

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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

5 v.

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

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

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

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

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

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

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

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

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

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

Defendants.

-----X

July 5, 1995
10:00 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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Southern District of New York
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SALVATORE S. RUSSO

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. We had a problem with
4 a juror who was delayed, but I gather he is on his way.

5 MS. AMSTERDAM: I am sorry. He is on his way?

6 THE COURT: Yes. In fact I think he is in the
7 building.

8 (Pause)

9 THE COURT: They are all here. Are you ready to
10 proceed?

11 MR. STAVIS: Yes, your Honor.

12 THE COURT: Good.

13 MR. PATEL: Your Honor, may I just advise the
14 court of a scheduling problem. I had a conference this
15 morning with Mr. Fitzgerald about a transcript which I had
16 provided to --

17 MS. AMSTERDAM: We can't hear you.

18 MR. PATEL: Your Honor, I provided copies of a
19 transcript of a tape that we plan to introduce through Agent
20 Anticev. I spoke to Mr. Fitzgerald around 8:30 this
21 morning. He had certain changes. The physical production
22 of those changes is happening as we speak and we plan to
23 have them by the time of the break.

24 THE COURT: It is my understanding that Agent
25 Dunbar was the first witness.

1 MR. PATEL: That is correct, your Honor.

2 MR. MCCARTHY: Your Honor, do you want the
3 witness?

4 THE COURT: Yes.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 JURORS: Good morning, your Honor.

8 THE COURT: Last week the government rested, and
9 so we will now hear from witnesses to be called by the
10 defense.

11 Mr. Stavis.

12 MR. STAVIS: Your Honor, the defense calls Agent
13 Carson Dunbar as a witness.

14
15 CARSON J. DUNBAR, JR.,
16 called as a witness by the defense,
17 having been duly sworn, testified as follows:

18 MR. STAVIS: May I inquire, your Honor?

19 THE COURT: Please.

20 DIRECT EXAMINATION

21 BY MR. STAVIS:

22 Q Mr. Dunbar, how are you employed?

23 A I am employed as a special agent with the FBI.

24 Q How long have you been with the FBI?

25 A Approximately 17 and a half years.

1 Q What is your present position with the FBI?

2 A I am an assistant special agent in charge.

3 MS. AMSTERDAM: I am sorry, sir. I am having
4 trouble hearing.

5 THE COURT: Try to keep your voice up.

6 A I am an assistant special agent in charge.

7 Q Is that a supervisory role?

8 A It is a second level supervisor.

9 Q What are the functions of an assistant special
10 agent in charge?

11 A I am responsible for administering a number of
12 investigative squads.

13 Q When did you become an assistant special agent in
14 charge?

15 A In January 1988.

16 Q And you have held that position continuously from
17 1988 until the present time?

18 A Yes.

19 Q As part of your supervisory duties with the FBI
20 have you worked with the Joint Terrorist Task Force?

21 A Yes.

22 Q What kind of work do you do with the Joint
23 Terrorist Task Force?

24 A At the present time, very limited. I have a
25 surveillance squad --

1 COUNSEL: We can't hear.

2 THE COURT: Try to keep your voice up, please.

3 A At the present time it is very limited. I have
4 one squad that belongs to the Joint Terrorism Task Force.

5 Q Drawing your attention back to 1992 and 1993,
6 what were your responsibilities with the Joint Terrorist
7 Task Force?

8 A At that time, I was responsible for all of the
9 Joint Terrorism Task Force.

10 Q What was the chain of command in the Joint
11 Terrorist Task Force -- withdrawn. I will withdraw the
12 question.

13 You were the head person at the Joint Terrorist
14 Task Force in 1992 and 1993, correct?

15 A Yes.

16 Q Who was directly below you on the chain of
17 command at the Joint Terrorist Task Force?

18 A Actually, it took place the latter part, middle
19 of 1992. I had three supervisors that were beneath me.

20 Q Who are those supervisors?

21 A One was John Crouthamel, one was Tom Harper, and
22 another was Neil Herman.

23 Q Did there come a time in 1992 where you assumed a
24 role -- withdrawn.

25 What was the Terrstop investigation?

1 A The Terrstop investigation was an investigation
2 that was begun sometime in 1993.

3 I need to clarify one thing, sir.

4 MR. BERNSTEIN: Sorry, Judge. It is still
5 difficult.

6 THE COURT: Try to point the microphones directly
7 toward you and pull your chair up a little bit.

8 A I need to clarify one matter, and that is,
9 Mr. Herman did not come to work for me until 1993, not 1992.

10 Q When you were the assistant special agent in
11 charge, who was your direct superior that you reported to?

12 A James Tomlinson.

13 Q What was his position?

14 A He was a special agent in charge.

15 Q That is in charge of the New York office of the
16 Federal Bureau of Investigation?

17 A In charge of the intelligence division.

18 Q Who, if anyone, did he report to?

19 A He reported to the deputy assistant director.

20 Q Who was the deputy assistant director in 1992 and
21 1993?

22 A I believe that was Mr. Gavin.

23 Q Was Mr. Gavin the top FBI guy in the New York
24 office?

25 A No, Mr. Fox was, James Fox.

1 Q And Mr. Gavin was directly one supervisory level
2 below him?

3 A That is correct.

4 Q While you were the assistant special agent in
5 charge, did the name Emad Salem come up at all?

6 A Yes.

7 Q Who were the case agents who were working with
8 Emad Salem in 1992 and 1993?

9 A Nancy Floyd, John Anticev and Louis Napoli.

10 Q Did they each have the same responsibility with
11 regard to Mr. Salem or did they have different
12 responsibilities?

13 A They had different responsibilities.

14 Q Taking them one by one, what was Miss Floyd's
15 responsibility with regard to Emad Salem?

16 A Miss Floyd was the original case agent.

17 Q What does that entail?

18 A She developed Mr. Salem as an informant and was
19 primarily responsible for him.

20 Q How about John Anticev? What were his
21 responsibilities toward Mr. Salem?

22 A I believe Mr. Anticev was a cocase agent, and --

23 Q What did that entail?

24 A He would meet periodically with --

25 Q Just let me finish so we will understand the

1 question better.

2 What did that entail, his being the cocaine agent?

3 A He would meet periodically with Mr. Salem and
4 assist in debriefing him.

5 Q How about Detective Louis Napoli?

6 A He acted in the same capacity.

7 Q As Agent Anticev?

8 A Yes.

9 Q Detective Napoli was a New York City police
10 detective?

11 A That is correct.

12 Q How did it come about that he was working in an
13 FBI investigation?

14 MR. MCCARTHY: Objection, relevance.

15 A He was a member of the task force.

16 THE COURT: Sustained.

17 Q In the spring of 1992 -- withdrawn.

18 When did you first start working on Emad Salem?

19 A You mean when did I first assume responsibility
20 for the investigation?

21 Q Yes.

22 A Sometime after April of '92.

23 Q Is there a name for that investigation that
24 Mr. Salem was working on in April of 1992?

25 A When he came to my attention, he came to my

1 attention as an informant, part of an informant file.

2 MS. STEWART: I couldn't hear the end of the
3 answer.

4 THE COURT: Could you repeat the last part.

5 A He came to my attention --

6 THE COURT: No, that was to the reporter.

7 (Record read)

8 Q Did the FBI give a name to the investigation
9 that --

10 MR. MCCARTHY: Objection, relevance, scope.

11 THE COURT: Sustained.

12 MR. JACOBS: May we be heard at the side bar,
13 your Honor, on this?

14 THE COURT: No.

15 Q Approximately how often, beginning in April 1992,
16 did you meet with Special Agent Nancy Floyd?

17 A Concerning this matter?

18 Q Yes.

19 A I can't give you a precise answer.

20 Q Can you approximate for us?

21 A Five times, possibly.

22 Q How many times did you meet with Special Agent
23 John Anticev concerning Emad Salem?

24 A Could you restate the time period?

25 Q Beginning in April of 1992, in the spring.

1 A Going till?

2 Q Going to the early summer of 1992.

3 A Approximately the same amount of times.

4 Q Would your answer be the same for Detective Louis
5 Napoli?

6 A Yes, but again, I can't be precise.

7 Q Did there come a time in that period, that is,
8 between April 1992 and July 1992, that you met Emad Salem?

9 A Yes.

10 Q When did you first meet Emad Salem?

11 A I don't recall the exact date.

12 Q Was it somewhere in that time period that I have
13 stated, which is April '92 to July '92?

14 A I believe so.

15 Q Do you know how many times you met with Emad
16 Salem in that time period April of 1992 until July of 1992?

17 A One or two times, but again, I can't be precise.

18 Q Drawing your attention to July 1, 1992, did you
19 have a meeting on that date with supervising Special Agent
20 John Crouthamel, Special Agent Nancy Floyd and Detective
21 Louis Napoli?

22 A I can't precisely say it was July 1. I did meet
23 with those individuals and it would be in that time frame.

24 Q Was Mr. Salem present at that meeting?

25 A I do not believe he was.

1 Q Do you recall the meeting? Is it just the date
2 that you don't recall?

3 A I recall that I met with those individuals during
4 that time frame, but, as I said, there were probably a
5 number of meetings. It has been almost two years. I can't
6 remember the exact dates.

7 MR. STAVIS: Your Honor, may I approach the
8 witness with 3534C, 220 to 224?

9 THE COURT: Go ahead.

10 Q Please draw your attention to the bottom of the
11 page.

12 MR. MCCARTHY: The bottom of the page 220?

13 MR. STAVIS: The bottom of the page 221.

14 Q Have you reviewed that?

15 A Yes, I have.

16 Q Agent Dunbar, having reviewed that, does that
17 refresh your recollection concerning the date of the meeting
18 between yourself, John Crouthamel, Nancy Floyd and Louis
19 Napoli?

20 A It doesn't refresh my recollection. It says that
21 I had the meeting. I have no reason to deny that the
22 meeting didn't take place.

23 (Continued on next page)

24

25

1 Q Now, at that meeting, Agent Dunbar, was it
2 decided --

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q Was the word "verification" used at that meeting,
6 Agent Dunbar?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 Q What happened after that meeting on July 1, 1992?

10 MR. McCARTHY: Objection to form.

11 THE COURT: Sustained. Focus the question.

12 Q What happened after that meeting with regard to
13 contacting Mr. Salem with regard to verifying his
14 information?

15 MR. McCARTHY: Objection; form of the question
16 and the scope.

17 THE COURT: That is overruled.

18 A You need to be a little bit more precise. I
19 don't know the question that you're asking.

20 MS. STEWART: I can't hear, Judge. I'm sorry.

21 THE COURT: You didn't miss anything.

22 Ask a focused question. This witness is somebody
23 you can examine in essence on the nature of
24 cross-examination, as you know, so why don't you just focus
25 the question.

1 MR. STAVIS: Can I have the question read back,
2 your Honor. I know you overruled the objection.

3 THE COURT: Pardon?

4 MR. STAVIS: I know you overruled the objection.
5 Can I have question read back.

6 THE COURT: He says he doesn't understand it, so
7 why don't you focus it.

8 Q What, if anything, occurred after that meeting
9 with regard to contacting Mr. Salem concerning verifying his
10 information?

11 A What information?

12 Q His information in connection with building and
13 planting of bombs in the Jewish community in the New York
14 City area and the assassination plan for New York
15 Assemblyman Dov Hikind.

16 A He was asked to -- the decision was made at the
17 meeting that we would like him to wear a wire.

18 THE COURT: Was that communicated to him?

19 MR. STAVIS: I'm getting to that, your Honor.

20 THE COURT: Fine.

21 Q Did you seek permission from Mr. Salem to wear a
22 wire following that meeting? Excuse me. Withdrawn.

23 Did you seek permission from the U.S. Attorney's
24 Office for Mr. Salem to wear a wire following that meeting?

25 MR. MCCARTHY: Objection, scope.

1 THE COURT: Sustained.

2 Q Did there come a time that you met personally
3 with Emad Salem?

4 A Yes.

5 Q Did you meet with Emad Salem on July 6, 1992 at
6 1:45 p.m.?

7 A I don't recall precisely, but I did meet with
8 him, and it was in that time frame.

9 Q Approximately how long did that meeting last?

10 A I do not recall.

11 MS. STEWART: Judge, we cannot hear.

12 THE COURT: He said he doesn't remember.

13 MS. STEWART: Before that, the answer before
14 that?

15 THE COURT: Try to keep your voice up, if you
16 would.

17 THE WITNESS: Yes, sir.

18 Q Was that your first meeting with Emad Salem?

19 A It was either the first meeting or the second.

20 Q Do you have a time frame regarding your first
21 meeting with Emad Salem?

22 A This could have been the first meeting. I am
23 not -- I just don't recall.

24 Q Do you recall it was around July of 1992?

25 A The date that you gave, I can't deny that that's

1 the date. I just don't recall the exact date.

2 Q When you met with Emad Salem around that time,
3 who else was present at that meeting?

4 A I don't believe anybody else was present. But I
5 could be wrong. I believe I met with him privately.

6 Q Your recollection is that it was just you and
7 him?

8 A I believe that's the case. I'm not positive.

9 Q Where did that meeting take place?

10 A In my office.

11 Q And where is that?

12 A At the 26 Federal Plaza.

13 Q Would that be the FBI headquarters?

14 A Yes.

15 Q In that meeting that you had with Emad Salem, did
16 you advise him that in view of the importance of information
17 recently provided by him that verification of information
18 was necessary?

19 A Yes.

20 Q Did you use the word "verification" or did you
21 use any other word?

22 A I don't specifically remember. I remember that I
23 was seeking verification, but I don't specifically recall
24 using that word.

25 Q Now, this is in 1992, this meeting?

1 A Correct.

2 Q And the bombing of the World Trade Center
3 occurred on February 26 of 1993, is that correct?

4 A Correct.

5 Q Did Mr. Salem advise you at that meeting that he
6 was opposed to wearing a monitoring device?

7 A Yes.

8 Q Did Mr. Salem become angry at that meeting?

9 A I don't believe he did.

10 Q Was Mr. Salem upset at that meeting?

11 A I don't believe he did, but I'm not positive.

12 Q Did Mr. Salem raise his voice at that meeting?

13 A Again, I don't believe that he did, but I am not
14 positive.

15 Q Did you raise your voice at that meeting?

16 A I don't raise my voice.

17 (Laughter)

18 MR. STAVIS: We will stipulate to that, your
19 Honor.

20 THE WITNESS: Unless you want to speak to my
21 wife.

22 MR. STAVIS: We can have her subpoenaed by this
23 afternoon.

24 (Laughter)

25 THE WITNESS: Then I would like to change my last

1 statement.

2 MR. STAVIS: If I may have one moment, your
3 Honor.

4 THE COURT: Yes.

5 MR. STAVIS: I have no further questions of this
6 witness.

7 THE COURT: Mr. Ricco?

8 MR. RICCO: Thank you, your Honor.

9 THE COURT: Representing Mr. El-Gabrownny.
10 Go ahead.

11 CROSS-EXAMINATION

12 BY MR. RICCO:

13 Q Good morning, sir.

14 A Good morning.

15 Q You were aware that in the spring of 1992 Emad
16 Salem was a paid informant, isn't that correct?

17 A Yes.

18 Q That means that he was receiving payment from the
19 FBI for information that he was providing to the Bureau,
20 isn't that correct?

21 A Yes.

22 Q In addition to payment he was receiving expenses?

23 A Yes.

24 Q Now, you said that your contact with Emad Salem
25 took place after April of 1992?

1 A Correct.

2 Q But not before then?

3 A Correct.

4 Q Emad Salem was providing information that caused
5 you concern, isn't that correct?

6 A Yes.

7 Q He was giving you information about bombings,
8 correct?

9 A Yes.

10 Q And an escape plot?

11 A Yes.

12 Q And the assassination or kidnaping of judges and
13 other public officials, isn't that correct?

14 A Incorrect.

15 Q That is incorrect?

16 A Yes.

17 Q The assassination and kidnaping of whom?

18 A He was giving us information regarding possible,
19 but there were no assassinations.

20 Q OK. In other words, we're talking about the
21 possibility of these things taking place?

22 A Yes.

23 Q Not that they took place?

24 A Yes.

25 Q Now, at the time he was giving this information,

1 again he was being paid, isn't that correct, for this
2 information?

3 A Yes, he was.

4 Q And there came a time in your supervisory
5 capacity that you wanted to talk about the progress of this
6 particular informant, isn't that correct?

7 A Yes.

8 Q And meetings were set up with his handlers, isn't
9 that correct?

10 A Yes.

11 Q Then ultimately you decided you wanted to speak
12 to him yourself, isn't that correct?

13 A Yes.

14 Q Now, after that meeting, after those meetings --
15 which took place in the early summer months of 1992, isn't
16 that correct?

17 MR. McCARTHY: Objection to form.

18 MR. RICCO: Withdrawn.

19 Q The meeting that you had with Emad Salem himself
20 took place early July of 1992, isn't that correct?

21 A Yes.

22 Q Now, after those meetings --

23 A If I may just clarify?

24 Q Sure.

25 A I'm not positive if there was more than one

1 meeting. I think there was one or two, but if we use the
2 term "meetings," then that's fine, but I'm not positive that
3 it's more than one.

4 Q One question. Agent Dunbar, you've testified in
5 many court proceedings, isn't that correct, in your 17 and a
6 half years with the FBI?

7 A I've testified before, yes.

8 Q And before testifying here today in these
9 proceedings, have you had an opportunity to review your case
10 file concerning your contacts with Emad Salem?

11 A No. I have not.

12 Q You have not?

13 A I have not.

14 Q So you're testifying here in the cold?

15 A No, that's not correct.

16 Q That's not correct. OK.

17 You met with Emad Salem in July of 1992, correct?

18 A Right.

19 Q And you wanted to talk to him about those three
20 areas, isn't that correct?

21 A Those are three of the areas that I wanted to
22 talk to him. There may have been others, but those are
23 three of the areas, yes.

24 Q And the reason why you were concerned about
25 those --

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q OK. You did have concern about them, isn't that
4 correct?

5 MR. McCARTHY: Objection.

6 THE COURT: I will allow that. Go ahead.

7 A Yes.

8 Q You had concern about these three areas, right?

9 A Yes.

10 Q Naturally, right?

11 A Yes.

12 Q And after the meetings that you had with Emad
13 Salem, he was to either wear a wire or take a polygraph,
14 isn't that correct?

15 A That's not precisely correct.

16 Q OK. What is precisely correct?

17 A What occurred was I tried to encourage him to
18 wear a wire. When he decided that he did not want to do
19 that, then I would -- then I asked him if he would submit to
20 a polygraph.

21 Q And he agreed?

22 A Yes, he did.

23 Q Now, the polygraph examination took place --

24 MR. McCARTHY: Objection, scope.

25 MR. RICCO: Just for the date, your Honor.

1 THE COURT: I'll allow it. Go ahead.

2 Q The polygraph examination itself took place
3 within ten days to two weeks of your meeting with Mr. Salem,
4 isn't that correct?

5 A Again, I can't give you the precise time frame,
6 but it's not unreasonable that that is the time frame.

7 Q And I would say approximately two weeks after
8 that his status was, he was declassified, isn't that
9 correct?

10 A I don't recall that.

11 Q You don't recall that?

12 A No, I do not.

13 Q Do you recall whether or not he was still
14 receiving payments from the FBI?

15 A He received, I believe, one more payment that I
16 authorized. Whether other people did or not, I don't know.

17 Q So can we say that as of August of 1992, you were
18 no longer authorizing payments for the information that Emad
19 Salem was providing to the FBI?

20 A We're talking just 1992 or --

21 Q We are talking 1992.

22 A I believe that's correct. But, as I said, I have
23 not looked at the file, so I don't know precisely. I
24 believe that's correct.

25 Q Was there another person at the FBI in the summer

1 and spring of 1992 that was authorizing payments to Emad
2 Salem for the information that he was providing, to your
3 knowledge?

4 A To my knowledge, I don't know. I just don't
5 know.

6 Q You were the agent in charge, isn't that correct?

7 A There's two answers to that: Yes, I was; and,
8 yes, I could have authorized the payments. Yes, I was; and,
9 yes, I could have authorized the payments, but there is
10 another individual that could have also authorized payments.

11 Q Who would that have been?

12 A Mr. Jack Lowe.

13 Q Did you ever discuss with that agent payments to
14 Emad Salem?

15 A Possibly. I'm not positive.

16 Q Do you have any reason to believe that that agent
17 would have authorized any payments to Emad Salem in the
18 spring or summer of 1992?

19 A It's possible.

20 Q That would have been in connection with the same
21 authorizations that you were giving?

22 A It's possible.

23 Q OK. What would make you clear about that would
24 be an opportunity to review your records and your documents?

25 A Yes.

1 MR. RICCO: Your Honor, can I have a moment,
2 please.

3 (Pause)

4 MR. RICCO: Your Honor, may we have just a brief
5 side bar?

6 THE COURT: Yes.

7 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Yes?

3 MR. RICCO: Judge, my concern is that we will
4 have half a dozen lawyers trying to get the agent to be
5 clear about a point that probably can be cleared up. I am
6 not sure if we have his documents that he's been testifying
7 to that would help clear these what I call peripheral issues
8 up.

9 THE COURT: The question of whether Salem was
10 being paid at a particular time and if so under whose
11 authorization?

12 MR. RICCO: Right.

13 THE COURT: Is there something?

14 MR. MCCARTHY: First of all, I turned over the
15 payment records and your Honor made me turn over the stubs
16 in addition to the payment records. So they have all that.

17 Secondly, this witness was proffered as somebody
18 who was going to be asked simply whether he told Salem that
19 he didn't believe him. Not only has that question never
20 been asked, but the examination that's being done right now
21 doesn't have anything to do with what was represented that
22 he was being called for.

23 MR. RICCO: The reason is we get to these
24 questions before you ask the ultimate question: What is the
25 relationship? What was the opportunity? What was going on?

1 THE COURT: He already said that he wasn't
2 authorizing any payments for Salem after a particular time.

3 MR. RICCO: OK.

4 THE COURT: Whether somebody else was or not is
5 certainly irrelevant to his testimony.

6 MR. RICCO: Maybe. My only concern for doing
7 this is I don't want to have to call other people to do
8 things that are not important.

9 THE COURT: Then you won't.

10 MR. RICCO: OK.

11 THE COURT: Let's proceed.

12 MS. STEWART: While we are here, I think that
13 co-counsel --

14 THE COURT: This was billed as a short side bar,
15 and it's going to be devoted to one issue, and we've already
16 covered the issue.

17 MS. STEWART: Areas opened by co-counsel which we
18 didn't know they were going to open?

19 THE COURT: No, no.

20 MS. STEWART: Well, we didn't know.

21 THE COURT: You didn't know? If you want to ask
22 questions, I will either sustain objections or I will
23 overrule them, but don't give me shock and surprise when I
24 overrule them.

25 MS. STEWART: I won't.

1 (In open court)

2 BY MR. RICCO:

3 Q You requested that Emad Salem participate in the
4 polygraph examination because you wanted to verify the
5 information that he was providing, isn't that correct?

6 A That's correct.

7 Q That's because at that time you had doubts
8 whether or not what he was saying to you --

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 MR. McCARTHY: Move to strike.

12 THE COURT: Well, since it is not evidence,
13 there's no need to strike it. It is a mere question to
14 which an objection has been sustained, and since it's not
15 going to get asked again, there's no need to strike it.

16 Go ahead.

17 MR. RICCO: I won't ask anymore.

18 THE COURT: Go ahead.

19 MR. RICCO: I have no further questions.

20 THE COURT: Mr. Jacobs?

21 CROSS-EXAMINATION

22 BY MR. JACOBS:

23 Q Good morning, Agent.

24 A Good morning.

25 Q Agent Dunbar, you were asked some questions about

1 Salem refusing to wear a wire. That was in the spring of
2 1992?

3 MR. McCARTHY: Objection.

4 Q Is that about the time frame, or later?

5 THE COURT: Sustained.

6 Q When was it that he refused to wear a wire?

7 A I believe it was sometime in July of '92.

8 Q Am I correct that he had worn a wire previously
9 for Nancy Floyd, to your knowledge?

10 MR. McCARTHY: Objection, scope, hearsay.

11 THE COURT: Sustained.

12 Q Did he in connection with any investigation that
13 you supervised wear a wire -- yes or no -- before that date?

14 MR. McCARTHY: Objection, scope.

15 THE COURT: That I will allow.

16 A No.

17 Q Let me show you 3534X for identification.

18 MR. JACOBS: Mr. McCarthy.

19 (Counsel conferred)

20 Q I'm sorry. This one here. I'm sorry. Wrong
21 number, 390A-1.

22 THE COURT: That is 35390?

23 MR. JACOBS: No, your Honor, I have it as
24 Government Exhibit 390A-1 for identification.

25 THE COURT: Go ahead.

1 MR. JACOBS: And 390B-1 for identification.

2 THE COURT: Go ahead.

3 Q Have you seen that document, sir?

4 Take a look at it, please.

5 A I see it, yes.

6 Q Does that refresh your recollection whether he
7 wore a wire for Nancy Floyd in 1992?

8 A I didn't supervise this at that time.

9 Q OK. Thank you.

10 Now, you were asked questions about this terr
11 stop. When did that start?

12 MR. MCCARTHY: Objection, scope.

13 THE COURT: Sustained.

14 Q Did you meet with Emad Salem on May 13, 1993?

15 A It's possible. I don't recall.

16 Q Did you have a conversation with Emad Salem in
17 May of 1993 concerning the ground rules for the terr stop
18 investigation?

19 MR. MCCARTHY: Objection, scope.

20 THE COURT: Sustained.

21 Q Did you at any time give instructions to Emad
22 Salem on how to gather evidence, at any time?

23 A Yes.

24 Q Did you tell him at any time that he was not to
25 offer to purchase any material or to instruct personnel on

1 what should be done?

2 A Yes.

3 Q Did you tell him to --

4 A May I clarify that?

5 Q Sure, of course, please.

6 A Either I did it or I instructed that it be done.

7 Q Did you instruct him yourself not to deviate from
8 any planned activity at any time?

9 MR. McCARTHY: Objection to form. Objection to
10 scope.

11 THE COURT: Sustained.

12 Q Did you ever indicate to him that coordination of
13 his actions was important?

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 Q Did you ever describe to him that strict control
17 of his activities was important?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 Q What did you advise him --

21 MR. McCARTHY: Objection.

22 Q -- when you met with him?

23 THE COURT: Sustained.

24 Q Did you ever instruct him that he was not to make
25 private tapes at any time?

1 A I believe I did. I am not positive.

2 Q Did there ever come a time that you learned that
3 he was making private tapes --

4 MR. MCCARTHY: Objection, scope.

5 THE COURT: Sustained.

6 MR. JACOBS: I have nothing further, and I will
7 reserve an application, your Honor. Thank you.

8 THE COURT: Do you want to discuss your
9 reservation at the side, Mr. Jacobs?

10 MR. JACOBS: Yes, if you'd like.

11 (Continued on next page)

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1 (At the side bar)

2 THE COURT: People don't generally have to
3 reserve their right to do anything unless there's excellent
4 reason for their not having done it before. Since you
5 reserved in front of the jury, what is it you reserved?

6 MR. JACOBS: Your Honor, I didn't want to
7 indicate by sitting down that I was waiving any further
8 examination. I sort of didn't want to put in the record --
9 your Honor was sustaining objections, and I felt it would be
10 more perfect to handle at the side bar what --

11 THE COURT: What is your application?

12 MR. JACOBS: In any event, my application is I
13 wanted to question Agent Dunbar about his meeting with Salem
14 on May 13, 1993 and the instructions he personally gave to
15 Emad Salem concerning the issues that we raised in our
16 letter and the defense in this case. I believe they are
17 relevant.

18 THE COURT: Be specific, Mr. Jacobs. I haven't
19 committed your letter to memory.

20 MR. JACOBS: I'm sorry, your Honor. What I am
21 doing is I have this agent's --

22 THE COURT: We discussed this agent's testimony I
23 believe at the meeting we had last Friday, didn't we?

24 MR. JACOBS: Yes, your Honor.

25 MR. MCCARTHY: Perhaps your Honor could ask Mr.

1 Jacobs where in his letter he addresses Carson Dunbar,
2 because it's lost on me.

3 MR. JACOBS: Perhaps I misunderstood, your Honor.
4 If I'm wrong I am happy to say it. I thought that Dunbar
5 was on the approved witness list to be questioned. I was in
6 front of Judge Patterson in the morning when Dunbar was
7 discussed in detail, but I thought Dunbar was approved.

