'm quoting, "knowingly assaulted with a dangerous
4 weapon and committed assault resulting in serious bodily
5 injury upon, and" --

6 THE COURT: They always do that. The charge is
7 invariably that although it says "and," they can find "or."
8 But since I've stricken the other, that's all that's left of
9 number 5.

10 MR. STAVIS: Yes. At the close of the
11 government's proof, your Honor has stricken the attempted
12 murder part.

13 THE COURT: Right.

14 MR. STAVIS: However, the case has been tried for
15 Mr. Nosair as an attempted murder under this heading here,
16 "Count Eight, Attempted Murder."

17 Your Honor will recall I did not cross-examine
18 Irving Franklin. The reason I did not cross-examine Irving
19 Franklin is because the government had not made out the
20 attempted murder. That was the theory. For those reasons,
21 I believe that the relief that I am entitled to, your Honor,
22 is that Count Eight be dismissed in total.

23 MR. MCCARTHY: The indictment did what it was
24 designed to do, which is place him on notice of the
25 potential theories of liability. That is the function of

1 the indictment. As your Honor points out, the fact that
2 things are charged in the conjunctive does not mean that the
3 disjunctive doesn't work in terms of liability. If Mr.
4 Stavis made a strategic choice not to cross-examine Irving
5 Franklin, I would suggest to to your Honor that there may
6 have been a variety of reasons why.

7 THE COURT: I assumed at the time he didn't
8 cross-examine him for the obvious reason that he didn't
9 identify his client. That, coupled with the fact that he
10 was a sympathetic witness, would have led any reasonable
11 lawyer not to cross-examine him.

12 I mean, if you put a Mercedes star on the front
13 of a Chevy, it's still a Chevy. If it says attempted murder
14 and it's murder and assault, it's murder and assault. We
15 will take the hood ornament off if you'd like.

16 MR. STAVIS: Those were more than different
17 theories; those were different statutory subsections, as I
18 pointed out.

19 THE COURT: And both of them were --

20 MR. STAVIS: There was a duplicity issue here.
21 The S5 indictment, I believe some of the defendants here
22 were arraigned on S5 the day we started the trial, your
23 Honor.

24 THE COURT: Nobody moved to dismiss this
25 indictment pretrial for duplicitousness, and had there been

1 a motion to dismiss this count as being duplicitous, it
2 would have been denied.

3 MR. McCARTHY: Your Honor, may I raise one other
4 matter?

5 THE COURT: Yes.

6 MR. McCARTHY: I am not seeking to reargue
7 anything, it is simply that I made an error this morning and
8 I would like to correct it. And that is that I argued this
9 morning to your Honor in terms of conscious avoidance that
10 conscious avoidance cannot make out the intent element of a
11 crime.

12 THE COURT: You didn't argue it, you conceded it.

13 MR. McCARTHY: I did.

14 THE COURT: Right.

15 You now think you made a mistake?

16 MR. McCARTHY: Well, I now know that that was a
17 mistake. I don't think it is a mistake that makes a
18 difference. I don't want to be deemed to have led you in
19 the wrong direction. Actually, I think it doesn't really
20 make a difference in terms of Mr. Wahid Saleh's case, but I
21 do think it may make a difference in terms of the future of
22 the litigation and other issues that may come up.

23 THE COURT: You can enlighten me at some point
24 with something in writing about that.

25 MR. McCARTHY: I will do that. Thank you.

1 THE COURT: All right.

2 Let's turn to -- yes?

3 MR. LAVINE: I don't mean to interrupt you, but I
4 would like to bring something briefly to your attention.

5 THE COURT: Sure.

6 MR. LAVINE: Earlier this morning my client's
7 name was deleted from Overt Act MMMM of Count One, the
8 seditious conspiracy, thereby, to some degree, lessening the
9 amount of proof against him. I had earlier --

10 THE COURT: No. The deletion of his name from an
11 overt act doesn't lessen the proof. The proof is whatever
12 it is. The overt acts are set forth in the indictment. The
13 indictment, as I will instruct the jury, isn't proof. I
14 shouldn't have to tell you that.

15 MR. LAVINE: I am using the wrong words, Judge,
16 but that's part of, I guess, lawyering from time to time.

17 But what I did want to bring your attention to
18 was this, that you had a denied a motion to sever which was
19 made by him pretrial, and now, in light of the fact that
20 even though there won't be less proof against him, his name
21 will probably be mentioned somewhat less, at least on the
22 overt acts that are reviewed with the jury by either the
23 government or the defendant, I would like to renew the
24 request for the severance which was based in pertinent part
25 on the disproportionate amount of expected evidence that was

1 produced with respect to him vis-a-vis the other defendants.

2 THE COURT: It is not only, again, the amount of
3 the evidence, it is also the character of it. He's
4 transporting barrels and whatnot into the safe house, and
5 all of this is going on around him.

6 MR. LAVINE: I wasn't a hundred percent sure I
7 was going to be able to persuade you to grant the motion,
8 but I did want you to consider it.

9 THE COURT: OK.

10 MR. LAVINE: Thank you.

11 THE COURT: All right. The motion is denied.
12 Let's go to the agenda that Mr. Stavis raised
13 yesterday.

14 First, there was supposed to have been some
15 discussion between defense counsel and the government as to
16 an offer of proof about what the federal agents who were
17 going to be called were expected to testify to.

18 MR. JACOBS: Can I deal with something before we
19 get to agents, your Honor, on proffers?

20 THE COURT: Yes.

21 MR. JACOBS: Defense counsel have taken the
22 position that with respect to the jihad organization and the
23 World Trade Center that we wish to proceed with our defense
24 concerning that first. We alerted the government in our
25 opening statements about our contest of the jihad

1 organization and our alleged participation in the World
2 Trade Center. We called for the documents concerning that
3 since February.

4 I sent a letter to the government at the end of
5 May asking for the search witnesses of Ramzi Yousef to be
6 available. I followed that up with a June letter.

7 THE COURT: Mr. Jacobs, --

8 MR. JACOBS: I just -- what I am --

9 THE COURT: Do you want to seize control of the
10 agenda or what?

11 MR. JACOBS: What I am suggesting, your Honor, is
12 that as far as the order of the defense case, we haven't
13 received the documents necessary for us to proceed. Some
14 counsel have been given something. I am still waiting for
15 the followup to Exhibit, Government Exhibit 196, which is
16 the Liberation Army Fifth Battalion document, and Government
17 Exhibit W78A1, which is the second Liberation Army document.

18 We're not in a position -- I'm certainly not in a
19 position to start calling witnesses on what I call the safe
20 house part of the case until the government complies with
21 what I consider to be a proper Rule 17(c) and the documents
22 have been provided and defense counsel and the defendants
23 have been given an opportunity to review them.

24 THE COURT: If that is a motion to adjourn the
25 start of your case, it's denied. Take your seat.

1 MR. JACOBS: It is not a question of adjourning
2 it, your Honor. It's a question of what witnesses are going
3 to be called first. The question is, is the government
4 going to tell us who to call first, or is the defense going
5 to be allowed to call the witnesses in the order that they
6 wish to do so?

7 THE COURT: Until you got up, Mr. Jacobs, I had
8 been told by Mr. Stavis that he was going to proceed first,
9 that he had a list of agents who he was going to call.

10 You now get up and behave as if it's been
11 accepted history that what was going to be done is what
12 you've just claimed was going to be done. Nobody ever told
13 me that and, to the extent I was told anything, it was to
14 the contrary. Nobody is changing the signals now.

15 MR. JACOBS: Pardon me?

16 THE COURT: Nobody is going to change the signals
17 now. Mr. McCarthy, do you know what he's talking about?

18 MR. McCARTHY: I didn't hear your last comment.

19 THE COURT: My question was do you know what he
20 was talking about?

21 MR. McCARTHY: What Mr. Jacobs was talking about?

22 THE COURT: Yes.

23 MR. McCARTHY: No.

24 THE COURT: Why don't you meet with him after we
25 get done and figure out what it all means.

1 What's happened with regard to the offer of proof
2 as to the agents?

3 MR. STAVIS: I am prepared to go forward with the
4 offer of proof, your Honor.

5 THE COURT: I thought --

6 MR. McCARTHY: We have gotten nothing from Mr.
7 Stavis. We've gotten nothing from any of his co-counsel.
8 We are in exactly the same position we complained about late
9 yesterday afternoon.

10 Also, your Honor, just to the extent it makes a
11 difference, I really don't think this is the best way to
12 proceed. I mean, I think that they should file something in
13 writing which gives everybody open eyes about --

14 THE COURT: I thought that when we broke
15 yesterday and I said that I expected people to comply with
16 the rules that that was what was going to happen. You're
17 nodding, but it hasn't happened.

18 MR. STAVIS: No, I was under the impression, and
19 so were all my co-counsel, and we discussed this, we were
20 prepared to make a proffer this afternoon.

21 THE COURT: You were just going to stand up and
22 orate?

23 MR. STAVIS: I have a very detailed proffer and
24 so do my co-counsel.

25 THE COURT: Why didn't you put it in a letter and

1 give it to the government.

2 MR. STAVIS: I wasn't under the impression, and
3 neither was any of my co-counsel -- I thought that was the
4 reason why we were not taking testimony. Perhaps there was
5 a miscommunication.

6 THE COURT: It was to deal with what had to be
7 dealt with because there was a representation to me that we
8 couldn't finish in the morning. What you are telling me now
9 is that under the well-known law of physics, work expands to
10 meet available time, and since you've got the available
11 time, you are just going to stand here and talk.

12 MR. STAVIS: I am not telling you that, your
13 Honor. I am telling you that when I stood up before this
14 court yesterday, it was my intention intention to make a
15 full proffer before the court today, and every one of my
16 colleagues thought the same thing. If there's confusion, if
17 I'm mistaken --

18 THE COURT: There is confusion. I am going to
19 clear it up right now. You are going to make a written
20 proffer this afternoon to the government. We are going to
21 reconvene tomorrow at 9:30 and deal with the sufficiency of
22 that proffer.

23 MR. STAVIS: I didn't understand that that was
24 what your Honor's preference was. I am prepared to do it
25 now. I am here.

1 THE COURT: That is my preference.

2 MR. STAVIS: I write plenty of letters in this
3 case, as your Honor knows.

4 THE COURT: I do. That is my preference.

5 MR. STAVIS: If your Honor wishes, I am happy to
6 write another one, but I'm also happy to make a presentation
7 and so is each and every person at this table.

8 THE COURT: That's good. Do it on your time, not
9 on mine. The second item was the request -- I am sorry.
10 You want to be heard?

11 MR. LAVINE: Judge, would you consider giving us
12 a short recess this afternoon to have maybe ten or fifteen
13 minutes to speak with the prosecutors with respect to this
14 issue?

15 THE COURT: Sure. If you can work it out, you
16 can work it out. I am not going to sit here and listen to
17 people orate.

18 The second item on the list was the request about
19 agent discovery. Is that what Mr. Jacobs was talking about?
20 Does anybody know?

21 MR. MCCARTHY: It's different agent discovery. I
22 have gotten a letter that assumes that 3500 applies to
23 witnesses that aren't called for the government. That's not
24 our position. It is not a question -- I guess the court
25 hasn't been asked to resolve this, but Mr. Patel wrote me a

1 letter asking for the type of discovery we would have to
2 turn over if we were were the ones calling the agents that
3 he wants to call. I declined to comply with that. Unless
4 your Honor gives a different direction, it is not our
5 intention to supply any discovery.

6 MR. JACOBS: It is not 3500.

7 THE COURT: Well, Mr. Patel, since you are the
8 author of the letter?

9 MR. PATEL: Can I have a moment with counsel,
10 your Honor.

11 MR. MCCARTHY: Your Honor, just to be clear, I
12 was not addressing myself to Mr. Jacobs' subpoena issue. I
13 was addressing myself simply to --

14 THE COURT: I understand.

15 MR. MCCARTHY: OK.

16 MR. JACOBS: Your Honor, I don't mean to quarrel
17 with the court, the first witness on the witness list is
18 Ramzi Yousef. The agents are not the first witnesses on the
19 list. Just so we are clear --

20 THE COURT: OK.

21 MR. JACOBS: -- as far as the position of the
22 defense is concerned, along with Ramzi Yousef comes
23 documents that we have not gotten.

24 Now, I understand Yousef may take the fifth; he
25 may not take the fifth. I guess that will get resolved when

1 it does. But along with that follows, then, the question of
2 804(b)(3) and whether at the time that Ramzi Yousef, if he
3 takes the fifth, if your Honor upholds it, if your Honor
4 declines then to allow statements as a declaration against
5 penal interest, are we going to then put in documents
6 concerning Yousef?

7 So to the extent that Mr. Stavis's letter
8 addresses the Nancy Floyds and the Anticevs, that's one
9 thing. But Ramzi Yousef, I call it World Trade Center
10 jihad, is the first witness on the list. The government has
11 not complied with our subpoenas or with the document
12 requests. I thank your Honor for ordering the government to
13 produce it for your Honor to look at, but we still haven't
14 gotten the documents yet.

15 THE COURT: Wait a second. I haven't directed
16 them to produce to me --

17 MR. JACOBS: Maybe I'm wrong.

18 THE COURT: Anything that you haven't by now
19 seen -- in fact, you are in the process of, when Mr. Serra
20 finishes his wizardry, of seeing more than I've seen.

21 MR. JACOBS: The question I have, your Honor, is,
22 our subpoena calls for a great deal of documents. I don't
23 know whether, and I go back to my famous document,
24 Liberation Army Fifth Battalion, I don't know if this is in
25 the computer or not in the computer, but with respect to

1 Ramzi Yousef I would like to see this document that was
2 recovered.

3 I assume, if it's in the computer, at some point
4 we'll find out about it. But as far as what he we'd like to
5 do first, we'd like to go forward with these documents first
6 before we get involved with the Nancy Floyds and the
7 Anticevs. That is why Mr. Stavis indicated who the first
8 witness in the case was.

9 I don't think we should be, with all due respect
10 to the government, go under their schedule and what they
11 want to do. I asked for this in February. I am not coming
12 here the night before we start our case and saying, "Give me
13 the Fifth Battalion Liberation Army document. I don't want
14 it in the middle of my case. I would like it now.

15 THE COURT: Mr. Jacobs, thank you.

16 MR. FITZGERALD: May I suggest that during the 15
17 minutes we break I speak to Mr. Jacobs about a conversation
18 I started to have with Mr. Serra before we got here, and if
19 there is something to resolve, we resolve it.

20 THE COURT: Which computer are you talking about?
21 Are you talking about Yousef's computer?

22 MR. JACOBS: Let me see if I can explain.

23 THE COURT: Or are you talking about Ayyad's
24 computer?

25 MR. JACOBS: The government entered into evidence

1 from Ayyad's computer the Fifth Battalion document,
2 Government Exhibit 78A, etc., etc.

3 THE COURT: All right.

4 MR. JACOBS: They also entered into evidence with
5 fingerprints 196. We hear from the Yousef indictment, which
6 is filed publicly before Judge Duffy, that there is another
7 Fifth Battalion document.

8 I don't mean it disrespectfully, but the
9 government continues to stonewall me on that document. I
10 have asked for it since February. I ask for it now.

11 I would like to start our case with Yousef with
12 the document and have a chance to take a look at it.
13 Perhaps some day the government will get around to deciding
14 when and if they are going to show it to us.

15 THE COURT: I am starting to understand your
16 point.

17 MR. FITZGERALD: I told Mr. Serra, but I didn't
18 get a chance to talk to Mr. Jacobs, that he would be getting
19 that I believe later today. So if we could talk for 15
20 minutes, we can resolve this.

21 MS. AMSTERDAM: One additional matter with regard
22 to the subpoena. I note that Mr. Serra is in possession of
23 the hard drive.

24 THE COURT: He is not. He is in possession of a
25 tape of the hard drive.

1 MS. AMSTERDAM: Thank you, your Honor.

2 THE COURT: I do not know the resolution of the
3 issue of Ramzi Yousef's address book, which is part of the
4 17(c) subpoena and part of the argument that the Ayyad,
5 Salameh, the other address books went in, and they didn't
6 ask for that book.

7 MR. FITZGERALD: Your Honor, the government's
8 position on the address book is that they are not entitled
9 to discovery of it. I will stipulate that none of the phone
10 numbers of any of the defendants nor of any of the four
11 defendants before Judge Duffy or in the phone book. I think
12 a Rule 17(c) subpoena is directed to relevant admissible
13 documents, and I don't think they are. They are two years
14 after the fact.

15 THE COURT: This was an address book seized when
16 he was arrested over on the other side?

17 MR. FITZGERALD: In Karachi in 1995.

18 THE COURT: OK.

19 MS. AMSTERDAM: Your Honor, Mr. Alvarez had an
20 address book seized from him that had numbers in it from
21 1991. I don't know that just because it was seized in 1995
22 it doesn't pertain to events two years earlier.

23 THE COURT: Ms. Amsterdam, it would be remarkable
24 and probative if the address book contained numbers of
25 people who are on trial here. It is unremarkable and not

1 probative if it doesn't.

2 MS. AMSTERDAM: Your Honor, with all due respect,
3 the subpoena goes to relevant admissible evidence. It is my
4 position, I have given the government a subpoena, it is not
5 up to them to decide if it's relevant or admissible. They
6 comply with the subpoena, if I can't get it in under an
7 evidentiary analysis, that's the court's role in this. It
8 is not Mr. Fitzgerald's role in this to tell me that it is
9 not relevant or admissible. It is the court's role to
10 decide that.

11 I've given a subpoena to the government. I want
12 the documents. If your Honor says I can't use them, I will
13 abide by the ruling. I don't think that they can take the
14 position of not turning them over.

15 MR. JACOBS: Your Honor, the government --

16 THE COURT: Take your seat.

17 Show them the the address book.

18 MR. FITZGERALD: Just so we are clear, I am not
19 rearguing, is it under the terms of the prior order?

20 THE COURT: It is under the terms of the prior
21 order.

22 MR. PATEL: Your Honor?

23 THE COURT: Yes.

24 MR. PATEL: To get back to about 10 minutes ago,
25 I wrote a letter to Mr. McCarthy sometime ago requesting

1 essentially a laundry list of materials. Quite candidly, it
2 was sort of under the second rule of litigation, which is,
3 if I don't ask for it, they can't say yes, with one
4 exception, and the exception was -- and I would ask your
5 Honor to correct me if I'm wrong because I think there's
6 been some previous litigation about this one item -- and
7 that is the agents' disciplinary files. I was under the
8 impression they had been subpoenaed by other counsel and
9 given to your Honor for review.

10 THE COURT: Right. And there was an issue --

11 MR. JACOBS: I think we had some matters on that.

12 MS. AMSTERDAM: Mr. Jacobs and I saw your Honor,
13 I believe, on the record but in the robing room on the
14 issue. At the time your Honor said that our request was
15 untimely.

16 MR. JACOBS: It was the wrong witness. Your
17 Honor had reviewed certain FBI material concerning Salem.
18 We had asked for the any misconduct of the agents concerning
19 Salem and the investigation. Your Honor reviewed certain
20 material and you indicated that your Honor believed that it
21 was not the appropriate witness to turn over that material
22 and declined at that time to turn it over to us, but that
23 your Honor had conducted some review and had marked
24 something, and obviously we weren't told what it was or
25 anything, and had said you'll deal with it at a later time.

1 I guess is now is the later time that we're
2 dealing with it. I may be reading your Honor, but I think
3 what your Honor was saying was subpoena witnesses that are
4 appropriate to be called, and you request the material, and
5 I will review it again, something along that line.

6 MS. AMSTERDAM: That is what I recall, your
7 Honor.

8 MR. STAVIS: Assuming that we can make an
9 appropriate proffer to your Honor --

10 THE COURT: Right.

11 MR. STAVIS: -- the disciplinary file for an
12 agent that we've satisfied our proffer obligation
13 concerning, would be relevant as to --

14 THE COURT: It might or it might not. It depends
15 on what it is you want to examine him about.

16 (Continued on next page)

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1 THE COURT: I think I remember. I don't want to
2 go by memory.

3 MR. McCARTHY: Your Honor did direct me, after
4 looking at, I think, Agent Floyd and Agent Napoli's file,
5 did direct me to --

6 THE COURT: Floyd and Anticev. Napoli?

7 MR. McCARTHY: Both.

8 THE COURT: You said Napoli.

9 MR. McCARTHY: I apologize. Anticev and Floyd.
10 After looking at the files, you did direct me to turn over
11 either one or two items from Agent Floyd's file -- one I
12 remember --

13 THE COURT: That had to do with the card case or
14 something, didn't it?

15 MR. McCARTHY: Yes.

16 THE COURT: If you can get whoever it is from the
17 Bureau to deliver that to me again to look at, would you?

18 MR. McCARTHY: If I may, could I get an
19 understanding of what the authority is for turning this
20 over? Obviously, I will turn it over to the Court. If your
21 Honor directs me to turn it over, I will turn it over. But
22 I would like to know what the authority is for the
23 proposition that by calling government witnesses they are
24 entitled to look at their personnel files.

25 THE COURT: I haven't ordered that they be turned

1 over. I simply asked to look at them again.

2 MR. McCARTHY: I will turn them over to the
3 Court.

4 MR. JACOBS: Your Honor, concerning our
5 obligations under the CFR and what we have to do or not have
6 to do, and acknowledging the fact that before a government
7 agent testifies that there is some obligation of the public
8 defense counsel, I am not clear whether the proffer has to
9 cover every conceivable subject that might be involved in
10 the examination. I mean, I will be perfectly candid: I
11 have talked to the government about the fact that they want
12 to question the agents about taping, whether they taped it
13 or they didn't tape, whether they wear tapes, are there
14 missing tapes. It is a subject that is rather public and
15 there has been no real disagreement between the government
16 and defense counsel that that is an area that is going to be
17 covered. Assuming that that is a proper area of inquiry of
18 the various agents involved in the case, and we simply state
19 that, knowing the subjects to cover, taping, and etc. etc.,
20 based upon the testimony in the record, do we have an
21 obligation under the CFR, or I am not clear whether we then
22 have to explore every conceivable area that we might ask.
23 If we make the initial showing -- for example, taping, which
24 I think is a relatively simple area to solve under the CFR,
25 are there missing tapes, and I think we have a right to ask

1 Anticev and Floyd and the other agents, are there missing
2 tapes based upon what we have established so far, or, for
3 example, that evidence has been destroyed based upon some of
4 the bootleg tapes that are in evidence. I think we have a
5 good-faith basis to ask the agents those kind of questions.
6 Now, assuming we establish that relatively quickly, I think
7 that is what Mr. Stavis meant on some levels some of these
8 things can be done. We have to make a more detailed
9 proffer.

10 MR. STAVIS: Your Honor, I was prepared -- and if
11 there was a misunderstanding I will put my proffer in a
12 letter, I was prepared to make a detailed proffer to your
13 Honor on several different subject areas, and I understood
14 that --

15 THE COURT: The proffer is not to me, at least in
16 the first instance, it is to them, to resolve any disputes.
17 If you have a copy of the section handy -- mine is
18 upstairs -- I would appreciate it.

19 MR. STAVIS: I have it here, your Honor.

20 THE COURT: Thank you.

21 THE COURT: Why don't I give you the 15 or 20
22 minutes that you wanted to do what you have to do, and maybe
23 you can all figure out what you want to do.

24 Are you also going to talk about stipulations, or
25 has that already been discussed? That was next on your

1 list.

2 MR. STAVIS: I think what has happened, your
3 Honor, is that the proffer, however it is to be made -- and
4 I understand it is to be made to the government in
5 writing -- has sort of held up the matters somewhat. I
6 think that if the proffer issue, to the extent it is an
7 issue, is resolved, I think that the other matters, about
8 which I haven't had an opportunity to speak to the
9 government -- and the government always says, well, give me
10 a proffer and we will deal with something else -- I think
11 that those should be rather easy to deal with.

12 The only reason that I raise the question of
13 stipulations is because some of the custodians of documents,
14 for example of military service records, are in Kansas City,
15 and as a logistical matter I might have to bring them in,
16 depending upon what the government's position is. But I
17 think once the proffer process, or whatever, satisfies the
18 government under the CFR, I think that we should be able to
19 deal with that.

20 Also, we have an agreement in principle regarding
21 a stipulation on the Classified Information Procedures Act,
22 but a final copy has not been executed. I think that is
23 another thing that we could get out of the way.

24 One of the other agenda items was the government
25 production of witnesses, assuming an appropriate proffer.

1 The government has previously indicate that they would
2 produce FBI agents, and I previously made known to the
3 government my preference in which government agents should
4 come first and the logistics of that obviously can await --

5 THE COURT: It is not a matter of preference.
6 You decide the order; they produce them in that order. But
7 everybody questions an agent once that agent gets produced.

8 MR. STAVIS: That's correct. We had all agreed
9 and co-counsel had met on this issue. The agents that I
10 will call on my direct case will be called once, and
11 everyone can take their shot, as it were.

12 THE COURT: But the shot is going to be described
13 in the proffer.

14 MR. STAVIS: That is our understanding, your
15 Honor.

16 THE COURT: All the shots.

17 MR. STAVIS: That's correct.

18 THE COURT: Good. Why don't I give you, what, a
19 half hour?

20 MR. PATEL: It ought to be enough time.

21 THE COURT: Do you think so?

22 MR. PATEL: I think it really should be done
23 rather quickly.

24 THE COURT: I will give you a half hour. I will
25 be upstairs. Call me.

1 (Recess)

2 (In the robing room)

3 MR. JACOBS: Your Honor, I guess what we have
4 resolved and not resolved is that we will all submit a
5 letter to the government relevant to the CFR on why we are
6 calling agents. We will get them to the government tonight.
7 I guess we will get them to your Honor first thing in the
8 morning. Maybe we can fax them in tonight.

9 MR. STAVIS: I don't know who that person would
10 be.

11 THE COURT: That is not the problem. The problem
12 is fax. I don't do incoming fax.

13 MR. JACOBS: If you want it hand-delivered
14 tonight, Judge, we will make every effort to do it tonight.
15 We will get the letters in tonight.

16 MR. STAVIS: It is my understanding that
17 Mr. McCarthy is not insisting upon the compliance with the
18 Code of Federal Regulations inasmuch as the Code of Federal
19 Regulations requires an affidavit, but that he will accept a
20 letter proffering the facts concerning each agent.

21 THE COURT: An affidavit or a statement.

22 MS. STEWART: I also will have to tell
23 Mr. McCarthy -- and I say it now -- that for myself I will
24 give as much of a proffer as I am able to give at this time.
25 I cannot say that I have finished the work on this, and that

1 it may be subject to ongoing proffering, which may be the
2 subject of further saying you can't ask that question. But
3 we had about 3,000 documents in Danish, which we -- not that
4 many, but a lot of them -- and we have been working very
5 steadily is all I can say.

6 MS. AMSTERDAM: I think specifically --

7 THE COURT: This is not unexpected, this being
8 the onset of defense case. I really don't want to hear any
9 more about how this is all happening at the last minute.
10 Their case ended like a Beethoven symphony. You got plenty
11 of warning.

12 MS. STEWART: Yes, Judge, but we also got
13 a 29-page single-space Danish document that had to be
14 translated and had to be gone over with the client. That
15 was not the Beethoven symphony. That was sort of a little
16 Shostakovich thrown in there at the end.

17 At any rate, not to harp on it, we will do the
18 best we can, and whatever will be the outcome will be the
19 outcome.

20 MR. WASSERMAN: Judge, can I just inquire as to
21 the extent the proffer might have to cover everything that
22 might possibly be asked of the agent? I don't conceive of
23 how that can be done, even if one were to try to write out
24 all the questions one would think of asking, which I don't
25 think is required. If I may, is the test to see whether or

1 not you are asking for the agent properly, which means that
2 he has a relevance to this trial, so that you are not
3 wasting the government's time? If that is the test --

4 THE COURT: Among other things.

5 MR. WASSERMAN: If you can elucidate, it might
6 help in terms of what we have to do.

7 MR. McCARTHY: Can I briefly say one thing on
8 that?

9 THE COURT: Sure.

10 MR. McCARTHY: Mr. Wasserman asked me a similar
11 question, and I declined to answer that because I don't
12 think it is wisely answered in the abstract. There is a
13 statute, and we all have to deal with it. We are not going
14 to unreasonably try to stop people from putting their
15 defenses in. That isn't what this is about at all. But I
16 think that, given the plain terms of the statute, in the
17 abstract, it is not going to help either the Court or the
18 government to subjectively define the generality of
19 compliance.

20 THE COURT: I wasn't about to respond with any
21 kind of abstract discourse, only with a bit of advice, which
22 is: Don't play games.

23 MR. WASSERMAN: If I may, Judge, the proffer can
24 be made to the government. I guess we can amend or add to
25 the proffer if necessary.

1 MR. JACOBS: Just so we can clarify what this is
2 about: The CFR is there so that the Department of Justice
3 can make certain objections to having witnesses testify for
4 various privileges and things like that. It is there for
5 Assistant U.S. Attorneys, as I well know, when they get
6 subpoenaed as a witness at a trial. It is for Washington to
7 oversee as to procedures. The question of compliance with
8 the CFR is one for the Justice Department to make.

9 It is a different issue as to whether a witness
10 is a valid witness, which is a 401 objection. That is for
11 the judge to rule. The question of CFR is so that the
12 Department of Justice can make certain initial
13 determinations as to whether they are going to produce a
14 witness. It has nothing to do with whether the Court
15 permits a witness to testify and as to what matters. That
16 is within this Court's prerogative, as any witness, as far
17 as I understand.

18 THE COURT: Correct. Although -- I am sorry,
19 yes?

20 MR. MCCARTHY: All I would say is that those
21 decisions are informed by the question whether what is being
22 sought is relevant or is not relevant in the case. So I
23 don't think that it is so easily divorced.

24 THE COURT: It is not easily divorced, number
25 one. Number two, I don't want to have a situation where you

1 say we have complied with the purpose of the regulation from
2 the standpoint of the Justice Department, and then call a
3 witness and have a series of objections sustained, and then
4 we go to the sidebar and start to haggle about it.

5 MR. JACOBS: Your Honor, most of us have tried
6 enough cases and I think all defense lawyers know what our
7 issues are. Your Honor has tried enough cases that, you
8 know, all of us feel comfortable enough that we can move
9 this procedure along. These people aren't being called in
10 the abstract. They are not being called to be questioned on
11 drug cases they did ten years ago. They are being called on
12 their conduct relevant to the investigation in this case.
13 The proffers will be detailed enough for the government to
14 respond appropriately and for your Honor to make rulings.

15 THE COURT: Talking in the abstract about
16 proffers is a waste of time.

17 MR. JACOBS: We know we have to comply, and then
18 the government will make their objections to the Court.

19 THE COURT: And we will do that tomorrow. Yes?

20 MR. STAVIS: There is some unfinished business
21 with regard to Mr. Yousef.

22 THE COURT: Correct.

23 MR. STAVIS: I do have a subpoena for him.

24 THE COURT: Is Mr. Kulcsar done with him?

25 We will get him in here and find out what his

1 view is.

2 MR. STAVIS: Perhaps that is something we can
3 take care of today if Mr. Yousef intends to assert is Fifth
4 Amendment privilege.

5 MR. JACOBS: On a personal matter, I have a
6 rather important sentence before Judge Patterson tomorrow
7 with witnesses who are scheduled, some doctors and some
8 people. It is at 9:30. Obviously I didn't know and I don't
9 think Judge Patterson knew, we anticipated doing it tomorrow
10 morning.

11 THE COURT: I didn't know it until it happened
12 either.

13 MR. JACOBS: I know. Your Honor just scheduled
14 this tomorrow morning.

15 MR. NOOTER: I do have a conflict as well.

16 MR. JACOBS: This was scheduled before Judge
17 Patterson. I didn't know we would be working tomorrow.
18 Maybe we can do it at 12. It is not going to be a real long
19 hearing. It is one doctor, and two or three witnesses and
20 an agent. But I know he has it scheduled at 9:30 on a
21 sentence. I don't know what your Honor wants to do.

22 MR. BERNSTEIN: Judge, if you are taking up
23 conflicts, I have a matter before Judge Weinstein. It is
24 his last day before he goes on a fairly extended vacation.
25 It is a sentence that has been held in abeyance up until

1 this last day. But if the Court has to proceed tomorrow on
2 legal matters, other counsel can stand in for me. I will
3 get back later in the session. I just didn't want to absent
4 myself under those circumstances.

5 MS. STEWART: You could do it at 11.

6 THE COURT: You suggest 11. What about 11?

7 MR. JACOBS: Fine. Judge Patterson is usually
8 prompt and ready to go. I will do everything I can, Judge.

9 MR. NOOTER: 11 would be good for me.

10 THE COURT: Let's try for 11.

11 MR. MCCARTHY: Your Honor, may I put --

12 THE COURT: I think I would rather do it at 12
13 than 11.

14 MR. JACOBS: I am in favor of 12, too.

15 MS. AMSTERDAM: 12 works for me.

16 THE COURT: 12.

17 MR. JACOBS: If this is going to be legal
18 argument, does anybody need the defendant tomorrow for these
19 conferences?

20 THE COURT: I don't.

21 MS. AMSTERDAM: We can't have them at 12 because
22 of the prayer situation.

23 MR. JACOBS: We will waive them.

24 THE COURT: It is not a question of waiving. It
25 is a legal issue.

1 MS. STEWART: Exactly.

2 MR. PATEL: Your Honor, I have a prior
3 commitment. I won't be available. Obviously, this is more
4 Mr. Stavis's boat than mine.

5 THE COURT: Right. I will miss you.

6 MR. PATEL: Thank you.

7 MR. JACOBS: Does your Honor want this letter
8 hand-delivered tonight?

9 THE COURT: If you can.

10 MR. MCCARTHY: I would just like to put two items
11 on the agenda for tomorrow, which are: If we may, we would
12 like to argue the admissibility of the testimony of Senator
13 D'Amato and the Attorney General.

14 MS. STEWART: You know, I am moving, and I had a
15 wedding last Friday. My office is in boxes.

16 THE COURT: That is going to be --

17 MS. STEWART: He is not scheduled to come for
18 another week, if we could maybe just put it off. I only
19 think you don't have any standing to argue on his behalf.

20 MR. MCCARTHY: What I have gotten, Ms. Stewart,
21 is inquiries about their expected date of testimony, since
22 the logistics of their schedules have to come into play too.
23 My only concern is that. It is not a question of trying to
24 put you in --

25 MS. STEWART: I think Mr. Stavis has told us it

1 is at least a week, week and a half.

2 THE COURT: I suspect that will be a very short
3 argument.

4 MS. STEWART: I am not so sure, Judge.

5 MS. AMSTERDAM: Did your Honor, while we are
6 waiting, receive my letter regarding the Siddig Ali and the
7 806 matters. It came in yesterday or the day before.

8 Oh, that is it.

9 I am several weeks away in terms of my case and I
10 am not advocating that we spend the Friday before the Fourth
11 of July weekend here endlessly, but at some point in the
12 next week or two, or whenever it is convenient to the Court,
13 I would like to address those issues.

14 MR. MCCARTHY: Your Honor, I am drafting a
15 response to that, which I think I will have on Monday or
16 Wednesday.

17 MS. AMSTERDAM: Fine. I didn't know. Sorry.

18 MS. STEWART: We did make it clear that the order
19 was Mr. Stavis, Mr. Ricco, and then I would be the third
20 person.

21 THE COURT: Do we know any more than that?

22 MS. STEWART: No, I am just saying, I thought
23 maybe we had not cleared it with Mr. Stavis.

24 MR. WASSERMAN: As far as I know, I am after Ms.
25 Stewart.

1 THE COURT: Yes. Clean-up.

2 MR. WASSERMAN: As it were.

3 THE COURT: As it were.

4 MS. STEWART: Only if one of us gets on base.

5 MR. STAVIS: After that, it was order of the
6 indictment, your Honor.

7 THE COURT: After that, it was order of the
8 indictment. All right.

9 Mr. Kulcsar, you have the floor.

10 MR. KULCSAR: Mr. Yousef stated that he wishes to
11 assert his Fifth Amendment privilege and wishes to do that
12 without having to come to open court.

13 MR. STAVIS: I would insist that he do that on
14 the witness stand in open court outside the presence of the
15 jury, your Honor.

16 MS. AMSTERDAM: I would join that.

17 THE COURT: I don't think we have any choice, in
18 that event. It is not going to be long or tedious or
19 unpleasant, but it will require stepping into the courtroom.

20 MR. KULCSAR: Other than stepping into the
21 courtroom, what procedure do you want to follow? Do you
22 want him to assert it himself?

23 THE COURT: Yes.

24 MR. KULCSAR: Can I assert it on his behalf and
25 have him affirm that?

1 MS. AMSTERDAM: I think we would want him to
2 assert it himself.

3 THE COURT: The question is not "wants" but
4 requirements. I think he has to indicate in some form that
5 is his choice.

6 MR. KULCSAR: I understand that, of course.

7 MR. STAVIS: I think the usual way this is
8 done -- and I have done it outside of grand juries -- is
9 that he consults with Mr. Kulcsar after each question and
10 Mr. Kulcsar would then advise him and then he would have an
11 interpreter there and he should respond to the question with
12 the advice of counsel.

13 THE COURT: I have seen people hold small sheets
14 of paper, usually handwritten, in my experience, that say.
15 something like: On advice of counsel, I refuse to answer,
16 either on the grounds of the Fifth Amendment or on the
17 grounds that the answer would tend to incriminate me, or
18 some other signal. I don't think there is magical language.

19 MR. JACOBS: Or "I haven't paid my lawyer."

20 MR. KULCSAR: Are you going to require that he be
21 sworn?

22 THE COURT: Yes. He can affirm. He can affirm
23 under penalty of perjury, and then simply assert the right.

24 MR. STAVIS: And we will apply for an immunity
25 order.

1 THE COURT: There are three showings you have to
2 make. (laughter)

3 MR. KULCSAR: I think the problem will start when
4 you ask him to take the stand and state his name.

5 THE COURT: That is fine. He doesn't have to
6 state his name before he is sworn. That is a mere
7 procedural formality.

8 MR. STAVIS: The first question is, "What is your
9 name?" If he asserts his Fifth Amendment privilege, then he
10 asserts the Fifth Amendment privilege.

11 THE COURT: I don't want to go through some long,
12 tedious ordeal. If he asserts the Fifth Amendment as to
13 that, I would hope he could be asked if he would continue to
14 assert it as to other matters relating to this case and be
15 done with it.

16 MR. JACOBS: A couple of questions, Judge. We
17 are not going to drag it out.

18 THE COURT: Please. Can you talk to him so that
19 he understands what we are going to do?

20 MR. KULCSAR: I would like to have a sense of
21 what the couple of other questions are so if there is an
22 argument addressed to those particular questions I can do it
23 now rather than in the court.

24 MR. STAVIS: 1. What is your name? 2. Have you
25 ever met El Sayyid Nosair? And that will probably be it.

1 MR. KULCSAR: All right, fine.

2 MR. BERNSTEIN: Are we doing that tomorrow
3 morning?

4 THE COURT: No, right now.

5 MR. KULCSAR: Can I have a few minutes with him?

6 THE COURT: Yes.

7 MR. JACOBS: Your Honor, may we have a few
8 minutes with the defendant?

9 THE COURT: Yes.

10 (Recess)

11 (In open court)

12 THE COURT: I gather Mr. Kulcsar has conferred
13 with his client and he is ready to proceed.

14 MR. STAVIS: Is the witness being produced, your
15 Honor?

16 THE COURT: Yes.

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18 (continued on next page)

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1 RAMZI YOUSEF,
2 called as a witness by the Defendants,
3 having been affirmed, testified through
4 an Arabic interpreter as follows:

5 MR. STAVIS: Your Honor, as our first defense
6 witness, the defense calls Ramzi Yousef to the witness
7 stand. May I inquire?

8 THE COURT: You may.

9 MS. AMSTERDAM: Your Honor, we can't hear the
10 witness or the interpreter.

11 THE COURT: All right. If you can provide a
12 microphone and if the witness could lean forward a little
13 bit. Good. OK.

14 THE COURT: Mr. Stavis?

15 MR. STAVIS: Yes.

16 DIRECT EXAMINATION

17 BY MR. STAVIS:

18 Q My name is Roger Stavis. We met a short while
19 ago, and I had subpoenaed you as a defense witness in this
20 case.

21 Do you understand that you have been called to
22 answer questions on behalf of the defense concerning the
23 bombing of the World Trade Center?

24 A Yes.

25 Q Are you prepared to answer questions concerning

1 the bombing of the World Trade Center?

2 A I will exercise my right, my constitutional
3 right, pursuant to the Fifth Amendment of the Constitution,
4 not to testify.

5 Q Is it your intention to assert the fifth, your
6 Fifth Amendment privilege with regard to each and every
7 question that I would pose to you concerning the bombing of
8 the World Trade Center?

9 A Yes, that pertains to all the questions.

10 MR. STAVIS: Your Honor, in view of the witness's
11 decision to assert his Fifth Amendment privilege and not to
12 answer any further questions, I can have no further
13 questions of him.

14 MS. AMSTERDAM: Your Honor, may I have one moment
15 with Mr. Stavis.

16 (Counsel conferred)

17 THE COURT: All right.

18 Thank you very much. You are excused.

19 (Witness excused)

20 MR. STAVIS: Your Honor, in view of Mr. Yousef's
21 position with regard to the assertion of the Fifth Amendment
22 privilege, I would seek under 804(b)(3) to introduce his
23 prior statements. I don't know for scheduling purposes when
24 your Honor would like to address the issue of the
25 preliminary inquiry under Rule 104.

1 THE COURT: Since we have to convene tomorrow in
2 any event, do you want to talk about it then?

3 MR. STAVIS: Yes, your Honor.

4 THE COURT: I am slightly handicapped because I
5 don't have the material with me, but I will have it then.

6 MR. STAVIS: Yes, your Honor.

7 I would just give one citation to the court.

8 THE COURT: Fine. Don't feel limited to one.

9 MR. STAVIS: I seldom feel limited, your Honor.

10 U.S. v. McDonald, 688 F.2d 224, concerning an
11 evidentiary hearing with testimonial evidence on the
12 admissibility of the statement under 804(b)(3). It would be
13 my position, and I would be prepared to argue tomorrow that
14 we should be entitled to an evidentiary hearing concerning
15 the reliability and circumstances of Mr. Yousef's
16 statements.

17 THE COURT: Well, the first thing to consider is
18 the statement itself, no?

19 MR. STAVIS: Excuse me, your Honor?

20 THE COURT: I said the first thing to consider is
21 the statement itself, correct?

22 MR. STAVIS: Yes, your Honor.

23 THE COURT: OK.

24 MR. FITZGERALD: Judge, we would actually, in the
25 interest of giving you the cites in advance, cite one case,

1 U.S. v. Bahadar.

2 THE COURT: I have that one.

3 MR. FITZGERALD: OK. Thanks.

4 THE COURT: I was prepared with that on another
5 issue.

6 MS. AMSTERDAM: Your Honor?

7 THE COURT: Yes. You're right. It does speak to
8 this.

9 Go ahead.

10 MS. AMSTERDAM: Before we start talking about the
11 statement, singular, I would point out to the court that
12 there are three separate statements, each of which I believe
13 has to be analyzed separately, and then there are statements
14 within the statements, some of which may be admissible under
15 evidentiary rules, and others of which may not be. So I
16 think that we cannot simply with a broad brush address
17 everything Mr. Yousef has said, you know, as one single
18 statement. I just want to alert the court to the discussion
19 tomorrow.

20 THE COURT: I haven't committed this stuff to
21 memory. There are separate statements. However, there are
22 some matters that bear on all of them.

23 MR. STAVIS: Yes. Your Honor under.

24 MS. AMSTERDAM: Your Honor --

25 MR. STAVIS: Excuse me.

1 MS. AMSTERDAM: Excuse me, your Honor.

2 MR. RICCO: Wait a second.

3 THE COURT: Gentlemen.

4 MR. RICCO: Judge, one point I wanted to raise.

5 I don't want us to be in a position -- we were in court
6 today with the proffers. A lot of us have not had the
7 opportunity to go through the statements at Roger's office
8 in the kind of detail that's needed under Salvador to make
9 the argument, so many of us are prepared to at least talk
10 about it tomorrow. There is no urgency for us to decide
11 this issue today or tomorrow.