8 Later on we discussed what the defense was going
9 be to be in this case, and I was going to ask the agent some
10 questions about his instructions, some of which he's already
11 answered concerning Salem. Some of it has been brought out
12 by Mr. Stavis concerning the instructions given to Salem
13 back in 1992.

14 THE COURT: It was my understanding that this
15 witness was being called to testify as to whether he told
16 Salem in sum and substance that he didn't believe him in
17 connection with the discussion of the wire and so forth. If
18 you had something else that you wanted to talk about, you
19 might have asked about it.

20 MR. JACOBS: I think the fact that he was then
21 given these instructions is a proper followup to the
22 examination and to the proffer that the defense counsel has
23 made. I believe the fact that -- by the way, this is --

24 THE COURT: I don't think it has anything to do
25 with it.

1 MR. JACOBS: I think it's an absolute followup.

2 THE COURT: What issue in this case does it
3 relate to?

4 MR. JACOBS: It relates to the fact that the FBI
5 gave Salem certain very specific instructions which we feel
6 were violated directly by Mr. Salem. I think he's already
7 testified to this one.

8 MR. McCARTHY: This is exactly the position that
9 I asked not to be put -- we had a lengthy discussion about
10 what Dunbar was going to be called for. He is not even
11 alluded to in passing in a lengthy letter from Mr. Jacobs
12 and Ms. Amsterdam. This examination hasn't been remotely
13 what it was represented to be the other day. It has veered
14 you off into areas that don't have anything to do with the
15 area that was represented and the area that was represented
16 was never covered.

17 I don't think that by summoning one witness,
18 getting that witness's testimony approved for a specific
19 reason, that that opens the door to everything that they
20 might conceivably want to ask about.

21 MR. STAVIS: I would just -- I am sorry.

22 MS. AMSTERDAM: May I say one thing. I owe both
23 the court and Mr. McCarthy an apology here. Neither Mr.
24 Jacobs nor I were here when the discussion of Mr. Dunbar
25 took place.

1 THE COURT: Jesus Christ.

2 MS. AMSTERDAM: I was sent to get Mr. Jacobs. We
3 then came in. I thought I was approved, so we focused our
4 argument --

5 THE COURT: Did you get a transcript of Friday?

6 MS. AMSTERDAM: Of Friday? Yes, I got it this
7 morning, along with Mr. McCarthy's letter, and I was in my
8 office 8 o'clock last night and there were no faxes. I had
9 no idea until 9:15 this morning that Mr. McCarthy was taking
10 the position that our defense did not apply to Mr. Dunbar.

11 MR. JACOBS: In any event, your Honor, so that we
12 are clear with what the proffer is, what it is is that we
13 have a report from this particular agent of his personal
14 instructions he gave the witness, and I believe this is
15 related to Mr. Stavis's examination as a necessary followup.

16 So the good-faith basis is this witness
17 personally gave them to Mr. Salem. It is possibly five
18 minutes' worth of questioning at most. That is all I am
19 saying. OK.

20 MR. MCCARTHY: The relevance of what the agents
21 may have communicated to Salem is not a relevant issue in
22 the case. The question in the case is whether the
23 defendants formed the intent or whether they were entrapped.
24 Whether or not this witness gave instructions that were
25 communicated either directly or through a third agent or

1 second agent to Salem bears not at all on the question of
2 what the intent of these defendants were, which is the
3 central issue in the case. It also bears not at all on the
4 question of whether they were either predisposed to commit
5 the crime or whether government initiated the crime in the
6 first place, which is the other issue in the case.

7 Even giving a generous berth to what they want to
8 put in with this frameup conspiracy, it doesn't go anywhere
9 toward establishing that, assuming for the moment, and only
10 for the sake of argument, that that is actually a defense in
11 this case. It is simply not relevant, aside from the fact
12 that the notice is utterly inadequate.

13 MR. JACOBS: In any event, we are talking about
14 two or three questions here.

15 THE COURT: Two or three irrelevant questions.

16 MR. JACOBS: We think they are relevant, your
17 Honor.

18 THE COURT: How is it relevant?

19 MR. JACOBS: Well, if Salem is told specifically
20 not to do certain things and he goes out and deliberately
21 does them, knowing that he's not supposed to, knowing that
22 he is not supposed to, we argue to the jury that he is --

23 MS. AMSTERDAM: And that it is condoned by the
24 agent supervising him.

25 MR. JACOBS: Right. And the agents later learn

1 about it and let him do it, we believe it's relevant to the
2 issues that we raised in our letter and to our defense.

3 THE COURT: To which issue is it relevant?

4 MR. JACOBS: It is relevant to the issue of
5 frame, it's relevant to the issue --

6 THE COURT: That is not a legal concept. That is
7 a jury argument. Let me send them out for this.

8 MR. JACOBS: OK.

9 (Continued on next page)

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1 (In open court)

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

6 (Jury excused)

7 (Witness excused)

8 THE COURT: Mr. Jacobs.

9 MR. JACOBS: Yes, your Honor. At the beginning
10 of, I will call it the safe house phase of the case, this
11 agent -- I am sorry. Did you want me to address this?

12 THE COURT: Yes. I am listening.

13 MR. JACOBS: This agent met with Salem and gave
14 Salem personal instructions, which is in the three-page
15 document. So the basis of my questioning is based on his
16 own document rather than something I am making up. It is
17 his own instructions to the agent. I think the instructions
18 are very important because it is our position the FBI took
19 these instructions and threw them away and didn't bother
20 following them intentionally, letting Salem then go out and
21 run his own investigation with their assistance. I am not
22 saying the supervisors participated in anything untoward,
23 but this agent as a supervisor gave very specific
24 instructions on the undercover phase of the case.

25 THE COURT: You were about to articulate some

1 relevant argument.

2 MR. JACOBS: Right.

3 THE COURT: What is it?

4 MR. JACOBS: That after this the FBI then went
5 out to the agents who were handling this and allowed them to
6 take tapes, throw tapes away --

7 THE COURT: All of which is in evidence, right?

8 MR. JACOBS: It is in evidence to the extent that
9 Napoli got up on the stand and made up some phony story
10 about it and Salem got on the stand and made up a phony
11 story. To the extent they have given this jury some
12 cockamamy explanation it is there. It is the Andy McCarthy
13 explanation that we want before the jury, not mine.

14 THE COURT: Is the instruction already in the
15 record?

16 MR. JACOBS: Not really. It is close to being in
17 the record. I had a couple more questions.

18 THE COURT: What follows from that, relating to
19 the state of mind of these defendants?

20 MR. JACOBS: It follows that if this jury is
21 aware of the fact that the supervising agents set strict
22 rules and control of Salem, we believe because of the prior
23 problems with him, and the case agent took these rules and
24 threw them out the window, that is why we have the missing
25 tapes in this case and that is why we have some of the

1 missing evidence. I read the record and I read Napoli's
2 baloney explanation to the jury -- if I may continue. Your
3 Honor asked the question. It is on the record and I briefly
4 read Mr. McCarthy's letter this morning. He says it is on
5 the record. What we have on the record is what Napoli says
6 took place. I don't think the defense in this case have to
7 accept Napoli's what I consider to be totally perjurious
8 explanation of tapes in this case or Salem's. I know I have
9 missing tapes. I can prove it. I intend to do it in front
10 of this jury.

11 THE COURT: Mr. Jacobs, all that you --

12 MR. JACOBS: I don't want to be bound by Napoli's
13 testimony --

14 THE COURT: Nobody is binding you on the basis of
15 Napoli's testimony. All of the sound that you have just
16 projected in my direction says nothing at all about what
17 this witness' testimony adds to to what is in the record,
18 which is to say that Salem got instructions not to do
19 certain things and they were done anyway.

20 MS. AMSTERDAM: May I? I have a slightly
21 different aspect to this, your Honor. We have maintained
22 that there is no crime because the FBI created the safe
23 house. That does not mean that every single agent, every
24 single supervisor affirmatively took part in that, and the
25 agents that did take part may have taken part in it by

1 actively seeking to look the other way.

2 One very specific example that I would like to
3 draw out from this witness is -- without objection Mr.
4 Jacobs is allowed to ask this witness was Emad Salem told
5 that he could not purchase material on his own. That
6 question was allowed and he said he was told that. In a
7 subsequent conversation between Mr. Salem and Mr. Anticev,
8 which I understand the witness is free to say didn't happen,
9 Mr. Salem says to Mr. Anticev that he went to this witness'
10 office and showed him a fuse that Salem claimed he
11 purchased, and this witness and Salem had a discussion as to
12 how to take that fuse and adapt it and make a propane tank
13 explosive. That is in direct contradiction to the fact that
14 the man said Salem was told not to purchase his own
15 materials. I am bound by his answer. He may say that
16 conversation never took place, but it does give me a good
17 faith basis for asking whether or not he had a conversation
18 with Salem, whether or not Salem came with the fuse, whether
19 or not he told him he should have a fuse, and whether or not
20 he was aware that this man was purchasing fuses, remote
21 detonators and timers on his own, even in contradiction of
22 his instructions.

23 THE COURT: Mr. McCarthy.

24 MR. MCCARTHY: This is exactly what we suggested
25 would happen last Friday and it has taken no less than about

1 a half hour to come through. What is going on here is, they
2 are trying to get a foot in the door to put somebody on the
3 stand, then throw a whole bunch of stuff in which doesn't
4 have anything to do with the representations that they make
5 to get the person to the stand in the first place, and the
6 thing just runs amok from there.

7 Assuming for the moment that everything that they
8 just represented to the court is true, and we vigorously
9 dispute their factual basis, but just for the sake of
10 argument assuming that it is true, assuming that Salem was
11 permitted wildly to run free and to make whatever rules of
12 the investigation he determined to make, it bears not a
13 scintilla on the issues in this case, which are, did the
14 defendants commit the crimes that are charged in the
15 indictment, did the government induce them to commit the
16 crimes, assuming for the moment that entrapment is a viable
17 defense in this case, and were they predisposed to do so?
18 Communications between the agents about investigative
19 strategy, guidelines among the agents and the manner in
20 which they control or don't control an informant are mere
21 camouflage for the fact that what we have going now and what
22 is promised if this continues is a trial completely
23 collateral on irrelevant issues that don't bear on the
24 charges in this case.

25 Whether or not the FBI effectively in anybody's

1 view reined Salem in, whether he did or didn't do on
2 occasion precisely what he was told to to do does not bear
3 at all on whether the defendants are guilty of what they are
4 charged with and is completely irrelevant to the proper
5 considerations of the jury in this case. It is not a
6 defense in this trial that the agents did or didn't properly
7 supervise the informant.

8 MR. JACOBS: I couldn't disagree more. I want to
9 tell this jury to disregard the CM's and if I want to do
10 that, and I may be a fool to do it and if I want to do it on
11 the basis they are running amok and there are missing CM's,
12 I have a right to do it.

13 THE COURT: Nobody is interfering with your right
14 to argue that there are missing CM's.

15 MR. JACOBS: And the rule -- I apologize.

16 THE COURT: That has zero to do with what you
17 have argued is the need for this testimony.

18 MR. JACOBS: Your Honor, in determining whether
19 our defense is viable, the fact that the FBI and someone
20 like this supervisor took the time to explain to Salem quite
21 clearly what he could and couldn't do is an important factor
22 for this jury to understand that he then didn't,
23 intentionally and deliberately. So when I say to the jury
24 that they can't rely on the CM's in this case because there
25 are missing CM's in this case and because there are

1 exculpatory things on my client that I have a right to have,
2 I can go --

3 THE COURT: You can't go back and argue that
4 unless you have evidence.

5 MR. JACOBS: Do you want me to give you the
6 number of CM that is missing? I am happy to put it on the
7 record for the government. It is a CM that on June 4 we are
8 missing the tape. I am happy to put the number on the
9 record.

10 MR. McCARTHY: Assuming for the moment that that
11 fantastical description of things is actually the truth,
12 they cannot argue something affirmative without some
13 affirmative evidence. They cannot argue that Mohammed Saleh
14 made exculpatory statements in the absence of any evidence
15 that he did.

16 MR. JACOBS: Sure. Not only that, I have a
17 conversation the day before where Siddig and Salem are going
18 to set up my client. I think we are missing conversations
19 on that day and I have a right to argue to the jury.

20 MR. McCARTHY: If Siddig and Salem set up Saleh,
21 that is not a defense in this case.

22 MR. JACOBS: Siddig and Salem discussed my client
23 on June 3 and June 4. We are missing tapes on those dates.
24 If I want to argue that Salem threw those tapes away, I
25 think I am permitted to do it, and the fact that Dunbar a

1 couple of weeks before told this fellow we want strict;
2 control of your taping and then the agents went out and
3 disregarded that, I have the document in my hand, this
4 witness --

5 THE COURT: Mr. Jacobs, stop it.

6 MR. JACOBS: All I am saying is, the government
7 doesn't want this defense before the jury. I don't blame
8 them.

9 THE COURT: Mr. Jacobs, the government has made a
10 legal argument.

11 MR. JACOBS: I understand. It is not a legal
12 argument. What it is, it is a plea to this court to not let
13 our defense go forward. It is not a legal argument.

14 THE COURT: Mr. Jacobs, it is bombast without
15 evidence in the record. Believe it or not.

16 MR. JACOBS: I will tell the government what is
17 missing. Why don't they tell us what they are. I am not
18 bombasting. I have the missing tapes.

19 MS. AMSTERDAM: Your Honor, I think what Mr.
20 McCarthy is proffering to the court in this argument is
21 really a jury issue. What he is saying is that he doesn't
22 want the facts to go to the jury, and it is that point that
23 I disagree with. If I am going to argue that the safe house
24 was akin to the Pennsylvania training exercise -- I would
25 like your Honor to recall that Haggag came on the stand and

1 said that they pretended, but it was done real, that they
2 were going to seize and take over a power plant, and as they
3 were crawling up on their bellies and attempting to take
4 over the power plant, people sprayed live ammunition over
5 their head. If we want to argue that what happened in
6 Queens was part 2 of that training exercise, then I have a
7 right to show the jury that this man had access to fuses,
8 detonators, remotes, and what was brought into the safe
9 house was brought in by him, with the approval or the tacit,
10 "I'll look the other way" of the FBI agents, to allow the
11 videos to paint a picture of something that is not real. It
12 didn't occur.

13 He gets them talking and on tapes where he
14 doesn't like what they say, such as my client's car ride out
15 to the safe house the first night, which by all evidence in
16 this record there does not appear to be a logical
17 explanation as to why that Nagra doesn't exist, I have a
18 right to argue what is in that and I have a right to argue
19 that these agents specifically told him that he wasn't
20 supposed to purchase material on his own and they
21 deliberately disobeyed their own rules and regulations when
22 they let him do it. This agent on the stand now was shown
23 the fuse. He may deny it but if he was shown the fuse, and
24 if he had a conversation with Salem about propane tank and
25 then he let him keep the fuse, I find that to be

1 troublesome.

2 There is a followup conversation with Agent
3 Anticev where Anticev says to Emad you know, you really have
4 to give us back the fuse, we really can't let you have these
5 things out there, what happens if these things fall into
6 wrong hands and a bomb goes off? And Salem says I don't
7 know what I did with it, I threw it in a desk drawer, I will
8 give it some thought. I think it is proper for the jury to
9 know that the agents allowed him to have components to the
10 bomb, in arguing to the jury that what they see on the tape
11 is not the whole picture. It is Alice in Wonderland, what
12 you're seeing is not what you're seeing. It's a sleight of
13 hand.

14 MR. McCARTHY: It's a sleight of hand, that's for
15 sure. The critical difference between the testimony Miss
16 Amsterdam alludes to from Haggag is that the stuff happened
17 in front of the defendants and bears on what they may or may
18 not reasonably have believed and what they intended. It may
19 be shocking to hear but that's actually what the issue is in
20 the case.

21 The transactions, for want of a better word,
22 between the agents and themselves, the agents and Salem, do
23 not bear at all on what the jury is going to be asked to
24 resolve at the end of the case, which is what did the
25 defendants intend. They are like night and day, and no

1 matter how long a lawyer can talk about what may have gone
2 on between the informant and the agents, it doesn't cross
3 the line into admissible evidence unless it somehow bears on
4 what the defendants thought, said and intended in this case.
5 And try as they might, they have not crossed the line still.

6 MS. AMSTERDAM: You only get there by facts, your
7 Honor, and all we are seeking is to adduce the facts so we
8 can make the summation to the jury. If they laugh in our
9 face, so be it, Mr. McCarthy has his verdicts. Mr. McCarthy
10 once many years criticized me because I objected --

11 THE COURT: Miss Amsterdam, I am not interested
12 in any conversations that you had with him.

13 MS. AMSTERDAM: I am sorry. I am just saying
14 that the trial should be a search for the truth and Mr.
15 McCarthy shouldn't be permitted to preclude that.

16 THE COURT: The relevant truth, Miss Amsterdam
17 and as I think I mentioned many months ago, we are not here
18 to write history as to every event that happened in the
19 world, correct? You do acknowledge that?

20 MS. AMSTERDAM: I do acknowledge that, your
21 Honor.

22 THE COURT: Good. That's progress.

23 With that in mind, however, inquiry as to what
24 Salem was told he could or couldn't do at the time --

25 MS. AMSTERDAM: I apologize, your Honor. I

1 really can't hear.

2 THE COURT: Inquiry as to what Salem was told he
3 could or could not do at the time, it seems to me, is
4 relevant, and I am going to let him ask about what Salem was
5 told he could or couldn't do, period. I will let him ask
6 this witness, I will also let him ask Anticev. However,
7 what arguments you will be permitted to make on the basis of
8 that are going to be very limited.

9 MR. JACOBS: I guess we will get to that when we
10 get to that, your Honor.

11 THE COURT: That is right, we will.

12 MR. JACOBS: I think I understand your Honor's
13 grounds.

14 THE COURT: I doubt it.

15 We need to take a short recess. I need to see
16 the government in the robing room.

17 MR. JACOBS: Your Honor, I did want to put on the
18 record -- and my apologies for not doing it in a more formal
19 fashion. Mr. Ricco and Miss Amsterdam and I did pull out a
20 couple of cases on the personnel issues and I wanted to put
21 the cases on the record.

22 U.S. against Penthorn, 931 F.2d 29; U.S. against
23 Gross, 603 F.2d 757 --

24 THE COURT: Do you have copies?

25 MR. JACOBS: Yes, I do.

1 THE COURT: May I see them?

2 MR. JACOBS: Sure, of course. They are basically
3 following the procedure that your Honor set up to review
4 them, but I think a couple of cases the court refused to --

5 THE COURT: I have looked at them. I have now
6 looked at them twice.

7 MR. JACOBS: I think -- I will give you the cases
8 anyway.

9 MR. MCCARTHY: Could I ask you to allow Mr.
10 Jacobs to finish giving the cites? And I am sorry, I didn't
11 get your first one.

12 MR. JACOBS: Sure it is U.S. against Penthorn,
13 931 F.2d 29; U.S. against Gross 603 F.2d, 757; U.S. against
14 Garrett, 542 F.2d 23; U.S. against Cadet, C-A-D-E-T, 727
15 F.2d, 1453.

16 Basically the cases say that the material should
17 be turned over if it contains information material to the
18 defendant's case. All of these cases basically support the
19 position that the court should look at them in camera, but
20 let me hand them up.

21 THE COURT: If all they are doing is telling me
22 that I should do what I have done already, maybe I don't
23 need them, but maybe on the other hand you might get a
24 reversal if I do it and you don't hand them up, so maybe you
25 ought to hand them up.

1 MR. JACOBS: I don't know about that.

2 THE COURT: I need to see the government in the
3 robing room.

4 (Pages 13387 - 13388 sealed)

5 (Recess)

6 (Continued on next page)

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1 CARSON DUNBAR, resumed.

2 (Jury present)

3 THE COURT: Mr. Jacobs?

4 MR. JACOBS: Your Honor, may I show the witness
5 3534HH. Mr. McCarthy, 00079, three pages.

6 THE COURT: Go ahead.

7 MR. JACOBS: Your Honor, may I give the witness
8 just a couple of seconds to take a look at it.

9 (Pause)

10 MR. MCCARTHY: Do you mind if I read over his
11 shoulder for just a second.

12 MR. JACOBS: Do you have another copy for
13 Mr. McCarthy.

14 (Pause)

15 CROSS-EXAMINATION (Continued)

16 BY MR. JACOBS:

17 Q Agent Dunbar, the document you just read is a
18 memo that you wrote about a meeting with Emad Salem on or
19 about May 13, 1993, is that correct?

20 A That's correct.

21 Q OK. And would I be correct in characterizing it
22 as basically review with Salem of some of the ground rules
23 of the undercover operation, is that fair to say?

24 A Yes.

25 Q Some of the FBI ground rules?

1 A Yes.

2 Q Would I be correct in stating that the federal
3 Bureau of investigation has rather formal and strict ground
4 rules, if I can use that word, in conducting undercover
5 investigations? Is that correct?

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained.

8 Q Does the FBI have written rules and
9 regulations --

10 THE COURT: Sustained.

11 Q On May 13, you gave certain admonitions and
12 instructions to Salem yourself, correct?

13 A That's correct.

14 Q Would you remember if any other body was present,
15 if you can recall?

16 A I don't specifically remember. There may have
17 been one other person with me.

18 Q I think you told us before that you told him that
19 he was not to offer to purchase any material or to instruct
20 personnel on what should be done, is that correct?

21 A I didn't ever say that.

22 Q Pardon me?

23 A I never said that.

24 Q Would you take a look at your memo.

25 A No, you said --

1 MR. McCARTHY: Objection to the form.

2 THE COURT: Sustained.

3 MR. JACOBS: I'm sorry.

4 Q Did you tell Emad Salem on or about May 13, 1993
5 that he was not to offer to purchase any material? Did you
6 tell him that?

7 A Yes.

8 Q Did you tell him that he was not to instruct
9 people on what to do?

10 A Yes.

11 MR. McCARTHY: Objection to --

12 Q Did you tell him that under no circumstances was
13 he to take part in or allow explosive devices to travel
14 outside the safe house?

15 A Yes.

16 Q Did you tell him that?

17 A Yes.

18 Q OK. That he was not to deviate from any planned
19 activity, correct?

20 A Yes.

21 Q He was to work closely with the case agents?

22 A Yes.

23 Q That, in fact, I think you said United States law
24 requires strict control, is that correct?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q Did you tell him that strict control was
3 necessary in this case?

4 A I believe I did.

5 Q Did you tell him that he should not offer to
6 obtain any items that are illegal? By the way, if you want
7 to refer to your memo --

8 A I believe I did.

9 Q And that he was not to take part in any illegal
10 activities without notifying the case agent, did you tell
11 him that?

12 A Yes.

13 Q And would I be correct that these things you are
14 telling him are part of the rules and regulations of the
15 FBI?

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 Q Did you discuss money with him?

19 A Yes.

20 Q At that time, at that meeting?

21 A Yes.

22 Q Did he ask that his money be increased from 1,000
23 bucks to \$3,000 a month?

24 A Yes.

25 Q Were you the agent at that time who was

1 responsible for recommending how much money he gets?

2 A Within the Bureau?

3 A Within the Bureau, correct.

4 Q And money that he would get would go through the
5 chain of command in the FBI, correct, or would you have the
6 final say within the Bureau?

7 A Technically, I would have the final say.

8 Q Would the money have to be approved by an
9 Assistant United States Attorney, to your knowledge?

10 A In this particular case, yes.

11 MR. JACOBS: I have nothing further.

12 May I take back my exhibit.

13 THE COURT: Ms. Amsterdam, were you rising?
14 Representing Mr. Khallafalla.

15 CROSS-EXAMINATION

16 BY MS. AMSTERDAM:

17 Q Good morning, sir.

18 A Good morning.

19 Q Sir, Mr. Jacobs just asked you if you instructed
20 Emad Salem on May 13, 1993 that he was not to offer to
21 purchase any material, correct?

22 A Yes.

23 Q That would include, that admonition would
24 include, would it not, that he should not on his own go out
25 and buy any destructive devices, correct?

1 MR. McCARTHY: Objection, unless she clarifies
2 whether it was told to Salem.

3 THE COURT: Sustained.

4 Q Was it made clear to Mr. Salem that he himself
5 could not go out and buy destructive devices?

6 A I can't precisely answer that. But in discussing
7 that, the bottom line was that I did not want him to do
8 anything, to purchase anything and offer to purchase
9 anything without getting some kind of direction.

10 Q Without getting direction or approval from you or
11 one of the supervising agents, correct?

12 A Well, direction from one of the defendants or
13 approval from one of the agents or supervisor.

14 Q So, in your words, the bottom line would be that
15 he was not supposed to go out and buy materials on his own
16 without either getting direction from an agent or
17 instructions from a defendant, correct?

18 A Correct.

19 Q Now, was there a time, sir, that Mr. Salem came
20 to your office and showed you a fuse, a dynamite-on-a-stick
21 fuse that he himself personally had purchased?

22 A No.

23 Q Was there a time, sir, that you had a
24 conversation with Mr. Salem in which you explained to
25 Mr. Salem how he could make a propane tank -- withdrawn.

1 Did you have a conversation at any time with
2 Mr. Salem during which you explained to Mr. Salem how he
3 could make a propane tank explosive with a fuse on a
4 dynamite stick?

5 A I wouldn't have the slightest idea of how to do
6 that now. No, absolutely not.

7 Q You would not have given him such instructions,
8 correct? You would not have told him how to make an
9 explosive --

10 A I couldn't do it because I don't know how to.

11 Q Fair enough.

12 Did he ever come to you and show you any fuses?

13 A Yes.

14 Q He did?

15 A Yes.

16 Q Did he tell you that he had purchased that fuse
17 himself?

18 A He showed me -- he showed me a, what I think was
19 like a large firecracker, like an M80 type firecracker.

20 MR. JACOBS: I am having a little trouble
21 hearing, Judge. My apologies.

22 THE COURT: He said he showed him an M80 type
23 firecracker.

24 Q Did he show you an M80 fire --

25 A This is much earlier. This is not about this

1 time.

2 Q When was that, sir, to the best that you
3 remember?

4 A I think it was possibly in '92.

5 Q In 92?

6 A Yes.

7 Q When he showed you that fuse, did you take
8 possession of it?

9 A No, I did not.

10 Q Did you tell him, in sum and substance,
11 "Mr. Salem, you shouldn't be out buying M80 fuses"?

12 A Yes, I did.

13 Q So he was instructed back in '92 also that he
14 should not be buying those type of devices on his own,
15 correct?

16 A Yes.

17 Q All right. Did Mr. Salem either show you or tell
18 you that he personally had purchased any remote detonators?

19 A I don't specifically recall, but it is quite
20 possible.

21 Q All right. If he had told you or shown you any
22 remote detonators that he personally had purchased, would
23 you have instructed him not to purchase such items?

24 A I would have told him in the first place not to
25 purchase them.

1 Q All right. Did you ever take any custody of --
2 withdrawn.

3 Did you ever take possession from him of any
4 remote detonators that were his personal property?

5 A I don't recall any remote detonator per se.
6 There was one detonator that he came into contact with that
7 I recall, which is the one that was in the safe house.

8 Q I am talking about a detonator that he personally
9 purchased.

10 A I don't recall. I mean the only detonator that I
11 recall was the one that was in the safe house.

12 Q All right. Do you recall whether or not
13 Mr. Salem ever came to you or showed you a personal timer
14 that he himself had purchased and wired --

15 A I believe --

16 Q -- and adapted?

17 A I believe that's the same one we're talking
18 about. I mean, the one that was in the safe house.

19 Q Now, in connection with that timer, did you
20 instruct agents under your control to remove that timer from
21 the safe house?

22 A I'm not totally sure. But what I believe
23 happened was it was important that that safe, that that
24 timer --

25 Q I am sorry, sir. I can't hear you.

1 A It may have been removed and then put back. I
2 remember there was some controversy about we had to make
3 sure that the timer was still there so everything looked
4 like it was in place, but I don't specifically remember.