12 THE COURT: Hold it. I was told by -- and I
13 don't know whether the things have now changed -- but Mr.
14 Jacobs was rather adamantly, or at least looked adamant from
15 here, taking a position that the first witness was going to
16 be Mr. Yousef.

17 Mr. Yousef having made himself unavailable, the
18 question then becomes whether the first order of business is
19 the statements. If what you're telling me is it isn't, and
20 it sounds like that is what you are telling me, then I want
21 to make sure everybody agrees on that.

22 MR. RICCO: What I am saying to the court is I
23 don't see an urgency to have to decide this issue tomorrow
24 with respect to my knowledge of Mr. Stavis's case or my
25 knowledge of my own case. So I don't want the court to be

1 under the impression that we are prepared to fully litigate
2 this issue tomorrow morning because most of us aren't.

3 MS. AMSTERDAM: I join in that, your Honor.

4 THE COURT: Mr. Stavis, is that agreeable to you
5 or not agreeable to you or what?

6 MR. STAVIS: I don't know if I am speaking for
7 everybody. Is that what my colleagues wish to do?

8 COUNSEL: Yes.

9 MR. STAVIS: I see heads nodding. I defer to
10 them, your Honor. I also apologize to Mr. Ricco. I hadn't
11 realized that he was standing at that time.

12 MR. RICCO: Don't worry about it.

13 MR. STAVIS: The other cite is Williamson v. U.S.,
14 114 -- I have it in the West edition, 114 S.Ct. 2431.

15 THE COURT: I am glad that is the edition you
16 have, because that is the only one I get, given the new
17 budget constraints.

18 MR. STAVIS: That I believe requires according,
19 to what Ms. Amsterdam was saying, a detailed analysis of the
20 portions of the statement, some of which may be reliable,
21 some of which your Honor may within your discretion find to
22 be unreliable. But it requires a somewhat detailed
23 analysis.

24 THE COURT: Well, fine.

25 Yes?

1 MR. FITZGERALD: If I could just state the
2 position so no one is surprised by it later, the government
3 reads Bahadar to require both a showing of the declarant's
4 trustworthiness and then the statement's trustworthiness, a
5 particular statement. So I don't know that we need the
6 detailed analysis. We can argue it later. I just don't
7 want anyone to be surprised by the government's position.

8 MR. STAVIS: The declarants in this case, your
9 Honor, are agents of the Federal Bureau of Investigation. I
10 don't know that Mr. Fitzgerald wants to be in a position for
11 challenging their credibility.

12 THE COURT: I don't think that's what he had in
13 mind. Are we going to talk further about this tomorrow or
14 not?

15 MR. STAVIS: Yes, your Honor.

16 MR. JACOBS: Just so we are clear, part of the
17 problem in even getting to this issue is we're still trying
18 to look through the documents that were seized. So there
19 may be things in those documents that might shed light on
20 the issues of trustworthiness. We will deal with that
21 tomorrow, your Honor.

22 THE COURT: While you are considering the issues
23 of trustworthiness, I would urge you consider two parts of
24 that statement, one of which in essence said that he didn't
25 want to disclose how the bomb was really made because he

1 wanted others to be able to make similar bombs and to
2 disclose how it was really made might compromise their
3 ability to do so. That's one part of it.

4 And another part of it is his statement that
5 there is a person or persons still at large who he doesn't
6 want to compromise, so he doesn't want to disclose
7 information that might compromise them. Finally, the fact
8 that to the extent there were statements to agents, they
9 were accompanied by a insistence that no notes be taken, and
10 a refusal to sign off, obviously, on what it is that he had
11 said to them.

12 MR. RICCO: I think one other issue, your Honor,
13 is that ultimately if the court makes a finding that these
14 statements are not reliable, I think it puts the government
15 in a very difficult situation to introduce them in
16 subsequent cases, we believe.

17 MR. FITZGERALD: Judge, there is a difference
18 between saying someone who will inculcate himself and hold
19 back on others, that those statements shouldn't be allowed
20 in at a trial of others and saying that they're not reliable
21 to the extent he inculpates himself.

22 MS. AMSTERDAM: That's why we have to go
23 statement by statement, because clearly a statement that
24 says, "I bombed the World Trade Center," presuming that
25 those were the only six words, those meet many more

1 threshold issues than other statements. I don't want to
2 rush to judgment with all 56 pages and we deal with it in
3 one broad-brush stroke.

4 THE COURT: Understand that I don't want to lose
5 sight of the forest for the trees. This guy is a little bit
6 like Iago in the sense that he sort of tells you what he's
7 doing to you while he does it. He discloses that he's got a
8 motive to do all kinds of things and that he doesn't want to
9 be pinned down to any particular version.

10 MS. AMSTERDAM: That would be an individual
11 analysis of one portion of the statement. Certainly, "I
12 bombed the World Trade Center," in and of itself doesn't
13 seem to be replete with the kind of problems that your Honor
14 envisions. I think that almost everybody here might say
15 that his credibility as to that statement is pretty
16 unattackable.

17 THE COURT: It may be.

18 MR. JACOBS: 12 noon tomorrow?

19 THE COURT: 12 noon.

20 MR. STAVIS: As a minor matter associated with
21 this, my colleagues and I would be caucusing on this issue,
22 I have your Honor's order concerning nondisclosure, and I
23 believe the materials were --

24 THE COURT: As twice amended.

25 MR. STAVIS: Excuse me, your Honor?

1 THE COURT: As twice amended.

2 MR. STAVIS: Well, can we amend it a third time,
3 your Honor? I hope it's not three strikes and you're out.
4 I would like to be able to sit in the room, give it to my
5 co-counsel and discuss it so that we can all prepare,
6 because it's very important for all of us for the Rule 104
7 preliminary proceeding.

8 MR. FITZGERALD: Your Honor, as long as it
9 remains in Mr. Stavis's presence and no one is there but
10 counsel of record on this case, just counsel, that's fine.

11 THE COURT: OK. Just counsel.

12 MS. STEWART: It has to be in Mr. Stavis's
13 presence that we work with these? We can't take it to
14 attorney's offices and make notes --

15 THE COURT: That's right. You can't.

16 MS. STEWART: We can't? It has to be with him?

17 THE COURT: Right. Once burned, twice shy.
18 See you tomorrow.

19 (Proceedings adjourned to Friday, June 30, 1995
20 at 12:00 noon)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,

16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

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

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

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

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June 30, 1995
12:15 p.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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1 THE COURT: Why don't we just get started and
2 deal with whoever is here.

3 Did you get Mr. Stavis's letter this morning?

4 MR. McCARTHY: I did, your Honor.

5 THE COURT: Do you want to be heard?

6 MR. McCARTHY: I do.

7 THE COURT: Go ahead.

8 MR. McCARTHY: Your Honor is referring, I assume,
9 to the letter dealing with the proffer, unless there is
10 another letter that I am not aware of.

11 THE COURT: Right. That is the one.

12 MR. McCARTHY: Your Honor, I want to argue in
13 general that with respect to all of the proffers that I have
14 received from defense counsel, and they include not only the
15 one I received from Mr. Stavis, but also two I have gotten
16 from Mr. Wasserman, and one I received from Mr. Jacobs and
17 Ms. Amsterdam. I think that may cover -- no, I don't seek
18 to deal this morning with one I got from Mr. Serra, because
19 the government doesn't have any issues with respect to that
20 certainly at this time.

21 THE COURT: All right.

22 MR. NOOTER: Mr. McCarthy, what about mine?

23 MR. McCARTHY: I am also not asking at the moment
24 to deal with Mr. Nooter's. With respect to Mr. Stavis's,
25 Mr. Wasserman's and the one we see from Mr. Jacobs and Ms.

1 Amsterdam, it is the government's position that in the main
2 what is sought to be elicited on what we're told about the
3 agent portion of the defense case is inadmissible for a
4 variety of reasons.

5 Let me first address the legal context that I
6 think that this arises under, unless your Honor just wants
7 me to get on the with the individual agents.

8 THE COURT: Since I don't know what you are going
9 to say, it's hard for me to express a preference. But I had
10 thought to deal with it on an individual agent basis.

11 MR. MCCARTHY: Then I will deal with it that way,
12 and, as things come up, I will expand on them as necessary.

13 With respect to Agent Floyd, on Mr. Stavis's
14 letter which is dated June 13, 1995, he seeks to call Agent
15 Floyd for three identifiable reasons, and one last reason
16 which I would regard as a catch-all since there doesn't seem
17 to be any objective limitations to what that might hold for
18 us.

19 The first thing he wants to call her for is with
20 respect to a subject that's not at all in dispute and a
21 subject that is not only cumulative and collateral, but
22 something that he didn't examine Mr. Salem on, and, to the
23 extent examination was done on Mr. Salem, he's taken the
24 matter out of dispute. Namely, that is to lay foundation
25 for a tape which is identified as Source Tape 1-8, which the

1 government does not dispute is the first conversation
2 recorded on Salem's tapes between Salem and an agent
3 following the bombing of the World Trade Center.

4 In connection with Salem's examination on that
5 subject, which was undertaken both by Mr. Stavis and some of
6 his other counsel, or co-counsel, Salem acknowledged in his
7 testimony that, following the bombing of the World Trade
8 Center, he was afraid that the FBI would view him as a
9 suspect.

10 There are several instances where that came up
11 during the course of Salem's lengthy, lengthy
12 cross-examination, and there is no dispute about that being
13 in issue. Mr. Stavis never confronted Mr. Salem with Source
14 Tape 1-8.

15 I would suggest to your Honor that he didn't do
16 so primarily because there was no reason to do so. Salem
17 acknowledged it. There is a transcript reference in Mr.
18 Stavis's own letter where he cites a portion of the record
19 where Salem in fact acknowledged the thing that he is
20 seeking to prove by extrinsic evidence, namely, that he
21 spoke to Agent Floyd after the bombing of the World Trade
22 Center and was concerned that the FBI would consider him to
23 be a suspect.

24 In view of that, this evidence is, this offer of
25 evidence is extrinsic evidence on a subject that's not in

1 dispute. It's cumulative. I think it's in violation of
2 613(b) as well, and I think it ought not to come in.

3 With respect to the second issue, that Mr. Stavis
4 seeks to examine Agent Floyd about, that is the recovery and
5 custody of the source tapes from Salem's apartment on June
6 29, 1993, Mr. Stavis, other than saying that Agent Floyd
7 participated in the search, doesn't identify any way in
8 which this testimony is relevant at all to the issues in the
9 case.

10 Salem was cross-examined at length on this
11 subject. There is no dispute that agents went into his
12 apartment following the arrest in this case and seized
13 tapes. He testified that he did not maintain records about
14 the tapes. There is no allegation, and the record is quite
15 strong that every conversation that he may ever have taped
16 has not been recovered. There's no dispute that he taped
17 over tapes, and, indeed, I would point out to your Honor
18 that of the 80 or so tapes that were ultimately recovered
19 from Salem that have been referred to as source tapes,
20 bootleg tapes and by other names, only a handful came into
21 evidence. And there is absolutely no link between what the
22 defense -- and at this point I would link both Mr. Stavis
23 and Mr. Jacobs -- but there's no link between what it is
24 that apparently they seek to question Agent Floyd about and
25 any tape of Salem's that came into evidence and is before

1 the jury in this trial.

2 Given the exhaustive examination that has already
3 been undertaken about that subject, and the lack of dispute
4 with respect to the things that counsel want to bring to the
5 attention of the jury, this testimony sought is utterly
6 cumulative.

7 With respect to the third matter, Mr. Stavis --
8 and I should have pointed out at the beginning that Mr.
9 Stavis's letter indicates that his offer of proof is on
10 behalf of all defendants, but Mr. Stavis's letter indicates
11 that he would also have Agent Floyd testify about a July 1,
12 1992 meeting which Mr. Salem had with Agent Floyd, Agent
13 Crouthamel and Agent Dunbar as well.

14 I should point out to your Honor that, so I don't
15 overly duplicate this, the notice at page 3 and page 4 also
16 indicates that the defense seeks to examine Dunbar and
17 Crouthamel with respect to this.

18 This particular aspect of Salem's testimony was
19 the subject of a good deal of litigation and discussion both
20 before Salem got on the stand and during Salem's testimony,
21 at the conclusion of which, at least it is the government's
22 understanding, that your Honor ruled that what was relevant
23 for purposes of this trial was what Salem's state of mind
24 was with respect to what the FBI thought about his
25 credibility.

1 We regard this testimony that the defense seeks
2 to elicit, not as biased, but as in United States v.
3 Adderton, and I will give that citation to your Honor now,
4 Adderton is at 936 F.2d 728, 733, (2d.Cir. 1991)

5 This is an instance of the not-uncommon practice
6 of trying to navigate around the fact that extrinsic
7 evidence which simply goes to a witness's credibility is
8 inadmissible, that is, navigating around that rule by trying
9 to allege a bias implication in order to take advantage of
10 the cases that indicate that in the discretion of the court
11 if it is not cumulative, prejudicial, or otherwise
12 inadmissible under Rule 403, counsel may get in evidence to
13 show bias and motive, even extrinsic evidence.

14 What is sought here is plainly to get in front of
15 the jury what counsel allege to be a third fact finder, that
16 is, the FBI management's view in 1992 of Salem's
17 credibility.

18 THE COURT: Did any FBI witness testify to that
19 meeting?

20 MR. McCARTHY: No, your Honor. I do not believe
21 Agent Napoli was asked about it when he was on the stand. I
22 would have to --

23 THE COURT: Although he was in attendance,
24 correct?

25 MR. McCARTHY: Yes. Again, I would have to take

1 a look at his testimony, but I do not believe he testified
2 about that. Let me just back up to the essential point of
3 it, unless your Honor had a question. I didn't mean to cut
4 off the court.

5 THE COURT: No.

6 MR. McCARTHY: Let me try to get to the bottom
7 line of what might be derived from that kind of testimony.
8 Salem testified that in his view, the FBI, at least people
9 in the FBI regarded him with suspicion. Your Honor
10 permitted him liberally to be cross-examined with tape
11 recordings that he made in which he stated that this meeting
12 occurred, and that he believed that Carson Dunbar, who was
13 the ranking official at the meeting, regarded him with
14 suspicion.

15 In terms of relevance to this case, and relevance
16 to his credibility, the only thing that's relevant is what
17 Salem may have thought the FBI thought of him and what, if
18 any, effect that has on actions that he later took.

19 What Dunbar, Crouthamel, Floyd, Napoli and the
20 others may think or have thought --

21 THE COURT: That I know.

22 MR. McCARTHY: The final category, which I
23 referred to earlier as the catch-all, is the following: Mr.
24 Stavis's letter at page 2 states, "Salem's subsequent
25 conversations with Agents Anticev, Napoli and Floyd reveal

1 that Emad Salem was concerned that he was a suspect and
2 attempted to extricate himself and inculcate other
3 defendants by attempting to convince the agents that he had
4 previously corroborated information."

5 THE COURT: That was testified to.

6 MR. McCARTHY: It was not only testified, but
7 what I am saying is if this is a foot in the door to get in
8 testimony, it's one that is not susceptible of any objective
9 control. This is just a broad window to question about
10 every single matter that may have come up in the tapes. I
11 will move on to -- did your Honor want me to stop there and
12 let them respond or shall I continue?

13 THE COURT: I want to hear from Mr. Stavis
14 specifically on the question of what it is in either Salem's
15 account of the meeting or his account of what he thought the
16 FBI thought of him that you want to rebut by calling FBI
17 agents.

18 MR. STAVIS: Is your Honor referring specifically
19 to Agent Floyd?

20 THE COURT: I am. In fact, I'm referring
21 generally now to the subject of the July 1, '92 meeting.

22 MR. STAVIS: Yes, your Honor. At the July 1
23 meeting he was told that he had to verify the information.

24 Now, if you take the defense theory, which is
25 that Emad Salem was a suspect in the World Trade Center

1 bombing, the fact --

2 THE COURT: Whether Emad Salem was or wasn't
3 objectively a suspect is irrelevant.

4 MR. STAVIS: I agree with that, your Honor.

5 THE COURT: Emad Salem has already conceded that
6 he had reason to believe and did believe that for some
7 reason he was suspected at some point. He testified that he
8 saw the picture. He testified that they viewed him with
9 suspicion and so forth. That was gone into.

10 So the question is what it is that you want
11 agents to testify about that is different from what he has
12 already said he knew.

13 MR. STAVIS: That he was told to wear a wire to
14 corroborate the information and that he refused to do that,
15 your Honor. He was very equivocal about that on
16 cross-examination. He said he was willing to wear a wire,
17 but he was afraid of becoming a witness.

18 THE COURT: But he didn't want to testify.

19 MR. STAVIS: That is correct.

20 THE COURT: You say that he was told to wear a
21 wire "because we don't believe you"?

22 MR. STAVIS: They used the word in the 302
23 reports that you must verify your information, but the
24 argument to the jury obviously is that they did not believe
25 him, but it goes to --

1 THE COURT: No, that is not the argument to the
2 jury because I will --

3 MR. STAVIS: I was mid-sentence, your Honor.

4 THE COURT: OK.

5 MR. STAVIS: That he understood that they didn't
6 believe him.

7 THE COURT: All right.

8 MR. STAVIS: When the World Trade Center was
9 bombed, he was in a pickle, to use the vernacular, your
10 Honor. That is an argument that we wish to make to a jury.
11 Whether it is a strong argument or a weak argument, I
12 believe it is a jury argument, your Honor.

13 THE COURT: If he was equivocal on the subject of
14 why he was asked to wear a wire, then I don't see why I
15 shouldn't permit inquiry into that subject since it goes to
16 what he believed about what they thought of him. No?

17 MR. McCARTHY: My hesitancy is not your Honor's
18 proposition, it is I am trying to recapture in my mind the
19 state of the record on that particular point.

20 There is an intercepted conversation between
21 Salem and Floyd in which they discuss whether Floyd would be
22 able to get up to Attica in time to tape record a
23 conversation between Salem and Nosair in 1993. Salem tried
24 to talk Floyd into doing it. I believe he was examined
25 about that, but off the top of my head --

1 THE COURT: This is much earlier.

2 MR. McCARTHY: No, this is July '92. This is
3 precisely the period of time he is talking about.

4 MR. STAVIS: Yes, your Honor, in 1992.

5 THE COURT: All right.

6 MR. McCARTHY: There is an intercepted
7 conversation which may even be in evidence at this trial.
8 It is on Salem's tape number 6 and we, I think, put in every
9 conversation including the Floyd Salem conversation that is
10 on that particular tape. That recording is a conversation
11 between Salem and Floyd, in which, among other things that
12 are covered in that conversation, is the fact that Salem is
13 trying to get Floyd to find out if she can get up to Attica
14 and arrange for a means to tape record a conversation
15 between Salem and Floyd. That is in evidence at the trial.

16 THE COURT: You mean between --

17 MR. McCARTHY: I'm sorry. Between Salem and
18 Nosair.

19 THE COURT: Right.

20 He didn't need anybody to arrange the taping of
21 the conversations between Salem and Floyd. You already had
22 somebody.

23 MR. McCARTHY: May I have a moment?

24 THE COURT: Yes?

25 MR. STAVIS: Yes, your Honor.

1 The issue of the taping, which is an issue that I
2 would argue strongly to the jury, Salem said he wanted to
3 tape on some of his source tapes, on other source tapes he
4 said, but I don't think I can tape. When Napoli was on the
5 witness stand talking about taping and I cross-examined him,
6 he said a tape was not allowed into Attica, but Salem
7 refused -- he said Salem refused to sign the form concerning
8 taping.

9 The FBI 302 reports from late June 1992, indicate
10 that the United States Attorney's Office for the Southern
11 District of New York gave Mr. Salem permission to tape.
12 That is the state of the record, your Honor, meaning it is
13 in quite an ambiguous state. The issue of taping at Attica
14 is an important one that I need to put before the jury at
15 this trial.

16 MR. McCARTHY: Can I address that point because
17 that goes to much of the rest of what he wants to put in in
18 the defense case.

19 THE COURT: OK.

20 MR. McCARTHY: That is this: A large part of
21 what Mr. Stavis is driving at is to establish for the jury
22 that the FBI had such control over Mr. Nosair's movements
23 and his activities in Attica that, had he actually been
24 fulfilling the role that the indictment alleges he
25 fulfilled, that would have been evident to the FBI. It is

1 well settled that specific instances of innocent behavior
2 are not admissible in order to show his conformity
3 therewith. The inference that he is seeking to draw and to
4 have the jury draw is that Nosair must be innocent of the
5 charges because --

6 THE COURT: That is not the point we are talking
7 about now.

8 MR. MCCARTHY: Well, it's the point that he
9 mentioned just now. I mean, what he just said now is that,
10 the building block, this is a predicate for the part of his
11 defense which is designed to establish that the FBI in a
12 heightened fashion scrutinized Nosair's activities up at
13 Attica. That is what Mr. Stavis said a minute ago was the
14 reason that he wants to get into this subject at all.

15 THE COURT: Is that the reason?

16 MR. STAVIS: No, it's not as limited as that. I
17 was giving your Honor one example. Mr. Ricco reminds me
18 that Mr. Salem was taping defendants other than Mr. Nosair
19 early on in 1992.

20 THE COURT: But you are veering wildly off the
21 point. The point is what it is that this agent has to
22 testify to that isn't in the record already. So far the
23 answer is nothing.

24 MR. RICCO: Your Honor?

25 THE COURT: Yes.

1 MR. RICCO: On the limited issue of the wire,
2 Emad Salem's --

3 THE COURT: I'm sorry. I don't mean to be
4 obtuse, but which limited issue of the wire?

5 MR. STAVIS: The 7/1/92 wire.

6 MR. RICCO: The 7/1/92 wire.

7 Mr. Salem testified in his mind the reason for
8 wearing the wire was solely related to the fact that the
9 agents wanted him to testify. However, your Honor, he had
10 conversations that are recorded where he says it wasn't
11 about testimony, you guys didn't believe me.

12 THE COURT: OK.

13 MR. RICCO: I am trying to find that particular
14 tape.

15 THE COURT: I think you're right in my
16 recollection. No?

17 MR. MCCARTHY: I don't think so. Salem testified
18 that, in addition to wanting evidence, that they also were
19 trying to corroborate it. I mean, that's what he testified
20 to.

21 THE COURT: All right.

22 MR. RICCO: I don't think that is that is clear
23 from the testimony.

24 MR. SERRA: I have the reference.

25 MR. RICCO: You have that reference.

1 MR. SERRA: Your Honor, 6125, cross-examination
2 by Mr. Stavis:

3 "Q And they asked you to wear a wire at that
4 meeting because they didn't believe you, is that correct?

5 "Objection.

6 "Overruled.

7 "A My understanding that they wanted to
8 corroborate the information, sir.

9 "Q They said to you, Mr. Salem, that they
10 didn't believe you, didn't they say that to you?

11 "A No, sir."

12 MR. RICCO: Now, your Honor --

13 MR. MCCARTHY: There is a big difference between
14 saying that one of the purposes was not to corroborate him.
15 In the testimony that Mr. Serra just read, he acknowledged
16 that one of the things that came up in the meeting was that
17 they told him they wanted to corroborate his information.

18 THE COURT: I will allow an agent to testify as
19 to whether they said to Salem in words or substance at that
20 meeting, "We don't believe you," as opposed to simply, "We
21 think you're terrific, and we believe everything you say,
22 but it would be nice to have corroboration," or words to
23 that effect. But that is all as to that meeting.

24 MR. STAVIS: That is all we were seeking, your
25 Honor.

1 THE COURT: OK. Fine. And that is the only
2 testimony, and it would be from one participant in the
3 meeting, and you can pick one. We are not going to have
4 three people testify to the same event.

5 MR. STAVIS: Understood, your Honor.

6 THE COURT: Moving along --

7 MR. STAVIS: Just a point of clarification, your
8 Honor?

9 THE COURT: Yes.

10 MR. STAVIS: Mr. McCarthy raised three, or rather
11 I raised three issues and Mr. McCarthy raised three
12 objections.

13 THE COURT: Right. I thought where the
14 discussion got us was that there was only one point to be
15 proffered through that witness's testimony. That was the
16 July '92 meeting.

17 MR. STAVIS: No, your Honor. There was the issue
18 of this Source Tape 1-8.

19 THE COURT: As to which I understand there's no
20 dispute. You want to offer it?

21 MR. STAVIS: Yes, your Honor.

22 THE COURT: Is there any dispute about it?

23 MR. MCCARTHY: It is in the record already. It's
24 proved.

25 THE COURT: It is in?

1 MR. McCARTHY: Not the tape, but the things that
2 he wants to put the tape in for. I am read you the
3 testimony, if I can have a second to just find it.

4 THE COURT: How long is the tape?

5 MR. STAVIS: That is a short conversation, about
6 three or four minutes, I think, your Honor.

7 MR. McCARTHY: I apologize, your Honor,
8 apparently I think I must have closed the books and lost my
9 place. There were about three different places in the
10 record where that's been testified to.

11 There is not an issue about the authenticity of
12 the tape. If your Honor going is going to let it in, I'll
13 stipulate to the authenticity.

14 THE COURT: I am going to let it in.

15 MR. McCARTHY: Fine.

16 THE COURT: You can play the tape.

17 MR. STAVIS: Your Honor, there was a point that
18 Mr. McCarthy made that I had never confronted Mr. Salem
19 concerning the subject matter of that tape.

20 THE COURT: There is a difference between
21 confronting him about the subject matter and confronting him
22 with the tape. But since the tape is already in, I suggest
23 you stop talking about it, unless you would like to talk me
24 out of it.

25 MR. STAVIS: I wouldn't like to do that, your

1 Honor.

2 THE COURT: Good.

3 MR. STAVIS: Your Honor, the second of the agenda
4 items was the tapes and the making of the tapes. I believe
5 that was Mr. Jacobs' issue.

6 THE COURT: I'm sorry?

7 MR. STAVIS: The making of the source tapes,
8 where the tapes were recovered from, how they were -- well,
9 we know how they were recovered.

10 MS. AMSTERDAM: Mr. Jacobs will be here in
11 approximately 10 to 15 minutes, he is completing a
12 three-hour sentencing hearing before Judge Patterson.

13 THE COURT: I know. I spoke to Judge Patterson's
14 deputy. He described it.

15 MS. AMSTERDAM: I went over there also.

16 THE COURT: I heard about it in excruciating
17 detail.

18 Do you want to pass that issue by in deference to
19 Mr. Jacobs?

20 MR. MCCARTHY: Whatever you want, your Honor.

21 THE COURT: Let's --

22 MS. AMSTERDAM: Mr. Jacobs specifically requested
23 that, if the court could accommodate him, he would be here
24 as soon as he could.

25 THE COURT: OK, fine.

1 MR. McCARTHY: Your Honor, I think it would save
2 my rambling on endlessly to cover topically rather than
3 witness by witness the next issue.

4 THE COURT: Fine.

5 MR. McCARTHY: Which is what I alluded to before.
6 What Mr. Stavis, the point Mr. Stavis apparently seeks to
7 make by the series of other FBI agents and Attica witnesses
8 that he wants to call is the degree of supervision which he
9 alleges the FBI had over Mr. Nosair's activities and whether
10 that alleged degree of supervision is consistent with the
11 notion that he could have possibly performed the role that
12 he is alleged to have performed according to the indictment.

13 I don't think that, assuming for the moment that
14 Mr. Nosair, rather than trying to draw an inference by
15 people who he does not appear to allege were dealing
16 directly with Mr. Nosair on a daily basis, but rather were
17 to troop in here let's say 15 or 20 people who actually had
18 direct contact with Mr. Nosair and could establish that on
19 one or another particular day he didn't do anything that
20 overtly seditious in nature, that type of testimony, in
21 United States v. Scarpa, which is at 913 F.2d -- I don't
22 have the page cite off the top of my head.

23 THE COURT: I am familiar with the principle. I
24 have cited it, not Scarpa, but I have pointed out a number
25 of times when people have tried to put in evidence along the

1 lines -- I mean, if this were a narcotics case and somebody
2 is charged with selling drugs on a particular street corner,
3 you can't put on witnesses who testify, "All the time that I
4 stood on the corner, he didn't sell drugs." If this is
5 designed to show that --

6 MR. STAVIS: It is not, your Honor.

7 THE COURT: What is it designed to show?

8 MR. STAVIS: Mr. Ricco has an issue to raise in
9 that regard.

10 MR. RICCO: I have a limited interest in someone
11 from the Attica Correctional Facility testifying that
12 Mr. Nosair's visits and mail were monitored by the prison's
13 officials or the FBI for the following reasons: The
14 government wants to argue to the jury that in the
15 tape-recorded telephone conversation when Mr. El-Gabrowny
16 said, "I don't want to talk now," that somehow that meant
17 that Mr. El-Gabrowny was hiding something of a seditious
18 nature.

19 In the same phone call Mr. Nosair says, "Put it
20 in writing. Put it all in writing and mail it to me."

21 What I want to be able to argue to the jury is
22 that Mr. Nosair's mail was monitored and read by prison
23 officials. It would mitigate against this, the secret
24 nature of what the government seeks to argue with respect to
25 that phone calls. So my interest in someone from this

1 facility testifying is just to testify that his mail was
2 monitored.

3 THE COURT: You have to know they were monitoring
4 his mail.

5 MR. McCARTHY: My answer to that, your Honor, is
6 the type of evidence that your Honor outlined in your last
7 remarks is qualitatively better than what they want to draw,
8 which is an inference from evidence that is not as direct to
9 Mr. Nosair as what they have available to put in. The
10 qualitatively better evidence would not be admissible for
11 the principles set forth in Scarpa and the other cases.

12 THE COURT: I think you're missing his point. If
13 Nosair knows there is a mail watch, and he says to
14 El-Gabrownny, "Put it in writing," and there's no testimony
15 about what the "it" is, then that makes it less likely that
16 the "it" is something incriminating than it would if there
17 was no mail monitor known to him.

18 MR. McCARTHY: Let's assume for the moment using
19 your Honor's example that the writing was of a seditious
20 nature. Let's say, as with many overt acts in a conspiracy,
21 it was innocent on its face, but meant something to the two
22 people who were involved in the communication.

23 THE COURT: Argue it.

24 MR. McCARTHY: What you are going to end up with,
25 then, is somebody's going to get on the witness stand and

1 testify that, and I don't know this to be the fact, but just
2 let's assume for the sake of the example somebody is going
3 to get up there and testify that, "I monitored the mail and
4 I didn't see anything criminal."

5 MR. RICCO: No.

6 THE COURT: That is not the point at all.

7 MR. RICCO: I wouldn't even ask the witness that.

8 THE COURT: That's right. He wouldn't and I
9 would sustain the objection. He's not going to do that.

10 The only thing that is sought to be established
11 is that there was a mail match and that Nosair knew it -- if
12 that is the case. I don't know whether that was the case or
13 not. But if it was the case, I think he is entitled to
14 prove it. I am going to let him prove it. If you want to
15 stipulate to it, you could save --

16 MR. McCARTHY: If I find out --

17 THE COURT: If you find out it is the case --

18 MR. McCARTHY: I will stipulate it.

19 THE COURT: Fine.

20 That would help two lawyers out.

21 (Continued on next page)

22

23

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25

1 MR. STAVIS: Your Honor, that was somewhat more
2 limited than actually it was --

3 THE COURT: One second.

4 (Pause)

5 MR. McCARTHY: I am sorry.

6 MR. STAVIS: Your Honor, based on the
7 government's opening and the indictment, much of the
8 criminal conduct that is alleged to have been committed by
9 Mr. Nosair is committed while he is in prison. I believe
10 that under Rule 401, if I can show, through FBI agents, that
11 not only was his mail monitored and he knew it, but his
12 phone calls were monitored and his visits were videotaped,
13 and the people who visited him were known to the FBI and
14 that he knew about that, I believe it is more -- the fact,
15 you know, if we take the language under Rule 401 that he
16 directed a war of urban terrorism from his jail cell, it
17 becomes less likely that he was able to do that.

18 THE COURT: That is exactly what you can't do,
19 because, in essence, what you are saying is that you can
20 show that, because it is unlikely that he did what the
21 government claims to have proved he did, therefore the
22 government did not prove that he did it. Either the
23 government has proved that he did it or it hasn't proved
24 that he did it. You are going to stand or fall on that.
25 You can't put on evidence to show that it is unlikely that

1 the government has proved what it has proved.

2 MR. STAVIS: I am showing, your Honor, that the
3 circumstances under which Mr. Nosair was in the prison did
4 not allow for him to do that, did not allow him to do the
5 things that are alleged.

6 THE COURT: Mr. Stavis, he either did it despite
7 that monitoring or he didn't do it despite that monitoring.

8 MR. STAVIS: But it is the monitoring that I want
9 to bring out to the jury, your Honor.

10 THE COURT: I know that. I believe there is an
11 article by an aeronautical engineer proving that humming
12 birds can't fly. It shows that their body mass is too
13 substantial to be held up by their wings. The humming
14 birds, however, have never read that article and so they fly
15 anyhow. You are seeking to put in testimony proving that
16 what the government says happened and claims that it proved
17 happened could not have happened. That is a diversion. I
18 am not going to let you do it.

19 MR. STAVIS: The jury is unaware of what the
20 prison was like, your Honor. The issue of the prison was
21 put into the case by the government in the opening.

22 THE COURT: The issue of what he did in prison
23 was put into the case by the government, and some of it was
24 proved; you can argue some of it wasn't proved.

25 MR. STAVIS: The videotape of one of the meetings

1 was introduced as a joint exhibit by the government and by
2 the defense.

3 THE COURT: And so you have established that it
4 was videotaped and they have established it was videotaped.
5 Everybody knows it was videotaped.

6 MR. MCCARTHY: It is also in evidence. In one of
7 the last exhibits that we put in, Mr. Nosair says to Mr.
8 Salem --

9 THE COURT: "My calls are being monitored. Don't
10 talk." We have talked about this in the robing room.

11 MR. STAVIS: He was treated differently from
12 other inmates, your Honor, and this is an absolutely crucial
13 part of my defense. I had cited to Rule 401, does it make
14 it more likely than not. But there is also a constitutional
15 dimension to this, your Honor. I would ask your Honor to
16 reconsider this issue, because I believe it is a jury
17 question. The jury has no knowledge of what Mr. Nosair was
18 doing in prison and how he was looked at in prison.
19 Everything a person can do in prison, your Honor, was
20 monitored by the FBI, which is unusual, because usually it
21 is the prison authorities --

22 THE COURT: Mr. Stavis, this is going to stand or
23 fall on what they proved and did and said. If he didn't do
24 it and say it, then it is not proved. If he did do it and
25 say it, despite the monitoring, then it is proved. All the

1 monitoring in the world doesn't make it not happen. I don't
2 know how to say it differently, I really don't.

3 MR. STAVIS: That assumes that it did happen,
4 your Honor, but --

5 THE COURT: No. It just assumes that whatever
6 has been proved has been proved. If nothing has been
7 proved, fine, nothing has been proved.

8 MR. STAVIS: This is a rhetorical question, but
9 how does one disprove what they say happened in Attica
10 prison?

11 THE COURT: I guess if they put on proof that it
12 happened, then one tries to explain the proof. If they
13 haven't put on proof that it happened or if they have put on
14 one version and your client has another, I guess he gets up
15 there and swears to it.

16 MR. STAVIS: I am trying to contradict the proof
17 and an issue that was raised, and I have cited your Honor to
18 the opening statement.

19 THE COURT: The opening statement isn't
20 authority. Mr. Ricco?

21 MR. RICCO: Your Honor, would it be possible for
22 Mr. Stavis to be able to show the conditions under which
23 Nosair was incarcerated but not permit him to make the
24 argument that because of those conditions he could not have
25 done it? In other words --

1 THE COURT: No. It is totally irrelevant.

2 MR. RICCO: There was some testimony that --

3 THE COURT: They know he was not at a spa, for
4 goodness' sake.

5 MR. RICCO: Your Honor, there was testimony by
6 Emad Salem that he secreted a fuse into the correctional
7 facility.

8 THE COURT: Right.

9 MR. RICCO: And one of the things that Mr. Stavis
10 had discussed was, he wanted to have an opportunity to
11 present to the jury what a person went through to get into
12 the maximum security area that Nosair was in. I agree with
13 the Court, I don't think that Mr. Stavis can argue, because
14 he was watched 24 hours a day, doesn't mean he couldn't
15 commit a crime because people who --

16 THE COURT: Forget that it means he couldn't
17 commit a crime. There are statements of his that are in
18 evidence.

19 MR. RICCO: But there are some aspects of his
20 monitoring, the way in which all of his visitors were
21 strip-searched, all of them were required to write their
22 names, give addresses, and a lot of that is a part of the
23 government's proof with respect to Mohammad Salameh and his
24 use of the El-Gabrownny license, the fuse that was supposedly
25 displayed in a visiting room. It just seems to me that the

1 jury should have some sense that there was a procedure, that
2 a person had to give a name, that they were required to
3 produce some identification.

4 MR. MCCARTHY: May I have a moment, your Honor?

5 THE COURT: Yes.

6 (Pause)

7 MR. RICCO: Your Honor, actually it is a very
8 dangerous position for --

9 THE COURT: I am sorry?

10 MR. RICCO: It is never a good idea to have to
11 argue to the jury that your client was watched 23 hours a
12 day. I mean, it really demonstrates that somebody --

13 THE COURT: Now you are arguing that he sincerely
14 wants to prove it. I am not questioning his sincerity.

15 MS. AMSTERDAM: Can I ask a question, your Honor:
16 Assume for the moment the hypothetical with the humming
17 bird. Assume just for purposes of this argument that
18 humming birds were extinct, the last one died off, and there
19 was an allegation that, whatever conspiracy, humming birds
20 were used to have little taped messages strapped to their
21 little legs and sent in furtherance of a criminal activity.
22 And the witness got up on the stand and said, "I used a
23 humming bird to convey those messages." Wouldn't the
24 testimony of the scientist who said humming birds can't fly
25 be admissible?

1 THE COURT: Sure.

2 MS. AMSTERDAM: Now, just so I know, and I
3 understand I don't have a dog in this race, if you don't
4 mind, can you explain to me how this situation differs from
5 that?

6 THE COURT: It differs from it in that the proof
7 is in already of what happened. Whatever happened,
8 happened. If you want to rebut some particular feature of
9 Salem's testimony, such as that he brought a fuse in, fine.

10 MS. AMSTERDAM: That he brought what?

11 THE COURT: That he brought a fuse in, then fine.
12 But what he has in mind is something a lot more grandiose
13 than that. That is what I object to.

14 MR. LAVINE: Judge, maybe I misunderstand
15 Mr. Stavis, but I am not altogether sure that what he has in
16 mind is quite so grandiose as the Court may believe. We
17 have in evidence videotapes of Nosair at Attica which have
18 been explained to Nosair's detriment by Salem. Now, what
19 Nosair wants to do is simply to show that he was the subject
20 of extraordinary surveillance in the jail facility itself,
21 from which a jury may be able to infer -- it is not
22 certainly dispositive -- but it may at least be
23 inferentially proper to argue that if, indeed, the man is
24 undergoing this extraordinary surveillance and knows about
25 it, then does it not stand to reason that he might be

1 considerably more circumspect on the videotapes?

2 A similar situation, Judge, might be a bank
3 robbery where the monitor is set up and the guy comes in
4 without a mask and smiles broadly at the video, and
5 certainly the government can argue that is brazen conduct.
6 On the other hand, if he comes in wearing a mask, the
7 government can argue as well that he knows what is going on,
8 he doesn't want to be videotaped. It is not a major,
9 crucial, end-all be-all point.

10 THE COURT: Have you seen his letter?

11 MR. LAVINE: Your Honor, I am not concerned with
12 the letter. I am only concerned --

13 THE COURT: I am, because I have the letter
14 sitting in front of me and he has a half a dozen or more
15 witnesses to testify.

16 MR. LAVINE: I am sorry, Judge, I misunderstood
17 you. Yes, I have seen Mr. Stavis's letter and maybe it is a
18 matter of paring things down, but the general proposition is
19 one that I am suggesting the Court not discount so
20 wholeheartedly.

21 MR. STAVIS: Your Honor, I would, in light of our
22 discussions, pare down this portion of my case. But it is
23 important, your Honor, and I did cross-examine Mr. Salem
24 concerning what he claims occurred in prison.

25 THE COURT: There was also one Attica witness up

1 here, wasn't there?

2 MR. McCARTHY: Yes, your Honor. That was the
3 statement, the post-World Trade Center statement.

4 THE COURT: Right. And there was a lot of
5 examination or there was some examination of him about
6 security.

7 MR. STAVIS: We have also gone a little far
8 because we are into the FBI agents. I can do this through
9 the Attica people, and I would pare down my case.

10 THE COURT: How about the Attica person?

11 MR. STAVIS: Excuse me?

12 THE COURT: How about the Attica person?

13 MR. STAVIS: The Attica person, yes, your Honor.

14 THE COURT: I am sure there is an Attica witness
15 who can testify to it, right?

16 MR. STAVIS: Yes. Perhaps your Honor was talking
17 about something grandiose. It is actually a discrete point
18 which I wish to make with the jury, and I can do it through
19 one witness.

20 THE COURT: Fine. You may do it.

21 Where are we?

22 MR. McCARTHY: That takes us down -- and
23 Mr. Stavis can correct me if I am wrong -- at least to Agent
24 Anticev, on page 4.

25 THE COURT: All right.

1 MR. STAVIS: Your Honor, if I may interject,
2 would I be permitted to call the FBI agent from the Buffalo
3 office?

4 THE COURT: No.

5 MR. STAVIS: There are other aspects of Agent
6 Veyera. I don't know if Mr. McCarthy is prepared to address
7 them.

8 THE COURT: What other aspects of Agent Veyera?

9 MR. STAVIS: The search of the work locker, your
10 Honor.

11 MR. SERRA: And a brief one that I had raised,
12 testifying using a carbine, which is in evidence.

13 MS. AMSTERDAM: I am sorry?

14 THE COURT: He said the testimony about the
15 carbine, the testifying of the weapon which he calls a
16 carbine and they call a submachine gun.

17 MR. STAVIS: Reasonable minds can differ, your
18 Honor.

19 THE COURT: What about the testimony about the
20 search of the locker? What is it about the search of the
21 locker?

22 MR. McCARTHY: I thought he already testified
23 about that.

24 THE COURT: About the search of the locker?

25 MR. McCARTHY: Yes.

1 THE COURT: Was he the one?

2 MR. McCARTHY: That is what I thought.

3 MR. STAVIS: Yes, specifically the recovery of
4 the fuse lighter, your Honor. I intend to inquire of
5 Veyera, because his original statement upon discovery of
6 what is now purported to be a fuse lighter was that it was a
7 hand grenade pull ring.

8 THE COURT: You are telling me you forgot to ask
9 him something on cross?

10 MR. STAVIS: No, your Honor.

11 THE COURT: How is it different from what he has
12 already testified to?

13 MR. STAVIS: He testified that a ring was -- I
14 think he only referred to it as a metal ring. Subsequent to
15 that, I think a witness, I don't know which FBI witness,
16 identified it as an M60 fuse lighter.

17 THE COURT: Right.

18 MR. STAVIS: Now, in light of that testimony, I
19 want to confront him with his prior statement concerning the
20 metal ring.

21 THE COURT: To prove what? To prove that it was
22 not a hand grenade ring?

23 MR. STAVIS: To prove that it was merely a metal
24 ring and that it is being given some sort of nefarious
25 identification in this case when it is unwarranted. I want

1 to undermine the testimony that it is an M60 fuse lighter.