5 Q So, to the best of your recollection, there was a
6 timer that Mr. Salem himself had purchased and adapted which
7 had been placed in the safe house and subsequently removed,
8 correct?

9 A Removed and then put back. I'm not sure. But I
10 mean there was a timer, and most of what you're saying is
11 correct.

12 Q Was that timer replaced in the safe house after
13 Mr. Salem demanded that it be put back there?

14 A That's quite possible.

15 Q Did Mr. Salem ever show you any explosive
16 material that he himself had purchased?

17 A Other than the one, the one M80 firecracker, I
18 don't recall.

19 MS. AMSTERDAM: I have no further questions.

20 Thank you.

21 THE COURT: Ms. Stewart?

22 CROSS-EXAMINATION

23 BY MS. STEWART:

24 Q Good morning, Special Agent Dunbar.

25 A Good morning.

1 Q I believe in answer to Mr. Stavis and Mr. Ricco
2 you testified earlier about two meetings which occurred in
3 July of 1992, is that correct?

4 A I believe I said there was one, possibly, two.

5 Q One that you had with the agents and one with
6 Mr. Salem, is that right, and the agents?

7 A Well, actually it was agents. I think when I
8 talked about agents I said there may have been as many as
9 four or five, but with Mr. Salem personally himself, I
10 thought there was one, possibly two.

11 Q And Mr. Stavis went on to ask you about the areas
12 that it was of concern to you be verified by Mr. Salem, is
13 that right?

14 A Correct.

15 Q Was not an area that needed to be verified in
16 your role as supervising special agent that whether or not
17 Mr. Salem was working at the direction of --

18 MR. McCARTHY: Objection.

19 Q -- the Egyptian intelligence?

20 THE COURT: Sustained.

21 Q Was it an area to be verified at that time?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

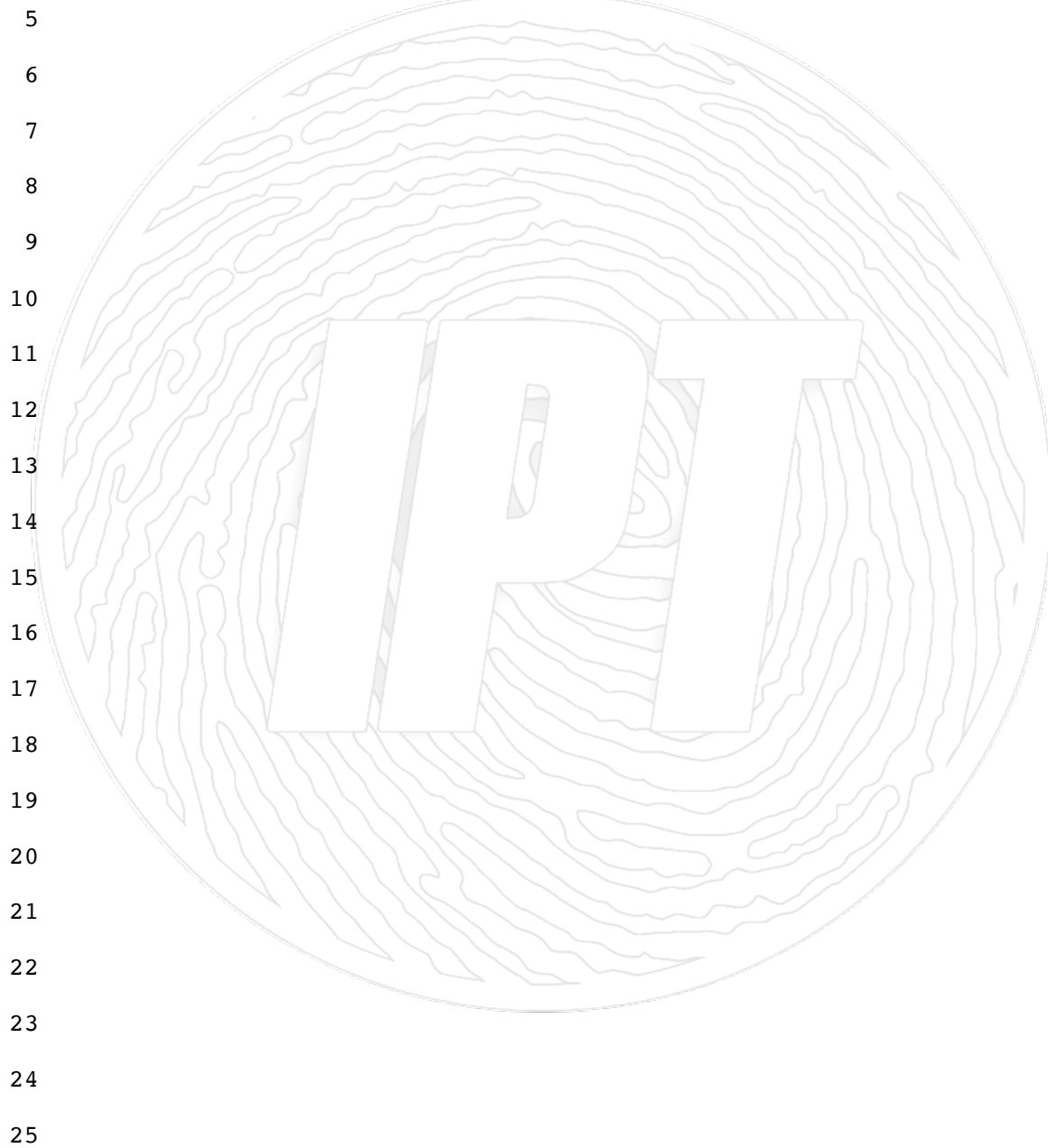
24 MS. STEWART: May I be heard, Judge?

25 THE COURT: We discussed this.

1 MS. STEWART: I don't think we discussed this.

2 THE COURT: I will talk to you briefly at the
3 side.

4 (Continued on next page)



1 (At the side bar)

2 MS. STEWART: During the entire period of the
3 polygraph questions, starting in January 1992 through
4 September of 1992, the FBI persistently asked on the
5 polygraph exams with regard to Mr. Salem's relationship
6 to --

7 THE COURT: The questions --

8 MS. STEWART: May I finish, Judge.

9 -- with regard to the Egyptian intelligence. The
10 way the jury now has it, the only areas they were concerned
11 with had to do with Dov Hikind and specific material that
12 was said by Nosair.

13 THE COURT: Now would you like to get a ruling?

14 MS. STEWART: Yes, certainly, Judge.

15 THE COURT: Good.

16 MS. STEWART: I am not interrupting. I just
17 wanted to put the full facts before you.

18 THE COURT: What was "of concern" or not "of
19 concern" to them is not the issue. The issue is what they
20 told Salem. If you want to explore whether they told Salem
21 that they were concerned about whether he was having contact
22 with Egyptian intelligence, that's fair game. You may not,
23 however, explore in the abstract whether they were concerned
24 about it. That was the reason I sustained the objections.

25 MS. STEWART: OK.

1 MR. McCARTHY: Does that mean that Agent Dunbar
2 now becomes the one witness that your Honor told Ms. Stewart
3 on Friday she would be entitled to --

4 THE COURT: Yes. I assume that is what she
5 wants --

6 MS. STEWART: No, Judge. That is a different
7 issue. This is questioning whether or not they were so
8 concerned with it that they were asking the man, along with
9 whether or not --

10 THE COURT: Their level of concern is irrelevant.
11 You said on Friday you wanted to put somebody on to talk
12 about whether they were telling him not to contact Egyptian
13 intelligence and so on and so forth. Is this the one?

14 MS. STEWART: No, this is not the one. Nancy
15 Floyd is the one.

16 THE COURT: Then let's move on to something else.

17 MS. STEWART: I have no more questions, then.

18 (Continued on next page)

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1 (In open court)

2 THE COURT: Anyone else? Any other direct?

3 None? Any cross, Mr. McCarthy?

4 CROSS-EXAMINATION

5 BY MR. McCARTHY:

6 Q Agent Dunbar, let me direct your attention to the
7 July 1992 meeting that you were asked about earlier this
8 morning. It is a fact, is it not, that at the time of that
9 meeting you were trying to develop a criminal case against
10 El Sayyid Nosair and others?

11 A Yes.

12 Q It is a fact, is it not, that during the course
13 of that meeting and during the course of the time when that
14 meeting took place that the criminal case you were trying to
15 develop against El Sayyid Nosair involved other things
16 besides what Emad Salem was providing you information about?

17 MR. STAVIS: I object to that question, your
18 Honor.

19 THE COURT: Overruled.

20 A I don't understand your question.

21 Q You were asked some questions this morning by Mr.
22 Stavis about some information that Emad Salem --

23 THE COURT: May I see counsel at the side
24 briefly, just briefly.

25 (Continued on next page)

1 (At the side bar)

2 THE COURT: What is the proffer on this?

3 MR. McCARTHY: It goes to what he was told
4 regarding why they wanted to corroborate his information.

5 THE COURT: It goes to what Salem was told?

6 MR. McCARTHY: Right. I am not going to go into
7 what they thought or what they believed other than to set
8 the framework for the discussion. I mean, right now the
9 jury has been told on the basis of the questions that have
10 been asked this morning that this meeting took place solely
11 because of information that Salem was providing.

12 MR. STAVIS: I'm sorry. Are you finished,
13 Mr. McCarthy?

14 MR. McCARTHY: Yes.

15 THE COURT: Go ahead.

16 MR. STAVIS: In framing this issue, my concern,
17 your Honor, is that we are veering widely from my direct
18 examination, which was very focused on what he was told. It
19 should not be license to Mr. McCarthy to go into the
20 investigation, which was the reason that I objected.

21 The total information in possession of Mr. Dunbar
22 and the FBI strategy were not things that I elicited on my
23 direct examination. I stuck to what Salem was told, by your
24 Honor's order of last Friday.

25 MR. McCARTHY: That is just not so. I mean about

1 three or four questions into the examination the question
2 was, "Are you familiar with the terr stop investigation?"

3 THE COURT: That was just a question, and the
4 objection was sustained as to that.

5 MR. STAVIS: That was a preliminary question and
6 I didn't go any further with that, and and others tried to
7 pursue it, and objections to those inquiries were sustained.

8 MR. McCARTHY: I will move on, if you want.

9 THE COURT: Good.

10 (Continued on next page)

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1 (In open court)

2 Q Agent Dunbar, at the meeting that you had with
3 Emad Salem, the one or two meetings that you have told us
4 about in July of 1992, you told Mr. Salem that you wanted
5 him to be a cooperating witness, is that correct?

6 A I asked Mr. -- I told Mr. Salem that I wished to
7 corroborate some of the information. I don't know whether I
8 used the term "cooperating witness." I suggested or I asked
9 him if he would be willing to wear a concealed wire.

10 Q Is it not so that there was a good deal of
11 discussion about the possibility that his cooperation with
12 your investigation would be found out at some point down the
13 line?

14 MR. STAVIS: Objection as to form, your Honor.

15 THE COURT: Overruled.

16 A That was the focal point of the discussion.
17 That's one of the reasons the discussion was held.

18 Q Is it not also so that there was a good deal of
19 discussion about whether the FBI would make efforts to
20 handle the case in such a way that Mr. Salem's cooperation
21 would not become known?

22 A Could I ask you just to restate that?

23 Q Sure. Is it not so that there was a good deal of
24 discussion about whether the FBI would take the case down or
25 handle the case in such a way that Mr. Salem's cooperation

1 with the FBI would not become publicly known?

2 A Yes, yes.

3 Q And didn't you, in fact, tell him that there was
4 no 100 percent guarantee that you could make that his
5 cooperation would never become publicly known?

6 A Yes.

7 Q Is it not so that at the end of your meeting the
8 way things were left, you still wished for him and you told
9 him that you still wished for him to continue to cooperate
10 with the investigation?

11 A Again, the purpose of the meeting was to get him
12 to continue the cooperation --

13 THE COURT: He didn't ask you the purpose of the
14 meeting.

15 THE WITNESS: Yes.

16 THE COURT: He simply asked you whether, at the
17 time the meeting ended, did you tell him in words or
18 substance that you still wanted him to cooperate and provide
19 information?

20 THE WITNESS: Yes.

21 Q Now, Mr. Stavis asked you some questions about
22 whether you uttered certain words. I think he said
23 "verification." He asked you if you used the word
24 "verification."

25 Do you recall that?

1 A I recall him asking, yes.

2 Q Let me ask you straight out: Did you ever tell
3 Emad Salem at that meeting or at any other time that you did
4 not believe what he was telling you?

5 A No.

6 MR. McCARTHY: Thank you. No further questions.

7 THE COURT: Before.

8 THE COURT: Mr. Ricco.

9 CROSS-EXAMINATION

10 BY MR. RICCO:

11 Q Mr. McCarthy used the word "take down a case,"
12 isn't that correct?

13 A Yes.

14 Q Now, "take down a case" means that there's
15 something, a criminal act has happened, and the FBI moves in
16 to make the arrest, isn't that correct?

17 A Yes.

18 Q Now, one of the areas of concern was an escape
19 plot, a plot to help Nosair break out of state prison, isn't
20 that correct?

21 A That's correct.

22 Q Was there a case to take down when you met with
23 Emad Salem in July of 1992?

24 A No.

25 Q One of the things that he talked about was the

1 kidnapping of judges. Was there a case to be taken down with
2 respect to a kidnapping of a judge when you met with Emad
3 Salem in July of 1992?

4 A No.

5 Q One of the other areas of concern was bombing of
6 unspecified targets in Brooklyn. Was there a case to be
7 taken down in July of 1992 concerning Emad Salem?

8 A No.

9 Q When you met with Emad Salem, you did talk about
10 his future involvement in the investigation, isn't that
11 correct?

12 A Yes.

13 Q But that was provided that Emad Salem took a
14 polygraph or wore a wire to confirm the information that he
15 had been giving, isn't that right?

16 A No.

17 Q That's not right?

18 I would like to show you what is Bates stamped
19 0219 --

20 MR. RICCO: That would be Government Exhibit,
21 your Honor, 3534C, page 219.

22 Thank you, Mr. McCarthy.

23 Q I am showing you that document and I ask you if
24 you recognize it.

25 (Pause)

1 Q Do you recognize it, sir?

2 A Yes.

3 Q That document is a memorandum prepared by you,
4 isn't that correct?

5 THE COURT: Mr. Ricco, they can't hear you unless
6 you go to the microphone.

7 MR. RICCO: I'm sorry. Excuse me.

8 Q That memorandum was prepared by you?

9 A Yes.

10 Q Signed by you?

11 A Yes.

12 Q Sent to your supervisor? Sent to the
13 administrative director in charge?

14 A It was sent to the file.

15 Q OK. Now, in your memo, didn't you say that the
16 asset was advised that should the polygraph confirm his
17 information, the matter would be further discussed with the
18 United States Attorney's Office --

19 MR. MCCARTHY: Objection.

20 I withdraw the objection.

21 THE COURT: Go ahead.

22 Q Didn't you say, amongst other things, that the
23 asset was advised that should the polygraph confirm his
24 information, the matter would be further discussed with the
25 United States Attorney's office to insure that the best

1 course of action to avoid the asset's, asset having to
2 testify in this case, did you say that?

3 A That's in the memo, yes.

4 Q The predicate, what had to happen first, was that
5 the information had to be confirmed, isn't that correct?

6 A Yes.

7 Q The way the information would be confirmed was
8 either through wearing a wire or through the polygraph?

9 A That's not exactly correct.

10 Q OK. That's what your memo says, isn't that
11 correct?

12 MR. MCCARTHY: Objection.

13 THE COURT: Sustained.

14 A That's not --

15 THE COURT: Sustained and stricken.

16 MR. RICCO: OK.

17 Q That's not exactly correct? There are other ways
18 in which the FBI could confirm information that a
19 confidential informant gives, isn't that correct?

20 A Yes.

21 Q You could do it through surveillance, isn't that
22 correct?

23 A Yes.

24 Q Photographs?

25 There are a number of different ways, isn't that

1 correct?

2 A That's correct.

3 Q But in relation to your meeting with Emad Salem,
4 when you said to him, "Wear a wire or take the polygraph,"
5 it was for the purpose of confirming the information?

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained as to form.

8 MR. RICCO: I will try to rephrase it.

9 Q The whole -- withdrawn.

10 In early July of 1992, the testimony that you
11 have been giving about the wearing of the body wire or the
12 polygraph, was related to the issue of confirming the
13 information, isn't that correct?

14 A That's correct.

15 (Continued on next page)

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1 Q And what you said to Emad Salem was, if it's
2 confirmed, then we will discuss in the future how we can
3 investigate the case so that you won't have to testify.

4 A That is not correct.

5 Q Which part of that isn't correct?

6 A I told Mr. Salem, I gave him a number of
7 scenarios that we could possibly use should he wear a wire,
8 in which he would not have to testify, or hopefully not have
9 to testify.

10 Q But the first thing that you wanted to do, Agent
11 Dunbar, was to confirm what he --

12 MR. MCCARTHY: Objection.

13 THE COURT: Sustained.

14 Q You wanted to confirm --

15 THE COURT: Sustained.

16 Q You didn't want to confirm --

17 MR. MCCARTHY: Objection.

18 THE COURT: Sustained.

19 REDIRECT EXAMINATION

20 BY MR. STAVIS:

21 Q At that meeting in early July of '92 when you
22 asked him to wear a wire, just so that we are clear, that
23 was to wear a wire when he went to visit my client El Sayyid
24 Nosair, is that correct?

25 A That is correct.

1 Q And that would be to wear a wire when he went to
2 visit Mr. Nosair at Attica prison, is that correct?

3 A That is correct.

4 Q And you told Mr. Salem that you could arrange
5 everything in Attica so that they could tape Mr. Nosair's
6 meeting with Mr. Salem, isn't that correct?

7 A I believe so.

8 Q And you had agents in the Buffalo office which
9 would help you do what needed to be done so that Mr. Salem,
10 if he went to visit Mr. Nosair at Attica prison, could tape
11 that meeting, is that correct?

12 A That is correct.

13 Q Mr. McCarthy asked you some questions and you
14 referred to taking the case down, is that correct?

15 A I did not refer. He did.

16 Q He referred and you answered his questions,
17 correct?

18 A Yes.

19 Q After your meeting with Emad Salem in early July
20 of 1992, you stopped authorizing payments to him, is that
21 correct?

22 A That is not correct. He got one more payment.

23 Q After the one more payment, did you authorize
24 additional payments to Mr. Salem after the July '92 meeting?

25 A I did not -- I don't think so, no. No.

1 Q And after the July '92 meeting with Mr. Salem,
2 did you authorize Mr. Salem to receive expense money?

3 A No.

4 Q And after the meeting with Mr. Salem in July '92,
5 did you authorize the payment of Mr. Salem's parking
6 tickets?

7 A No.

8 Q So after the meeting in July of '92, Mr. Salem,
9 to your knowledge, received no further benefits, except for
10 the one payment received no further payments from the FBI,
11 isn't that correct?

12 MR. MCCARTHY: Objection unless he establishes a
13 time frame.

14 THE COURT: Do you want to establish time frame.

15 MR. STAVIS: Yes.

16 Q From the July '92 meeting with Mr. Salem until
17 end of 1992, Mr. Salem did not receive any further benefits
18 from the FBI except for that one payment that you have told
19 us about.

20 A On my approval.

21 Q On your approval?

22 A Right.

23 Q Is that correct?

24 A That is correct.

25 Q Mr. McCarthy asked you if you ever told Mr. Salem

1 at that July 1992 meeting, "I don't believe what you are
2 telling me." Do you recall that testimony?

3 A Yes.

4 Q What if anything did you say to Mr. Salem at that
5 July 1992 meeting that would cause him to believe that you
6 did not believe him?

7 MR. McCARTHY: Objection, only to form. I don't
8 object to the area.

9 THE COURT: Do you want to frame it in terms of
10 "was there anything that you said."

11 Q Was there anything that you told Emad Salem at
12 the July '92 meeting to make him believe that you did not
13 believe what he was telling you about my client Mr. Nosair?

14 A The only discussion was that I told him that we
15 needed to have corroboration of what he told us.

16 Q Did you use the word corroboration?

17 A Corroboration, verification, whatever.

18 Q I would ask you to think about that carefully,
19 Agent Dunbar.

20 MR. McCARTHY: Objection.

21 THE COURT: Objection sustained.

22 Q Did you use the word verification -- which word
23 did you use? Verification or corroboration?

24 A It is over three years ago. Either word. It's
25 the same meaning.

1 Q When you wrote a memorandum the day after your
2 July 6, 1992 meeting with Mr. Salem, did you use the word
3 verification?

4 A I believe you showed me the document before and I
5 stand with whatever is written there.

6 Q And what is written there is the word
7 verification, correct, sir?

8 A Yes.

9 Q Mr. Jacobs on cross-examination was asking you a
10 few questions about your conversations with Emad Salem with
11 regard to the money that the FBI was paying.

12 MR. MCCARTHY: Objection, scope.

13 THE COURT: Sustained.

14 MR. STAVIS: Is this line foreclosed, your Honor?

15 THE COURT: Yes. This isn't round robin. Let's
16 go.

17 MR. STAVIS: Then I have no further questions of
18 this witness.

19 MS. AMSTERDAM: I have one last question.

20 RE-CROSS-EXAMINATION

21 BY MS. AMSTERDAM:

22 Q Sir, Mr. McCarthy asked in his words flat out at
23 the July 1992 meeting was there any reason that you had to
24 disbelieve Emad Salem.

25 MR. MCCARTHY: Objection.

1 THE COURT: Sustained. He never asked him that.

2 Ask a question, Ms. Amsterdam.

3 Q The meeting in July of 1992, that meeting was
4 before -- withdrawn.

5 The meeting in July 1992, it was for the first
6 time at that meeting that the discussion of wearing a wire
7 or taking a polygraph was discussed with Mr. Salem, correct?

8 A With me?

9 Q Yes.

10 A With me, I believe that is correct, yes.

11 (Continued on next page)

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1 MS. AMSTERDAM: Thank you.

2 THE COURT: Anyone else? Anything else, Mr.
3 McCarthy?

4 MR. MCCARTHY: No, thank you.

5 THE COURT: You are excused.

6 (Witness excused)

7 MR. STAVIS: Your Honor, at this time the defense
8 offers into evidence Nosair Exhibit V as in Victor, VV, and
9 a transcript Nosair VV-T, and I would ask that the jurors
10 open their books to Nosair Defense Exhibit VV.

11 MR. MCCARTHY: There is no objection.

12 THE COURT: VV is received.

13 (Defendant Nosair Exhibit VV received in
14 evidence)

15 THE COURT: I believe you have those exhibits.

16 MR. MCCARTHY: Your Honor, this is a conversation
17 in English.

18 THE COURT: Yes. This is a conversation in
19 English. I will tell you that the transcript, as I am sure
20 you recall, is only for your assistance in listening to the
21 tape, and if there is any difference between listening to
22 the tape and what you read in the transcript, it is the tape
23 that is the evidence.

24 MR. STAVIS: There is also a stipulation with the
25 government. It is stipulated with the government and the

1 defense that Nosair Exhibit VV and VV-T is a conversation
2 between Emad Salem and Nancy Floyd which occurred on March
3 4, 1993. It is the first conversation between an FBI agent
4 and Emad Salem following the bombing of the World Trade
5 Center.

6 I would ask everybody to put their headphones on,
7 if they could.

8 (Tape played)

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
12 will resume at 2:00.

13 (Jury excused)

14 THE COURT: Ms. Stewart, when did you want to be
15 heard with regard to the subpoenas?

16 MS. STEWART: We got the letter at 9:15 this
17 morning. I would like to have a little time, Judge. We are
18 not due up until after Mr. Stavis and Mr. Ricco.

19 THE COURT: I understand that.

20 MS. STEWART: Monday, Judge?

21 THE COURT: Monday is fine.

22 (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. Stewart, before the break, you
5 were talking about your being heard on the subject of those
6 subpoenas.

7 MS. STEWART: Yes, Judge.

8 THE COURT: Do you want to submit something in
9 writing, is that it?

10 MS. STEWART: I would like to answer the letter.

11 THE COURT: This issue is not new, and it's not a
12 surprise. I would like you to answer it by Friday.

13 MS. STEWART: It's just that we have so many
14 other things we have been doing, Judge.

15 THE COURT: This ought to be child's play. This
16 is not a new issue. I would like to get it dealt with, and
17 I would like it by Friday.

18 MS. STEWART: All right.

19 (Jury present)

20 THE COURT: Good afternoon, ladies and gentlemen.

21 JURORS: Good afternoon, your Honor.

22 THE COURT: Mr. Patel?

23 MR. PATEL: Your Honor, the defense calls John
24 Anticev as our next witness.

25

1 JOHN MICHAEL ANTICEV,
2 called as a witness by Defendant Nosair
3 having been duly sworn, testified as follows:

4 THE COURT: Mr. Anticev, you are going to have to
5 try to move up as close as you can and try to talk right
6 into those microphones or else folks aren't going to be able
7 to hear you.

8 THE WITNESS: I'm sorry.

9 THE COURT: OK.

10 MR. PATEL: Thank you, your Honor.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MR. PATEL:

14 Q Good afternoon, Mr. Anticev.

15 How are you employed?

16 A I am a special agent with the FBI in New York.

17 MS. STEWART: I can't hear.

18 Q I'm having trouble hearing you.

19 THE COURT: Slower and louder.

20 Q May I just try this. Thank you.

21 How long have you been with the FBI?

22 A Eight years.

23 Q What is your current assignment with the Bureau?

24 A I am assigned to the New York office to work
25 matters of counterterrorism.

1 Q I am sorry. I didn't hear the --

2 A I work counterterrorism matters.

3 Q Are you assigned to the Joint Terrorist Task
4 Force?

5 A Yes, I am.

6 Q When were you first assigned to the Joint
7 Terrorist Task Force?

8 A Approximately February, 1990.

9 Q February of 1990.

10 And is Detective Louis Napoli your partner?

11 A Yes, he is.

12 Q And he's been your partner since 1990?

13 A Yes, we've worked together since 1990.

14 Q Now, you've been involved in the investigation of
15 Mr. Nosair or any of the other defendants for -- since 1990,
16 is that fair to say?

17 A Yes, I first became involved with investigations
18 concerning Mr. Nosair around November 5, 1990.

19 Q That's the -- did you go to the Marriott Hotel
20 that night?

21 A No, I did not.

22 Q Did you go to the 17th Precinct that night?

23 A Not that night.

24 Q Did you attend a meeting at the 17th Precinct on
25 November 9?

1 MR. FITZGERALD: Objection, scope.

2 THE COURT: Sustained.

3 Q What did you do in the early stages of your
4 investigation of Mr. Nosair?

5 MR. FITZGERALD: Objection, scope.

6 THE COURT: Sustained.

7 Q Did you attend Mr. Nosair's state trial?

8 A Yes, I did.

9 Q Every day?

10 A No, I did not.

11 Q You worked with Mr. Salem during Mr. Nosair's
12 state trial?

13 A Yes, I did.

14 Q Now, Mr. Salem stopped working for the Bureau in
15 late summer, or summer or fall of '92, is that correct?

16 A That's correct.

17 Q Now, during the course of your investigation, you
18 received some audiotapes that had been recorded at Attica
19 Prison, conversations of Mr. Nosair's?

20 A Yes, we did.

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

23 THE COURT: Yes.

24 Q I am showing you what's been marked as Government
25 Exhibit 672A. Could I ask you to take a look at that.

1 Do you recognize that?

2 A Yes.

3 Q What is it?

4 A This is an FD 504. It is a chain of custody
5 envelope.

6 Q An FD 504, that's an FBI form number?

7 A I believe, yes.

8 Q And that's one that you filled out?

9 A Yes.

10 Q And that's for a tape that you received from
11 Attica State Prison?

12 A Yes.

13 Q And do you know when you received that tape?

14 MR. STAVIS: Your Honor, the jurors are having
15 trouble hearing the testimony.

16 MR. PATEL: I'm sorry.

17 Q Do you know when you received that tape?

18 MR. PATEL: Is that better?

19 A According to this I received it on 1/27/93.

20 MR. PATEL: Your Honor, I would offer the
21 envelope. I believe the tape is already in evidence. I
22 would offer the envelope at this time.