2 THE COURT: I don't understand how this witness
3 can do that.

4 MR. STAVIS: Because of his prior statements,
5 your Honor. I was present when the locker was searched,
6 your Honor.

7 THE COURT: You are calling him as an expert to
8 testify to what?

9 MR. STAVIS: No, I am not calling him as an
10 expert.

11 THE COURT: I think you are.

12 MR. STAVIS: When he was there, he said it is an
13 M60 fuse lighter -- excuse me, your Honor. He says
14 immediately it is a hand grenade pull ring. Later, and the
15 government's position now is, that subsequent to Veyera's
16 testimony, that it is an M60 fuse lighter.

17 THE COURT: And?

18 MR. STAVIS: My point is, it is just a metal ring
19 and nobody knows what it is, and when the FBI first found
20 it, they didn't know what it was, your Honor.

21 THE COURT: No. That is out.

22 We are up to Anticev.

23 MR. MCCARTHY: Anticev is offered apparently to
24 establish the following: the FBI scrutiny of Nosair point
25 that we have already alluded to; the fact that Salem was

1 depicted on a --

2 THE COURT: He already testified to that.

3 MR. MCCARTHY: Right. And there is no dispute
4 about it.

5 THE COURT: Correct.

6 MR. STAVIS: I am sorry, is it appropriate?

7 THE COURT: Do you want to talk to Mr. McCarthy?

8 MR. STAVIS: No. Is it appropriate for me to
9 address one aspect that was just raised or does your
10 Honor --

11 THE COURT: No. If there is some specific aspect
12 that I passed lightly over, tell me.

13 MR. STAVIS: I don't mean to be discourteous,
14 Mr. McCarthy.

15 MR. MCCARTHY: I don't take it that way.

16 MR. STAVIS: The most wanted list has already
17 been testified to. Just the fact of it has been testified
18 to, your Honor, not precisely what occurred at that time.
19 It was glossed over, your Honor. And now, on the defense
20 case, where I believe it is extraordinarily relevant to the
21 issue of bias, I want to deal with it more fully. Now, I
22 don't think that I should be bound, your Honor, by the
23 government's treatment of something if I believe it goes a
24 lot deeper than that. And I would like to bring out --

25 THE COURT: The only mind in which you can show

1 it went deeper is Mr. Salem's mind.

2 MR. STAVIS: That's correct, your Honor. But
3 assume, for example, your Honor, that when Mr. Salem viewed
4 that wanted list, he had a physiological reaction -- I am
5 being cryptic, your Honor --

6 THE COURT: He hasn't testified to that. Right?

7 MR. STAVIS: What was his emotional reaction to
8 that? And it was glossed over, your Honor, it really was.

9 THE COURT: You want to prove through Anticev
10 that Salem passed out when he saw the list.

11 MR. STAVIS: Passed out, wet his pants, whatever
12 occurred, your Honor. I want to go into it more fully than
13 the limited version we have had.

14 MR. MCCARTHY: There hasn't been a limited
15 version; there has been an elongated version.

16 THE COURT: I know there has been an elongated
17 version. I will let him ask about it. I will limit it.

18 MR. MCCARTHY: I didn't hear your Honor.

19 THE COURT: I said I will limit it. He may ask
20 him about that incident.

21 MR. MCCARTHY: Let me just say: The relevance of
22 this and where it is going is what has been going on from
23 the beginning of the trial, which is to get in front of this
24 jury what the FBI thought of Salem's credibility.

25 THE COURT: Mr. McCarthy, telling me that he has

1 a dirty mind doesn't do it. He can show that in a limited
2 fashion.

3 MR. McCARTHY: Salem was confronted at length on
4 cross-examination by, I believe, Mr. Stavis and other
5 counsel about the fact that he gave them Salameh's name
6 after the bombing of the World Trade Center, and whether he
7 tried to convince them -- referring at the same time to Mr.
8 Stavis' letter -- that he had told them in advance about the
9 World Trade Center bombing. That is something that came out
10 not only on direct but again he was questioned at great
11 length on cross-examination about that and acknowledged the
12 truth of what it is that Mr. Stavis seeks to prove through
13 another witness.

14 THE COURT: Which is?

15 MR. McCARTHY: That he did in fact do those
16 things. He claimed that he had given Salameh's statement
17 and he claims that he told him in advance about the bombing
18 of the World Trade Center.

19 MR. STAVIS: Your Honor, the relevant inquiry is
20 what was in Emad Salem's mind, and we have had him on the
21 witness stand. But what we haven't had, your Honor, is what
22 the agents told him when he told them that.

23 THE COURT: I will let you ask him about it.

24 MR. McCARTHY: The next issue, your Honor, with
25 respect to Anticev gets into the issue of the tapes. Can I

1 just have one moment?

2 THE COURT: Yes.

3 (Pause)

4 MR. McCARTHY: Counsel has suggested that we cut
5 back to Ms. Stewart's application with respect to witnesses
6 that we have already talked about, before we move on to the
7 tape issue, which will probably be more of --

8 THE COURT: I don't think I have Ms. Stewart's
9 application.

10 MS. STEWART: Judge, when I got back to my office
11 yesterday afternoon, everything including all computers were
12 packed and ready to be moved. I resurrected a typewriter
13 and typed it up this morning, but unfortunately I carried it
14 with me, copied it at Kinko's, I have it here, it is very
15 short, but I think it is fairly clear and I think that
16 everybody remembers the testimony.

17 THE COURT: Has he seen it?

18 MS. STEWART: Yes.

19 MR. McCARTHY: I personally haven't. I think my
20 colleagues have it.

21 THE COURT: Whatever.

22 MR. McCARTHY: If it is short, I will take a
23 second.

24 THE COURT: Let's talk about it.

25 MS. STEWART: It was also, Judge, mentioned in

1 the letter. It is stuck under Burke but it was mentioned by
2 Mr. Stavis in his letter when I called him, about 9 o'clock.

3 MR. McCARTHY: Your Honor, to otherwise finish
4 the picture with respect to Mr. Stavis' letter, I told Mr.
5 Ricco before, with respect to item 10, the government
6 doesn't have any arguments to make against the calling of
7 Agent Burke.

8 THE COURT: Fine. Do you want to turn to Ms.
9 Stewart's letter?

10 MR. McCARTHY: Sure.

11 MR. McCARTHY: Two things. Number one, I don't
12 know what Ms. Stewart means when she refers to contradictory
13 statements with regard to his relationship with --

14 THE COURT: That is just advertising.

15 MS. STEWART: I just cite to the record, Judge.

16 THE COURT: As far as I am concerned, it is
17 advertising.

18 MS. AMSTERDAM: Advertising?

19 THE COURT: Yes.

20 MS. AMSTERDAM: I just can't hear.

21 THE COURT: The point is, I guess, that she wants
22 to call an agent or agents with regard to their instructions
23 to Mr. Salem or lack of them, or their conversations with
24 Mr. Salem or lack of them, over contacts with and work for
25 Egyptian intelligence. She also refers to conversations

1 among the agents. That is out. That you don't have to deal
2 with.

3 MR. McCARTHY: With respect to whether he worked
4 for Egyptian intelligence or not, and he did acknowledge
5 giving a good deal of information to Egyptian military
6 intelligence, to the extent that bias is relevant, his bias,
7 and he is the only person with direct knowledge, I suppose,
8 other than the Egyptians on this, he was examined at length
9 as far as that goes.

10 As far as it otherwise goes to credibility,
11 whether it is bad behavior on his part, it is a matter that
12 is completely collateral to the trial.

13 THE COURT: I don't think she is offering it for
14 that. She is offering it strictly on the issue of bias. He
15 has testified that he had contacts with people who were
16 involved with the Egyptian Government in one fashion or
17 another. I don't see what this adds. You are the --

18 MS. STEWART: Pardon me, Judge?

19 THE COURT: I say I don't see what this adds.

20 MS. STEWART: Judge, I think the main point is,
21 and particularly with Special Agent Floyd who was present at
22 the very early days when he is contacted by someone from
23 general intelligence, and her reports all indicate that he
24 was told, and a telephone conversation all indicate, that at
25 that point he was told that he could not work for both; that

1 there was in fact a conflict of interest, you cannot be
2 serving both. He said, first, that he did get that
3 direction. Then he said that order was never given to him,
4 and everybody knew he was working for both, during the
5 entire course of his continued relationship with the FBI.
6 That is the state of the record as it now stands. I think I
7 can call the agents to find out (a) was that direction given
8 to him, was it their understanding that he continued to
9 supply, whether formally or informally, information to the
10 Egyptian intelligence services, because I think it does go
11 directly to bias. I think it goes to whether or not he
12 would lie to protect that situation from the witness stand.

13 MR. MCCARTHY: In making the argument, as was
14 done several times during the during the cross-examination,
15 Ms. Stewart is blurring two different things, which are:
16 Egyptian military intelligence and Egyptian general
17 intelligence. Salem was adamant on the point that the
18 Egyptian general intelligence service contacted him on that
19 one and only occasion that she is referring to. With
20 respect to Egyptian military intelligence, he testified that
21 he was never given a direction that he couldn't continue to
22 talk to those people.

23 THE COURT: I guess you can try to show that he
24 was.

25 MR. MCCARTHY: The predicate for establishing the

1 contradiction here is the premise that Egyptian general
2 intelligence and Egyptian military intelligence are the same
3 thing.

4 THE COURT: Not necessarily. Do you have a basis
5 for believing that he was told not to have any contact with
6 military intelligence?

7 MS. STEWART: Yes.

8 THE COURT: What is it?

9 MS. STEWART: Well, it is an informal
10 conversation between him and Nancy Floyd on a bootleg where
11 she says you can't be giving them any more information.
12 That is her statement. Then there are our reports, one of
13 which is teletyped to Washington, the other of which is just
14 a regular -- they are not 302's, whatever they used in this
15 case -- where she said, subject was directed not to give any
16 more -- I can read it from the record if you want me to find
17 it here a minute, exactly what was said in that.

18 MS. STEWART: Page 5840, Judge.

19 THE COURT: Who do you understand the source of
20 the direction to have been?

21 MS. STEWART: Nancy Floyd.

22 THE COURT: So she is the witness?

23 MS. STEWART: She is the witness.

24 MR. MCCARTHY: May I, Judge? I am not trying to
25 step on the ruling I think I am about to hear. I just want

1 to know what the tape was that Ms. Stewart is relying on.

2 THE COURT: The tape?

3 MR. McCARTHY: Yes. She alluded to a tape that
4 is part of the basis for her belief in this regard.

5 MS. STEWART: Rather than hold up the
6 proceeding --

7 THE COURT: Could you talk about that afterward?

8 MS. STEWART: I will find it.

9 THE COURT: When she is called, I will let you
10 ask her whether she directed him not to talk not only to
11 general intelligence but also military intelligence.

12 MS. STEWART: With regard to Anticev and Napoli,
13 there are allusions in their conversations -- well, strike
14 that. I will stick with Nancy Floyd. We will do it that
15 way. Thank you, Judge.

16 THE COURT: Fine.

17 MR. McCARTHY: Your Honor, I think that brings us
18 into the tapes.

19 THE COURT: That was Mr. Jacobs.

20 MR. JACOBS: I am sorry I was late. Judge
21 Patterson finished up the sentence late.

22 THE COURT: I heard about it. It was not your
23 fault.

24 MR. McCARTHY: Your Honor, I just want to premise
25 this discussion with the following: I have -- and

1 concededly I have not researched this the way that I would
2 have if I had had more time -- but I have a good deal of
3 doubt about the premise of Ms. Amsterdam and Mr. Jacobs'
4 letter, which I understand to be the following. Let me make
5 sure I have it.

6 MS. AMSTERDAM: I can give you his opening
7 statement.

8 THE COURT: What Mr. Jacobs did or didn't promise
9 the jury in his opening statement is of marginal relevance
10 here.

11 MS. AMSTERDAM: No, I must say I would have
12 appreciated being put on notice that the government did not
13 regard that as a defense. I mean, no one objected to us
14 saying that that was our defense. We were very explicit
15 that that was our defense.

16 MR. MCCARTHY: I don't think we were under
17 obligation. There were an awful lot of things in opening
18 that were objectionable. If we stood up every time, it
19 would have taken a lot of time. I don't think the
20 government is required to do that and I don't think we
21 waived the right to challenge something that is inadmissible
22 by not objecting to something that is objectionable in an
23 opening statement.

24 Leaving that aside, I do not believe that what is
25 proffered or at least framed in Mr. Jacobs and Ms.

1 Amsterdam's letter constitutes a legal defense to the
2 charges in the indictment. Assuming for the moment -- and
3 only for the sake of argument, because we vigorously dispute
4 the factual assertions underlying the claim -- but assuming
5 for the sake of argument that a group of government
6 personnel got together and conspired to lure defendants into
7 criminal behavior --

8 THE COURT: Wait. I don't understand that to be
9 the subject of any examination.

10 MS. AMSTERDAM: No, that is not.

11 THE COURT: I thought what he was trying to show
12 was something entirely different. I do see this little
13 sentence on the --

14 MR. MCCARTHY: I am referring, your Honor, to the
15 third page, going over to the fourth page, of Mr. Jacobs'
16 letter under the heading safe house --

17 THE COURT: That is out.

18 MR. JACOBS: I am sorry?

19 THE COURT: That is out. The motive of the
20 people conducting the investigation or, more expansively,
21 authorizing the charges -- we are going to get to Ms.
22 Stewart on that at some point -- has nothing to do with what
23 the evidence shows or doesn't show.

24 MR. JACOBS: I am sorry. Perhaps, if someone
25 will ask me what we are trying to do here, I would be happy

1 to explain. Maybe the government, your Honor, is
2 misunderstanding what we are talking about.

3 This is not a due process, outrageous government
4 conduct argument, which I think --

5 THE COURT: Which, in any event, is a legal
6 argument to me, not a fact argument to them.

7 MR. JACOBS: What I am saying is, this is not an
8 outrageous government conduct, due process argument, which,
9 having done enough of them, I know is a legal decision for
10 the Court to make. I understand that premise.

11 We have a theory that the government created the
12 crime, i.e., there is no crime. Now, that means that agents
13 got together and said, "We are going to create the safe
14 house plot. We are going to plant evidence" --

15 THE COURT: Mr. Jacobs, don't give me your
16 summation.

17 MR. JACOBS: It is not summation. You have to
18 understand what I am saying. We are going to get together
19 and we are going to plant evidence, we are going to finagle
20 tapes, we are going to destroy evidence, and we are going to
21 frame these Muslim defendants for this crime.

22 Now, we think we have a good-faith basis to do
23 that. I have an FBI agent on tape saying, I think he says
24 something to the effect of -- well, I have it here
25 somewhere -- in any event, it is Anticev's comments about

1 taking tapes and not using them in evidence.

2 THE COURT: I recall it.

3 MR. JACOBS: In any event, we have had additional
4 testimony, at least on some basis of the record, of missing
5 tapes, missing envelopes, no chain of custody, conversations
6 that I believe intentionally are deliberately cut off,
7 beginnings missing, endings missing, planting of evidence in
8 the safe house.

9 It is our intention to call the agents and
10 question them about that and to establish the fact that the
11 agents created a crime, then conspired together to carry out
12 that fact. It is not a motive. This is not the motive that
13 matters. But if they did that and therefore the clients did
14 not conspire or get together to do anything, or agreed to
15 overthrow the United States or to do the things that the
16 government says, then the jury can consider the frame
17 argument, a factual frame argument in deciding whether or
18 not it has proven their charges.

19 THE COURT: That defense is called entrapment.

20 MR. JACOBS: It is not entrapment, your Honor.
21 And just so your Honor is clear: *Matthews v. United States*,
22 I think, has changed quite a bit the concept of entrapment.
23 It is now permitted to have bifurcated entrapment, which is
24 what I am arguing and Ms. Amsterdam is arguing, I believe
25 Mr. Bernstein is arguing, and the safe house defendants are

1 arguing.

2 What we are saying to the government is there --

3 THE COURT: You mean secondary entrapment?

4 MR. JACOBS: No, I am not.

5 THE COURT: Bifurcated entrapment.

6 MR. JACOBS: What I am saying is, the defendants
7 did not have an intention to commit the crime because there
8 was no crime and there was a frame. However, if the jury
9 under Matthews determines that we are wrong and the
10 defendants had an intention, then we are entitled to the
11 entrapment charge as well.

12 Now, the Supreme Court in Matthews consistently
13 talks about how that is an absurd point for any lawyer to
14 argue, and that any lawyer is a fool to argue that
15 particular point, and the discussions go back and forth in
16 the majority and the dissent why people shouldn't be doing
17 that and why it is a crazy system to do. Nevertheless, that
18 is precisely what the safe house defendants wish to do in
19 this case. We wish to argue to the jury, based upon at
20 least the good-faith basis we have, that the FBI conspired
21 to destroy the evidence of our clients' voices on the tape.
22 We have that now on the record at least to the extent I
23 think we have a good-faith basis to do it, that they
24 conspired to create the safe house. Therefore, there was no
25 crime. Therefore, the clients had not intention to do

1 anything.

2 Now, we may fall on our faces, and we may call
3 these agents and they may knock us flat on our faces and
4 they may say, we never conspired, we never did these things,
5 we are just sloppy, and we are stupid, and we are
6 incompetent and we didn't get good authority, and I may go
7 nowhere with it. And then I may put my client on the stand
8 and he may argue that he was entrapped. But that is our
9 right to do it, your Honor, under Matthews, and I believe
10 under the authority that we have the right to say that there
11 is no crime. There is no safe house. The safe house is an
12 FBI and Department of Justice creation. I argued it in my
13 opening and I think I have a good-faith basis to proceed
14 with that.

15 Now, beyond the good-faith basis, the agents
16 knew they had no crime, so then they fabricated evidenc
17 and they planted evidence to frame the safe house
18 defendants.

19 Now, if your Honor tells me I can't do it, and
20 that is my argument under GAF and under Petrosia and
21 understand Durham, if that is the defense of the safe house
22 defendants here, and it may be an absurd defense, but that
23 is our defense, that we say it is a government plot, we had
24 no intention, we want to produce agents to show the frame,
25 we want to produce the agents to show that they faked

1 evidence, they planted the evidence, and we want that charge
2 to go to the jury under Durham and under GAF.

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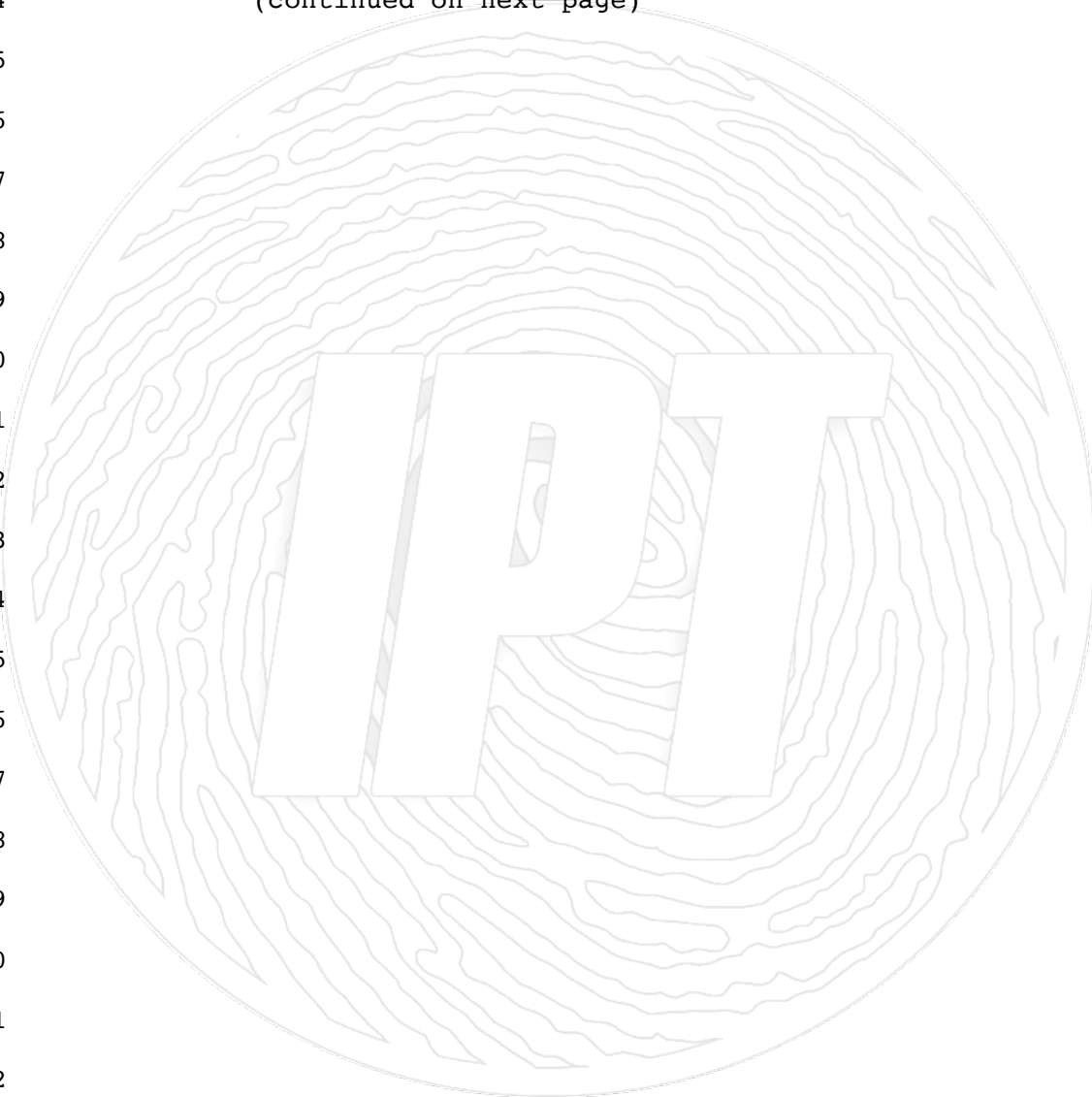
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1 THE COURT: Which charge under Durham and GAF?

2 MR. JACOBS: That means no matter how absurd a
3 defendant's defense is, he has a right to present it to the
4 jury. That's U.S. v. GAF, U.S. v. Durham.