23 MR. FITZGERALD: No objection.

24 THE COURT: 672A is received.

25 JURORS: We can't hear.

1 THE COURT: You folks are just going to have to
2 talk louder.

3 THE WITNESS: OK.

4 (Government Exhibit 672A for identification was
5 received in evidence)

6 Q When was that tape recording made, if you know?

7 A Well, according to the envelope, the interception
8 was made on 12/28/92.

9 Q It was received in the FBI office when?

10 A It was received by me on 1/27/93.

11 Q Did you review the tape when you received it?

12 A I don't think so.

13 Q Did you send it out for translation?

14 A Yes. When we received the tapes from Attica, I
15 did not get the raw tapes. They were sent to, there was a
16 procedure set up where the tapes were sent somewhere else
17 first for review.

18 Q Would you tell the ladies and gentlemen of the
19 jury what the procedure for handling those tapes was.

20 A I'm not 100 percent sure, but to the best of my
21 recollection --

22 MR. FITZGERALD: Objection, scope.

23 THE COURT: Sustained.

24 Q Now, in late February or early March of 1993, did
25 you have a meeting with Emad Salem and your partner, Louis

1 Napoli, in a car?

2 A I believe so.

3 Q Was this the first time that you had seen
4 Mr. Salem since the World Trade Center explosion had
5 occurred?

6 A That might have been the first time I personally
7 saw him.

8 Q Do you know the exact date of that meeting?

9 A No, I do not.

10 Q Did you later learn that Mr. Salem was wearing
11 some kind of recording device that day?

12 A Yes.

13 MR. PATEL: Your Honor, at this time, I would
14 offer Nosair Exhibit WW, which for the benefit of counsel
15 was formerly known as Source Tape 43-1, and Nosair WW/T,
16 which is a transcript, which is not being offered in
17 evidence, but is being offered as a guide to the jury. This
18 is an English tape.

19 MR. FITZGERALD: No objection.

20 THE COURT: All right. WW is received, and the
21 transcript is received as an aid.

22 (Nosair Exhibit WW for identification was
23 received in evidence)

24 THE COURT: Do you want to play it?

25 MR. PATEL: Yes, your Honor. I would just like

1 to note that it has been stipulated that this is a recording
2 of that meeting.

3 MR. FITZGERALD: Yes.

4 THE COURT: OK. Go ahead.

5 MR. PATEL: Your Honor, this transcript is in the
6 jury's notebook behind the tab marked WW.

7 I would ask the members of the jury to put their
8 headsets on. We are ready to play this tape.

9 I think we are ready, Mr. McCarthy. Thank you.

10 (Tape played)

11 BY MR. PATEL:

12 Q Mr. Anticev, do you recall during that
13 conversation that there was a point when you and Detective
14 Napoli told Mr. Salem that he had not informed you about
15 specific targets?

16 Do you recall that point in the conversation?

17 A Yes.

18 Q Now, when you were in the car that day, Detective
19 Napoli was driving?

20 A Yes.

21 Q You were in the front passenger's seat?

22 A No. Rear. I was in the back seat.

23 Q And Mr. Salem was in the front passenger's seat?

24 A Yes.

25 Q Could you see Mr. Salem from where you were

1 sitting?

2 A I imagine so. I was sitting right behind him.

3 Q How did he react when you and Detective Napoli
4 started telling him that he hadn't told you about those
5 targets?

6 A He seemed trying to press the point that he did
7 tell us.

8 Q Did he seem nervous?

9 A Did he seem nervous?

10 Q Did he seem nervous?

11 A No, a little excited, but not nervous.

12 Q When you say "a little excited," what do you mean
13 by that? Did he seem agitated?

14 A No.

15 Q What do you mean by "a little nervous"?

16 MR. FITZGERALD: Objection to form.

17 THE COURT: Sustained.

18 Q "A little excited." I'm sorry.

19 What did you mean by that?

20 A Well, judging by the way he was speaking, his
21 voice was a little elevated.

22 MS. AMSTERDAM: I'm sorry. Elevated?

23 A Elevated, and he was talking rapidly. While
24 listening to the tape, the only word I could think of was a
25 little excited.

1 Q Did Detective Napoli frisk Mr. Salem for a
2 recording device that day?

3 A No, I don't think so.

4 Q Was there another day that Mr. Salem told you
5 that he had been frisked by Detective Napoli for a recording
6 device?

7 A Yes.

8 Q You don't recall when that was?

9 A No, he mentioned it one time that Louis,
10 Detective Napoli patted him down or was looking for a
11 device.

12 Q After you had this conversation in the car, the
13 three of you went down to the FBI office, is that correct?

14 A I believe so.

15 Q You drove in through the basement at 26 Federal
16 Plaza?

17 A Probably.

18 Q You went up to your office at FBI headquarters
19 here in New York, right?

20 A Yes.

21 Q When the three of you got up there, there was a
22 suspect board of World Trade Center suspects set up in your
23 office, is that correct?

24 A I wouldn't consider it a suspect board for World
25 Trade Center suspects. To the best of my recollection, that

1 board was produced prior to the World Trade Center.

2 Q There was a board of suspects?

3 A Of individuals we were investigating.

4 Q OK. Was the board labeled in any way?

5 A It was not labeled "World Trade Center Suspects."

6 Q Was it labeled at all?

7 A I believe it was.

8 Q Do you recall what it said?

9 A I think it just said Joint Terrorist Task Force
10 on top.

11 Q OK. Did you put the board together or play a
12 role in putting the board together?

13 A Yes.

14 Q Well, let me break that down.

15 Do you put it together?

16 A No.

17 Q Who did?

18 A I don't exactly remember who put it together. I
19 gave it to somebody else. I used pictures that we had of
20 some people that were of interest to us, and I wanted to put
21 them all on a board together.

22 Q You gave the person the pictures?

23 A Yes.

24 Q And you gave that person a picture of Mr. Salem,
25 is that correct?

1 A Yes.

2 Q And Mr. Salem's picture was at the top of the
3 board, is that correct?

4 A On that poster, yes.

5 Q And did it say anything under Mr. Salem's
6 picture?

7 A Just his name.

8 Q Did it say anything like "explosives expert" or
9 any description of his --

10 A No.

11 Q Do you know where that picture came from?

12 A Yes.

13 Q Was that a photograph that he had given to you?

14 A No.

15 Q Was that a photograph that you took of him?

16 A Yes.

17 Q And when did you take that photograph of him?

18 A We took that photograph, I don't remember the
19 date, but it was in September '92.

20 Q How did Mr. Salem react when he saw his
21 photograph up on that board?

22 A He became concerned. He was actually angry.

23 Q Was he screaming at you?

24 A No.

25 Q What did he say?

1 A He said, "Why do you have me as a suspect?"

2 Q Did he say it in a calm tone of voice like you're
3 using here in court today, or was he agitated?

4 A Agitated.

5 Q Did he say, "Why am I up on that board?"

6 A Yes.

7 Q What else did he say?

8 A "You think I" -- to the best of my recollection,
9 "Do you think I bombed the World Trade Center?"

10 Q He was very upset?

11 A Yes.

12 Q He was excited?

13 A Yes.

14 Q He was nervous?

15 A I don't know if he was nervous, but he was
16 excited.

17 Q He wasn't sitting, calmly sitting, staring at the
18 board, was he?

19 A No, he looked at it, and then he started getting
20 excited, like I said.

21 Q OK. Did you try to get a confession from him at
22 that point?

23 A No.

24 Q Now, you're an experienced investigator, correct
25 eight years with the Bureau?

1 A Yes.

2 Q You know that when someone is agitated that this
3 is often a good time to get them to talk about things they
4 might not ordinarily talk about, correct?

5 A Sometimes.

6 Q Now, Mr. Salem at that point had been fired by
7 the FBI, dropped by the FBI --

8 MR. FITZGERALD: Objection.

9 THE COURT: Sustained.

10 Q Mr. Salem, I believe we discussed this earlier,
11 had been dropped by the FBI in '92, right?

12 MR. FITZGERALD: Objection.

13 THE COURT: Sustained.

14 (Continued on next page)

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1 Q Mr. Salem at that point -- we are now in '93 and
2 he at that point was not working with the FBI, is that
3 correct?

4 A Yes.

5 Q And you knew that he had just suffered an ear
6 injury, correct?

7 A Yes.

8 Q He told you that on the tape.

9 A Yes.

10 Q And that was contemporaneous or right around the
11 time of the World Trade Center bombing, that he had this ear
12 injury, correct?

13 A Yes.

14 Q And you know that ear injuries are not uncommon
15 occurrences with explosions, correct?

16 A I would imagine so.

17 Q And you had been discussing, for some period of
18 time, bombs with Mr. Salem, is that correct?

19 A Yes, we were.

20 Q As an investigator, it was reasonable for you to
21 find out if he knew anything about this, is that correct?

22 A About the World Trade Center?

23 Q Yes.

24 A Yes, we were asking him about his previous
25 contacts with people we were interested in.

1 Q With his own involvement with that explosion.

2 MR. FITZGERALD: Objection to form.

3 THE COURT: Sustained.

4 Q Did you ask him questions about his involvement
5 in the explosion in the basement of the World Trade Center?

6 A No.

7 MR. FITZGERALD: Objection to form again.

8 THE COURT: That objection is sustained.

9 MR. PATEL: I am sorry, your Honor. Was that an
10 objection to form?

11 THE COURT: Yes.

12 Q Did you ask him if he had had anything to do with
13 building the bomb that went off in the World Trade Center?

14 A No, I did not.

15 Q Did Mr. Salem seem very upset that he was a
16 suspect on that board?

17 MR. FITZGERALD: Objection to form.

18 Q Mr. Salem was upset that his photograph was on
19 that board?

20 A Yes.

21 Q What did you tell him?

22 A I told him that his picture was put up on the
23 board by accident.

24 Q You had selected his photograph to put up on the
25 board, correct?

1 A Yes, I did.

2 Q So you were trying to calm him down?

3 A I was telling him the truth and trying to calm
4 him down.

5 Q You had selected his photograph -- at the time
6 you selected his photograph you knew who Mr. Salem was,
7 correct?

8 A I did.

9 Q Did you give him any reassurance that he was not
10 a suspect?

11 A Yes.

12 Q What did you tell him?

13 A I told him the picture was put up on the board
14 because when -- back in September we had taken several
15 photographs of people and major case prints, and from those
16 pictures I wanted to make a board, and to keep Emad Salem's
17 cover as being one of them, we subpoenaed him to come in and
18 take those pictures.

19 Q That was to protect his cover in the community --
20 MR. FITZGERALD: Objection. Can he finish his
21 answer?

22 MR. PATEL: I am sorry. I couldn't hear what Mr.
23 Fitzgerald said.

24 THE COURT: To let him finish his answer.

25 Q I am sorry. Were you done?

1 A No.

2 Q Please continue. I apologize.

3 A We had several unidentified fingerprints from
4 Nosair's vehicle, and our investigation brought us to a
5 point where we had 11 or so people that we were interested
6 in getting their major case prints, and we brought Emad
7 Salem into that in order to keep him -- that the group would
8 think that he was part of them and that we were looking at
9 him also.

10 Q That was to protect his cover in the community,
11 correct?

12 A The whole plan wasn't to protect his cover in the
13 community, but the picture of him.

14 Q The reason you brought him in for major case
15 prints was to protect his cover in the community?

16 A Emad, yes.

17 Q How much time had passed from the time that you
18 had this conversation in the car where you told him that he
19 had not told you about targets, to the time that he saw his
20 photograph up on that board?

21 A Not long, less than, I would say less than an
22 hour or two.

23 MR. PATEL: May I have a moment, your Honor?

24 THE COURT: Yes.

25 Q The fingerprints that you were investigating from

1 Mr. Nosair's car, that was a car that was seized in 1990,
2 correct?

3 A Correct.

4 Q And this was in 1992 that you were doing this,
5 getting these major case prints?

6 A Yes.

7 Q And these were basically -- you were getting
8 major case prints of anyone who went to visit Mr. Nosair, is
9 that correct?

10 A It wasn't just -- it wasn't people who went to
11 visit him, it was people that our investigation determined
12 that were closely associated with Mr. Nosair.

13 Q So people who were close to Mr. Nosair were
14 brought in for major case prints?

15 A Correct.

16 Q This was approximately a year, or six months
17 before the World Trade Center explosion?

18 A Correct.

19 Q When you were working with Mr. Salem, you kept a
20 notebook, is that correct?

21 A Yes.

22 Q And you went back and checked after you had this
23 conversation with Mr. Salem in the car, is that correct?
24 You went back and looked through your notes?

25 A I don't get the question.

1 Q You kept a notebook of the things that Mr. Salem
2 told you throughout the investigation.

3 A Yes.

4 Q Had he in fact given you targets?

5 A No.

6 MR. PATEL: Thank you, your Honor. No further
7 questions.

8 THE COURT: Mr. Ricco.

9 MR. RICCO: Thank you.

10 CROSS-EXAMINATION

11 BY MR. RICCO:

12 Q Good afternoon, Agent Anticev.

13 A Good afternoon.

14 Q Agent Anticev, I want to take you to the
15 automobile where this tape was recorded. When you were in
16 the vehicle, you were not wearing a wire, were you?

17 A No.

18 Q Detective Napoli was not wearing a wire, was he?

19 A No.

20 Q Was that because you saw no need to be wearing a
21 wire at that time?

22 A Why would I have to wear a wire?

23 Q You subsequently --

24 THE COURT: Look, he asks the questions, you give
25 the answers. He asks you whether you had a reason for

1 wearing a wire, if you had one say you had one, if you
2 didn't have one say you didn't have one.

3 THE WITNESS: I am sorry, your Honor.

4 Q Did you have a reason to wear a wire?

5 A No.

6 Q However, you later discovered that Emad Salem was
7 wearing a wire, isn't that correct?

8 A Yes.

9 Q And he was recording each and every word that was
10 said between you, himself and Detective Napoli, isn't that
11 correct?

12 A Yes.

13 Q He had no authority by the bureau to be wearing
14 that wire, isn't that correct?

15 A Correct.

16 Q And he was wearing it for his own reasons,
17 whatever they were, isn't that correct?

18 A Correct.

19 Q I think when Mr. Patel asked you a question, you
20 said he kept pressing the issue with respect to the targets.
21 Was that the word that you used?

22 A I believe so.

23 Q He kept bringing it up, isn't that right?

24 A Yes.

25 Q As if he was trying to get you to agree that he

1 had in fact said that, isn't that correct?

2 MR. FITZGERALD: Objection.

3 THE COURT: Sustained.

4 Q He said it over and over again, that he had given
5 you the names of the targets, isn't that correct?

6 A Yes.

7 Q And you had an opportunity to check your notes,
8 isn't that right, at a subsequent time?

9 A Yes.

10 Q And discovered that your recollection of in the
11 vehicle was correct, that he had not given you the targets,
12 isn't that correct?

13 A Yes.

14 Q In the conversation, Mr. Salem makes reference to
15 tapes at his house. Do you recall those references,
16 correct?

17 A Yes.

18 Q You became aware that Emad Salem was taping
19 conversations that he was having with the individuals that
20 the bureau was investigating, isn't that correct?

21 A That is correct.

22 Q And he was doing that taping without your
23 authority or consent, isn't that correct?

24 A That is also correct.

25 Q I take it that at no time did you ever tell Emad

1 Salem who to tape or what to tape from his personal tape
2 recordings, is that correct?

3 MR. FITZGERALD: Just objection to form.

4 MR. RICCO: I will rephrase it, your Honor.

5 Q At any time did you tell Emad Salem who to go out
6 and record in those personal recordings, those unauthorized
7 recordings?

8 A Only one time.

9 Q I will come back to that. But with the exception
10 of that one occasion, you never instructed Emad Salem as to
11 whom to record, isn't that correct?

12 A That is correct.

13 Q And with the exception of that one occasion, you
14 never instructed Emad Salem what subject matter to record,
15 isn't that correct?

16 MR. FITZGERALD: Objection to form, on the
17 personal recordings.

18 Q On the personal recordings. I am sorry,
19 counselor.

20 A That is correct.

21 Q Because those recordings were unauthorized and
22 were not done with the permission of the bureau, isn't that
23 correct?

24 A That is correct.

25 Q Just so we can clear up the matter, the one

1 occasion that you are referring to, that was the one
2 occasion where Emad Salem told you that someone was trying
3 to get your address, isn't that correct?

4 A That somebody was coming over to his house to
5 discuss me personally.

6 Q Right, and that was the occasion where you said
7 to him try to get that recorded if you can, isn't that
8 correct?

9 A Yes, it is.

10 Q Because you became aware through Emad Salem that
11 this individual was trying to get your home address or
12 something of that sort, isn't that correct?

13 A That is correct.

14 Q And it was on that one particular occasion that
15 you told him listen, if you can get it on tape, fine. That
16 was basically it, right?

17 A Yes.

18 Q During the time that Emad Salem was working with
19 the FBI, you often sat down with him and discussed with him
20 the different people that the bureau was investigating,
21 isn't that correct?

22 A Yes.

23 Q He was paid for the information that he was
24 supplying, isn't that correct?

25 A Yes.

1 Q When you were in the car with him when this tape
2 was recorded, the tape that we just listened to, he was off
3 the payroll at that point, isn't that correct?

4 A Yes.

5 Q And he was trying to get back on the payroll,
6 isn't that correct?

7 MR. FITZGERALD: Objection.

8 THE COURT: Sustained.

9 Q At that point, were you aware -- well, withdrawn.
10 When you met with Emad Salem, you would often ask
11 him questions about, for example, Mr. El-Gabrowny, isn't
12 that correct?

13 A Yes.

14 Q And you know Mr. El-Gabrowny, don't you?

15 A Yes, I do.

16 Q In fact, you knew who Mr. El-Gabrowny was before
17 Emad Salem got involved in the investigation, isn't that
18 correct?

19 A Yes.

20 Q And you had occasion to discuss Emad --
21 withdrawn.

22 You had occasion to discuss Mr. El-Gabrowny with
23 Emad Salem, isn't that correct?

24 A Yes.

25 Q In fact, on this tape recorded conversation that

1 the jury just heard, there is some discussion about Mr.
2 El-Gabrowny, isn't that correct?

3 A Yes.

4 Q And certain comments are made by yourself and
5 Agent Napoli about Mr. El-Gabrowny, isn't that correct?

6 A Yes.

7 Q And Mr. Salem makes some comments about Mr.
8 El-Gabrowny, isn't that correct?

9 A Yes.

10 Q Have you had an opportunity to review the tape
11 recorded conversations -- withdrawn.

12 You became aware that Mr. Salem recorded other
13 conversations between himself and you, isn't that correct?

14 A Can you repeat that.

15 Q You became aware later on that Emad Salem had
16 recorded his telephone conversations between himself and
17 you, isn't that correct?

18 A After the conclusion of this case.

19 Q Yes.

20 A That is correct.

21 Q So as we sit here today you know for a fact that
22 Emad Salem recorded and stored conversations that he had
23 between you and him, isn't that correct?

24 A Yes.

25 Q Early on in this investigation, when Emad Salem

1 was involved in the investigation, Emad Salem reported to
2 you that Mr. El-Gabrownny was interested in bombing some
3 undescribed synagogue in Brooklyn, isn't that correct?

4 A Yes.

5 Q And you put that in your notes, isn't that
6 correct?

7 A Yes, I did.

8 Q This was early on. This was before 1992, isn't
9 that correct?

10 A I believe so, yes.

11 Q It was during the period that the Nosair state
12 trial was going on, isn't that correct?

13 A Yes.

14 Q After the verdict in the trial but before
15 sentencing, you had an opportunity to discuss with Mr. Salem
16 on the telephone whether or not Mr. El-Gabrownny had ever
17 mentioned anything more to him about bombings -- I will
18 rephrase that. I will withdraw the question.

19 I would like to take you to the time period from
20 after the verdict in the state trial but before the
21 sentencing. In that time period, you had conversations with
22 Mr. Salem about Mr. El-Gabrownny, isn't that correct?

23 A I imagine so.

24 Q In one such conversation, do you recall asking
25 him, did Mr. El-Gabrownny mention anything more about the

1 explosives of bombing?

2 A That line sounds familiar.

3 Q And he said no, Mr. El-Gabrownny was involved with
4 the demonstrations and the press conferences. Do you recall
5 having that conversation with him?

6 A Yes.

7 Q That was sometime in January of 1992. It was
8 before the sentencing.

9 A OK.

10 Q Is that correct?

11 A I believe so.

12 Q At that time -- this is in January of 1992 -- the
13 bureau was very concerned with the tension that was existing
14 around the trial, that is, the tension between the Muslim
15 community and the Jewish community, isn't that correct?

16 MR. FITZGERALD: Objection, scope.

17 THE COURT: Sustained.

18 Q You have the conversation with Mr. Salem in the
19 car, that's in 1993, the one that was recorded and we just
20 listened to, right?

21 A Yes.

22 Q That is sometime in March of 1993, isn't that
23 right?

24 A Yes, the recording I listened to was in March of
25 1993.

1 Q That's over a year after January 1992, isn't that
2 correct?

3 A Yes.

4 Q Sometime in March of 1992, you had a telephone
5 conversation with Mr. Salem where you said to Mr. Salem, did
6 you ever tape anything between you and Mr. El-Gabrownny
7 talking about bombs and stuff like that? Do you recall
8 that?

9 A When did you say that conversation was?

10 Q March of 1993.

11 A '3, OK.

12 Q Yes. Do you recall having that conversation?

13 A Yes. I thought you said '92.

14 Q No, I am sorry, sir.

15 And he responded to that, you told me don't. Do
16 you recall that?

17 A Yes, he did say that.

18 Q And you said, but I'm, maybe if you did it on
19 your own anyway, you have, you have all of the machinery
20 there to do it. Do you recall saying that to him?

21 A Yes, I do.

22 Q And he said, I know, but since you told me don't,
23 I didn't, I mean, you was even pushing me not to carry any
24 bug, so people don't get suspicious. Especially I was
25 searched a few times.

1 Do you recall him saying that to you?

2 A Yes.

3 Q And did you recall him saying I can go through my
4 tapes and, uh, try to check if there is something that can
5 be used? Do you recall him saying that?

6 A Yes.

7 Q I want to take a couple of points with you, if I
8 can. When he said to you you told me don't, you never told
9 him any particular subject matter to record, isn't that
10 correct?

11 A I never told him except that one time. I
12 discouraged him, I didn't want him recording anybody. I did
13 not want him recording anybody.

14 Q So when he responded you told me don't, he meant
15 you told him don't record anybody at any time on any
16 subject, isn't that right?

17 A That is correct.

18 Q That is with the exception of that one time.

19 A Yes, sir.

20 Q However, he said to you, I will go look through
21 my tapes and see if I can find something anyway that can be
22 used, right?

23 A Yes.

24 Q And this was in March of 1993. Did Emad Salem go
25 through his tapes and give you something that could be used

1 against Mr. El-Gabrownny?

2 A No, he did not.

3 Q You discovered sometime after June of 1993 that
4 Mr. Salem had in fact recorded thousands of conversations on
5 hundreds of cassettes, isn't that correct?

6 MR. FITZGERALD: Objection, your Honor.

7 THE COURT: Sorry, may I hear it again.

8 (Record read)

9 THE COURT: Sustained.

10 Q Without the specific number, after June of 1993,
11 you discovered that Emad Salem had did a whole lot of taping
12 on his own, isn't that correct?

13 A Yes.

14 Q And after June of 1993, the bureau took custody
15 of those tapes, isn't that correct?

16 A Yes.

17 Q I want to change subjects for a second. I want
18 to go back to WW-T and ask you a a question. Inside the
19 car, on page --

20 A I don't have a copy.

21 MR. PATEL: May I approach, your Honor?

22 THE COURT: Yes.

23 Q Agent Anticev, can I bring your attention to page
24 6, and the jury if you don't mind, on WW-T. Agent Anticev,
25 on page 6 there is a transcription of a part of the

1 telephone conversation -- I mean the recorded conversation
2 in the car -- excuse me -- where Emad Salem is talking about
3 a telephone call that Nosair made to his home, the middle of
4 the page, the big paragraph, last line. Agent, do you see
5 that?

6 A Yes.

7 Q Emad Salem is telling you there that Nosair
8 called him, Emad Salem, at his home, right? Do you see
9 that?

10 A Yes, OK. I was reading the paragraph ahead of
11 you.

12 Q Do you see that, Sayyid Nosair called me at home?

13 A From jail, right.

14 Q And he is saying that Salem told him to come
15 visit him to the jail, Nosair wanted him to visit him at the
16 jail, isn't that right?

17 A Maybe I am missing --

18 MR. RICCO: Withdrawn. Excuse me, your Honor.
19 Wrong. One second.

20 Q Emad reported to you that Nosair told him that
21 Nosair has a lawyer for Emad Salem, isn't that correct?

22 A Yes.

23 Q And that Nosair wanted Emad to file a complaint
24 against the FBI, right?

25 A Yes.

1 Q And he says that in this conversation Nosair was
2 pushing him.

3 MR. FITZGERALD: Objection to form.

4 THE COURT: Sustained.

5 Q He says that they were trying to get him to get
6 back involved and to give some technical support for
7 building a bomb.

8 A Well, from what I could tell, he is using the
9 word "pushing him" in reference to signing, you know,
10 hooking up with that lawyer to make a complaint against the
11 FBI.

12 Q OK.

13 A That part you are talking about, technical
14 support, he is talking in the context of Mahmoud Abouhalima
15 now, I believe.

16 Q OK. He said that Mahmoud Abouhalima was pushing
17 him? Is that what you think that means?

18 A I will have to read it carefully.

19 Q Please do.

20 (Pause)

21 Q Emad Salem was saying that someone was pushing
22 him to give technical support to participate in the bombing
23 of the World Trade Center. Isn't that what he is saying
24 there?

25 MR. FITZGERALD: Objection, your Honor,

1 competence.

2 THE COURT: Sustained.

3 Q Who is the person who was pushing him to give
4 technical support, if you know?

5 MR. FITZGERALD: Objection.

6 THE COURT: Sustained.

7 Q Do you know?

8 MR. FITZGERALD: Same objection.

9 THE COURT: Sustained.

10 Q The telephone call that he is referring to, --
11 withdrawn.

12 Have you ever listened to the transcripts of the
13 telephone calls between El Sayyid Nosair and Emad Salem?

14 A No.

15 Q Never?

16 A No.

17 Q So you would have no way of knowing whether or
18 not El Sayyid Nosair said those things or not.

19 A No, I don't.

20 Q He also talks about Mohammad Salameh during this
21 conversation, isn't that right?

22 A Correct.

23 Q And on page -- give me a moment, please.

24 At one point in this conversation, he says to
25 you, does Mohammad Salameh show up one week before the World

1 Trade Center to visit Nosair? And you say yes, right?

2 A Correct.

3 Q And he says thank you, thank you very much,
4 that's enough for me. Do you recall him saying that in this
5 call?

6 A Yes, I do.

7 Q He also goes on to talk about Mohammad Salameh,
8 isn't that correct?

9 A Yes.

10 Q Are you aware that the question that he asked
11 you, that is, to check the Attica records for Mohammad
12 Salameh, are you aware that Agent Floyd told him to ask you
13 that question?

14 A Yes, I am.

15 Q And at this point in the conversation, he was
16 pretending as though it was his own question, isn't that
17 correct?

18 A Yes.

19 Q And she had told him to ask you that question but
20 for him not to reveal that she told him that, isn't that
21 correct?

22 A I believe that is correct.

23 Q So where he said thank you, thank you very much,
24 that's enough for me, he was acting, wasn't he?

25 MR. FITZGERALD: Objection.

1 THE COURT: Sustained.

2 Q He also talked about Mohammad Salameh being in
3 Egypt for six months, isn't that correct, during this
4 conversation that was recorded?

5 A Yes.

6 Q And he said that Mohammad Salameh traveled over
7 to Egypt and carried instructions, isn't that correct,
8 during this conversation he said that?