5 MS. AMSTERDAM: He didn't mean the charge. He
6 meant that the cases stand for the proposition that we are
7 permitted to put forth to the jury any defense, regardless
8 of how seemingly absurd and implausible it may be.

9 MR. JACOBS: What we are saying, your Honor, is
10 that --

11 THE COURT: Now I understand.

12 MR. JACOBS: OK.

13 THE COURT: Since I understand you why don't you
14 sit down and let me understand the government's position.

15 MS. AMSTERDAM: May I just supplement one thing?

16 THE COURT: Yes.

17 MS. AMSTERDAM: I don't think, even though
18 regardless, I agree with Mr. Jacobs that, regardless of how
19 implausible, we should be able to put it forth. I think
20 there are some facts that really establish the plausibility.

21 THE COURT: I am not interested in that because
22 it is not my problem.

23 Mr. McCarthy?

24 MR. MCCARTHY: Number one, do you have the
25 citation for Matthews?

1 MR. JACOBS: Sure. I have 108 S.Ct. 883 in front
2 of me. I think it's 485 U.S. 58.

3 THE COURT: You're citing Matthews in essence for
4 the proposition that a defendant is permitted to argue both
5 that he didn't do it and that, if he did do it, he was
6 entrapped?

7 MR. JACOBS: Correct.

8 THE COURT: That I know. That is not news.

9 MR. JACOBS: No. It is only to the extent, your
10 Honor, that if you were doing an entrapment you couldn't
11 really argue some of these points as straight entrapment,
12 but then you're saying your client committed the crime, he
13 was just induced into doing it.

14 THE COURT: I know you are permitted to argue
15 both.

16 MR. JACOBS: I think that is important in this
17 case.

18 THE COURT: We are not there yet, but it would be
19 interesting to hear who it is who thinks he has an
20 entrapment defense.

21 MR. JACOBS: That may be another matter.

22 THE COURT: It is another matter because -- well,
23 because.

24 MR. MCCARTHY: Your Honor, I don't quarrel -- not
25 that it would matter, if I quarreled -- with the proposition

1 that a defendant is entitled to put in a factually absurd
2 defense. But it's also fairly well established that if what
3 the defendant wants to put in is a legal defense and there
4 is no factual predicate for it, the court is empowered to
5 keep that out.

6 THE COURT: That's right. But that is not the
7 defense he's putting in.

8 He claims that he wants to prove that the
9 evidence from the safe house was fabricated, tampered with,
10 that voices were purposely obliterated from tapes, that
11 there was evidence that went the other way and was
12 deep-sixed.

13 MR. MCCARTHY: There is no good faith basis for
14 that. First of all, let me just start with what he started
15 with, which is the government created the crime, i.e., or, I
16 guess, therefore, there is no crime.

17 That is the point from which everything else
18 springs. It is not a defense. I mean, it is an entrapment
19 defense. He's either entrapped or not.

20 THE COURT: He didn't really mean it that way, I
21 guess, or that is not his actual argument. His actual
22 argument is that there was no crime because the evidence was
23 fabricated. Well, I can't use the example I wanted to use
24 but -- the punch line of which is, "Who are you going to
25 believe? Your honey or your lying eyes?"

1 MS. AMSTERDAM: From hummingbirds to lying eyes.

2 MR. McCARTHY: I guess one thing that springs
3 immediately to mind is what if ultimately, enlightened by
4 whatever it is that apparently the Supreme Court decided to
5 heed all counsel out there with, somewhere in the middle of
6 this presentation counsel suddenly realized that what they
7 embarked on is such an absurdity that it's not something
8 that ought to be gone forward with. What then happens with
9 all of the evidence which has come pouring in under this --

10 MS. AMSTERDAM: We would never back off.

11 THE COURT: If they decide to stop, they stop.
12 That's all.

13 MR. McCARTHY: What they then have is a bunch of
14 inadmissible evidence, a bunch of what would otherwise be
15 inadmissible evidence in the record and there available for
16 whatever pops into somebody's mind to say about it on
17 summation.

18 THE COURT: All you are saying is what happens if
19 they try to prove it and can't.

20 MR. McCARTHY: No, I guess what I'm saying is I
21 am not so sure -- well, let me withdraw that. I would
22 rather think this through a little bit.

23 THE COURT: OK. Let me ask you: We are not
24 going to get to that until after we finish the other stuff
25 that we talked about before, are we?

1 MR. JACOBS: I guess not.

2 THE COURT: Or are you now changing your order
3 again?

4 MR. STAVIS: No, the agents were going to be --
5 excuse me.

6 MR. JACOBS: Yes.

7 MR. STAVIS: We told your Honor that we only want
8 one bite of the apple so to speak. In cross-examining my
9 witnesses I think it was Mr. Jacobs' intention to pursue
10 that defense. Technically the witness is mine, is being
11 called by me, whether it's Agent Floyd or Agent Anticev.

12 MR. JACOBS: It is the same agents basically,
13 Judge.

14 THE COURT: No, it isn't.

15 MR. JACOBS: We are not looking for another 50
16 people.

17 THE COURT: The only agent I see on your list who
18 coincides with the ones on Mr. Stavis' list is Anticev.

19 MR. JACOBS: Well, Floyd, Anticev, Napoli. I
20 think I listed -- retrieval agents are a rather simple
21 matter. I don't think that they are really -- there may be
22 agents that have to be called, your Honor, concerning the
23 planting of evidence. I think that is another matter that
24 is going to be dealt with. We are calling Salem back, and I
25 am certain we will be pursuing that with Salem, too.

1 It may have to be, and I am not looking to
2 duplicate it, I am not sure which agents planted the
3 evidence and who knew about it yet. We are going to try to
4 find out as best we can who conspired together within the
5 FBI to plant the evidence in the safe house to make the
6 crime that they couldn't make.

7 But we know evidence is planted, and we are going
8 to take our best shot at trying to pin down who did the
9 planting. We know there are tapes missing, and we are going
10 to try to do our best to find out, with spirited cross and
11 moving it along, about the missing tapes.

12 We know that we have things like the agents
13 talking about making up stories -- from what tape is that
14 Mr. Ricco. When El-Gabrownny's arrested Salem asks if you
15 have enough evidence, and Anticev says, "We'll make it up."

16 We will explode Anticev's statements like that to
17 show the frame, we will explode Agent Anticev to show the
18 fact that he destroyed tapes, and we will show the fact that
19 there was no crime that was committed. We will do it in
20 whatever order your Honor suggests and that Mr. Stavis has
21 proffered.

22 MR. McCARTHY: A couple of things: Number one,
23 as far as the planted evidence is concerned, I don't know
24 what he is talking about in terms of what got admitted at
25 this trial. There was nothing that got admitted against the

1 defense by the government at this trial that was a
2 government creation.

3 Now, there are a number of things that were put
4 in by Mr. Serra from the safe house on cross-examination
5 which are things that the government put in the safe house
6 to make it look like the safe house. There is no dispute
7 that Salem created a test bomb which was present in the safe
8 house on the night of the take-down. That was not offered
9 against the defendants. To the extent it came in, it came
10 in on cross for whatever reason the defense sought to put it
11 in.

12 But the argument that evidence has been planted
13 against the defendants and that they are being tried on
14 evidence that was planted against them is completely
15 baseless. There is no support at all for that.

16 MR. SERRA: Your Honor, answering for what
17 Mr. McCarthy correctly says that I did on cross, it is not
18 only what the government does in front of the jury, it is
19 also what the government agents do in front of the
20 defendants. Perhaps that will become clearer later on in
21 the defense case.

22 MS. LONDON: Your Honor, I would like to add to
23 what Mr. McCarthy just said that although the government
24 didn't introduce that evidence, the government, however, has
25 introduced videotapes in which scenes of the safe house are

1 shown, scenes of the workbench are shown, and in which all
2 of this evidence is clearly there. Certainly, the jury
3 could believe that it is attributed to these defendants.
4 All of the equipment that is in that safe house isn't
5 attributable to the defendants as they see those videos.

6 MR. McCARTHY: That is impossible. Salem was
7 cross-examined at length by counsel who went -- I think Mr.
8 Nooter certainly did some of this, and I don't remember who
9 else did it, but he was cross-examined in exquisite detail
10 about the things that he put in the safe house versus the
11 things that the defendants put in the safe house.

12 Moreover, there is a wealth of tape-recorded
13 evidence as to which there can't be any credible claim that
14 it was doctored after the fact by the agents that show the
15 defendants planning to obtain the very materials that end up
16 in the safe house.

17 So, again I ask --

18 THE COURT: Yes. You understand, of course, you
19 are going to have full rights of cross-examination, during
20 which you will show, I assume, precisely that.

21 MR. McCARTHY: Your Honor, I am not fearful of
22 confronting the evidence if that is what the evidence is.
23 What I worry about, and I say this with no disrespect to
24 your Honor intended, what I am worried about is a three-ring
25 circus. Because once these folks get in here and they start

1 asking questions, we are in a position where in a case where
2 the government is being accused of fabricating a crime, I
3 either have to fly out of my chair on a question-by-question
4 basis and make it appear to the jury like I'm trying to
5 protect the fabrication that they are trying to bring out,
6 or I have to sit there and let them get it all in. I don't
7 think it is a position that we ought to be put in --

8 THE COURT: Get all what in? Your denials?

9 MR. JACOBS: This is not a complex thing. I
10 mean, the agents will say what they are going to say, and
11 then we will conduct a normal examination.

12 THE COURT: Understand this, Mr. Jacobs. I am
13 trying to figure out a way to say it so it doesn't sound
14 personal, but there is no way.

15 MS. AMSTERDAM: Say it to me and I will relay it
16 to Mr. Jacobs.

17 MR. JACOBS: That's all right.

18 MR. STAVIS: Mr. Jacobs can pare it down to a
19 one-ring circus.

20 THE COURT: Yes. You tend to get the wind up a
21 little bit when your enthusiasm gets the better of you, and
22 to behave in a way as if you think that what you are doing
23 is evidence. The jury is going to be very clear --

24 MR. JACOBS: I understand.

25 THE COURT: -- on that as many times as I have to

1 repeat it. And if I have to repeat it every 15 minutes, I
2 am going to repeat it every 15 minutes.

3 MR. JACOBS: I have no problem with that. As
4 your Honor can recall, your Honor and I tried a case
5 together about two years ago where the FBI, either
6 intentionally or negligently, lost a videotape. I ran as
7 hard as I could with the theory that they intentionally did
8 it. Your Honor was gracious enough to let me put my defense
9 in, and I tried my case.

10 THE COURT: Your defense as you summed up on it
11 was not that they had intentionally done it. Your defense,
12 and I can remember your summation almost verbatim, the FBI
13 agent was named Dowden.

14 MR. JACOBS: Right.

15 THE COURT: The assistant was named DePippo, and
16 they had lost the videotape and he had run out of film.
17 Your summation was: If somebody came to you from the
18 brokerage firm of Dowden and DePippo and tried to sell you
19 some stock and you asked him for a prospectus, and he said
20 he was sorry, but he had lost it, and then you asked him for
21 a balance sheet, and he said he's sorry, he had a large
22 supply of them, but he had run out, would you buy the stock?
23 No. And then an argument along the lines of, although not
24 explicit in the words of: If you wouldn't buy that, don't
25 buy this. And they didn't. But, first off, it took them a

1 long time. And secondly, if I recall the agent, there's no
2 way you could have sold them on the idea that he did it on
3 purpose. He did very little on purpose. That was the
4 problem.

5 MR. JACOBS: I understand. In any event, your
6 Honor, I will certainly try to stay within the rules. Your
7 Honor has sat me down before, and I'll certainly try to do
8 it within the framework of the way we try cases here in this
9 building. Your Honor has controlled me in the past. I'm
10 certain you will be able to do it here.

11 I don't mean that disrespectfully. I mean, I
12 think we can do this to give both sides a fair trial. That
13 is all we want, to get our shot at this defense. I think we
14 can do it according to the rules and let the jury make its
15 decision on whether these defendants have done the crime or
16 not.

17 MR. MCCARTHY: Your Honor, I don't mean to be
18 obtuse, I really don't. I just don't understand exactly,
19 still, what it is that people are anticipating doing here.
20 Maybe it is a failing on my part, but I just don't
21 understand how what is anticipated here is a legal defense
22 to the charges in the indictment.

23 Assuming for the moment that rather than -- I
24 guess I just don't understand what it is that they are now
25 permitted to do. There is no claim in this case that the

1 government didn't obtain the safe house. There is no claim
2 in this case that the government didn't attempt to make the
3 safe house look like a safe house. There is no claim in
4 this case that the government didn't put stuff in the safe
5 house to make it look like a safe house.

6 THE COURT: He says he is going to go further
7 than that.

8 MR. MCCARTHY: Which is?

9 THE COURT: Since there is no dispute about that,
10 I am not going to permit him to examine about that.

11 MR. JACOBS: Well, your Honor --

12 THE COURT: No.

13 MR. JACOBS: There is no point in arguing about
14 examinations that haven't taken place. The fact that the
15 government may be willing to concede five points, ten
16 points, twenty points, a hundred points, doesn't mean the
17 testimony necessarily is cumulative, depending on where it
18 goes and what is going on.

19 THE COURT: Mr. Jacobs, understand something, you
20 made a very specific commitment just now, and your
21 commitment was you were going to show that people, basically
22 the FBI committed a massive crime here.

23 MR. JACOBS: Right.

24 THE COURT: That is your commitment.

25 MR. JACOBS: Correct.

1 THE COURT: That is what you are going to examine
2 on.

3 MR. JACOBS: Correct.

4 THE COURT: You are not going to examine on
5 activity that is lawful.

6 MR. JACOBS: Well --

7 THE COURT: Well, listen. You made the contract.
8 You are going to fulfill it.

9 MR. JACOBS: If I can just -- the question of
10 whether they have a legal right to set up a safe house is
11 not what we are trying to argue or not argue.

12 THE COURT: Mr. Jacobs, you just talked about
13 fabricating evidence.

14 MR. JACOBS: Right. I get into the safe house --

15 THE COURT: No. You are going to start with
16 that. OK? Because what I detect is something very
17 different, which is a kind of gee-whiz presentation of stuff
18 that is not in dispute in an attempt to suggest something
19 that is not there. That I will not permit.

20 MR. JACOBS: Well --

21 THE COURT: Let me give you an example that has
22 nothing to do with this case, but maybe I have a fondness
23 for such examples, but when George Smathers was running
24 against Claude Pepper for the Senate -- you know the story,
25 right?

1 MS. STEWART: I know --

2 MR. STAVIS: Red pepper, your Honor?

3 THE COURT: Right. He used to get up in front of
4 audiences in northern Florida and tell them, "Do you know
5 that when Claude Pepper went to college, he practiced
6 celibacy?" Of course, none of those people knew what
7 "celibacy" meant, but it sounded horrible. He won the
8 election.

9 You are not going to do that. Do you understand
10 me?

11 MR. JACOBS: If I could just -- one point.

12 THE COURT: That you are not going to do.

13 MR. JACOBS: If I can, assuming that there are
14 still some people in this back row that are arguing
15 entrapment and inducement, then I think to the extent, if I
16 can continue the argument --

17 THE COURT: Yes.

18 MR. JACOBS: -- your Honor, the fact of what the
19 government inducement is and the entrapment, some of these
20 things -- this isn't going to be an examination that is
21 going to take ten hours to describe how the government
22 created the safe house.

23 THE COURT: I am not talking about wasting time.
24 I am talking about something that you will not do.
25 Entrapment comes from a person. It is not enticement. It

1 is entrapment. The only person who can have entrapped
2 anybody in this case is Salem.

3 MR. JACOBS: That is why he is on the
4 conversation with --

5 THE COURT: You just made a commitment that you
6 were going to prove the FBI fabricated evidence. That is a
7 crime.

8 MR. JACOBS: Correct.

9 THE COURT: If you want to try to prove it, I
10 will let you try to prove it.

11 MR. JACOBS: Right.

12 THE COURT: I will not let you try to prove
13 anything else.

14 MR. JACOBS: I have asked in my proffer -- I want
15 to show that there are tapes of my client missing. I want
16 to show that the FBI did not maintain proper custody of
17 tapes. They have thrown away tapes that are relevant. We
18 have our missing tape from the car that we believe is
19 another fabricated issue. This isn't lengthy examinations.
20 I will keep the examinations hopefully within reason, but
21 the fact that the FBI kept no logs of tapes, retrieved the
22 tapes in a haphazard manner, didn't follow their normal
23 procedures, and I think there are tapes of my client missing
24 is something I have a right to show.

25 It goes into perhaps some of the other arguments,

1 but it is part of our proffer that we made here, and I think
2 all counsel have joined in on that. Some of it may be even
3 established with Napoli and it doesn't have to be repeated.
4 I don't know. We have to get some examination on that. We
5 think we have a right to do that.

6 MR. McCARTHY: Your Honor, I would suggest to
7 your Honor that that is totally cumulative. We had Napoli
8 on the stand for two days. There is no dispute that the
9 tapes that Salem made there were no records kept of them,
10 there is no question that they didn't end up in the right
11 little white envelopes sometimes.

12 THE COURT: Mr. Jacobs, you are not going to redo
13 that.

14 MR. JACOBS: Judge, I was going to say, if the
15 government wants to stipulate that some agents have
16 intentionally thrown away my client's tapes, I will take a
17 stipulation and sit down.

18 THE COURT: Oh, stop. You know that's not what
19 they are saying.

20 MR. JACOBS: I am serious. Why can't I explore
21 that? I think there are tapes of my client's that are
22 missing. I think Anticev and other agents deep-sixed them.

23 MS. AMSTERDAM: Let me give you a very specific
24 example.

25 THE COURT: Sit down. What you can't explore are

1 the things that you already explored with Napoli.

2 MR. JACOBS: You sustained objections when I
3 tried to -- and I can get it out -- when I tried to move off
4 just the little things that he was doing. He had no
5 knowledge of a lot of things. When I asked him about the
6 whole taping process, the government objected and the
7 objections were sustained. You said, "Not today, Mr.
8 Jacobs, some other time."

9 THE COURT: Which "whole taping process"?

10 MR. JACOBS: I will get out the examination and I
11 will show you where your Honor sustained objections to
12 certain areas that you said were not proper because it was
13 just concerning the admissibility of the tapes.

14 THE COURT: Right.

15 MR. JACOBS: But, in any event, I think we are
16 entitled to explore within reason the taping process here in
17 this case. It is the heart and soul of the government's
18 case, the CM's and some of the bootlegs. The fact that it
19 is done in what I consider to be a criminal conspiracy by
20 the FBI is something I want to bring out. The government
21 says I am crazy. Then the jury is going to think that at
22 the end of the case, I guess.

23 THE COURT: Yes?

24 MR. MCCARTHY: Your Honor, the other thing I
25 wanted to point out is Mr. Jacobs also alluded to tape

1 tampering. I would like to know what the parameters of that
2 are going to be. We have heard a lot about tape tampering.

3 MS. AMSTERDAM: I'm sorry. We can't hear you.

4 MR. MCCARTHY: I would like to know what the
5 parameters of the tape tampering claim are going to be. We
6 have heard a lot about tape tampering during the course of
7 the government's direct case in connection with Mr. Jacobs'
8 examination of Mr. Salem and Mr. Ginsberg's later
9 appearance.

10 It turned out that what at the beginning was tape
11 tampering actually in the end boiled down to the fact that
12 Salem was able to control the on-off switch.

13 If that is the kind of tape tampering that we are
14 talking about, that is already in. If what is now being
15 claimed is that the FBI, after Mr. Jacobs represented during
16 the government's direct case that there was no dispute about
17 what happened to the tapes once they got into the FBI's
18 possession, that is with respect to the CM's, if the claim
19 now retreats from that and what we have is a claim that the
20 FBI did something to the tapes afterwards, I would like to
21 know what the good-faith basis for that is. Because at
22 great expense to the court and the public --

23 THE COURT: I know. Is that the claim?

24 MR. JACOBS: Your Honor, we have an FBI agent on
25 the tape saying the following --

1 THE COURT: Mr. Jacobs, I am not interested in
2 what you have on tape. I am interested in what you are
3 claiming happened to the tapes.

4 MR. JACOBS: I am saying the agents intentionally
5 told Salem not to record certain things. That is why we're
6 missing preambles on 40 tapes.

7 THE COURT: That is very different from what you
8 said two minutes ago. I mean, words have a meaning. Do you
9 know that?

10 MR. JACOBS: That is tampering with a tape. To
11 make -- maybe I'm using it in a much broader sense. To
12 Mr. McCarthy's question am I saying that the FBI, once they
13 got the CM's, tampered with them? Absolutely not. Am I
14 saying that the FBI agents conspired with Salem what to
15 record, what not to record, not to record exculpatory
16 things, I am saying yes. I have the evidence for it. I am
17 willing to take my shot at it.

18 And destroyed tapes. I have an agent saying,
19 "But if you happen to turn on one of those little gadgets,
20 we will keep it on the side, it's not going to be entered
21 into any kind of evidence." That is an FBI agent saying
22 that.

23 THE COURT: I know that.

24 MR. JACOBS: I think I have a good-faith basis,
25 with that in mind, to pursue this point. Period.

1 MR. McCARTHY: I would like to point out that
2 that instance, given that this is apparently a performance
3 of the agents, was gone into on examination. That
4 particular instance dealt with a situation where Anticev had
5 previously been the subject of a conversation between Sattar
6 and another individual where they were trying to locate
7 Anticev.

8 The other individual was on his way to Salem's
9 house, and Salem and Anticev had a conversation during which
10 Anticev made that statement. I think that is an awful slim
11 predicate for a wholesale claim, and I should point out that
12 that conversation happened a couple of months before the
13 CM's in this case started to be recorded. But that is an
14 awful slim reed to predicate the kind of stuff that they are
15 talking about doing at this point.

16 MR. JACOBS: I don't recall Anticev testifying to
17 that yet. Perhaps when he does it, then I will sit down and
18 have a lot of egg on my face. I haven't bought Salem's
19 testimony on it yet, and I don't think the defense is
20 obligated to do that yet. You asked for a good faith-basis
21 for the frame. I put it on the record. Let's hear
22 Anticev's story under oath. That is all we want.

23 MS. STEWART: I also have a very short
24 examination of Special Agent Anticev on the question of --
25 which I tried to do with Napoli, he said he didn't know

1 about it -- having to do with what happened with CM10 once
2 it was handed in to the agents.

3 There seems to be a discrete amount of time
4 before it ended up in the evidence locker, and I just want
5 to know where that tape was and what it was doing during
6 that period of time.

7 THE COURT: Who is the agent on that?

8 MS. STEWART: Anticev.

9 THE COURT: Anticev.

10 MR. McCARTHY: Which tape?

11 THE COURT: CM10.

12 MS. STEWART: CM10.

13 MR. McCARTHY: Your Honor, I must say, under the
14 circumstances, I would ask your Honor to direct an amended
15 C.F.R. notice from counsel. What I have and what I've
16 gotten in the last 12 hours doesn't even come close to
17 suggesting the kind of stuff we have heard about this
18 morning.

19 THE COURT: It does not.

20 MS. AMSTERDAM: What I would say is that it's not
21 going to be possible then to do the agents in one bite. We
22 will do a more detailed submission if that is what
23 Mr. McCarthy wants, and Mr. Jacobs and I on our case will go
24 with this defense and call the agents at that time.

25 MR. McCARTHY: Here's what I don't get: Three

1 weeks ago I asked for C.F.R. notices. I asked again after
2 that. It wasn't the first time when I asked about it three
3 weeks ago. They decided quite tactically to wait until the
4 very last second to file them. Now they filed them, with
5 the --

6 THE COURT: It turns out that most of it is a
7 delusion. Talk about fabrications.

8 MR. MCCARTHY: The point I was going to make
9 was --

10 THE COURT: Mr. Jacobs, your opening statement
11 which you just brandished is not notice of anything. It
12 certainly isn't notice of what you just uncorked.

13 MR. JACOBS: Judge, I told the government
14 before --

15 THE COURT: Mr. Jacobs.

16 MR. JACOBS: I told them I was calling the agent
17 for that point in my opening. It is not a secret. I read
18 the quote to the jury why I'm calling Anticev. I don't want
19 Mr. McCarthy to say, "Gee, Mr. Jacobs you are surprising me.

20 THE COURT: Mr. Jacobs, you are all over the lot
21 with this. You made allegations about fabricating evidence.
22 Then you didn't mean that; you meant something else. You
23 are going to file a notice that is in proper form before the
24 witness gets called, which is to say get it in by Monday.

25 MS. AMSTERDAM: Your Honor, we can't do it. We

1 can't file it by Monday. We cannot file it by Monday. We
2 just can't, your Honor.

3 THE COURT: I'm sorry you can't.

4 MS. AMSTERDAM: I want to tell you. I haven't
5 seen -- my children are away. I am seeing them this
6 weekend. They are then moving to the country. I am not
7 seeing them for two more months. I cannot file this by
8 Monday. I have said that we will call the agents on our
9 case. I have asked for this week off on vacation. I cannot
10 file this by Monday.

11 THE COURT: Ms. Amsterdam, the end of the
12 government's case is not a surprise. If Mr. Jacobs or you
13 or one of you or both of you have known about this from the
14 time that Mr. Jacobs opened and you have something other
15 than free play planned for this examination, then it ought
16 to be possible to file it.

17 MR. JACOBS: Maybe I am misunderstanding
18 something. We have given the government notice under the
19 C.F.R. that we wish to call certain agents. They want the
20 exact names. There are four or five them. I will give it
21 to them. The subject is not narcotics, it is not organized
22 crime, it is a period of time of five given months. I have
23 testified enough under the C.F.R. to know that is what the
24 Department of Justice requires. They are being asked to
25 testify concerning their investigation, concerning these

1 defendants in this trial in this case involving a certain
2 five-month period of time.

3 Does the government want to put their names on
4 the record? I can't do more. I do not have to proffer the
5 questions and answers. If Mr. McCarthy has a problem
6 because the FBI has files that they don't want to turn over
7 or if there are problems with the agents, that is not my
8 concern.

9 What I proffered under the C.F.R. -- maybe I
10 didn't give every name of every agent. I said Anticev,
11 Floyd, I am assuming Napoli is under their control, and some
12 of the other safe house agents. They know what it is about.
13 They know the nature of the examination. They know what the
14 time sequence is.

15 You have my word they will not be questioned on
16 any other unrelated cases. I have no interest in exploring
17 what Floyd did in some other case or what Anticev has done
18 in some other case. We are questioning about this case on
19 trial. Doesn't the FBI and Justice have notice now?

20 I think they do. I think what Mr. McCarthy is
21 doing is like people accused me of, is dancing. He doesn't
22 want them on the stand, and he's going to dance with me
23 until he gets them off the stand. I have given them enough
24 notice why Anticev is needed. I gave them the tape. What
25 do I have to do now?

1 THE COURT: Mr. Jacobs, nobody is accusing you of
2 dancing. Shouting, yes. Not dancing. Sit down.

3 MR. McCARTHY: The United States has a right
4 under law to know if its agents are going to be called as a
5 witness or witnesses what the relevance of the testimony is.

6 The relevance of this testimony changes with each
7 snap of a clock. We don't know a thing in terms of the
8 parameters of what they are talking about by this letter.
9 What I request -- what I think I am entitled to under law is
10 each witness that they intend to call and the areas that
11 they intend to go into with sufficient specificity that we
12 have some idea of what is going to go on on the witness
13 stand once they get up there. This is utterly insufficient
14 for that.

15 MR. JACOBS: Well, I will attach your Honor's
16 minutes and your Honor's comments from the daily copy with a
17 cover letter. I have given them a summary. Your Honor has
18 made some statements. I am more than willing to abide by
19 the court's rulings.

20 If the Department of Justice can't read your
21 Honor's comments clearly as to what this examination is
22 about, then I really can't add much more to it. If I am
23 going to be precluded, then I am precluded, but I have given
24 them I think sufficient notice.

25 THE COURT: I want to know at the very least the

1 names of the agents.

2 MR. JACOBS: Absolutely, sir. That's today.

3 Now.

4 THE COURT: Who?

5 MR. JACOBS: If you could give us a few minutes,
6 Judge. We will be happy to get them.

7 MR. McCARTHY: Your Honor, I don't really think
8 that the C.F.R., if the C.F.R. didn't exist, there would be
9 very good reason for the court to be asking for more of a
10 proffer than what we've gotten up until now about this
11 information. I don't think the C.F.R. is the only issue.

12 THE COURT: What else is the issue?

13 MR. McCARTHY: Well, if the government was going
14 to put on questionable testimony, we would have probably a
15 lengthy proceeding about it, we would probably -- the
16 defense would probably claim entitlement to a hearing under
17 Rule 104 about the admissibility of it, and I would have had
18 a proffer, chapter and verse, like we have been doing since
19 1993 on this case, what it was we intended to do.

20 MR. JACOBS: Your Honor, I don't want to make it
21 personal, you know, when the government offered the CM's and
22 they said to me, would you mind if we put them in through
23 Napoli, even though he didn't collect all of them, Anticev,
24 all the other people, I said, I have no problem letting it
25 come in that way. And we discussed the fact that there

1 would come a time when the Anticevs and that group, we would
2 get our shot at them.

3 I am not saying that was a commitment by the
4 government or that the government, you know, played a game
5 with me or anything like that. That's not what I am saying.

6 The point is this: The Department of Justice has
7 a perfect right, as we've discussed, to know why their
8 agents are being called. They know why. They know what the
9 nature of the examination is about.

10 If they don't want to put them on, they don't
11 have to. They know what the consequences are if they choose
12 not to bring us the witness. I have sat there. I know what
13 it is like. There are sometimes the Department of Justice
14 won't put a witness on the stand.

15 THE COURT: That is not what is going on, Mr.
16 Jacobs.

17 MR. JACOBS: I don't know. But I mean --

18 THE COURT: Yes, you do. Yes, you do.

19 MR. JACOBS: I have a feeling I know.

20 THE COURT: Please.

21 MR. JACOBS: But the point is we have given them
22 sufficient notice. I will give them the names.

23 MR. MCCARTHY: What just got said was completely
24 inaccurate. I just want to point out that, first of all,
25 when I asked about whether other witnesses besides Napoli

1 would be necessary as far as the defense was concerned, I
2 was told in fact they would.

3 But, secondly, it was completely unnecessary to
4 put Napoli on in the first place to get the tapes in,
5 something that your Honor alluded to at least once in this
6 trial already. So the question of whether Mr. Jacobs
7 graciously gave me permission to get the tapes in through
8 one witness rather than many is not only --

9 THE COURT: I am not going to relive that.

10 MR. JACOBS: I'm sorry. May I just interrupt. I
11 have a couple of other people who really were unrelated. I
12 assume Mr. McCarthy is not having any problem with statement
13 agents on my client. I mean, I proffered under the C.F.R.
14 on some really unrelated matters. There were some search
15 agents and I stated why I wanted those. I assume we have
16 been dealing here with another matter as opposed to -- I
17 asked for the four agents who picked up the bootlegs, why I
18 wanted them, that was Voss, Roth, Anticev and McNally, and I
19 wanted to call some agents concerning Voss's statements to
20 my client about that he was videotaped. I proffered the
21 government as to what that was about. There were also some
22 searches at his gas station. I wanted all those agents. I
23 assume Mr. McCarthy is not raising those as a particular
24 problem. I don't know the names of some of those agents.

25 MR. MCCARTHY: We hadn't gotten to the question

1 of the tapes yet. What I have been focusing on is this one
2 particular aspect of Mr. Jacobs' letter. As far as the
3 other witnesses are concerned, if we are finished with this
4 point and moving on to something else -- are we finished
5 with this point?

6 THE COURT: We are about to be. I am going to
7 permit him to start to do it. If I start sustaining a whole
8 string of objections, I am going to stop it, and I am going
9 to tell the jury what has gone on. You are folding your
10 hands and shrugging your shoulders as if to say, well, if
11 that's what has to happen, that's what has to happen. Is
12 that what you mean? Because I don't want to hear any
13 whining about it when it does.

14 MR. JACOBS: Judge, I have tried a lot of cases.
15 When a judge makes a ruling I will sit down and I will go
16 about my business. You know, your Honor makes rulings, I
17 live with them. I mean, your Honor runs the courtroom and
18 your Honor will make the rulings. If your Honor thinks we
19 are out of line, then your Honor will tell the jury, and we
20 will move on.

21 THE COURT: Let me repeat it again: You are not
22 going to cross-examine about matters that are not in
23 dispute, and you are not going to cross-examine about
24 matters that do not go to what you have claimed you are
25 going to prove, which is fabrication.

1 MR. JACOBS: Assuming that certain statements can
2 be stipulated to between the government and the parties that
3 are not in dispute, I have no problem with your Honor's
4 statement. As we get to those individually, perhaps that
5 can be worked out. I have no problem with certain things
6 like that. I don't need to open my big mouth anymore. I am
7 sit down.

8 MR. McCARTHY: I don't know what that means. I
9 don't think any of this is admissible, and I am certainly
10 not going to stipulate in the blind. I guess I will find
11 out.

12 MR. SERRA: Your Honor, I think I'm picking a
13 good point for this. I have one commitment which was
14 unbreakable as it is a personal one.

15 THE COURT: You are excused.

16 MR. SERRA: Thank you. I have discussed the
17 issues with virtually all of my colleagues, and I am aware
18 of everyone's position.

19 MR. McCARTHY: Your Honor, just so the government
20 is clear, Mr. Jacobs and I guess whoever else is joining in
21 this defense is going to be required to let us know at least
22 which agents it is.

23 THE COURT: Yes.

24 MR. JACOBS: Right here.

25 MR. McCARTHY: I just want to know what the state

1 of what the discovery as to this is.

2 Thank you.

3 THE COURT: I want a list for Wednesday.

4 MR. JACOBS: Pardon me?

5 THE COURT: Who is starting on Wednesday and with
6 whom?

7 MR. STAVIS: I am, your Honor.

8 THE COURT: And with whom?

9 MR. STAVIS: In order of appearance -- as your
10 Honor may be aware, the first seven or eight witnesses the
11 government has graciously agreed to provide to the court.
12 Those witnesses are Agent Floyd, Agent Anticev, and, I think
13 he is the assistant director in charge, Carson Dunbar.

14 THE COURT: Dunbar as to what?

15 MR. STAVIS: Your Honor said as to the July 1,
16 1992 meeting.

17 THE COURT: That is the one agent?

18 MR. STAVIS: That is the one agent.

19 MR. McCARTHY: What is left with Floyd then?

20 MR. STAVIS: Floyd was Tape 1-8.

21 THE COURT: There is no dispute about that. That
22 is in. There is no need to examine her about it.

23 MS. STEWART: Egyptian intelligence.

24 THE COURT: The question of instruction on
25 Egyptian intelligence.

1 MR. STAVIS: That was it, assuming that 1-8 is
2 being stipulated in.

3 THE COURT: It is.

4 MR. MCCARTHY: Stipulated.

5 MR. STAVIS: So then Floyd would not be the first
6 agent, your Honor, because the tape is being stipulated in,
7 Source Tape 1-8.

8 THE COURT: So who will be the first witness?

9 MR. STAVIS: Anticev.

10 THE COURT: Then who?

11 MR. STAVIS: Then Dunbar.

12 THE COURT: Right.

13 MR. STAVIS: Then Michael Urban, the assistant
14 inspector general from the New York Department of
15 Correctional Services.

16 THE COURT: To testify to?

17 MR. STAVIS: To testify to -- your Honor
18 permitted me one Attica expert, not expert --

19 THE COURT: This is a day in the life of?

20 MR. STAVIS: A day in the life of, yes, your
21 Honor.

22 THE COURT: All right.

23 MR. STAVIS: Then the other Attica expert -- not
24 an expert. Excuse me. The other Attica witness is
25 Lieutenant George. The government was going to call him on

1 their case. I was given 3500 material, and then they had
2 agreed to provide him in the event that they didn't call
3 him.

4 Certain statements at Attica to a correctional
5 guard had been introduced. The statements were also made to
6 Lieutenant George of the Special Housing Unit at Attica.

7 The next witness is Kevin Howe, who is an EMS,
8 Emergency Medical Services, lieutenant. That is the Kahane
9 portion of the case, your Honor.

10 THE COURT: Pardon?

11 MR. STAVIS: That is the Meir Kahane portion of
12 the case.

13 THE COURT: Right.

14 MR. STAVIS: Although, depending upon the
15 schedule, Dr. Bernard Adams who performed the autopsy --
16 excuse me, who did not perform the autopsy but had a post
17 mortem examination of Dr. Kahane is the next witness. I
18 understand that he's out of state, and, if there is a need
19 to switch him around with Lieutenant Howe, or if there are
20 problems in producing him, we will work with that and we
21 will rearrange. Those are the witnesses that the government
22 has graciously agreed to provide.

23 THE COURT: That is the order in which they are
24 going to be called?

25 MR. STAVIS: Yes, your Honor.

1 THE COURT: My suggestion to you is that nobody
2 should make firm plans for Fridays from here on in because
3 we may be back.

4 MR. BERNSTEIN: When you say that, you say "we
5 may be back," you mean lawyers in session with the court as
6 opposed to taking testimony?

7 THE COURT: Correct.

8 MR. STAVIS: I don't have to have witnesses
9 available for Fridays, your Honor?

10 THE COURT: No, not yet.

11 MR. MCCARTHY: Your Honor, there were a couple of
12 other things in Mr. Jacobs's letter that need to be --

13 THE COURT: Go ahead.

14 MR. MCCARTHY: Mr. Jacobs apparently wants to
15 call Agent Voss and Agent Pellegrino for the purpose of
16 examining them as to whether Mr. Saleh was advised that he
17 was on videotape. I guess the relevance of that has to do
18 with the substance of the statement that he ultimately gave,
19 which, by the way, doesn't have anything to do with him
20 being on videotape. But I don't know that I can mount a
21 very spirited objection with respect to that.

22 THE COURT: OK. That is what they are being
23 called to testify to?

24 MR. JACOBS: Yes. Pellegrino testified to it at
25 the hearing before your Honor, that he believed Voss told my

1 client that he was on a videotape.

2 THE COURT: Why do you need them both?

3 MR. JACOBS: I don't. I wasn't sure. I mean
4 Pellegrino said he didn't hear it, but he believed Voss said
5 it.

6 THE COURT: That's totally inadmissible.

7 MR. JACOBS: These are conversations with my
8 client that he had.

9 THE COURT: Pellegrino's testimony that he didn't
10 hear it but believes it happened isn't admissible.

11 MR. JACOBS: I put it down because it was a
12 little unclear at the hearing whether Pellegrino actually
13 heard it or just repeated what Voss said. Voss would be
14 fine. I don't need both.

15 MR. MCCARTHY: Voss.

16 THE COURT: Voss.

17 MS. STEWART: Judge, just groundrules wise, Nancy
18 Floyd is no longer going to be offering any evidence on Mr.
19 Stavis's case. She will be called on my case because it is
20 my questions that she will be answering. But it is our
21 understanding that whoever calls an agent, anyone else that
22 had questions must be prepared at that time to talk to the
23 agent and will have actual proffers to the government.

24 THE COURT: Correct.

25 MS. STEWART: So we thought we were going to get

1 ten agents and we were all going to do them all at the
2 beginning of the case and then go on. But now it does
3 appear that they will be interspersed throughout the case.

4 THE COURT: So long as you tell them when they're
5 being called.

6 MS. STEWART: Right, exactly.

7 In other words, Mr. Nancy Floyd will no longer be
8 called by Mr. Stavis.

9 (Counsel conferred)

10 MS. STEWART: We will work this out within the
11 defense, Judge. We understand what the parameters are. I
12 think it will not be a problem.

13 MR. STAVIS: Your Honor, I left off my list
14 Dr. Basil Michaels, who was a prosecution witness earlier in
15 the trial, and there was a line of cross-examination that I
16 wished to pursue that was outside of the scope, and your
17 Honor had said that I should bring him back on my case in
18 the event that I wanted to pursue that line of
19 cross-examination.

20 THE COURT: I don't recall it.

21 MR. MCCARTHY: If I can defer to Mr. Khuzami on
22 this?

23 THE COURT: All right.

24 MR. KHUZAMI: Your Honor, I had asked Irving
25 Franklin some questions about his stay in the hospital.

1 Objections by Mr. Stavis were sustained to that. He
2 attempted, when Dr. Michaels was on the stand, to inquire
3 about his treatment of Irving Franklin.

4 The government objected on scope grounds. The
5 court did indicate that Mr. Stavis could call him back.
6 However, since the attempted murder prong of the 1959 count
7 is now out, I don't see what the relevance is of his
8 testimony.

9 THE COURT: What is this about?

10 MR. STAVIS: The attempted murder prong is out,
11 but, however, your Honor has retained the assault charge,
12 assault in aid of racketeering.

13 THE COURT: Right.

14 MR. STAVIS: As I understand your ruling. I have
15 the right -- Dr. Michaels testified previously in a grand
16 jury as a supervisor of the trauma slot at Bellevue
17 concerning the wounds of Irving Franklin.

18 THE COURT: What do the wounds of Irving Franklin
19 have to do with what was going on in your client's mind?

20 MR. STAVIS: They have to do with whether or not
21 my client assaulted Irving Franklin.

22 MR. KHUZAMI: Your Honor, the medical records are
23 in.

24 THE COURT: I mean, if somebody wants to
25 cross-examine about the direction the bullet came from or

1 something of that sort.

2 MR. STAVIS: Yes, your Honor.

3 THE COURT: He can do it.

4 MR. STAVIS: Depending upon the availability of
5 Dr. Adams, Dr. Michaels could go before or after.
6 Logistically I will work that out with the government.

7 THE COURT: OK.

8 MR. STAVIS: I believe that Mr. McCarthy and I
9 have had a meeting of the minds with regard to the CIPA
10 stipulation, but we haven't done so, and I am about to
11 commence my case, but I think we will have the long weekend
12 to work on that.

13 MR. MCCARTHY: That will be worked out.

14 MR. STAVIS: The other outstanding issue was, not
15 the personnel files but the disciplinary files of the
16 agents. The only agent that I am calling is Dunbar, the
17 supervisor, but specifically with regard to Mr. Anticev,
18 there was a letter earlier from Mr. Patel concerning the
19 disciplinary file for Agents Floyd and Anticev, but I am
20 pressing the issue with regard to Mr. Anticev. We intend to
21 inquire.

22 THE COURT: You intend to inquire about what?

23 MR. STAVIS: About misconduct on Agent Anticev.

24 MR. JACOBS: I thought your Honor was going to
25 look at the file.

1 THE COURT: I have looked at the file. In no
2 way, shape or form are you going to ask that question unless
3 and until I tell you that you can. Because any judgment
4 that anybody made about anybody's behavior in this case is
5 totally irrelevant, any third person.

6 MR. STAVIS: That is correct, your Honor. But --

7 THE COURT: Most particularly depending upon what
8 the nature of the behavior was.

9 MR. STAVIS: But, as with all witnesses that are
10 on the witness stand, the witnesses are subject to
11 impeachment for their prior bad acts and misconduct. That's
12 something that we saw certainly --

13 THE COURT: Going to truth telling.

14 MR. STAVIS: Going to their credibility, that's
15 correct, your Honor. That is something that we saw with
16 Mr. Ginsberg when he was called.

17 THE COURT: No, it had to do with his taking
18 positions that were --

19 MR. JACOBS: Your Honor, getting back, obviously
20 I haven't seen the files. I don't know what your Honor has
21 seen. Your Honor knows the issues of the defense in this
22 case. If any agent was disciplined concerning the handling
23 of tapes, concerning the safe house conduct --

24 THE COURT: If any agent was disciplined
25 concerning the handling of tapes or the safe house, it's

1 totally irrelevant to the point that you are trying to make.

2 MR. JACOBS: I would completely disagree with
3 that. And I believe that the circumstances surrounding that
4 and whatever underlying facts are revealed by documents, I
5 leave that to your Honor as to what we are entitled to get
6 or not get.