9 A I don't recall him saying carrying instructions.
10 If he did, fine, but I don't recall it.

11 Q At the time he was making these statements to
12 you, you had Mohammad Salameh's passport, isn't that
13 correct?

14 A Yes.

15 Q The FBI had his passport, isn't that correct?

16 A Yes.

17 Q Was Mohammad Salameh in Egypt for six months?

18 MR. FITZGERALD: Objection.

19 THE COURT: Sustained.

20 Q The thing that he said to you, that Mohammad
21 Salameh was in Egypt for six months, that was something that
22 you would have been able to verify, isn't that correct?

23 A Yes.

24 Q Was this something else that Emad Salem told you
25 that wasn't true?

1 MR. FITZGERALD: Objection to form, your Honor.

2 THE COURT: Sustained.

3 Q He talked about Mohammed El-Gabrownny in this
4 conversation, isn't that correct?

5 A Yes.

6 Q He said that when Ibrahim El-Gabrownny got
7 arrested, Mohammed El-Gabrownny was downstairs watching and
8 that he had slipped away so that he wouldn't get arrested.
9 That's what he said, right?

10 A Yes.

11 Q You weren't present when Mr. El-Gabrownny got
12 arrested, right?

13 A Correct.

14 Q So you don't know whether or not Mohammed was
15 standing down there watching and slipped away, do you?

16 A No.

17 Q But there were other agents that were there that
18 day, isn't that correct?

19 A Yes.

20 Q And you had an opportunity to talk to some of
21 them, isn't that right?

22 MR. FITZGERALD: Objection.

23 THE COURT: Sustained.

24 Q When you took Emad Salem to the FBI on the day
25 this conversation was recorded in the car, he had an

1 opportunity to see on the board photographs that were part
2 of the Joint Terrorist Task Force investigation, isn't that
3 correct?

4 A Yes.

5 Q And that's all it was, it was an investigation,
6 right?

7 A Yes.

8 Q Also up on that board was the picture of Mr.
9 El-Gabrownny, isn't that correct?

10 A Yes.

11 Q Emad Salem's picture was up there, right?

12 A Yes.

13 Q And your testimony is that his picture was up
14 there to protect him from being exposed, correct?

15 MR. FITZGERALD: Objection to form.

16 MR. RICCO: I am going to take it piece by piece.

17 Q His picture was up there to protect him from
18 being exposed, correct?

19 A His picture only.

20 Q And that is because the FBI had subpoenaed some
21 people in the Muslim community, requiring them to come to
22 the office, isn't that correct?

23 A Yes.

24 MR. FITZGERALD: Objection to form.

25 THE COURT: Sustained as to form. Do you want to

1 come to a convenient break point in the next five minutes,
2 please.

3 MR. RICCO: Yes, your Honor.

4 Q The FBI served a subpoena requesting some men to
5 come to the FBI offices, isn't that correct?

6 A Yes.

7 Q When these men were there, you wanted to have
8 Emad Salem's picture up there on the bulletin board, no?

9 A No.

10 (Continued on next page)

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1 MR. RICCO: This is a good breaking point, your
2 Honor.

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

7 (Jury excused)

8 (Continued on next page)

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IPT

1 (Pages 13461 - 13462 sealed)

2 (Recess)

3 (Jury present)

4 THE COURT: Mr. Ricco.

5 MR. RICCO: Thank you, your Honor.

6 BY MR. RICCO:

7 Q Agent Anticev, as a result of your investigation,
8 did you ever discover if Mohammad Salameh went to Egypt for
9 six months in 1992?

10 MR. FITZGERALD: Objection, scope.

11 THE COURT: Sustained.

12 Q You were the case agent for Emad Salem, correct?
13 One of the case agents, I am sorry.

14 MR. JACOBS: I am sorry, I am having trouble
15 hearing.

16 THE COURT: He said yes.

17 Q That means from the time he got involved in the
18 investigation -- which, incidentally, was November of 1991,
19 correct?

20 A Correct.

21 Q Up until the time he was no longer involved in
22 the investigation, sometime in the summer of 1992, you were
23 one of the case agents, isn't that correct?

24 A For that period, I was alternate case agent. The
25 case was originally assigned to Nancy Floyd, was the case

1 agent.

2 Q But during November of 1991 and December of 1991,
3 you had contacted Emad Salem, isn't that correct?

4 A Correct.

5 Q You also had contact in that time period with Mr.
6 El-Gabrowny, isn't that correct?

7 A That is correct.

8 Q And during the state court trial of Mr. Nosair,
9 you would see Mr. El-Gabrowny at the trial, isn't that
10 correct?

11 A That is correct.

12 Q And on occasion you had casual conversation with
13 Mr. El-Gabrowny, isn't that correct?

14 A Yes, that is correct. Yes, that is correct.

15 Q You were aware that Mr. El-Gabrowny was Mr.
16 Nosair's cousin, isn't that correct?

17 A Yes.

18 Q And that he was involved with the defense fund
19 for Mr. Nosair, isn't that correct?

20 MR. FITZGERALD: Objection, scope, competence,
21 your Honor.

22 THE COURT: Sustained.

23 Q During the time that you had casual conversation
24 with Mr. El-Gabrowny, you discovered that Mr. El-Gabrowny
25 wanted to apply for a pistol license, isn't that correct?

1 MR. FITZGERALD: Objection to scope.

2 THE COURT: Sustained.

3 Q At the time, early in the investigation Mr. Salem
4 is providing information and he is being paid for it,
5 correct?

6 A Correct.

7 Q Mr. Salem also provided information about black
8 Muslims at Al-Taqwah, isn't that correct?

9 MR. FITZGERALD: Objection, scope.

10 THE COURT: Sustained.

11 Q Specifically with respect to Mr. El-Gabrowny,
12 Emad Salem reported to you that Mr. El-Gabrowny --
13 withdrawn.

14 I asked you moments ago, before the break,
15 questions about Mr. Salem's claim that Mr. El-Gabrowny
16 wanted to bomb some undisclosed synagogue in Brooklyn. Do
17 you remember those questions?

18 A Yes.

19 Q At that same time, Mr. Salem also indicated that
20 Mr. El-Gabrowny kept explosives on his roof, isn't that
21 correct?

22 A I don't think that is correct.

23 Q You kept notes on the information that Mr. Salem
24 provided, isn't that right?

25 A Yes.

1 MR. RICCO: May I have one second, your Honor.

2 Q When you say that's incorrect, is it your
3 testimony that Emad Salem never reported to you a claim that
4 Mr. El-Gabrowny stored dynamite on his roof?

5 MR. FITZGERALD: Objection to form.

6 THE COURT: Sustained as to form.

7 MR. RICCO: I will rephrase it, Judge. Should I,
8 your Honor?

9 THE COURT: If you like. I sustained an
10 objection as to form.

11 Q Is it your testimony that Emad Salem never
12 reported to you that Mr. El-Gabrowny claimed that he stored
13 dynamite on his roof?

14 MR. FITZGERALD: Objection to scope and 613(b).

15 THE COURT: Sustained.

16 Q When Emad Salem gave you information, you kept it
17 in your notes, correct?

18 A Correct.

19 Q And if he provided you information that you
20 thought required immediate action, you took it, didn't you?

21 A It depends.

22 Q It depends on?

23 A On the immediacy of the action.

24 Q Bombs being stored on a rooftop would be
25 something that would require --

1 THE COURT: Sustained.

2 Q In the recorded conversation that was played to
3 the jury, we hear Emad Salem saying to you, check El Sayyid
4 Nosair's Attica records, correct?

5 A OK, yes.

6 Q On other occasions at that time, during that time
7 period, Emad Salem would say to you to check the Attica
8 records, isn't that correct?

9 A I am not sure.

10 (Continued on next page)

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1 Q You are not sure.

2 MR. RICCO: Your Honor, I would like to approach
3 the witness.

4 THE COURT: Go ahead.

5 MR. RICCO: This would be El-Gabrowny's, deem it
6 marked, your Honor, for purposes of identification and I
7 will subsequently straighten out with Miss Schwartz the
8 number that we are up to.

9 THE COURT: Try W.

10 MR. RICCO: Thank you very much, your Honor.
11 This will be deemed El-Gabrowny's W for identification.

12 MR. FITZGERALD: Your Honor, may we approach
13 while the agent is reviewing it?

14 THE COURT: Yes.

15 (At the side bar)

16 MR. FITZGERALD: My concern is on scope. I don't
17 have an encyclopedic knowledge of these tapes but --

18 THE COURT: I don't know what exhibit is being
19 shown so I am at somewhat of a disadvantage.

20 MR. RICCO: Judge, it is a telephone recording
21 where Emad Salem is asking him to look at Attica records.

22 THE COURT: Where is that in the projected
23 testimony that you submitted on this witness?

24 MR. RICCO: Ultimately, your Honor, it goes to
25 Emad Salem giving testimony here favorable to the FBI that

1 is not true, and what -- hold on, if I can finish, Judge.
2 Emad Salem was giving information to the FBI then for
3 purposes of getting back on the payroll.

4 MR. JACOBS: Well --

5 THE COURT: Mr. Jacobs, be quiet.

6 MR. RICCO: I am sorry, your Honor. He
7 subsequently testified to those events in this courtroom.

8 THE COURT: That doesn't give you a basis to get
9 this witness' testimony about it. The objection, if that is
10 what it is, is sustained. Let's proceed.

11 (Continued on next page)

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1 (In open court)

2 MR. RICCO: I just have a few more questions.

3 THE COURT: Go ahead.

4 MR. RICCO: If I may just take a moment.

5 BY MR. RICCO:

6 Q After the bombing of the World Trade Center, you
7 had asked Mr. Salem not to take a high-profile position in
8 the Muslim community, isn't that correct?

9 A I believe I said that at one point.

10 Q You had asked him not to get involved with the
11 lawyers, isn't that correct?

12 A Yes.

13 Q To stay away from hiring the lawyers or going to
14 meetings with the lawyers, is that correct, and that would
15 be the lawyers for Mr. El-Gabrownny, isn't that correct?

16 A That is correct.

17 Q And notwithstanding your instructions, you found
18 yourself having to say that to him on more than one
19 occasion, isn't that correct?

20 A That is correct.

21 Q In the tape-recorded conversation, there is a
22 mention about a demonstration at the World Trade Center at
23 the governor's office, isn't that correct?

24 A In the tape we listened to today?

25 Q Yes, sir.

1 A Yes, I think there was.

2 Q What was being referred to at that point were
3 some demonstrations that were held in 1992, isn't that
4 correct?

5 A I know there were demonstrations there. I don't
6 know the date.

7 Q There were several demonstrations that were
8 attended by Mr. El-Gabrownny, isn't that correct?

9 A I am sorry, I don't know which demonstrations you
10 are talking about.

11 Q After the verdict and before the sentence, there
12 was a demonstration at Judge Schlesinger's house, isn't that
13 correct?

14 A That is correct.

15 Q And you were aware of that, isn't that correct?

16 A Yes.

17 Q And Mr. El-Gabrownny was at that demonstration,
18 isn't that correct?

19 A I believe he was.

20 Q In fact, you had discussed that demonstration
21 with Emad Salem, isn't that correct?

22 A That is correct.

23 Q You asked Emad Salem to accompany El-Gabrownny to
24 the demonstration, isn't that correct?

25 MR. FITZGERALD: Objection to scope.

1 THE COURT: Sustained.

2 Q On the tape there was a discussion about a
3 demonstration at the World Trade Center at the governor's
4 office, isn't that correct?

5 A Yes.

6 Q There was also a demonstration at Senator Al
7 D'Amato's office, isn't that correct?

8 A Yes.

9 (Continued on next page)

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1 Q And Mr. El-Gabrownny was at that demonstration,
2 isn't that correct?

3 MR. FITZGERALD: Objection to scope.

4 THE COURT: Sustained.

5 Q You also had an opportunity to discuss with Emad
6 Salem Ibrahim El-Gabrownny's attendance at a firearms safety
7 class, isn't that correct?

8 MR. FITZGERALD: Objection to scope.

9 THE COURT: Sustained.

10 Q After the verdict in the El Sayyid Nosair state
11 trial, there was a celebration of sorts at the Abu Bakr
12 Mosque, isn't that correct?

13 A Yes.

14 MR. FITZGERALD: Scope.

15 THE COURT: Sustained.

16 Q There was a tape recording, taped video that came
17 into your possession from that event, isn't that correct?

18 MR. FITZGERALD: Same objection.

19 THE COURT: Same ruling.

20 MR. RICCO: Your Honor, I hate to ask for it but
21 I would ask for a side bar on this particular question.

22 THE COURT: I will hear you.

23 MR. RICCO: Thank you.

24 (AT the side bar)

25 THE COURT: I still want to know where your

1 proffer is with regard to this witness as to what you
2 recognize going to call him to testify to.

3 MR. RICCO: Judge, this particular question, it
4 relates to the --

5 THE COURT: This witness.

6 MR. RICCO: This particular question of the
7 particular witness relates to the handling of the tape which
8 relates to the Abu Bakr Mosque.

9 THE COURT: Did you make a proffer with regard to
10 this witness at all?

11 MR. RICCO: I did. I sat down with Mr. Jacobs
12 and Mr. Stavis and they offered the letters but their
13 letters are a result of my efforts and our offers.

14 THE COURT: That is news to me.

15 MR. RICCO: No, your Honor. Mr. Stavis' letter
16 says it is being offered on behalf of all counsel.

17 THE COURT: If that is the proffer with regard to
18 this witness, what is the specific proffer with regard to
19 this question?

20 MR. RICCO: The specific proffer with regard to
21 this question, beginning with the Abu Bakr tape recording of
22 a tape that is in evidence is the handling, the way the FBI
23 got the tape, what they did with it and when they gave it
24 back. It is the handling of the tapes. It is the aspect
25 that was raised on Mr. Jacobs' -- it is the only reason I

1 asked for a side bar on this question.

2 MR. FITZGERALD: If it is only chain of custody,
3 I don't object. I just don't want to see it going into
4 inadmissible evidence.

5 THE COURT: That is all it is.

6 (In open court)

7 (Continued on next page)

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IPT

1 BY MR. RICCO:

2 Q There was a videotape of the Abu Bakr
3 celebration, isn't that correct?

4 A Yes, the celebration for Nosair's acquittal.

5 Q You did not ask Mr. Salem to make a video or to
6 produce a video from that event, did you?

7 MR. FITZGERALD: Objection to scope.

8 THE COURT: Sustained.

9 Q Well, he turned the video over to you, isn't that
10 right?

11 A That is correct.

12 Q And you made a copy of the video, right?

13 A Correct.

14 Q And you gave the video back to him, right?

15 A Correct.

16 Q Was the taping of this event something that the
17 FBI requested?

18 MR. FITZGERALD: Same objection.

19 THE COURT: I will allow that one question.

20 A I don't recall, but -- I don't recall if he had
21 the occasion to tape it and then gave it to me, but it is
22 not beyond reason that I would have asked him if he had --

23 THE COURT: Do you know whether it was
24 specifically requested?

25 THE WITNESS: I don't recall.

1 Q The tape, after it was copied by you, was
2 returned back to Mr. Salem, isn't that correct?

3 A Yes.

4 Q Have you ever had an occasion to review that
5 tape?

6 A Yes.

7 MR. FITZGERALD: Objection to form. Which tape?

8 THE COURT: I assume he means the copy.

9 MR. RICCO: The video of the Abu Bakr Mosque
10 so-called celebration.

11 THE COURT: You mean the copy that was made?

12 MR. RICCO: Yes, sir.

13 MR. FITZGERALD: No objection.

14 A Yes.

15 Q Did you have an opportunity to review it with
16 Mr. Salem?

17 MR. FITZGERALD: Objection to scope.

18 THE COURT: Sustained.

19 MR. RICCO: No further questions.

20 THE COURT: Ms. Stewart.

21 CROSS-EXAMINATION

22 BY MS. STEWART:

23 Q Good afternoon, Agent Anticev.

24 A Good afternoon.

25 Q In preparing for your testimony here, Agent

1 Anticev, did you have occasion to meet with the assistants
2 in the U.S. Attorney's Office?

3 A Yes.

4 Q For how long did you meet with them?

5 A Several hours.

6 Q When was that?

7 A Monday.

8 Q Did you meet with them in connection with your
9 testimony here at any other time?

10 A No. Monday was when I got prepped.

11 Q On that occasion, did you review the so-called
12 bootleg tapes, the unauthorized tapes of Emad Salem?

13 A No, only my own.

14 Q Only, I am sorry, I didn't hear you.

15 A The tapes that he made of me and him speaking.

16 Q In other words, the tapes where you are part of
17 the conversation, is that right?

18 A That is correct.

19 Q And you did that on Monday as well?

20 A No. I have had them for a while.

21 Q So you have had them in your possession for how
22 long?

23 A Over a year.

24 MR. FITZGERALD: Objection to scope.

25 MR. JACOBS: I would like to be heard on this.

1 THE COURT: That is overruled.

2 Q When you say you have had them in your
3 possession, is that the tapes or the transcripts or both?

4 A I have had the transcripts.

5 Q Just immediately prior to testifying here today,
6 did you have occasion to read any particular transcripts
7 over?

8 A I read, in the last week I have read them all but
9 in particular the one that we played today.

10 Q You first met Emad Salem in October 1991, is that
11 right?

12 A Yes.

13 Q He had been working as a confidential informant
14 with Nancy Floyd, is that correct?

15 A Yes.

16 Q And then you approached him with regard to
17 becoming a confidential informant with regard to working
18 with you and Louis Napoli, is that right?

19 MR. FITZGERALD: Objection to scope, and asked
20 and answered.

21 MS. STEWART: It's a preliminary question, Judge.

22 THE COURT: As a preliminary question, I will
23 allow it. Go ahead.

24 A Nancy Floyd came to my squad area and approached
25 me and said that she had a source that was working for her

1 who is Egyptian, and expressed an interest in helping out
2 with terrorism matters.

3 Q When you say expressed an interest, meaning Emad
4 Salem had expressed an interest?

5 A Yes.

6 Q When you first met him and spoke about his focus
7 in this investigation, did you instruct him as to the two
8 subjects he should focus on?

9 MR. FITZGERALD: Objection to scope.

10 THE COURT: Sustained.

11 Q Did you give him any direction with regard to
12 whom should be the focus of the investigation?

13 A Yes.

14 MR. FITZGERALD: Same objection.

15 THE COURT: Same ruling.

16 MS. STEWART: May I be heard on this, Judge?

17 THE COURT: No.

18 MR. JACOBS: I request a side bar, your Honor.

19 THE COURT: Denied.

20 Q Directing your attention, leaping ahead now to a
21 time following the bombing of the World Trade Center, Emad
22 Salem came back on the payroll for the FBI, is that right?

23 A That is correct.

24 Q Did you approach him or did he approach you with
25 regard to coming back on the payroll?

1 MR. FITZGERALD: Objection to scope.

2 THE COURT: Sustained.

3 MS. STEWART: Judge, may I be heard on this?

4 THE COURT: No.

5 Q As part of his duties for whether he came back to
6 work at your request or his request, was part of his work to
7 tape conversations that became then part of your
8 investigation?

9 A No.

10 Q Did you not outfit him with a briefcase and wire
11 his car subsequent to the World Trade Center bombing so that
12 he was enabled to tape conversations?

13 A Yes.

14 Q Those are what have been called the CM's in this
15 case, is that right?

16 A That is correct.

17 Q Is it fair to say that at first he used a special
18 briefcase with which to tape, that had a Nagra tape recorder
19 in it?

20 A Yes.

21 Q Then later on his car was also equipped with
22 Nagra tape recorders, is that right?

23 A Yes, that is correct.

24 Q Did you give, instruct him with any procedural
25 instructions as to how and when and who? And if so, could

1 you repeat them for us now?

2 A Emad Salem in April agreed -- I believe it was
3 April -- agreed to start making consensually monitored
4 recordings, and I gave him instructions on how to make those
5 recordings and what the guidelines were regarding consensual
6 monitoring.

7 Q Do you remember as you sit there now what exactly
8 you told him?

9 A Yes. I told him that he is only allowed to
10 record conversations that he was part of, and that he would
11 have to turn off the device if he left the room or was not
12 there with the machine on him.

13 Q Was he ever authorized by you to wear a body wire
14 subsequent to April, I think you said, 1993?

15 A Yes.

16 Q On what occasion was that?

17 A It was during the course of the investigation. I
18 don't recall exactly what date he wore the wire.

19 Q Did you set up a procedure for the retrieval of
20 the tapes that he recorded?

21 A We took back the tapes, usually the following
22 day.

23 Q What happened to them at that point?

24 A They were entered into evidence. They were
25 preserved for evidence, I should say.

1 Q Preserved. We do entering in court, you do
2 preserved where you are.

3 A I stand corrected.

4 Q Agent Anticev, I would like to show you what has
5 been marked 311A for identification.

6 THE COURT: Miss Stewart, you cannot be heard if
7 you are not at one or another microphone.

8 Q Agent Anticev, I would like to show you what has
9 been marked 311A in evidence.

10 MS. STEWART: Judge, I wonder if I might ask that
11 be distributed to the jury copies, photocopies of that at
12 this time.

13 MR. FITZGERALD: No objection. That is the
14 envelope, right?

15 THE COURT: 311A is received without objection.
16 Do you have copies of them?

17 MS. STEWART: I do. I have the wrong number on
18 them for some reason.

19 THE COURT: Let Miss Schwartz handle it.

20 (Government's Exhibit 311A received in evidence)

21 MS. STEWART: May I approach the witness, Judge?

22 THE COURT: Yes.

23 MS. STEWART: May I approach the witness one more
24 time, Judge?

25 THE COURT: Yes.

1 BY MS. STEWART:

2 Q Agent Anticev, I see that you are looking at the
3 second sheet of what is marked or should be marked 311Z. Do
4 you recognize that to be a blow-up of the portion of the
5 brown envelope in front of you, Exhibit 311A in evidence?

6 MR. FITZGERALD: I will stipulate.

7 THE COURT: Is that offered as well?

8 MS. STEWART: Yes, Judge, it is.

9 MR. FITZGERALD: No objection.

10 THE COURT: 311Z is received.

11 (Government's Exhibit 311Z received in evidence)

12 Q Agent Anticev, I would just like you to tell us
13 first of all which consensually monitored tape the brown
14 envelope refers to, if you can tell us that? If you would
15 look at the top right-hand corner.

16 A Which number?

17 Q Yes.

18 A I am sorry, CM 10.

19 Q You filled out some portion of this envelope, is
20 that correct?

21 A Yes.

22 Q And you filled it out at the time that you
23 received the tape from Emad Salem, is that correct?

24 A Yes.

25 Q If you recall, CM 10 involves a conversation with

1 Dr. Omar Abdel Rahman in his kitchen. Does that refresh
2 your recollection as to what is on this particular tape?

3 A That is correct.

4 Q Your notation on this tape envelope is that the
5 interception occurred on May 23, 1993, is that correct?

6 A Correct.

7 Q I am sorry.

8 A Yes, that is correct.

9 Q And that it was removed from the equipment,
10 meaning from the Nagra recorder, on 5/23/93, at 9:30 a.m.,
11 is that right?

12 A No, that was the time that I received it.

13 Q There is a difference between the time that you
14 received it and the time it was taken off the Nagra?

15 A Yes.

16 Q What was the difference in time, if you can
17 recall?

18 A I did not remove this tape from the equipment.
19 This tape was removed by Mr. Salem and given to me, and I
20 picked it up on 5/23, at 9:30 a.m.

21 Q Do you remember where you were when you picked it
22 up?

23 A No, I don't.

24 Q You then placed the tape in the envelope, is that
25 right?

1 A Yes.

2 Q And then what happened?

3 A The envelope, the original tape -- for this one,
4 you are talking about.

5 Let me explain again. This was a tape that was
6 given to me by Emad Salem. We, myself, Detective Napoli and
7 Emad Salem took this tape back to the office that morning.

8 Q What did you do with it at the office?

9 A We played it.

10 Q After you played it, what did you do with it?

11 A I sealed it up and put it in the safe.

12 Q You released custody of this envelope with the
13 tape in it at that time?

14 A No.

15 Q When you say you put it in the safe, what safe?

16 A The safe in the office.

17 Q But not in the evidence locker, is that right?

18 A Correct.

19 Q You put it in a safe in your own private office?

20 A In a squad area.

21 Q You did not turn it in to the evidence custodian
22 of the FBI, is that right?

23 A No. I believe it was a weekend.

24 Q If it was a Sunday, is that correct?

25 A It was either a Saturday or a Sunday, I am not

1 sure.

2 Q You did not turn it in to the evidence locker
3 until the 26th, is that correct?

4 A That is correct.

5 Q And if you look at the blow-up, you can see very
6 clearly it says 5/26/93, at 8:30 a.m. you released custody
7 of that tape, is that right?

8 A Correct.

9 Q Isn't it a fact, Agent Anticev, that you picked
10 up the tape, C11, on May 24, 1993?

11 I would like to show you what I am marking 311X,
12 to refresh your recollection.

13 Agent Anticev, is it a fact that you turned in CM
14 11 on May 24, 1993, at 2:45 in the afternoon?

15 MR. FITZGERALD: Objection to form, "turned in."

16 THE COURT: Do you want to focus the question.

17 MS. STEWART: Let me step back if it is not
18 clear.

19 Q The routine with regard to the CM's was, you took
20 them from Emad Salem and turned them in at sometime to the
21 evidence custodian or the duplicating person at the FBI, is
22 that correct?

23 A That is correct.

24 Q And when you did that, you first signed as
25 accepting custody from Emad Salem, and that is in the first

1 box where it says signature, reason, under accepted custody,
2 is that right?

3 A Correct.

4 Q And released custody would be the time that you
5 gave the tape and the envelope to whomever at the FBI you
6 turned it over to, is that right?

7 A Yes.

8 Q You told us that with regard to CM 10, you put it
9 in your locked safe in your squad office on the morning of
10 May 23, is that right?

11 A Yes.

12 Q And it was not turned over to anyone in evidence
13 until May 26, at 8:30 a.m., is that right?

14 A That is correct.

15 Q These are your signatures on this brown envelope,
16 is that right?

17 A Yes.

18 Q What my question is, CM 11 was recorded the
19 following day, you received it, 5/24/93, is that right?

20 A Yes.

21 Q At 11 a.m., and that was turned in to the FBI the
22 same day at 2:45, is that right?

23 A Yes.

24 Q And at that time CM 10 was still in your locked
25 safe in your squad room?

1 A Yes.

2 Q And CM 12, which is the next, if you need to
3 refresh your recollection, you received that from Mr. Salem
4 at the same time, 5/24/93, 11 a.m., is that right?

5 A Yes.

6 Q And that went in to duplication on 5/24/93, May
7 24, the same day, is that right?

8 A Yes.

9 Q And at that time CM 10 was locked in the safe in
10 your squad room, is that right?

11 A Yes.

12 Q And with regard to CM 13, you received that on
13 May 24 at 11 a.m., is that right?

14 A Yes.

15 Q And that also went to duplication the same day
16 you received it, at 2:45, is that right?

17 A Yes.

18 Q And with regard to CM 14, you received that on
19 5/25/93, is that right?

20 A Yes.

21 Q At 10:30 a.m., and you turned that in the next
22 day at 3:00 p.m., is that right?

23 A Yes.

24 Q And it was on this day in the morning, 5/26, that
25 you finally got around to turning in CM 10, is that right?

1 MR. FITZGERALD: Objection to form.

2 THE COURT: Sustained.

3 Q Did you, Agent Anticev, on May 26, 1993, at
4 2:45 -- no, take it back -- at 8:30 a.m. turn in CM 10?

5 A Yes.

6 Q And it is your testimony that it sat in your
7 evidence locker, or it sat in the safe in your squad room
8 for those three days, is that right?

9 A Yes.

10 Q And this is CM 10 that has Sheik Omar Abdel
11 Rahman talking to Mr. Salem in the kitchen, is that right?

12 A Yes.

13 Q Why did you leave it in the safe?

14 A I put it in the safe because I had no place else
15 to put it on the weekend. I had to preserve it and keep it
16 safe. That's why I put it in the safe.

17 Q And why not when Monday morning came?

18 A I don't know.

19 Q What happened when you turned in all these other
20 tapes? You forgot about this tape?

21 A I don't know what happened.

22 Q You indicated that there was one time during the
23 earlier investigation, the 1992 investigation, that you
24 authorized Salem to tape, is that right?

25 A In '92?

1 Q Yes.

2 MR. FITZGERALD: Objection.

3 THE COURT: Sustained.

4 Q Did you not tell Mr. Ricco that you authorized
5 Mr. Salem to tape on the occasion that someone was trying to
6 get your address?

7 A Correct.

8 Q Is that right?

9 A That is correct.

10 Q Was that, if you know, because Mr. Salem told you
11 that someone was trying to get your address to do harm to
12 you?

13 A Yes.

14 Q Did that come out of an incident with Mr. El
15 Sattar on Staten Island, where you live?

16 MR. FITZGERALD: Objection.

17 THE COURT: Sustained.

18 Q Do you see Mr. El Sattar sitting in the courtroom
19 right in the back here?

20 A Yes, I do.

21 (Continued on next page)

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1 Q It was an innocuous incident on Staten Island,
2 was it not, where he --

3 MR. FITZGERALD: Objection, your Honor. May we
4 approach?

5 THE COURT: Yes.

6 (At the side bar)

7 MR. FITZGERALD: Your Honor, my objection is to
8 the fact that we can't control who is in the courtroom, but
9 I think she is trying to vouch for Mr. Sattar not being
10 under arrest, and I think if we get into people who are
11 accused of having done illegal things or threatened
12 people --

13 THE COURT: Mr. El Sattar has been all over this
14 record at various times and he has been present at various
15 times.

16 MR. FITZGERALD: But we haven't identified him in
17 the courtroom.

18 MS. STEWART: The only thing is that it was
19 brought up in Mr. Ricco's cross-examination that it was
20 somehow a threat to Agent Anticev's life and that is how he
21 authorized it. I just wanted to bring out that it was, as
22 far as I know, an extremely friendly meeting on a street in
23 Staten Island where he was delivering express mail and he
24 ran into Anticev. But Salem came back and turned it into
25 something else. The only question I was going to ask was

1 wasn't this --

2 MR. FITZGERALD: My understanding is that when
3 they ran into each other is different from the conversation
4 that took place later between Mr. Mohammed Saad and Ahmed
5 Abdul Sattar.

6 THE COURT: There was nothing in anything that I
7 heard up until now that had Anticev running into Sattar.

8 MS. STEWART: That is why I was objecting, Judge,
9 because it sounds like Salem became --

10 THE COURT: The problem is that there are two
11 separate incidents. The incident that you are talking about
12 is not directly related to the incident you are talking
13 about.

14 MS. STEWART: My understanding is that they were
15 corroborated.

16 MR. FITZGERALD: It corroborates what Mr. Sattar
17 told Mohammed Saad about where he lives.

18 THE COURT: The two things have nothing to do
19 with one another and I am not going to permit it.

20 (In open court)

21 (Continued on next page)

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1 BY MS. STEWART:

2 Q Agent Anticev, you told us that one of the
3 instructions you gave Emad Salem was that he could not tape
4 unless he was a member of the conversation -- a party to the
5 conversation that he was taping, is that right?

6 A That is correct, for the Terrstop phase.

7 Q If you know, was Emad Salem told by you or any of
8 your brothers or sisters in the FBI that the federal
9 government was wiretapping Dr. Abdel Rahman?

10 A I am sorry. Can you repeat that?

11 Q If you know, did you or any of your brothers and
12 sisters in the FBI ever tell Emad Salem that Dr. Abdel
13 Rahman was being wiretapped by the federal government?

14 A No.

15 MS. STEWART: I have nothing further, Judge.

16 MR. JACOBS: Do you want me to start?

17 THE COURT: Make a start.

18 CROSS-EXAMINATION

19 BY MR. JACOBS:

20 Q Agent Anticev, the first CM in this case, CM 1,
21 is dated on or about May 7, 1993, isn't that correct, sir?

22 A Yes.

23 Q That is a conversation between Salem and Siddig
24 Ali about the World Trade Center, correct?

25 A I am not sure.

1 Q Before Salem went out and recorded that, you had
2 him execute an FD473, correct, sir?

3 A If that's his permission to do CM's, that's the
4 one.

5 Q Let me show you 3534X for identification and ask
6 you, is that the consent FD473 that he signed in connection
7 with this investigation, sir? It's a little light. If you
8 can't read it --

9 A Yes, that's it.

10 (Continued on next page)

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1 Q In connection with this investigation or any
2 investigation, is that the first consent he signed, sir, to
3 your knowledge? Is there any other one in existence?

4 MR. FITZGERALD: Objection.

5 Q To your knowledge.

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

8 (At the side bar)

9 THE COURT: Where is this going?

10 MR. JACOBS: This is going to the fact, your
11 Honor, that this document is a joke, that this witness knew
12 that this --

13 THE COURT: Look, I don't want to hear your
14 summations, I want to hear a legal argument.

15 MR. JACOBS: The legal argument, your Honor, is
16 that this is the first consent the witness got. He had
17 tapes of targets in the case, he wasn't turning them over to
18 the FBI, and this document is a sham -- I am just putting on
19 the record what I think it is.

20 THE COURT: Do you know what happened to Bruce
21 Cutler?

22 MR. JACOBS: I do, sir. I have this witness now
23 stating under oath that he was aware of conversations that
24 were recorded that he did not report to his other
25 supervisors. This witness has now admitted under

1 examination of Mr. Ricco that there were private
2 conversations that he knew about. I am trying to find out
3 when he knew about it, when he knew about it and how he got
4 this thing signed for May 7. It is exactly the thing I am
5 writing in my letter.

6 MS. AMSTERDAM: May I add one factor, your Honor?

7 THE COURT: You may not. He is examining.

8 MS. AMSTERDAM: I think it would help.

9 MR. JACOBS: I think, without the rhetoric, it is
10 a significant date. It is the first CM in the case but it
11 is in fact not the first CM. There are many others now.

12 THE COURT: What is the difference?

13 MR. JACOBS: It is a critical difference in
14 determining whether we have the --

15 MS. AMSTERDAM: It's the coverup and the facts --

16 THE COURT: The coverup of what they disclosed to
17 you.

18 MS. AMSTERDAM: Agent Napoli said I reviewed the
19 testimony. Agent Napoli said under oath that he was not
20 aware of any private tapings done by Mr. Salem prior to the
21 day that the arrest was made, June 23 of '93. We played a
22 tape in court today which is prior to June 23, 1993, that
23 Agent Napoli was a party to where Emad Salem says I have
24 hundreds of tapes at home.

25 THE COURT: Argue it.

1 MS. AMSTERDAM: I don't think I should have to
2 stand by Agent Napoli's statement --

3 THE COURT: You have the evidence. Argue
4 whatever significance you think it has to the issues in this
5 case.

6 MR. JACOBS: Your Honor, I think I can conduct
7 this examination within the rules. I have showed him a
8 document that he is personally involved with. He has
9 admitted under oath about the private conversations that he
10 was aware of. Based upon our letter, which is now supported
11 by this witness' testimony, I think I am entitled --

12 THE COURT: It isn't supported by this witness'
13 testimony.

14 MR. JACOBS: Your Honor and I disagree as to the
15 significance of what his testimony means. I obviously don't
16 want to do it here by the side bar but I think it is very
17 significant that an FBI agent admits that he was aware of
18 private conversations recorded and he did nothing about
19 them. It may take 15, 20 minutes to develop it --

20 THE COURT: It should not take you 15 minutes, it
21 should take you two questions.

22 MS. AMSTERDAM: Do it in two.

23 (In open court)

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

25 THE COURT: Go ahead.

1 BY MR. JACOBS:

2 Q Agent Anticev, on the date that Salem executed
3 this consent to record conversations for the FBI, you knew
4 that he had made unauthorized tapes before that, correct,
5 sir?

6 A That is correct.

7 Q Would you tell this jury what you did before May
8 7 to get those tapes. What did you do?

9 A I did nothing.

10 (Continued on next page)

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1 MR. JACOBS: May we recess at this point, your
2 Honor?

3 THE COURT: Yes. Ladies and gentlemen, we are
4 going to break for the day. Please leave your notes and
5 other materials behind. Please don't discuss the case, and
6 we will resume tomorrow.

7 (Jury excused)

8 THE COURT: Two things. Mr. Stavis, you had a
9 scheduling order.

10 MR. STAVIS: I thought we might sit late and that
11 would create some problems with regard to other witnesses.

12 THE COURT: Then there is no problem.

13 Just so the record is complete, in something that
14 was said at the side, I relied on two different things with
15 regard to Mr. Jacobs, but since I did that, I would like to
16 see Mr. Jacobs, Miss Amsterdam and Mr. Ricco in the robing
17 room with the government.

18 (Pages 13501 - 13506 and 13507 - 13509 sealed)

19 (Proceedings adjourned until 9:30 a.m., Thursday,
20 July 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

July 6, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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Southern District of New York

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1 (Pages 13514 - 13534 sealed)

2 (In open court; jury not present)

3 MR. McCARTHY: Your Honor, that exhibit has been
4 marked 35143A.

5 THE COURT: Thank you.

6 JOHN ANTICEV, resumed.

7 MR. JACOBS: Your Honor, relative to what took
8 place, I have some agreement with the government on a
9 question. I would like to put it on the record so your
10 Honor knows what it is.

11 THE COURT: I promise you that I am not going to
12 sustain an objection that doesn't get made.

13 MR. JACOBS: I have discussed the matter with the
14 government and myself and I have informed some counsel. I
15 think it touched on what your Honor mentioned inside.

16 THE COURT: On that subject. I am not saying
17 that I won't on other subjects. It's not a license.

18 (Jury present)

19 THE COURT: Good morning, ladies and gentlemen.

20 JURORS: Good morning.

21 THE COURT: Again, I am sorry for the late start.
22 There were some matters that I had to talk to the lawyers
23 about. The theory is that if I take some time with them to
24 talk about it when you are not here, it might save sometime
25 when you are. That theory doesn't always work. I hope it

1 will this time. That in any event is the theory. I am
2 sorry for the delay.

3 Mr. Anticev, you are still under oath.

4 Mr. Jacobs, ready to continue?

5 (Continued on next page)

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1 CROSS-EXAMINATION continued

2 BY MR. JACOBS:

3 Q Good morning, Agent. I concluded yesterday by
4 asking you the following question --

5 THE COURT: Mr. Jacobs, we remember what you
6 concluded with yesterday. Why don't you move on.

7 Q Relative to these bootleg tapes and what you did,
8 if anything, you told us that you did nothing before May 7.
9 After May 7, what if anything did you do to recover these
10 bootleg tapes?

11 A I didn't do anything after May 7.

12 Q Am I correct that the arrest in this case took
13 place on the evening of June 23 into June 24, 1993? Is that
14 correct?

15 A Yes.

16 Q And, Agent, you continued to work as a co-case
17 agent in the case during that period of May and June and
18 July of 1993, is that correct, sir?

19 A Yes.

20 Q Relative to this question of the unauthorized
21 tapes, you played, or a tape was played yesterday -- I am
22 not sure you were on the stand, you may have been -- tape
23 43-1. It is Nosair WWT, I believe a conversation recorded
24 in March of 1993. During that conversation you were present
25 in the car, I believe, with Detective Napoli, correct?

1 A Yes.

2 Q It is during that conversation that the question
3 about Abouhalima comes up and Salem says he can go back to
4 his tapes and Napoli says I don't mean by tape, get in touch
5 with him. Do you remember that portion?

6 A Yes.

7 Q And there is another portion where the tape
8 subject is raised again, and Napoli says do you want to stop
9 by your house and get it, Salem says not at this time --

10 MR. FITZGERALD: Objection to form.

11 Q -- sorry, because I have hundreds of forms. Do
12 you recall that, said?

13 A Yes.

14 Q And you were present, correct?

15 A Yes.

16 Q After this conversation in March of 1993, did you
17 and Detective Napoli discuss these unauthorized tapes?

18 A No.

19 Q At any time did you discuss with Detective Napoli
20 the making of unauthorized tapes by Emad Salem?

21 A No.

22 Q As you sit here now, did you discuss the making
23 of unauthorized tapes before June 23, 1993, with anybody in
24 law enforcement?

25 A No.

1 Q And with that I mean FBI agents or Assistant
2 United States Attorneys. Did you do that, sir, before June
3 23, 1993?

4 A No, I did not.

5 Q Did anybody ask you about -- law enforcement, I
6 am talking about. Did any agent or prosecutor ask you about
7 Emad Salem and unauthorized tapes before June 23, 1993?

8 A No.

9 Q Concerning these unauthorized tapes, were you
10 aware before June 23, 1993, that he was recording
11 conversations with targets of the investigation?

12 A Yes, it became apparent to me that he was.

13 Q Let me show you this microcassette 639A in
14 evidence, a conversation, I will call it a bootleg
15 conversation --

16 MR. FITZGERALD: Objection.

17 THE COURT: Sustained.

18 Q Let me show you this conversation recorded
19 between the sheik and Salem and ask you if you have ever
20 seen this before? That is 639-1 in evidence, source tape
21 391 made May 30, 1993, Salem, Siddig and the sheik. Do you
22 see that exhibit before you?

23 A Yes.

24 Q Am I correct, sir, that that was an unauthorized
25 tape made by Salem involving a target of the investigation?

1 MR. FITZGERALD: Objection.

2 MR. JACOBS: I will withdraw it.

3 Q To your knowledge, is that an unauthorized tape
4 made by Emad Salem in this investigation?

5 MR. FITZGERALD: Objection, your Honor.

6 THE COURT: Sustained.

7 Q What is that tape?

8 A This is a tape that was received by James Roth
9 from Emad Salem.

10 Q Did you know about this tape before June 23,
11 1993, sir?

12 A This specific tape, no.

13 Q If that tape was made, it was made without your
14 permission, sir, correct?

15 MR. FITZGERALD: Objection.

16 THE COURT: Sustained.

17 Q Did you give him permission to tape targets of
18 the investigation, including the sheik, before June 23,
19 1993?

20 A Before June 23?

21 Q Yes.

22 A The scope goes from when he was given permission
23 to do consensual monitoring. That was a couple months prior
24 to June 23.

25 Q I think we established that, if I am correct, on

1 or about May 5, 1993, is when he signed the form, correct?

2 A That is correct.

3 Q Is that tape in front of you a tape that you
4 gave, you meaning the FBI gave Emad Salem? Yes or no.

5 A No.

6 MR. FITZGERALD: Objection.

7 THE COURT: I will allow that.

8 MR. JACOBS: I am sorry. I think the answer was
9 no, for the record.

10 THE COURT: The answer was no.

11 Q Concerning the unauthorized taping, did you
12 provide him with equipment to do that?

13 MR. FITZGERALD: Objection to form.

14 THE COURT: Concerning the taping that he did on
15 his own, providing the equipment?

16 MR. FITZGERALD: Are we talking about spring of
17 1993?

18 MR. JACOBS: I am sorry, yes.

19 Q We are talking about spring of 1993. Did you
20 provide him any taping equipment so that he could make
21 authorized tapes?

22 A Are we referring to after he signed the form?

23 Q March, April, April, May, June, up to June 23.
24 Did you provide him with any equipment at any time to make
25 unauthorized tapes?

1 MR. FITZGERALD: Objection to form.

2 A To make authorized tapes?

3 Q Unauthorized tapes.

4 A I didn't provide him any equipment.

5 Q You were asked some questions by Mr. Ricco
6 yesterday about a time where you specifically asked Salem to
7 make an unauthorized recording. Do you remember that
8 question by Mr. Ricco yesterday, sir?

9 A Yes.

10 Q And you know there is a tape of that, between you
11 and Salem, correct?

12 A Yes.

13 Q Would I be fair to say, Agent, that you have
14 reviewed that tape a number of times, is that correct?

15 A Yes, I have reviewed it several times.

16 Q And you have heard your words on the tape and you
17 have heard Salem's words on the tape, correct?

18 A I never played that tape but I read the
19 transcript.

20 Q Did you tell Salem, do you have all your little
21 gadgets over there to record things? Did you make that
22 statement to him?

23 A Yes, I did.

24 Q And he said definitely, and you said OK, this is
25 not, you know, Salem says that confa. You said this is not

1 official me telling you this, I'm not allowed without
2 headquarters' authority. Salem said I understand. You
3 said, but if you happen to turn on one of those little
4 gadgets, we'll keep it on the side, it's not going to be
5 entered into any kind of evidence.

6 Did you make that statement to Emad Salem, sir?

7 A Yes.

8 Q And when you referred to little gadgets, what
9 were you referring to, sir?

10 A His own equipment that he has.

11 Q How do you know that he had his own equipment,
12 sir?

13 A He had told me.

14 Q What did he tell you that he had?

15 A He told me he had some recording equipment.

16 Q Do you remember when this conversation took
17 place? I think it is tape 33-1. Do you remember when that
18 was?

19 A I believe that was in March.

20 Q March of '93?

21 A Yes.

22 Q How did he get the equipment, to your knowledge?

23 A I assume, only, that he purchased it on his own.

24 Q Did you know if he had Nagras in March of 1993
25 when you had this conversation?

1 A No.

2 Q Do you know if he had any other kind of body
3 recorders?

4 A No.

5 Q Do you know if he had a home taping device?

6 A Yes.

7 Q He told you that?

8 A Yes.

9 Q Did you ever go to his home, by the way, at any
10 time?

11 A Yes.

12 Q Did you ever see his home taping device?

13 A I believe it was just a tape recorder next to his
14 phone.

15 Q At any time -- we will get to July 15 -- before
16 June 23, did you ever see any of these private tapes that he
17 had?

18 A No.

19 Q Did you ever ask to see them?

20 A No.

21 Q Agent Anticev, in your, I think you said --

22 A Wait, excuse me.

23 Q I am sorry, please. Did you want to add
24 something?

25 A I think in one conversation that I had with him

1 later on, we were talking about Ibrahim, we were talking
2 about Ibrahim El-Gabrownny, and I made a reference to, do you
3 have any tapes of him from before, before he was authorized
4 to make tapes. So I did ask once.

5 Q In connection with asking about Mr. El-Gabrownny
6 and tapes, he was a target of the investigation, fair to
7 say?

8 MR. FITZGERALD: Objection to form.

9 THE COURT: Sustained.

10 Q He was someone you were investigating?

11 A Yes.

12 Q In your eight years of experience, would I be
13 correct in stating you were aware of the facts that there
14 are certain rules that we follow in a criminal case, like
15 defense lawyers get tapes of their clients? You are aware
16 of that, sir?

17 A Can you rephrase that?

18 Q Sure. Sure. If your eight years of working with
19 the FBI, you have worked criminal cases, am I correct?

20 A Not that many.

21 Q Were you aware back in the spring of 1993 that
22 recordings that are made of the defendant are turned over to
23 his lawyer in a criminal case? Were you aware of that back
24 in the spring of 1993?

25 A I can't say that I did.

1 Q In order to make a recording between two people,
2 one consenting -- we call it consensual recording -- an FBI
3 agent like yourself gets the permission of the individual
4 who is consenting. That is that form I showed you
5 yesterday, correct?

6 A Yes.

7 Q That is required to be done by the rules and
8 regulations of the FBI to secure the consent of one person,
9 correct, sir?

10 MR. FITZGERALD: Objection, 401.

11 THE COURT: Sustained.

12 Q In connection with this case, you secured Salem's
13 permission to record consensual calls May 5, correct?

14 A Correct.

15 Q You asked him to make an unauthorized tape in
16 March, correct?

17 A Yes.

18 Q And you knew that that was against FBI policy and
19 procedure, correct, sir?

20 A Yes.

21 Q When you made the statement that the tape would
22 not be put into evidence, you knew that that was in
23 violation of the FBI rules and procedures to make that
24 statement to the witness, correct, sir?

25 A Yes.

1 Q The question of whether something comes into
2 evidence or not or turned over, that is a decision by
3 federal prosecutors and federal judges, not agents, correct,
4 sir?

5 A That is correct.

6 Q At the time you made the decision that you wanted
7 him to do something in violation of your own rules and
8 regulations, correct?

9 A Yes.

10 Q And I think you alluded to the fact with Mr.
11 Ricco that this somehow involved some inquiry about where
12 you lived that somebody was making, correct, sir?

13 A Yes.

14 Q And it is something that concerns you, correct?

15 A Yes.

16 Q And it might have something to do with your
17 safety, is that correct?

18 A Yes.

19 Q And I am not asking you where you live or
20 anything, but I assume you have a family, sir, is that
21 correct?

22 A Yes.

23 Q Children, correct?

24 MR. FITZGERALD: Objection.

25 THE COURT: Sustained.

1 Q Did you believe that this was something that
2 should have been reported to the FBI, that there was a
3 problem about your safety?

4 A Yes, and it was.

5 Q Did you, back in March of 1993, report to the FBI
6 that you had a problem about your safety?

7 A Yes.

8 Q And did they tell you to go out and make
9 recordings?

10 MR. FITZGERALD: Objection, 401.

11 THE COURT: Sustained.

12 Q You on your own met privately with Salem and
13 decided to investigate the platter, correct, sir?

14 A Emad told me that a certain person was coming
15 over to his house, and the subject of myself and where I
16 lived may come up, and I told him, if that subject arises,
17 if you can record it I'll listen to it, and at that time, in
18 March, Emad was adamant about not becoming a witness, and I
19 told him, I don't want to put him on the stand but for my
20 own sake and the sake of my family, I wanted to get
21 confirmation that there was a threat against me, and I asked
22 him, period.

23 Q In connection with that, did you go then to your
24 supervisors and tell them what you did?

25 A No.

1 Q Did you report to Carson Dunbar that you had told
2 Emad to make an unauthorized recording?

3 A No.

4 Q You were handling it privately with Salem,
5 correct?

6 MR. FITZGERALD: Objection.

7 THE COURT: Mr. Jacobs, move on.

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1 Q In connection with this taping in March of 1993
2 when you told him to make an unauthorized tape, have you
3 been the subject of an FBI inquiry?

4 A Yes.

5 Q In other words, there's been an official
6 investigation conducted by the FBI relative to that
7 statement that you made about not making a tape according to
8 FBI rules, correct?

9 A Yes.

10 Q In connection with that inquiry, did the Federal
11 Bureau of Investigation require you to make a sworn
12 statement, sir? Did they do that?

13 MR. FITZGERALD: Objection.

14 THE COURT: Sustained.

15 Q Did you meet and speak with agents of the FBI in
16 connection with that inquiry?

17 MR. FITZGERALD: Objection.

18 THE COURT: Sustained.

19 Q To your knowledge, is that inquiry still open?

20 MR. JACOBS: This is the subject of discussions I
21 had with the prosecutors, your Honor.

22 Q To your knowledge, is the inquiry still open?

23 A Yes.

24 Q In connection with this concern about your
25 safety, did you ever get confirmation on tape about it, sir?

1 A No.

2 Q In connection with this inquiry by the FBI, were
3 you asked to take a polygraph?

4 THE COURT: Sustained.

5 Q Did there come a time, Agent Anticev, where Salem
6 told you, when he taped you, that he had taken tapes, packed
7 them all, threw them away, out of the house, completely in a
8 certain place, and, "I wrote a message, if, God forbid
9 something wrong happened to me from the FBI, these tapes got
10 to be sold to one of the CNN, you know, I did something like
11 that to protect my heirs," did you have a conversation where
12 Salem told you that, sir?

13 A Yes.

14 Q And you have reviewed that tape or that
15 transcript, is that correct?

16 A I read it.

17 Q OK. Do you remember when that took place?

18 A I believe also in March.

19 Q What steps did you take when he made that
20 statement to get the tapes from him?

21 MR. FITZGERALD: Objection. 403.

22 MR. JACOBS: I will withdraw it.

23 Q Did you make any steps when he made that
24 statement to you to get the tapes?

25 THE COURT: This has been covered. Move on.

1 Q When he said to you that, "something wrong
2 happened to me from the FBI," he was blackmailing you, is
3 that correct, sir?

4 MR. FITZGERALD: Objection.

5 THE COURT: Sustained.

6 Q When he made the statement, "God forbid something
7 wrong happened to me from the FBI," what did he mean by
8 that?

9 MR. FITZGERALD: Objection.

10 THE COURT: Sustained.

11 Q Did you ever have a conversation with Emad Salem
12 where Emad Salem told you that he was not going to follow
13 the rules of the FBI in the conduct of the investigation?

14 A That he was not going to follow the rules?

15 Q Correct.

16 A I would have to see the exact phrase. I don't
17 recall it in that context.

18 Q Did you ever have a conversation with him
19 concerning a meeting with Carson Dunbar where he told you,
20 "I cannot support the investigation for the Bureau, and he
21 wants me to follow that rules. I can't. I don't have to
22 follow that rules."

23 Did he ever tell you that, sir?

24 MR. FITZGERALD: I would just object. Can we
25 have a time frame?

1 MR. JACOBS: Sure. I believe March 8, 1993.

2 Q Did he tell you that, sir, "I don't have to
3 follow that rules"?

4 MR. FITZGERALD: Objection, 401.

5 MR. JACOBS: May I approach the witness?

6 MR. FITZGERALD: And 613(b).

7 THE COURT: Sustained.

8 Q In the conduct of what you are supposed to tape,
9 how you were supposed to tape, did Emad Salem tell you he
10 could not follow the rules?

11 MR. FITZGERALD: Same objection.

12 THE COURT: Same ruling.

13 I want to point out to the jurors, as I have had
14 occasion to point out to you before, that the only evidence
15 is what witnesses testify to, and what's properly
16 admissible. Lawyers' questions are not evidence. I said at
17 the beginning of today that I try to meet with people when
18 you are not here so as to avoid spending times on things
19 when you are here. Sometimes it works, and sometimes it
20 doesn't.

21 Again, lawyers' questions are not evidence. If
22 they were, lawyers could suggest all kinds of things in
23 questions and they would be evidence. They are not. So,
24 again, the evidence is what comes from the witness stand,
25 not what comes from the lawyers.

1 Go ahead, Mr. Jacobs.

2 Q Did you ever have a conversation where you
3 explained that the FBI has strict guidelines on how to
4 conduct an investigation?

5 A Yes.

6 Q Was it during that conversation where you told
7 him that the FBI has strict guidelines, he said, "I don't
8 have to follow the rules"?

9 MR. FITZGERALD: Same objection.

10 THE COURT: Same ruling.

11 Q With respect to the unauthorized recordings, did
12 there come a time after the arrest of Emad Salem that you
13 became aware that these recordings were found by --

14 MR. FITZGERALD: Objection to form.

15 MR. JACOBS: I'm sorry. Withdrawn.

16 MR. FITZGERALD: You asked Emad Salem.

17 MR. JACOBS: I'm sorry.

18 Thank you, Mr. Fitzgerald.

19 Q After the arrest of some of the defendants in
20 this case on June 23, did you become aware of the fact that
21 the unauthorized tapes of some of the them had been
22 recovered by agents of the FBI?

23 A Yes.

24 Q When did you become aware of the fact that these
25 unauthorized tapes were recovered, if you can tell us the

1 best you can remember?

2 A Probably within a week or two.

3 Q A week or two of them being recovered?

4 A No, I believe after the arrests, but I am not
5 sure.

6 Q Well, I believe we have in evidence the fact that
7 there were 49 tapes recovered on June 29, 1993. Are you
8 aware of that, sir?

9 MR. FITZGERALD: Objection.

10 MR. JACOBS: I will rephrase the question.

11 Q Are you aware of the fact that 49 tapes were
12 recovered on June 29, 1993 from Mr. Salem's house?

13 MR. FITZGERALD: Same objection.

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

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1 (At the side bar)

2 MR. McCARTHY: He's completely misstating the
3 record. As I have explained a couple of times already in
4 this litigation, it wasn't 49 tapes that were recovered from
5 his house; it was 49 plus 17.

6 They were all recovered from his house at one
7 time, as I have written Mr. Jacobs in a letter and told him
8 at the side bar at least twice in this trial. It wasn't 49.
9 It was about 66, if my math is right. 17 of them he was
10 permitted to keep for a period of about two weeks, and then
11 at our request he turned those over as well.

12 But it is simply incorrect to continue to
13 misstate that. Just like it is incorrect to suggest that
14 Salem was arrested, just like it is incorrect to ask the
15 witness about polygraphs.

16 THE COURT: I am willing to put down the Salem
17 arrest to wishful thinking.

18 MR. JACOBS: I will rephrase the question, your
19 Honor.

20 MS. AMSTERDAM: I have an issue, as long as we
21 are here, regarding the informant having told the agent that
22 he would not follow the rules.