7 THE COURT: You left out a phrase.

8 MR. JACOBS: Pardon me?

9 THE COURT: You left out a phrase, "if anything."

10 MR. JACOBS: If anything.

11 MR. STAVIS: The point is not the disciplining,
12 OK, because that does relate to a third party. The point of
13 the facts contained in the disciplinary charges or the
14 report --

15 THE COURT: If any.

16 MR. STAVIS: If any, that's correct, your Honor.

17 THE COURT: You guys are assuming an awful lot.

18 MR. McCARTHY: Your Honor, I would like to return
19 to Mr. Jacobs' letter, take the last item, and then move
20 back to the first item if I may.

21 THE COURT: The last item?

22 MR. McCARTHY: Being search agents.

23 THE COURT: Right.

24 MR. JACOBS: Forget the person. The agents have
25 covered that. I think there was a search at this gas

1 station. I might want one agent to put in some records and
2 generally describe the search.

3 MR. McCARTHY: My concern here is what I think is
4 probably a misunderstanding. There was no search of the gas
5 station. There were documents that were obtained by
6 consent. They were not obtained as a result of a search.
7 They were the receipts that were handed to the agents and
8 that's already been the subject of testimony. But there was
9 not either by consent under the Fourth Amendment or
10 otherwise a full-blown search of either of the business
11 locations.

12 MR. JACOBS: I think there were some more items
13 that were taken other than the two receipts in evidence. I
14 am not sure. I can work that out with Mr. McCarthy. I
15 don't think that needs the court's intervention at this
16 point.

17 MR. McCARTHY: I just wanted to correct what I
18 thought was a misunderstanding.

19 MR. JACOBS: I will work that out with the
20 government.

21 MR. McCARTHY: Your Honor, the next topic I have
22 is with respect to tape retrieval. Mr. Jacobs has requested
23 four different agents apparently, they are listed at pages 1
24 to 2 of his letter, to testify regarding the retrieval of
25 Salem's personal tapes.

1 My suggestion to your Honor is that this is
2 already beyond the point of being cumulative. Out of the 80
3 or so tapes that there were, at best five or six, and I
4 should say portions of five or six were received in
5 evidence. I should also say that he's already been
6 questioned at length about them.

7 I realize that they are not required to take his
8 answers, but his answers actually conceded the point that
9 they want to establish, I would suggest, through the agents.

10 This is a potentially large investment of time
11 which is going to turn out to be totally cumulative because
12 to the extent that there is anything that's relevant and
13 material, it's already in the record.

14 MR. JACOBS: Your Honor, I think Salem was lying
15 about the tapes, the number of tapes, where they were
16 gotten, how they were gotten. I think his testimony is a
17 bunch of nonsense.

18 THE COURT: Mr. Jacobs, cut it out.

19 MR. JACOBS: I'm serious. I think his
20 testimony --

21 THE COURT: I am not interested in what you
22 think. I am interested in what you intend to prove with the
23 four agents.

24 MR. JACOBS: It takes me about five minutes or
25 ten minutes of examination with each agent. I can do the

1 examination of the four agents in 20 minutes and cover the
2 points, your Honor, of where they got them and under what
3 circumstances. I am anxious to see them describe the chair
4 he sat in and things like that.

5 I am obviously not going to disclose the
6 security, where he was. I can do it in a real short time.
7 It is not going to take a lot of time.

8 (Continued on next page)

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1 MS. STEWART: I also have an issue with that,
2 Judge. Agent Roth. There are bootlegs in evidence that
3 concern my client which were conceded to be missing CM's or
4 introduced not as -- when I use that, I don't mean that they
5 were Nagras, I mean that they were introduced as if they
6 were CM's. And I think Mr. Salem himself said that he
7 couldn't use his briefcase so he used his body wire, but he
8 did throw it in the chair just like he did everything else.
9 And since this does go to whether or not these were ever
10 intended to see the light of day, I think I would ask this
11 agent a few questions about where he found them and under
12 what circumstances.

13 THE COURT: Where he found the ones that were
14 received?

15 MS. STEWART: Yes.

16 THE COURT: I will allow it. What else?

17 MR. MCCARTHY: Mr. Wasserman has sent me a
18 letter. I unfortunately have the wrong one in front of me,
19 but let me try to recapture it from memory. He sent me a
20 letter dated June 26 with respect to some testimony that he
21 wants to elicit from Detective Napoli, which relates to
22 evidence that he sought to elicit during the government's
23 direct case. It was kept out at that time. I believe it
24 continues to be inadmissible.

25 MR. WASSERMAN: Good afternoon, Judge.

1 THE COURT: Good afternoon.

2 MR. WASSERMAN: Your Honor, there are a number of
3 statements that -- well, to begin with, part of the proffer
4 to the government of the June 26 letter covered testimony by
5 Detective Napoli concerning my client, testimony that he was
6 not crossed on. It arose from the question posed by
7 Mr. Jabara in connection with whether Mr. Napoli, rather
8 Detective Napoli, ever met with Emad Salem other than to
9 pick up the tapes. And rather gratuitously, Detective
10 Napoli went into, yes, I did, there was one occasion when
11 Emad Salem was scared for his life, he was going to meet
12 with Dr. Rashid, and he was very afraid, blah blah blah.
13 That testimony, both because the government had put
14 Detective Napoli on the stand solely to lay a foundation for
15 the tapes and because it was not something that was elicited
16 by the government in its direct, was something that I did
17 not feel at the time was something appropriate for me to
18 cover in cross-examination of him. But it is clearly he has
19 testified directly against my client. I think I am entitled
20 to have Detective Napoli on the stand to explore his bias in
21 that regard.

22 In that regard, his statements to Emad Salem on
23 June 23 are relevant to explore that bias. And those
24 statements take several forms. There is the statement that
25 we have already had a sidebar on, which was got to get

1 the -- as it turns out, a relistening of the tape, and I
2 should correct the record at this point, the word is not
3 "involved." I am not sure at this time what it is, but it
4 is not "involved." It goes on to say buying ammunition,
5 buying material. And that is one statement. There now,
6 having listened to the original Nagra just within the last
7 week or so, there are other statements that are audible in
8 which it continues on to address Salem in saying the office
9 is pissed. This investigation, and then again I am still
10 working on the tape to develop what is being said, but he
11 goes on in that vein with Emad Salem over the phone. I
12 think I am entitled to get those statements out on
13 cross-examination of Detective Napoli to explore his bias,
14 not that they are admissions.

15 Mr. McCarthy has quite appropriately corrected
16 the statement that I made the other day in court that I
17 could get -- that the theory for admissibility was that they
18 were admissions. They are not. However, the same case that
19 resolves that states quite clearly that you can use those
20 statements to impeach the credibility of the declarant, that
21 is, if they are not offered for the truth of the assertion,
22 they can be used for impeachment. And I have a basis for
23 impeaching Detective Napoli based upon his testimony against
24 my client.

25 Second, there is a group of statements that

1 Napoli makes to Emad Salem which have not to deal with his
2 opinion, and I think I understand the Court's response the
3 other day that what Napoli thinks as to whether the doctor
4 was involved, again using the word that isn't on the tape,
5 but the concept of it, I agree with your Honor that is not
6 competent. However, I am not offering his statement for
7 that purpose. I think the fact that it is said bears both
8 upon his bias towards my client and also, in terms of what
9 Emad Salem's response was to that statement. It makes no
10 difference whether it is true or not in Detective Napoli's
11 judgment that my client was involved, guilty, not guilty, or
12 whatever. That is not my point, and I think the Court
13 appropriately instructs the jury accordingly, but rather it
14 is said that Emad Salem's response to it is appropriate,
15 appropriate evidence, and Emad testifies here in a number of
16 ways, your Honor.

17 THE COURT: Mr. Wasserman, it is out.

18 MR. WASSERMAN: What is out?

19 THE COURT: What you propose to prove.

20 MR. WASSERMAN: I can't cross-examine Napoli on
21 his bias against my client?

22 THE COURT: You have no basis to cross-examine
23 Napoli as to on bias based on those statements because they
24 don't illustrate bias at all.

25 MR. WASSERMAN: I am sorry. He has testified

1 that Emad Salem was afraid of meeting my client. Don't I
2 have a right to question Napoli on that statement?

3 THE COURT: You had a right to question him at
4 the time that he testified to that.

5 MR. WASSERMAN: I am sorry, the government's
6 position, when they put him on, was solely for foundation.
7 This wasn't something they elicited. The fact that --

8 THE COURT: They didn't elicit that.

9 MR. WASSERMAN: He didn't elicit it so much as he
10 posed the question that Napoli went off on to gratuitously
11 throw in. I don't feel I have to respond because he
12 gratuitously throws it in at the time when it is not
13 appropriate for me to respond to it.

14 THE COURT: No. Then it is gone. What he said
15 at the time was that he was afraid because it was a hurry-up
16 thing. That is what he said.

17 MR. WASSERMAN: He also testified that he didn't
18 want Emad Salem to be wired because of that. And then we
19 had Emad testifying concerning that he was not only wired,
20 he was doubly wired. I fail to see why, if a witness is put
21 on solely to lay a foundation for tapes, and counsel for
22 some other defendant elicits a response that wasn't
23 appropriate to the question but rather gratuitous, that I am
24 obligated to cross that witness at that time on that
25 statement. I don't think that I am subject to that kind of

1 vagaries. .

2 Second of all, the fact of the matter is that
3 there are other statements by Detective Napoli concerning
4 his conversation with Emad Salem that bear directly on Emad
5 Salem's bias, and having nothing to do with Detective
6 Napoli's expressing directions to Emad Salem about getting a
7 doctor to buy munitions and --

8 THE COURT: That is not in your letter.

9 MR. WASSERMAN: I have written several letters to
10 the government on Detective Napoli. If I am supplementing
11 it at this point, I don't think that -- I think I said it
12 specifically in my letter to the government that it bears on
13 Emad Salem's bias.

14 If I may add, Judge, at this point there are
15 several different types of statements that Detective Napoli
16 makes to Emad Salem, and each one has to be treated on its
17 own. At one point -- and again it is something that has
18 just been audible on the tape in the past week listening to
19 the original -- he asks Emad Salem concerning whether my
20 client has the intention of joining us, referring to the
21 safe house and what is going on there. It is directly
22 relevant to illuminating for the jury what was the doctor's
23 project which Emad Salem testified to as being the UN and
24 other matters. It is directly on point in terms of Emad
25 Salem's testimony concerning the meeting that he had set up

1 for June 24, which Emad Salem said he was going to pick up
2 detonators from my client. I think to not allow me to cross
3 Detective Napoli about what his directions and questions
4 were of Emad Salem prohibits me from exploring Salem's bias
5 and falsification in his testimony.

6 The second thing is, I think it is separable what
7 Napoli responds to on the witness stand and the tape itself.
8 And I think that the tape itself has an independent basis
9 for coming in to impeach the credibility of Emad Salem, to
10 impeach the credibility of Detective Napoli, to indicate
11 their bias, and also to provide a context for Emad Salem's
12 testimony that yes, he told Detective Napoli that the doctor
13 had his own project, nothing to do with us. I think it is
14 very important for the jury to know what question that was
15 in response to. There is no basis for keeping it out. It
16 is not putting in an opinion before the jury. It is putting
17 facts before the jury. And there are two ways of doing it.

18 THE COURT: With the obvious intention of putting
19 an opinion before the jury.

20 MR. WASSERMAN: Forgive me, I couldn't hear your
21 Honor.

22 THE COURT: With the obvious intention of putting
23 an opinion before the jury.

24 MR. WASSERMAN: Judge, if I may, respectfully, I
25 care about what his instructions and questions are, the

1 factual basis, and that to introduce for the purpose of
2 impeaching the credibility of Napoli's testimony and Emad
3 Salem's testimony about the subject matter of those
4 statements. I think the case law, if I may refer your Honor
5 to U.S. v. Detrick, which deals with a state of mind
6 introduction of an agent's -- not an agent, I am sorry --
7 with a third-party statement being introduced not for the
8 truth of it but rather for the fact of it being said, and
9 for the very case that bars me from using Napoli's
10 statements as admissions, but suggests that the proper
11 course of action is to have him on the stand and
12 cross-examine him and use the statements to impeach his
13 credibility. That was a case where the agent had identified
14 someone else as having been responsible for an assault. I
15 don't see any reason why I can't cross-examine --

16 THE COURT: Let me hear from the government.

17 MR. MCCARTHY: Your Honor, let me start out with
18 a proposal, because I think the very most that ought to
19 happen here, if anything, is that your Honor could perhaps
20 inspect the portion of the record in connection with Mr.
21 Jabara's examination of Napoli that Mr. Wasserman alludes
22 to. If Mr. Wasserman is correct that Mr. Napoli's response
23 was gratuitous and nonresponsive, then notwithstanding the
24 fact that Mr. Wasserman probably should have cross-examined
25 him on it, the government would not oppose a motion to

1 strike the testimony that Mr. Wasserman contends is
2 gratuitous.

3 THE COURT: Not responsive.

4 MR. McCARTHY: Yes. Which I think would take
5 care of the majority --

6 THE COURT: Of what it is he is talking about.

7 MR. McCARTHY: Right. With respect to the rest
8 of it, I don't want to belabor the point or take up more
9 time than is necessary. I continue to think that Napoli's
10 state of mind with respect to this is irrelevant, and
11 Salem's assessment of whether or not Mr. Hampton-El was in
12 the conspiracy is similarly irrelevant.

13 MR. WASSERMAN: Judge --

14 THE COURT: Yes?

15 MR. WASSERMAN: I just think that Emad ought to
16 testify. I am entitled to present to this jury that which
17 amplifies and illuminates his testimony. He has been told
18 that the office is pissed because my client hasn't done what
19 the officers wanted him to. That is bare-bones
20 encouragement for him not only to take actions at the time,
21 but to get on the witness stand here and to falsify his
22 testimony concerning what he expected to accomplish in a
23 meeting the next morning. It is a matter that the agent
24 bald-facedly says to him what is the doctor's intention, is
25 he joining with us, and Emad Salem says no, no, no. That is

1 not a matter of whether he has or not from the legal point
2 of view but from what Emad's testimony is concerning --

3 THE COURT: Is that not in already?

4 MR. WASSERMAN: No. And I will tell you why. It
5 may be, but it is not explained to the jury what it was in
6 response to. The jury only has heard Emad's testimony that
7 that is what he told Detective Napoli. They haven't heard
8 the question. It is hard to understand the answer if you
9 don't know what the question was. He denied on the stand
10 hearing the question. In fact, the work that is being done
11 now --

12 THE COURT: This is of tertiary relevance, it
13 really is.

14 MR. WASSERMAN: Tertiary?

15 THE COURT: Yes.

16 MR. WASSERMAN: Judge, I know it is on an empty
17 stomach, but you say it is tertiary to my client and he will
18 kill me. Seriously, Judge, if I can do two things: one,
19 striking Napoli's testimony is not ringing the bell and just
20 doesn't work.

21 THE COURT: Sure it does.

22 MR. WASSERMAN: The first time I hear my client's
23 name is when someone is very afraid of meeting him and is
24 told not to wear a wire. And you are going to tell him:
25 forget about that. I don't understand how that works. The

1 second thing is, will your Honor wait until the transcript
2 based upon what we are doing with the original matter is
3 ready and point to the exact wording? It is basically that
4 in order to understand an answer, you should know what the
5 question is. Emad has testified to what he answered and I
6 think the jury should hear what the question was. I don't
7 understand quite what the government's objection is. One of
8 the points about Detrick that struck me when I read it --

9 THE COURT: I gather we are not going to get to
10 Napoli for a while, is that correct?

11 MR. McCARTHY: It looks that way, your Honor.

12 THE COURT: All right. I would just as soon
13 postpone this for a short time.

14 MR. WASSERMAN: All right.

15 MR. McCARTHY: There is another matter with
16 respect to Hampton-El that I don't think is going to be
17 relevant for a week or so yet, which is Mr. Wasserman's
18 request to have produced the agents who were involved in the
19 search of 251 RogersRogers Avenue, and specifically
20 the Department of Investigation's inspector who accompanied
21 Agent Cordaro to the first entry into 251 Rogers Avenue.

22 THE COURT: I remember that.

23 MR. McCARTHY: Which had to do with the lost
24 tape. I don't think that is relevant to the case. I bring
25 it up only at this point because there may be a logistical

1 problem with Agent Floridia after next week. If your Honor
2 wants to deal with it now, fine. If not, I will try --

3 MR. WASSERMAN: Your Honor, I think that the last
4 paragraph in the letter to the government is a valid proffer
5 relevant to that search. The evidence has been introduced
6 by the government not to show that my client is innocent but
7 that weapons were hanging on the wall and, in what has been
8 called the safe house by the government, were there for the
9 purpose of urban terrorism. The second thing, they went to
10 great lengths to put in that note that they claim is from
11 Abu Ubaidah, which was found in my client's car --

12 THE COURT: Mr. Wasserman, the man's testimony is
13 that it was not hanging on the wall when he went in. Right?

14 MR. WASSERMAN: You are talking about on May 10?

15 THE COURT: Yes.

16 MR. WASSERMAN: That is precisely my point.
17 There has been testimony that Abu Ubaidah, so far in this
18 trial, there was testimony that he was very cooperative in
19 having Cordaro and Floridia come in. My point, it is not
20 the only way of doing it. From my point, the weapons were
21 on the wall, that the conversation that was had between
22 Ubaidah and Floridia was concerning the display, and the
23 fact that the tape doesn't exist is relevant to that point.
24 Most of all --

25 THE COURT: In other words, you want to put a

1 witness on the stand, cross-examine him, hope that the jury
2 believes the opposite of his story, and use that to argue
3 that the weapons were on the wall when he went in, in the
4 first place?

5 MR. WASSERMAN: Judge, if I may just --

6 THE COURT: No. This is really of tertiary
7 relevance and it is a complete waste of time, Mr. Wasserman.
8 You develop a fascination with a subject at times that is
9 beyond understanding.

10 MR. WASSERMAN: I know, but I am not always
11 wrong. Let me just take one second of the Court's time.
12 The fact of the matter is that Ubaidah, being present during
13 this interview on May 10 and being testified to as
14 cooperative, if in fact the weapons on the wall are there,
15 it shows two things: one, that in response to public
16 authority, that is, the display of the Department of
17 Investigation -- rather -- the building inspector badges, he
18 opens up the door and says, "Come on, I'll show you around,"
19 that shows a lack of consciousness of (a) that there is any
20 guilt --

21 THE COURT: By somebody who is not on trial here.

22 MR. WASSERMAN: But he has been associated time
23 and time again with my client as the person who was there at
24 the time of the search, and second, that note has been
25 offered to show that the raid projected great emergencies.

1 Dr. Rashid, whatever it says, it is a great emergency. The
2 FBI has raided the apartment. My point is simply that there
3 is a difference between great emergency because there has
4 been an FBI raid. If you look at the footage, you kind of
5 get the raid itself is the emergency, not that the items
6 seized were the emergency. And going into the fact that
7 those items were viewed by public authority a month and a
8 half before the search with Abu Ubaidah parading these
9 inspectors through it, is a point that I should be entitled
10 to make, a prior entry where I am claiming the evidence that
11 was seized a month and a half later.

12 THE COURT: I understand your point,
13 Mr. Wasserman. No.

14 MR. WASSERMAN: I can't go into it at all?

15 THE COURT: Correct. You will not call that
16 witness.

17 MR. WASSERMAN: Your Honor, what if I show a
18 basis that in fact at the hearing before you, if I produce
19 evidence before those agents are called to show that in fact
20 that there was that display, so that what actually happened
21 that your Honor is operating under, that you have been lied
22 to about what was present there.

23 THE COURT: Mr. Wasserman --

24 MR. WASSERMAN: Excuse me, what you are saying is
25 I can't put a witness on who is going to deny what I want

1 him to say. That happens all the time.

2 THE COURT: Mr. Wasserman, whether the stuff was
3 up or down was of marginal relevance in the hearing before
4 me. The hearing before me is over.

5 MR. WASSERMAN: Right.

6 THE COURT: It is of no relevance now, because by
7 all accounts the stuff was up when the place was broken into
8 by the FBI.

9 MR. WASSERMAN: But the fact that it was there a
10 month and half and Abu Ubaidah, who has been testified to as
11 being an associate of my client, takes authority under
12 badge --

13 THE COURT: I heard you say that.

14 MR. WASSERMAN: Doesn't that count for something?

15 THE COURT: No.

16 MR. WASSERMAN: The jury sees that note as
17 evidence of guilt. Isn't it undercut by the fact that he
18 was already shown these things, and that what he is writing
19 the note about is that there has been an emergency, there
20 has been a raid? Why can't I show that? I don't
21 understand. I think that is a separate, valid point to
22 show. If the government don't want to introduce --

23 THE COURT: Mr. Wasserman, you don't get to keep
24 talking until I change my mind. That is not the rule.

25 MR. WASSERMAN: I think it is a separate matter.

1 MR. McCARTHY: Your Honor, my only response to
2 that is that the record is more than adequate to make that
3 argument now. And the events of May 10 bear little on it.

4 THE COURT: They bear not at all on it. Is there
5 anything else we have to do today?

6 MR. McCARTHY: I have an application to make,
7 your Honor, with respect to the sealed materials. I would
8 like to make it under seal if your Honor will hear it.

9 THE COURT: With respect to the material that
10 went, that is Mr. Stavis'?

11 MR. McCARTHY: That's correct.

12 MR. STAVIS: Your Honor, I have brought the
13 sealed materials.

14 THE COURT: Do you want to make it ex parte?

15 MR. McCARTHY: No, your Honor.

16 THE COURT: All right.

17 THE COURT: Then I will see you and Mr. Stavis.

18 MR. McCARTHY: Just so counsel understands it, I
19 will say this much: The application is going to be for the
20 government to take back the materials and keep them in our
21 custody. If there is no opposition to that, there is no
22 reason for me to take up your Honor's time.

23 MR. STAVIS: No, I oppose it, your Honor.

24 THE COURT: Then let's go inside and talk about
25 it.

1 MR. JACOBS: May other counsel be excused? Have
2 a nice weekend.

3 THE COURT: You too.

4 (Pages 13333 to 13338 sealed)

5 (Adjourned to Wednesday, July 5, 1995 at 9:30

6 a.m.)

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