23 Our position is that if he says he won't follow
24 the rules and they continue to let him work on this
25 operation, they are endorsing and controlling the framing,

1 the planting and the destruction of evidence. He tells them
2 point blank, I will not follow your rules.

3 MR. JACOBS: I was going to raise that.

4 MR. FITZGERALD: Your Honor, 613(b) says if you
5 are --

6 THE COURT: Did you confront Salem with that when
7 he testified?

8 MS. AMSTERDAM: Salem is coming back. But
9 regardless of whether or not I confronted him, I am arguing
10 that the FBI also is part of a frame, so I ought to be able
11 to confront this witness with the fact that Salem told him
12 that and he took no steps to correct that behavior.

13 MR. STAVIS: That is not impeachment evidence,
14 Judge.

15 MR. FITZGERALD: Are counsel saying in the rubric
16 of McKeon and Cunningham that they are committing to the
17 position that the FBI was part of a frame with Emad Salem to
18 the point where if they are going to get evidence in on that
19 representation, we can quote that back to the jury, and, if
20 so, I would like to know which counsel are taking that
21 position?

22 MS. AMSTERDAM: Certainly we wrote a letter
23 saying it. So for our purposes, I am asking the question.

24 THE COURT: I haven't heard any objection from
25 any other lawyer to this, so I assume that since everybody

1 is here enjoying it, they are all in it, unless you opt out.

2 Is that correct?

3 MR. JACOBS: Well, your Honor --

4 THE COURT: Is that correct? I want a yes or a
5 no. Do I get a yes or no, or don't I?

6 MR. JACOBS: You get a qualified yes, and I think
7 I am entitled to do it, your Honor. There are frames and
8 there are frames.

9 THE COURT: No, Mr. Jacobs.

10 MR. JACOBS: Your Honor --

11 THE COURT: You have said a lot of things. I
12 want a yes or no.

13 MR. JACOBS: I am saying Emad Salem framed these
14 defendants with the --

15 MS. AMSTERDAM: Acquiescence.

16 MR. JACOBS: -- tacit acquiescence of the FBI,
17 not their deliberate attempt at that.

18 THE COURT: That is dancing with what you said
19 last.

20 MR. STAVIS: I don't view myself as being bound
21 by anything that another counsel --

22 THE COURT: You are going to have to live with
23 the results unless you start objecting. Let's go.

24 I am going to let you ask that question, by the
25 way.

1 MR. JACOBS: Thank you.

2 THE COURT: But understand where this is going.
3 When the cross-examination starts and you don't like the
4 scenery, don't object, because you started down the road.

5 MR. JACOBS: I understand, Judge.

6 MS. LONDON: Your Honor, not all counsel are at
7 side bar.

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IPT

1 (In open court)

2 MR. JACOBS: May I continue, your Honor.

3 THE COURT: You may.

4 BY MR. JACOBS:

5 Q Agent Anticev, whatever the number of tapes that
6 were recovered, to your knowledge, were tapes recovered on
7 or about June 29, 1993?

8 A Yes.

9 Q Did you tell any other agent before June 29, 1993
10 of the existence of any of these unauthorized tapes?

11 MR. FITZGERALD: Objection. Asked and answered.

12 MR. JACOBS: I think it was up to the 23rd, your
13 Honor, that I asked. I did not ask that additional week.

14 MR. FITZGERALD: I withdraw the objection.

15 MR. JACOBS: Thank you Mr. Fitzgerald.

16 Q During that additional six days, June 23 until
17 the time they were recovered on June 29, whatever the number
18 was, did you tell the FBI or any other agent or prosecutor
19 about the tapes?

20 A I don't remember.

21 Q Now, you yourself went and got a number of tapes
22 from Salem on July 15, 1993, about 17, is that correct?

23 A Yes.

24 Q OK. And did you -- I don't want the exact
25 location, but you went to someplace other than his home

1 where he had been residing up to June 23, is that correct?

2 A Yes.

3 Q And did you meet with him alone or with other
4 agents when you got the tapes?

5 A I don't recall, but there had to be agents there.

6 Q OK. Did he personally hand you the 17 tapes?

7 A I don't really recall, but I imagine he did.

8 Q Again, I am not interested in his exact street
9 address or town, did you see where he took the tapes from?

10 A I don't recall anything like that.

11 Q I assume you made no report or notation of where
12 these 17 tapes came other than from Salem, correct?

13 A Correct.

14 Q You took those 17 tapes and you followed FBI
15 procedure and vouchered the tapes and put them into the
16 evidence envelopes, correct, signed them in?

17 A Well, when I got the tapes, I didn't have any of
18 the correct forms. I just took the, you know, tapes in a
19 bag.

20 Q I asked you a few minutes ago about a
21 conversation that you had on or about March 8, 1993,
22 transcript of source tape 30-7, about following rules and
23 regulations. Do you recall those questions?

24 A Yes.

25 Q And I ask you again, did Emad Salem during that

1 conversation tell you that he did not have to follow the
2 rules? Yes or no.

3 A I don't know the context of how I presented the
4 question or how it -- if you would let me look at it.

5 Q Sure, please. Of course. Let the record
6 indicate --

7 MR. McCARTHY: Mr. McCarthy, I don't have your --
8 it's 30-7.

9 THE WITNESS: Thank you.

10 A I am done, counsel.

11 Q So you read that?

12 A Yes.

13 Q Am I correct that during the course of that
14 conversation, Emad Salem told you that he wasn't going to
15 follow the rules? Yes or no.

16 MR. FITZGERALD: Objection under 106.

17 MR. JACOBS: Mr. McCarthy, would you like me to
18 read a portion of it?

19 MR. McCARTHY: The whole answer --

20 MR. JACOBS: Sure. With your Honor's permission.

21 MS. AMSTERDAM: Excuse me one moment, your Honor.

22 (Counsel conferred)

23 MR. JACOBS: Pursuant to agreement with the
24 government, your Honor, I will read the following:

25 Agent Anticev, you said as follows -- or Salem

1 said: OK. So if you know that, what you doing?

2 You said: The thing is, there's no problem, why
3 can't you just, why can't you just continue what you're
4 doing and you get and we pay you.

5 Salem said: I cannot support the investigation
6 for the Bureau. I work it as an investigator F in New York.
7 I work it as a, a, a, a, law enforcement a, a, a person in
8 my country. I used to work hard and be 'imbursed for my
9 work over here. These guys say, "OK, you work hard, and you
10 get me the information and I will get credit for it, and you
11 are not going to get anything, like it or not, tough luck."

12 And he wants me to follow that rules. I can't, I
13 don't have to follow that rules. I want to live either the
14 right way as an investigator and do the good, good job and
15 he created mess. Since he -- I'm sorry, he did, created
16 mess in the country, and between us now you, coming to me
17 now John Anticev, the person I, a, a, a, we had a bond like
18 we would become friends you say, "I hope you're not taping
19 me," I mean --

20 Anticev: Uh-uh. Inaudible.

21 Salem: We came back to the first, the first
22 meeting when John, uh, Louis was searching my back thinking
23 that I'm carrying bugging device on him, so if we came to
24 that point that we don't trust each other --

25 Anticev: Actually, well --

1 Salem: And he, he, he digging deeper and deeper
2 for Middle East mistrust. Now he feel that I'm angry, and
3 he think that since I'm angry, I will supply false
4 information.

5 Anticev: Who said this?

6 MR. McCARTHY: OK.

7 Q The person that he's referring to, that's Carson
8 Dunbar, correct?

9 A I believe so.

10 Q And he then goes on to say that Dunbar asked him
11 for a polygraph, correct?

12 MR. FITZGERALD: Objection, your Honor.

13 THE COURT: Sustained.

14 MR. JACOBS: I will withdraw it.

15 Q He was complaining about Dunbar to you, correct?
16 Fair to say?

17 MR. FITZGERALD: Objection, 401.

18 THE COURT: Sustained.

19 Q Now, in connection with the CM's that were made
20 in this case, would I be correct in stating that you and
21 Agent Napoli, I believe there are 64 of them, had the
22 primary responsibility for supervising the recordings of the
23 CM's?

24 A We had the primary responsibility for handling
25 the source and the retrieving the tapes.

1 Q On or about May 7, 1993, I think you I showed it
2 to you yesterday, the first CM official recording was made,
3 is that correct?

4 A Yes.

5 MR. JACOBS: Your Honor, with the court's
6 permission, can the jurors turn to Defendant Saleh's B in
7 evidence. And let me give a copy of it to Agent Anticev.

8 Q Agent Anticev, am I correct that -- and, by the
9 way, if you wish to see any of the exhibits, just ask me and
10 I am certain we can show them to you, but would I be correct
11 in stating that CM1, recorded on May 7, I believe retrieved
12 personally by you on May 8, has a particular envelope number
13 and reel number that match, is that correct, sir?

14 If you would like to see it, I will be happy to
15 show it to you. Perhaps we will show it to you.

16 MR. JACOBS: Mr. McCarthy, can I see CM1, I'm
17 sorry.

18 MR. FITZGERALD: I will take care of it.

19 (Counsel conferred)

20 Q Do you have it before you?

21 A Yes.

22 Q Am I correct, Agent Anticev, that that's the
23 first CM in the case, correct?

24 A Yes.

25 Q One you personally were involved in by retrieving

1 it on May 8, 1993, fair to say?

2 A Yes.

3 Q And you do agree with me, I think the envelope is
4 in evidence, but the envelope has a number on it, 38732, and
5 the reel number of 38732, correct, sir?

6 MR. FITZGERALD: If you can just specify for the
7 record the white envelope.

8 MR. JACOBS: The white envelope has a number on
9 it, 38732, and the actual reel in evidence has a number on
10 it, 38732, that match, correct, sir?

11 THE COURT: Mr. Jacobs, may I see you at the
12 side.

13 MR. JACOBS: Sure.

14 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Is this going to be a reprise of the
3 Napoli examination?

4 MR. JACOBS: Very short. I will move along very
5 quickly.

6 THE COURT: The answer is yes, but it is not
7 going to take much time?

8 MR. JACOBS: It is not a reprise.

9 THE COURT: It is a reprise. Move on to
10 something else.

11 MR. JACOBS: Your Honor, this agent handled
12 certain tapes that Napoli didn't.

13 THE COURT: You went through the whole thing with
14 Napoli. You went through all the tapes, you went through
15 that some of them were missing, you went through the
16 numbers, the envelopes, the whole nine yards. You spent a
17 lot of time with Napoli. You are not going to spend time
18 with him.

19 MR. JACOBS: I think I am entitled to from this
20 agent to find out whether there is a log. Napoli said there
21 isn't. Maybe he knows about one.

22 I need a few minutes to ask the questions. I
23 will not be repetitive and not go over the whole chart and
24 waste the jury's time. I think I am entitled to at least
25 establish certainly what he knows, what instructions he

1 gave, what recordkeeping he is aware of. I will make the
2 inquiry brief. I will try not to make it cumulative, but to
3 the extent that it is a bit cumulative, it's very important
4 for this jury to understand what the agents did or didn't
5 do.

6 THE COURT: Yes?

7 MR. FITZGERALD: It is the government's view that
8 this was exhaustively covered with Detective Napoli.

9 THE COURT: That is clearly my view, too. That
10 is why I asked for this.

11 MR. FITZGERALD: And with the expert,
12 Mr. Ginsberg. The only reason we did not object as
13 cumulative is it is my understanding that he is trying to
14 show that the FBI is involved with a criminal fraud. That
15 is why I made the McKoen statement. If it is for any other
16 purpose, then the government would object.

17 If everyone is saying that they want the evidence
18 to go forward because they are going to show that the FBI
19 was engaged in a criminal conspiracy, then the government
20 will not object. If counsel are not taking that position,
21 they ought to let us know, because we are relying upon it.

22 MR. STAVIS: Your Honor, it is very important,
23 addressing myself specifically to what Mr. Fitzgerald said,
24 I state on the record that I am not joining in that
25 position, and when Mr. Fitzgerald made the statement earlier

1 at the side bar not all counsel were present. We each
2 represent individual clients. Some may choose to join in
3 this, others may not.

4 THE COURT: We will deal with this later.
5 Everybody was happy to see it go forward as far as I was
6 concerned on Friday.

7 MR. JACOBS: Your Honor, rather than waste time
8 up here, I have a few questions in the area, and I will make
9 it brief.

10 (Continued on next page)

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1 (In open court)

2 MR. JACOBS: May I continue, your Honor?

3 THE COURT: You may.

4 BY MR. JACOBS:

5 Q Agent Anticev, did you or any other agent keep a
6 record of the number of CM's, tapes that you gave Salem?

7 A Before they were taped on?

8 Q Either before or afterward.

9 A After, yes. Before --

10 Q What did you keep? What kind of record?

11 A This is the record.

12 Q Do you know --

13 MR. FITZGERALD: Judge, for the record, can we
14 just identify it, the brown envelope, or manila envelope.

15 Q Do you know how many blank Nagra's you gave him?

16 A No.

17 Q Did you keep a record of that?

18 A No.

19 Q Did there come a time in May or June that you
20 realized that there were missing envelope numbers in
21 sequence, or reel numbers that were missing, did you in May
22 or June realize that?

23 A That never became an issue, and I never knew that
24 there had to be any -- and there isn't a rule about this
25 serial number or this serial number that means anything in

1 the FBI.

2 Q Well, how do you know what tapes he made or
3 didn't make?

4 A I take back the tapes that he gives me.

5 Q Well, when you gave him a tape, did you make a
6 notation of its number or some record to know that that
7 physical thing you gave him you get back? Is there any such
8 thing in existence?

9 MR. FITZGERALD: Objection to form.

10 THE COURT: Sustained.

11 MR. JACOBS: I will rephrase it.

12 Q On May 7, shortly before May 7, you gave him a
13 Nagra, a blank Nagra, correct?

14 A Yes.

15 Q You gave it to him in the envelope that's in
16 front of you, correct?

17 THE COURT: Mr. Jacobs, that was explored with
18 Napoli, and it was explored with Ginsberg.

19 MR. JACOBS: OK. All right.

20 Q Do you know, Agent Anticev, whether Salem was
21 duplicating any of the CM's?

22 A I don't think it was possible for him to
23 duplicate the CM's.

24 Q Pardon me?

25 A I don't think it was possible for him to

1 duplicate those.

2 Q Agent Anticev, as you sit there now, are you
3 aware of the fact that copies of the CM's were found on June
4 29, 1993 in Salem's possession?

5 MR. FITZGERALD: Objection.

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

7 (Continued on next page)

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1 (At the side bar)

2 MR. FITZGERALD: Your Honor, I am unaware of any
3 duplicate copies made of the CM's that were recovered in his
4 apartment.

5 MS. AMSTERDAM: Five. If I could just interject
6 here, there are five bootleg, five source tapes which
7 correspond to CM's. They are either duplicates or
8 simultaneous recordings.

9 MR. MCCARTHY: That is a different matter.

10 MR. FITZGERALD: There is a difference between a
11 duplicate and a simultaneous recording.

12 MR. JACOBS: I will rephrase the question.

13 MS. AMSTERDAM: I told him to rephrase the
14 question because there could be a difference.

15 THE COURT: Mr. Jacobs, the angelic smile is
16 going to carry you only so far, and you are getting very
17 close to the limits of it.

18 MR. JACOBS: I know. My limits are being done on
19 my examination, too, your Honor, so you will be happy to
20 know that.

21 THE COURT: You know --

22 MR. JACOBS: I am almost finished, Judge.

23 THE COURT: I understand necessity is the mother
24 of invention, however, it is not the mother of evidence.

25 MR. JACOBS: I got you.

1 THE COURT: Thank you.

2 MR. JACOBS: I understand.

3 (In open court)

4 THE COURT: You wanted to rephrase that question,
5 Mr. Jacobs?

6 MR. JACOBS: Yes, your Honor. Thank you.

7 Q Have you become aware that Salem may have been
8 running simultaneous recordings of his own of the CM's?

9 MR. FITZGERALD: Objection to form.

10 THE COURT: Sustained.

11 MR. JACOBS: I will withdraw it.

12 THE COURT: Do you want me to ask the question
13 for you?

14 MR. JACOBS: Thank you, Judge. Sure.

15 THE COURT: Did you become aware at any time
16 that, at the same time he was making CM's, Mr. Salem was
17 using his own taping equipment to tape the same conversation
18 that was being taped on a CM? Did that ever come to your
19 attention?

20 THE WITNESS: No.

21 MR. JACOBS: Thank you, Judge. I am always
22 willing to take help.

23 Q Other than the envelopes that are in front of
24 you, Agent Anticev, do you have any other paperwork on these
25 CM's yourself?

1 A No.

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

3 THE COURT: Ms. Amsterdam?

4 MR. JACOBS: May I just give back the government
5 their exhibits?

6 THE COURT: You may.

7 CROSS-EXAMINATION

8 BY MS. AMSTERDAM:

9 Q Good morning, Agent.

10 When was the last time that you had a personal
11 contact with Emad Salem prior to the bombing of the World
12 Trade Center approximately?

13 A I want to say I was out ill for a while, he
14 called me then. I would like to say September.

15 Q September of --

16 A '92.

17 Q Of '92?

18 A Yes.

19 Q The World Trade Center explosion was February 26
20 of 1993?

21 A Yes.

22 Q So certainly in excess of four or five months you
23 were not in contact with Mr. Salem, would that be fair?

24 MR. FITZGERALD: Objection. You said "personal
25 contact"?

1 MS. AMSTERDAM: Personal contact with Mr. Salem.

2 A I think he did call me once to tell me that he
3 was approached by, I want to say Nosair, or somebody --

4 THE COURT: Don't tell us what he told you. The
5 only question she was --

6 THE WITNESS: Yes, I'm sorry.

7 THE COURT: -- asking was when that happened.

8 Q So you think that between September of '92 and
9 February 26, 1993, there may have been one telephonic
10 personal communication between yourself and Mr. Salem, would
11 that --

12 A Yes, yes.

13 Q -- basically be correct?

14 A Yes.

15 (Continued on next page)

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1 Q Did he call you, did Mr. Salem call you from the
2 hospital, from when he was in the hospital?

3 Let me rephrase it. You are aware, of course,
4 that Mr. Salem was admitted to the hospital on February 26,
5 1993, correct?

6 A Yes.

7 Q Did he call you from the hospital?

8 A No.

9 Q How did you find out that he was in the hospital?

10 A He told us.

11 Q Did he tell you that while he was in the hospital
12 or subsequent to his release?

13 A Subsequent to his release.

14 Q You are aware, are you not, that the explosion at
15 the World Trade Center happened around 12:15 p.m. on the
16 26th of February?

17 A Yes.

18 Q And you are aware, are you not, that Mr. Salem's
19 admission to the hospital was subsequent, albeit the same
20 day, as the explosion?

21 A I didn't realize what date -- what time in
22 relation to the Trade Center it was.

23 Q Did the fact that Mr. Salem had been admitted to
24 the hospital for some type of problem with his ear, did that
25 cause you to have any concerns or suspicions regarding his

1 possible involvement in the Trade Center bombing?

2 A No.

3 Q You had known, had you not, however, from working
4 with him prior to the Trade Center bombing that Mr. Salem
5 had his own fuse, did you not?

6 A Yes.

7 Q In fact he told you in a conversation that he had
8 shown that fuse to your supervisor Carson Dunbar, right?

9 A Yes.

10 Q And he claimed -- by "he" I mean Mr. Salem --
11 claimed that Carson Dunbar had actually told him how to
12 adapt that fuse to a dynamite stick and put it onto a
13 propane tank for an explosion.

14 MR. FITZGERALD: Objection, your Honor.

15 MS. AMSTERDAM: I will rephrase the question.

16 Q Didn't you have a conversation, sir, with
17 Mr. Salem where Mr. Salem said to you that he had shown the
18 fuse -- I showed him the dynamite stick -- meaning to
19 Mr. Dunbar.

20 MR. FITZGERALD: Objection, your Honor.

21 THE COURT: When?

22 Q In March of '93, did you have a conversation with
23 Mr. Salem at which point -- withdrawn.

24 Did you have a conversation in March of '93 where
25 you asked Mr. Salem whatever happened to that fuse that you

1 had? Do you recall that?

2 A Yes.

3 Q And he told you in effect, I don't know what I
4 did with it, I put it in my drawer, I may have thrown it
5 out?

6 MR. FITZGERALD: Objection.

7 THE COURT: Sustained.

8 Q During the conversation that you had with
9 Mr. Salem regarding the location of that fuse, didn't he
10 indeed tell you that he had shown that fuse to Carson
11 Dunbar, your supervisor?

12 A I believe so.

13 Q And didn't he indeed tell you that he had shown
14 him the dynamite on the stick, I told him this is a quarter,
15 this is half a dynamite stick power explosion, and he
16 explained to me how he could make it with a propane tank.

17 Do you recall that?

18 A Yes, but I sincerely doubt he was referring to
19 Carson Dunbar telling him how to attach it to a propane
20 tank. He was referring to El Sayyid Nosair.

21 Q All right. Regardless of -- withdrawn. I am not
22 suggesting that Mr. Dunbar told him how to make an
23 explosion. My question, however, is, he did have a
24 conversation with you in which he indicated that he had a
25 fuse and some knowledge as to how to make an explosive

1 device, correct?

2 A Correct.

3 Q Did you at that time talk to Carson Dunbar about
4 that conversation?

5 A No.

6 Q Did you ask Mr. Salem to make any further search
7 to locate that fuse?

8 A I don't believe so.

9 Q Also, from your working with him prior to the
10 Trade Center explosion, you were aware, were you not, that
11 Mr. Salem had purchased a remote timer, correct? A timer
12 device?

13 A Yes.

14 (Continued on next page)

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1 THE COURT: Excuse me. May I see just Ms.
2 Amsterdam and the government briefly at the side.

3 (At the side bar)

4 THE COURT: There is no need to roll your eyes
5 when I ask you up here.

6 MS. AMSTERDAM: I apologize. I certainly didn't
7 mean to do that. I am sorry.

8 THE COURT: It is kind of an oral tick you have.
9 Every time you get an answer, not every time but many times
10 when you get an answer there is a little skeptical "all
11 right" that creeps out. It is a little tick. That is why I
12 am asking you not to do it.

13 MS. AMSTERDAM: The funny thing is that I was
14 rereading Agent Napoli's testimony and apparently at that
15 time I used to go "uh-huh," and apparently I transferred it
16 into an "all right." I am sorry.

17 (In open court)

18 BY MS. AMSTERDAM:

19 Q In regard to that timer, did you ask at any time
20 Mr. Salem to surrender that timer to you?

21 A I am a little confused.

22 Q OK. Let me start over.

23 A Yes.

24 Q Do you recall a conversation in which Mr. Salem
25 told you that he had purchased a timer and had actually

1 taken it to the mosque to show some people?

2 A Yes.

3 Q And my question to you is, did you ever ask or
4 demand him to return or surrender that timer to you?

5 A Well, we did have a problem with a timer
6 regarding the operation in the safe house. Is that what you
7 are referring to?

8 Q Let me break it down. Prior to the safe house,
9 when you first learned that he had purchased a timer and
10 taken it to the mosque, at that point did you ask him to
11 surrender the timer to you?

12 MR. FITZGERALD: Could we just have a year?

13 Q 1993, March of 1993 did you ask him to return the
14 timer to you?

15 A I don't recall, but I do recall something about a
16 timer that we made inoperative.

17 Q All right. Subsequent to that conversation,
18 there was a timer belonging to Mr. Salem that was brought
19 into the safe house, correct?

20 A I am sorry.

21 MR. FITZGERALD: Objection to form.

22 A I didn't catch that.

23 Q In May of 1993, when the safe house was set up,
24 there came a time that a timer was brought into the safe
25 house by Mr. Salem, correct?

1 A Yes.

2 Q And that timer was subsequently removed by FBI
3 agents, correct?

4 A Yes, I think it was removed but it had to be put
5 back.

6 Q And it was returned after Mr. Salem insisted that
7 it be returned, correct?

8 A Yes.

9 Q Prior to the setting up of the safe house, my
10 question to you was, did you at any time ask him to give
11 that timer to you?

12 A No. Is this the same timer we are talking about?

13 Q Well, let me ask you this: Did you see any of --
14 Mr. Salem told you that he had purchased a timer and had
15 taken it to the mosque, correct?

16 MR. FITZGERALD: Objection to form.

17 Q You just stated that you had a conversation, did
18 you not, that you had a conversation with Mr. Salem where
19 Mr. Salem related to you that he had purchased a timer,
20 taken it to the mosque and showed it to some people. My
21 question is, did you ever see that timer?

22 MR. FITZGERALD: Objection to form.

23 THE COURT: I will allow it.

24 Q Did you ever see that timer?

25 A I am not sure.

1 Q But you never took possession of that timer,
2 correct?

3 A No.

4 Q After the explosion of the World Trade Center,
5 when did you begin working with Mr. Salem in an official
6 capacity?

7 A Several weeks later, but we spoke as early as,
8 what, June -- I mean, March 8, 6, something like that.

9 Q So in early March you had some communications
10 with him -- this is 1993 -- and within several weeks you
11 began working with him in an official capacity. Would I be
12 stating that correctly?

13 A Yes.

14 Q At the time that you began working with Mr. Salem
15 again, would I be correct in saying that he repeatedly
16 criticized, not you personally but the FBI bureau for not
17 having stopped the World Trade Center bombing?

18 MR. FITZGERALD: Objection, 401, 403.

19 THE COURT: I will allow it. Go ahead.

20 A Yes, he did criticize the FBI.

21 Q All right, and he claimed, Mr. Salem claimed --

22 THE COURT: Ms. Amsterdam, subject to the
23 conference at the side.

24 THE COURT: I am sorry, your Honor.

25 Q Mr. Salem claimed, did he not, that the FBI

1 hadn't listened to him, that they hadn't done their job,
2 would that be a correct statement?

3 A Yes, he made statements to that effect.

4 Q And Mr. Salem also said that if the FBI had
5 continued working with him there would have been no
6 explosion at the Trade Center, would that be correct?

7 A Yes, he said that.

8 Q You went back and you reviewed the notebook of
9 the notes that you kept during your working with Mr. Salem
10 in 1992 --

11 THE COURT: This was gone into yesterday. Please
12 move on.

13 MS. AMSTERDAM: Just one moment, your Honor. I
14 will try to abbreviate some of this.

15 Q Mr. Jacobs asked you if Mr. Salem had told you or
16 threatened you that he would send his personal tapes to CNN
17 if anything happened to him as a result of the FBI. Would
18 that be correct?

19 MR. FITZGERALD: Objection, asked and answered.

20 MS. AMSTERDAM: It is just as foundation, your
21 Honor, for the next line of questioning.

22 THE COURT: All right. Did he say anything about
23 doing that?

24 A Yes, he did.

25 Q You had not heard those tapes, had you, sir?

1 A No.

2 Q And you had no idea about what the contents of
3 those tapes were, did you?

4 A No.

5 Q Did the fact that he made that statement, that he
6 might send the tapes to CNN, in any way cause you to fear,
7 cause you to have any personal concerns, regarding either
8 yourself or your position in the bureau?

9 A No.

10 Q Did the fact that he stated that he would send
11 his tapes to CNN in any way cause you to have any concerns
12 that that might jeopardize future prosecutions?

13 A No, that didn't occur to me.

14 Q Did the fact that he might send his personal
15 tapes to CNN in any way cause you to be concerned that the
16 FBI's reputation might in some way be tarnished?

17 MR. FITZGERALD: Objection under 401.

18 THE COURT: I will allow it. I assume this is --

19 MS. AMSTERDAM: This is the last in that series.

20 A No.

21 Q Yet Mr. Salem made it clear -- withdrawn.

22 You understood Mr. Salem's statements to you,
23 however, to be a threat, did you not?

24 MR. FITZGERALD: Objection.

25 THE COURT: Sustained.

1 Q When he said that to you, that if anything
2 happens to me I will send my tapes to the CNN, what was your
3 reaction to that statement?

4 MR. FITZGERALD: Same objection.

5 THE COURT: Same ruling.

6 Q Did the fact that Mr. Salem had, to your
7 knowledge -- withdrawn.

8 Mr. Salem had stated to you in that conversation
9 we heard yesterday that he had hundreds of tapes, correct?

10 A Yes.

11 Q Did that fact, the fact that he had hundreds of
12 tapes, in any way affect the way in which you handled
13 Mr. Salem as an informant?

14 A No.

15 Q Did it cause you to allow him to work with fewer
16 controls?

17 A Absolutely not.

18 Q Had you ever had any other informant that you
19 allowed to do private taping?

20 MR. FITZGERALD: Objection to form.

21 THE COURT: Sustained.

22 Q Did it cause you to exercise a different degree
23 of discretion in terms of allowing Mr. Salem to tape who he
24 wanted and what he wanted?

25 MR. FITZGERALD: Objection.

1 THE COURT: Sustained.

2 Q Had you ever allowed any other informant the wide
3 discretion in terms of who they taped and when they taped?

4 MR. FITZGERALD: Objection.

5 THE COURT: Sustained. Move on. Ms. Amsterdam,
6 would you move on.

7 MS. AMSTERDAM: All right, finished the tapes.

8 Q Was any other informant that you ever worked with
9 allowed to keep his own fuse or his own timer?

10 A I can't comment on my work with other informants.

11 Q Would you know if that is a violation of any FBI
12 guidelines for handling informants?

13 A For keeping a fuse?

14 Q Keeping components to a bomb. Let me withdraw
15 that question.

16 Did you ever have a conversation with Carson
17 Dunbar in which Carson Dunbar explained to you what rules
18 and regulations he had outlined for Emad Salem?

19 MR. FITZGERALD: Objection.

20 THE COURT: Sustained.

21 Q Were you aware of what rules and regulations
22 Mr. Salem was supposed to conform to?

23 MR. FITZGERALD: Objection.

24 THE COURT: Sustained.

25 Q After the World Trade Center, isn't it a fact,

1 sir, that you had a conversation with Mr. Salem in which you
2 instructed him, Mr. Salem, that he was not permitted to
3 build his own bomb? Let me withdraw that.

4 Isn't it a fact, sir, that you had a conversation
5 with Mr. Salem after the World Trade Center that the FBI
6 guidelines did not allow an agent to allow an informant --

7 MR. FITZGERALD: Same objection.

8 Q -- to facilitate in making a dangerous bomb that
9 would not immediately be --

10 THE COURT: Sustained. Ms. Amsterdam, sustained.

11 Q Did you tell Mr. Salem that he could not
12 personally make a bomb?

13 A I believe in that conversation we were referring
14 to prior to -- to the Terrstop investigation. I was trying
15 to explain to him why his relationship with the FBI was in
16 effect terminated, that we wouldn't allow him to be involved
17 in building a device that the FBI did not have strict
18 control over at all times.

19 Q Yet you permitted him, did you not, to obtain
20 possession of both --

21 MR. FITZGERALD: Objection.

22 THE COURT: Sustained, sustained.

23 MR. LAVINE: Objection.

24 THE COURT: Sustained.

25 Q Didn't Mr. Salem say to you that it would take

1 another bomb to convince the bureau?

2 MR. FITZGERALD: Objection.

3 THE COURT: Sustained. Ms. Amsterdam, please
4 move it along.

5 Q Didn't you, sir, permit Mr. Salem to operate the
6 investigation by his own set of rules?

7 A No.

8 Q After Mr. Salem told you that, in the
9 conversation that Mr. Jacobs referred to, that he couldn't
10 abide by some of the rules of the FBI, did you take any
11 additional --

12 MR. FITZGERALD: Objection.

13 THE COURT: Sustained.

14 Q In the course of this investigation, would I be
15 correct in stating that you told Mr. Salem what you were
16 going to need in order to make a conspiracy prosecution?

17 A Yes. I tried to explain to him what the elements
18 of a conspiracy were, to the best that I could articulate
19 it.

20 Q Indeed, in a conversation you used an example
21 about a robbery, a bank robbery, correct?

22 A Yes, I think I did.

23 Q And you told Mr. Salem in that conversation that
24 if people are just talking, you wouldn't be able to make a
25 conspiracy, correct?

1 MR. FITZGERALD: Objection.

2 Q Just talking about robbing a bank, that they
3 wouldn't be able to make a conspiracy.

4 THE COURT: Sustained, sustained.

5 Q You told Mr. Salem, did you not, that in order to
6 make a prosecution that you would --

7 MR. FITZGERALD: Same objection.

8 Q -- people do something.

9 THE COURT: That I will allow.

10 MS. AMSTERDAM: I will rephrase the question.
11 Just one second.

12 I apologize. I am sorry, Agent.

13 Q In the conversation in which you explained to
14 Mr. Salem what was necessary to make a conspiracy
15 prosecution, didn't you in fact tell him what things he
16 would need -- what things needed to be done, what things he
17 would need to have done?

18 MR. FITZGERALD: Same objection.

19 MS. AMSTERDAM: I said it better the first
20 time -- could I have the last question, not the last
21 question but the question before read back? I apologize.

22 (Record read)

23 Q -- you would have to have people do certain
24 things.

25 THE COURT: Did you tell him that in substance?

1 THE WITNESS: I'm sorry, your Honor.

2 THE COURT: I want to caution the jury that
3 whatever conversations this witness may or may not have had
4 with Mr. Salem about what a conspiracy is, it is my
5 instructions on what a conspiracy is that will come at the
6 end of the case that will define that crime for you and that
7 you will follow. What Mr. Anticev may or may not have said
8 to Mr. Salem about what a conspiracy is or what it isn't
9 does not control what the law is.

10 Q You told him, did you not, sir, that if they just
11 talk about it, it in and of itself is not a crime, correct?

12 A Yes.

13 Q And you used the example of a bank robbery and
14 you said that in order to have a crime you would have to get
15 somebody to buy a gun or buy a mask or buy a get-away car or
16 take pictures --

17 MR. FITZGERALD: Objection to form.

18 Q -- or take pictures of the bank.

19 THE COURT: Did you tell him that?

20 A I don't think I said you have to get somebody to
21 do anything. I explained what the elements are, unless --
22 if you can correct me.

23 MS. AMSTERDAM: May I approach, your Honor, with
24 13-4, page 9.

25 THE COURT: What is the exhibit number, Ms.

1 Amsterdam?

2 MR. McCARTHY: For identification, 613-4.

3 THE COURT: Please don't have a private
4 conversation.

5 MS. AMSTERDAM: I am sorry, sir.

6 MR. FITZGERALD: Objection, your Honor. Not
7 inconsistent. I can hand it up.

8 THE COURT: He asked to see it.

9 A I didn't see where I told him you had to get
10 somebody to do something. It's not there.

11 Q You told Mr. Salem, did you not, that talk itself
12 was not a crime, correct?

13 A Yes.

14 Q And you told him, did you not, that one of us has
15 to make an overt act in order to do it, in other words, one
16 of us has to buy a gun or go buy a mask or buy, you know, a
17 get-away car or take pictures of a bank.

18 THE COURT: That is sustained.

19 Q Didn't you --

20 THE COURT: Ms. Amsterdam, move on to something
21 else.

22 Q Didn't you in a subsequent conversation tell
23 Mr. Salem that in working on this investigation, the safe
24 house part of the investigation, that you were not
25 interested in just taking down what person?

1 A Yes.

2 Q And in that conversation, you told him that --
3 withdrawn.

4 You made it clear to him, did you not, in that
5 conversation that that was just you talking to him, correct?

6 A I don't know. I would have to -- I don't know
7 the context of the conversation.

8 Q What does "take down" mean?

9 A Make arrests.

10 Q Make arrests, and you told him that you were not
11 interested in arresting just one person, correct?

12 A That, I said.

13 MS. AMSTERDAM: I am almost through, your Honor.
14 One moment, please.

15 Q Following the World Trade Center, during your
16 dealings with Mr. Salem, the issue of the money that he was
17 going to obtain from the bureau was a constant source of
18 conversation, was it not?

19 A His payments, yes.

20 Q And at one point he indicated or requested of you
21 or the Bureau that he actually be given \$200,000 for
22 information that led to the arrest of Mahmoud Abouhalima in
23 Egypt, correct?

24 A I believe in that conversation I was trying to
25 explain to him how the payments --

1 THE COURT: No. Did he ask you that? Did he?

2 Q He asked you for \$200,000 for the information he
3 had given regarding the whereabouts of Mahmoud Abouhalima,
4 correct?

5 A I believe so.

6 Q And he told you that we're not selling tomatoes
7 here, didn't he?

8 A Yes, he said that.

9 Q In that conversation he was very angry, would
10 that be a fair statement?

11 A It would be fair.

12 Q He was angry about the bureau not coming forward
13 with the money that he thought he was due, right?

14 A He was angry regarding the way the payments were
15 being handled and what he thought -- he wanted to be on some
16 sort of guaranteed payroll.

17 Q In the course of that conversation, did he not
18 state to you that if he didn't get what he wanted he would
19 go public with the fact that the World Trade Center had been
20 built by the supervision of the bureau and the D.A., that we
21 were all informed about it and we know that the bomb started
22 to be built by who? By your confidential informant. Did he
23 not say that?

24 MR. FITZGERALD: Objection to form.

25 THE COURT: Sustained.

1 MS. AMSTERDAM: I would offer at this time the
2 entire tape into evidence.

3 MR. FITZGERALD: Can you tell us which tape?

4 MS. AMSTERDAM: 34-3.

5 MR. McCARTHY: For the record, your Honor, the
6 source tapes as they have been called are the 600 series.
7 So to the extent counsel refer to, for example, 34-3, the
8 number should be 634-3 for identification.

9 MS. AMSTERDAM: Thank you, Mr. McCarthy. I
10 appreciate it.

11 THE COURT: It is 634-3 that you are offering?

12 MS. AMSTERDAM: Yes.

13 MR. McCARTHY: We need a moment to look at it.

14 THE COURT: Can we pass this off or move on to
15 something else?

16 MS. AMSTERDAM: That is almost the end of my
17 examination, your Honor. Let me just review my notes while
18 they are looking.

19 THE COURT: Thank you.

20 Q A few more questions. Sir, in your dealings with
21 Mr. Salem, isn't it a fact that you told him information
22 that you asked him to keep secret from even your own
23 partner?

24 A One time.

25 Q Wasn't there a time that you told him that Nidal

1 Ayyad's fingerprints from the World Trade Center case were
2 found on bomb manuals belonging to Ajaj and you told
3 Mr. Salem to keep that between us, don't even tell Louie?

4 A Yes, I said that, but that was --

5 THE COURT: No, no. Did you say it?

6 THE WITNESS: Yes.

7 THE COURT: If they want to explore it further,
8 they can. Go ahead.

9 Q Isn't it a fact, sir, that Mr. Salem discouraged
10 you from following up other lines of investigation in regard
11 to the bombing of the World Trade Center?

12 A That Emad discouraged the FBI from following
13 leads?

14 Q Yes.

15 A No.

16 Q Wasn't there a time that you spoke to Emad Salem
17 about the possibility that Iraq had bombed the World Trade
18 Center in retaliation for the Gulf War?

19 A I am sorry. Can you repeat that.

20 Q Isn't it a fact that you spoke to Emad Salem
21 about your belief that there was a possibility that
22 Egyptian -- withdrawn -- that Iraqi intelligence had been
23 behind the bombing of the World Trade Center in retaliation
24 for the bombing of Iraq during the Gulf War?

25 A I said that?

1 Q I am asking you, didn't you have that
2 conversation with Mr. Salem?

3 A I know we discussed hypothetical situations or
4 maybe how I felt before we got the right people, but I am
5 sure after we had made the arrests that I was not talking
6 about Iraq doing that for the war.

7 Q Didn't you ask Mr. Salem to find out about Musab
8 Yasin, who was an Iraqi and related to one of the World
9 Trade Center coconspirators?

10 A Yes.

11 Q Didn't you tell Mr. Salem that you would hate to
12 find out that it -- withdrawn.

13 Didn't you tell Mr. Salem that you would hate to
14 think that what's going on, if this guy turns out to be an
15 Iraqi intelligence operation, that these people, meaning the
16 World Trade Center defendants, were used? Did you have that
17 conversation with him?

18 MR. FITZGERALD: Objection, 403.

19 THE COURT: Sustained.

20 Q Did Mr. Salem discourage you from following up
21 other leads of possible suspects in the World Trade Center
22 bombing?

23 A No.

24 MS. AMSTERDAM: I am through with my examination
25 subject to this tape.

1 THE COURT: Subject to the offer?

2 MS. AMSTERDAM: Subject to the offer.

3 MR. FITZGERALD: Your Honor, it is 34 pages.

4 Could I look at it over the break?

5 THE COURT: All right. They are going to look at
6 it over the break. It is 34 pages long.

7 Anyone else? Is there any other examination?

8 MR. NOOTER: Judge, I have a very brief
9 examination.

10 THE COURT: Go ahead. Mr. Nooter representing
11 Mr. Wahid Saleh.

12 CROSS-EXAMINATION

13 BY MR. NOOTER:

14 Q Agent, I just want to direct your attention to
15 the CM tapes that were taped on the last day of the
16 investigation, that is, June 23, and recovered after the
17 arrests went down. Do you know what I am talking about,
18 CM's 62, 63 and 64?

19 A Counselor, I know they were there but I had
20 nothing personally to do with any of that.

21 MR. NOOTER: That was my only question. Thank
22 you.

23 THE COURT: Anyone else? Cross?

24 MR. FITZGERALD: Yes, Judge. Thank you.

25

1 CROSS-EXAMINATION

2 BY MR. FITZGERALD:

3 Q Good morning -- good afternoon. Sorry. Agent
4 Anticev, you were just asked questions about a Musab Yasin.
5 Do you recall those questions from Miss Amsterdam?

6 A Yes.

7 Q Is it fair to say that Musad Yasim lived in New
8 Jersey with Mohammad Salameh, as far as you understood it?

9 A Yes.

10 Q Did you understand him to be on the board of
11 directors of the Farook mosque in Brooklyn?

12 A I believe so.

13 Q He was not someone who lived in Iraq?

14 A No.

15 Q You were asked whether or not Emad Salem
16 discouraged the FBI from following up any leads. Did Emad
17 Salem report information as to the whereabouts of Mahmoud
18 Abouhalima to you?

19 A Yes, he did.

20 Q Did he first tell you that Mahmoud Abouhalima was
21 in Saudi Arabia, if you recall?

22 A I believe he did.

23 Q Did he then report to you that he had learned
24 that Mahmoud Abouhalima was arrested in Egypt?

25 A Yes, he did.

1 Q Did he then encourage you to have the FBI get him
2 back from Egypt?

3 A Yes.

4 Q Did he at any time express any concern that if
5 Mahmoud Abouhalima was brought back to the United States,
6 that Mahmoud Abouhalima might implicate him in the World
7 Trade Center bombing?

8 A No.

9 MR. FITZGERALD: Before I ask the next question,
10 your Honor, I will stipulate that Wahid Moharam is not Wahid
11 Saleh and has no relation to Wahid Saleh.

12 Q Did Emad Salem advise the FBI that there was a
13 witness Wahid Moharam, who had spoken to Mahmoud Abouhalima
14 the night of the World Trade Center bombing?

15 A Yes, the day of the World Trade Center bombing.

16 Q Did he encourage the FBI to go out and find this
17 person and interview him and develop him into a cooperating
18 witness?

19 A Yes, he did.

20 Q Did he express any concern that if Wahid Moharam
21 were to become a cooperating witness, he might tell you guys
22 that Emad Salem was part of the World Trade Center bombing?

23 A No.

24 Q During the spring of 1993, during the
25 consensually monitored tapes were you aware that Emad Salem

1 kept asking people about the World Trade Center explosion?

2 A Yes.

3 Q Did he prod Siddig Ali for what information
4 Siddig Ali knew about the World Trade Center explosion?

5 MS. AMSTERDAM: Objection to "prod," your Honor.

6 THE COURT: "Question."

7 Q Did he question Siddig Ali on more than one
8 occasion for whatever information Siddig Ali had about the
9 World Trade Center explosion?

10 A Yes.

11 Q Did he ever indicate to you, did Mr. Salem ever
12 indicate to you any concern that he was afraid that Siddig
13 Ali would say you built the bomb?

14 A No.

15 Q You were asked questions by Ms. Amsterdam about
16 whether or not you explained your understanding of what
17 conspiracy is to Emad Salem. Do you remember those
18 questions?

19 A Yes.

20 Q Did you also explain to Emad Salem the Brady
21 rule? Do you know what the Brady rule is?

22 A Yes.

23 Q Did you tell Emad Salem that if he came across
24 any information indicating that anyone, including Mohammad
25 Salameh, was innocent, that the government would disclose

1 that information in good conscience?

2 A Yes.

3 Q Did you hear that on the tapes that were later
4 recovered from Emad Salem?

5 A Yes.

6 Q Did you tell Emad Salem on a number of occasions
7 not to associate himself with the attorneys for the defense
8 in that case, in the World Trade Center case?

9 A Yes.

10 Q Did you tell Emad Salem that even if he heard
11 anything about defense strategy he should not share it with
12 you?

13 A Yes.

14 Q You were asked questions about whether or not
15 Emad Salem asked for \$200,000 for the information he
16 provided concerning Mahmoud Abouhalima. Do you remember
17 those questions?

18 A Yes.

19 Q Are you also aware that the FBI offered a reward
20 of \$2 million to anyone who helped locate Ramzi Yousef or
21 Musab Yasin?

22 A Yes.

23 Q And for that \$2 million he had to simply indicate
24 where the person was located, isn't that correct?

25 A Yes.

1 Q They didn't have to go underground or wear a wire
2 or testify, is that correct?

3 A That is correct

4 Q Mr. Jacobs asked you some questions this morning
5 several times about a conversation where Emad Salem said he
6 wouldn't follow that rules and then he actually read to you
7 that conversation. Did you understand Mr. Salem to be
8 telling you that Mr. Salem was going to break the law and
9 frame people when he told you during that conversation that
10 he wasn't following that rule?

11 MR. JACOBS: Objection.

12 THE COURT: Overruled.

13 A Could you repute the question.

14 Q During that conversation that was read to you
15 when Emad Salem said the various things about how they want
16 to do it, they want to get the information, they want the
17 credit, they don't want to give me nothing, I'm not
18 following that rule, did you understand him, Emad Salem, to
19 be telling you that he was going to break the law and frame
20 innocent people?

21 A No.

22 Q You are testifying today before a jury in a
23 criminal trial. How many times before in your career have
24 you testified before a jury in a criminal trial?

25 MR. JACOBS: Objection.

1 THE COURT: Overruled.

2 A Never.

3 Q Have you ever worked as a case agent and sat in
4 on a criminal trial?

5 A No.

6 Q Have you ever been involved in making discovery,
7 in determining what things have to be produced and not
8 produced?

9 A No.

10 Q In 1991 and 1992, the matter that you were
11 working on with Mr. Emad Salem, is it fair to say that that
12 was an intelligence investigation and not a criminal
13 investigation?

14 A Yes.

15 Q You were asked yesterday by a number of counsel
16 about the transcripts Nosair WW-T. That is the transcript
17 of yourself, Detective Napoli and Emad Salem in a car in
18 early March 1993. And you were asked questions about
19 whether or not your notes reflected that Emad Salem had told
20 you about certain targets. Do you recall those questions?

21 A Yes.

22 Q During that conversation, WW-T, did Emad Salem or
23 the others present make reference to the plot to kill an
24 assemblyman?

25 A Yes.

1 Q And had you heard that before from Emad Salem?

2 A Yes.

3 Q Was there reference to a plot to kill a Judge
4 Schlesinger?

5 A Yes.

6 Q Had you heard that information from Emad Salem
7 before?

8 A Yes.

9 Q Was there reference during that conversation to
10 an escape plan?

11 A Yes.

12 Q And was that the escape of Sayyid Nosair from
13 Attica state facility?

14 A Yes.

15 Q And had you heard about that matter from Emad
16 Salem before?

17 A Yes.

18 Q Was there reference in that conversation to
19 detonating 12 bombs in New York City?

20 A Yes.

21 Q And had you heard about a plan to detonate bombs
22 before?

23 A Yes, I did.

24 Q Was there discussion during that taped
25 conversation of Jewish targets of that pipe bombing

1 campaign?

2 A Yes.

3 Q And had you heard that before?

4 A Yes.

5 Q Was there discussion during the conversation of
6 Ibrahim El-Gabrownny indicating that he wanted to get
7 detonators from Afghanistan?

8 A Yes.

9 Q And had you heard that from Emad Salem before?

10 A Yes.

11 Q And was there discussion in the conversation by
12 you of Ibrahim El-Gabrownny telling Emad Salem that he wanted
13 high explosives?

14 A Yes.

15 Q And had you heard that before?

16 A Yes, I did.

17 Q And was there discussion by Emad Salem during
18 that tape recorded conversation that he knew someone back in
19 1992 who had ready-made bombs, who had bombs already made?

20 A I am sorry. Can you repeat that.

21 Q Do you recall Detective Napoli during this
22 conversation saying oh, you're talking about Rashid, during
23 WW-T, if you recall?

24 A No, I don't.

25 Q Let me approach you with a copy of Government's

1 Exhibit WW-T directing your attention to page 19 of Nosair
2 Exhibit WW-T, looking at that, was there conversation with
3 Emad Salem about someone who was supposed to have bombs
4 available in 1992? You are looking at it. Let me know if I
5 am incorrect.

6 A Yes, I see it.

7 Q And did Detective Napoli indicate the name
8 Rashid?

9 A Yes.

10 Q And had you heard about that before?

11 A Yes.

12 Q This conversation in early March '93 was before
13 CM 25, the tape recorded conversation between Emad Salem and
14 defendant Clement Hampton-El on May 30, 1993, is that
15 correct?

16 A Yes.

17 Q On page 17 of that transcript, two pages earlier,
18 you make a statement to Emad Salem after the name Sattar
19 comes up, or Saad comes up, should I be worried. Do you see
20 that?

21 A Yes.

22 Q What were you talking about?

23 A Should I be worried with about people who are
24 responsible for acts at the World Trade Center and murder,
25 to consider to be a threat to them and they would be out to

1 hurt me.

2 Q There is a reference there to where I live. Do
3 you see that reference?

4 A Yes.

5 Q What were you talking about there?

6 A About the fact that I ran into Sattar by my
7 house.

8 Q Did you have any conversation with Emad Salem
9 about whether or not Sattar told anyone where you lived?

10 A Yes.

11 Q What did he tell you?

12 A He told me that on one occasion he saw Sattar
13 talk to another individual, saying I have information
14 regarding the whereabouts of Anticev, and they walked off
15 into a corner to discuss it further.

16 Q Who was the individual that walked off into the
17 corner to talk about your address with Mr. Sattar?

18 A I think it was Mohammed Abdou.

19 Q You were asked questions yesterday about
20 Mr. Salem's photograph being on a board or a chart or a
21 display. Do you recall those questions?

22 A Yes.

23 Q You indicated to the jury that a number of people
24 were subpoenaed in the fall of '92 for prints or
25 photographs, is that correct?

1 A Yes.

2 Q How many of those people that were subpoenaed had
3 their photographs put on display?

4 A All of them.

5 Q Did you physically create this display or did you
6 have a clerk do it?

7 A I had a clerk do it.

8 Q And among the people whose photographs and prints
9 were taken were your informant Emad Salem and other people,
10 correct?

11 A Yes.

12 Q Do you try to keep the identity of an informant
13 secret?

14 A Yes.

15 Q Did you tell the clerk when you handed him the
16 photographs, by the way, one of these photographs is an
17 informant?

18 A No, I did not tell him that.

19 Q When you saw the display come back and among the
20 different people pictured on this display included Emad
21 Salem, a confidential informant, did you think that it was a
22 bad idea that he was included just like anybody else?

23 MS. AMSTERDAM: Objection, your Honor, to what he
24 thought.

25 THE COURT: Sustained.

1 Q Did you leave it up?

2 A Yes, for a while.

3 Q Did this go up before or after the bombing of the
4 World Trade Center?

5 A Before.

6 Q Did you explain this to Emad Salem when he asked
7 you about it?

8 A Yes.

9 Q You were asked questions about your debriefings
10 of Emad Salem in 1992. Was there a time period during 1992
11 when you were not available to participate in his
12 debriefings of Emad Salem?

13 A Yes.

14 Q For what time period was that?

15 A From June 8, '92 to September 8, '92.

16 (Continued on next page)

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1 Q Why was that?

2 MR. JACOBS: Objection.

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

5 (At the side bar)

6 THE COURT: Is this something other than just I
7 was out ill?

8 MR. FITZGERALD: I was out ill.

9 THE COURT: Why don't you lead him and ask
10 whether he was out ill. I don't want some graphic
11 description of whatever it was that kept him out.

12 MR. PATEL: It was a three-month illness. I
13 object on scope. No one went near this.

14 MR. FITZGERALD: This was during a time when all
15 the polygraphs were happening and everything, and people
16 were asking why he was terminating. He wasn't out for any
17 of this. He was out ill. They are implying that he is a
18 case agent, what's in his notes, if he didn't hear this or
19 that, it didn't happen. There is a three-month gap.

20 MR. STAVIS: He had brain surgery, is my
21 understanding, your Honor.

22 THE COURT: That is definitely not coming in.

23 MR. FITZGERALD: He was out on sick leave.

24 MR. PATEL: There were very specific questions
25 about --

1 THE COURT: The only thing I will allow you and I
2 want you to lead him on this, were you out on an authorized
3 leave. That is the question.

4 MR. JACOBS: We will go for that.

5 MR. LAVINE: We will stipulate that he was out on
6 an authorized leave for that period.

7 THE COURT: He can ask him.

8 (Continued on next page)

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IPT

1 (In open court)

2 BY MR. FITZGERALD:

3 Q If you could just answer the following question
4 yes or no.

5 During the time period you just discussed, from
6 June to September 1992, were you out on an authorized leave
7 from work?

8 A Yes.

9 Q Now, for CM10, you were asked questions yesterday
10 by Ms. Stewart about CM10, which I believe she indicated was
11 the tape recording made of Emad Salem speaking to defendant
12 Abdel Rahman in his kitchen, do you recall those questions?

13 A Yes.

14 Q You indicated that the tape was placed in the
15 safe for several days and then it indicates it was removed
16 and entered into evidence for duplicating, is that correct?

17 A Yes.

18 Q Did you do any voice dubbing on CM10 during those
19 three days it was in the safe?

20 A No.

21 Q Do you speak Arabic?

22 A No.

23 Q Did Detective Napoli speak Arabic?

24 A No.

25 Q Did you direct that Emad Salem go back to

1 defendant Abdel Rahman's apartment, go back in the kitchen,
2 pledge allegiance again, and try the conversation one more
3 time?

4 A No.

5 Q As you sit here today, do you have any reason to
6 believe that that tape was altered in any way, shape or form
7 during the time it spent in your safe?

8 A No.

9 Q Are you aware of whether or not that tape was
10 later taken out for a defense expert to examine it for
11 authenticity?

12 A I am not aware of that.

13 Q Were you concerned about that?

14 A No.

15 MS. STEWART: Objection.

16 THE COURT: That is overruled.

17 Q Now, sir, let me ask you this: Did you plant any
18 evidence in this case?

19 A No.

20 Q Did you plant 255 gallons of diesel oil in a van
21 to be taken from a gas station to the safe house?

22 A No.

23 Q Did you write a fax number of Yousuf Hussein on
24 the back of the personal property of Mohammed Saleh?

25 A No.

1 Q Did you destroy any evidence?

2 A No.

3 Q Did there come a time when you heard any tapes --
4 excuse me. Did you ever hear a tape where Amir Abdelgani or
5 Fares Khallafalla said, "Hey, you told us in the car right
6 out this is all a game, it's make-believe"?

7 A No.

8 Q Did you plant any evidence on any defendants?

9 A No.

10 Q As you sit here today, do you believe that Emad
11 Salem blew up the World Trade Center?

12 A Absolutely not.

13 MR. JACOBS: Objection.

14 THE COURT: Overruled.

15 Q Were you here during the cross-examination of
16 Emad Salem for a month earlier this year?

17 A No.

18 Q Do you know whether or not anyone asked him
19 whether he blew up the World Trade Center?

20 A No.

21 MS. AMSTERDAM: Objection.

22 THE COURT: Mr. Ricco?

23 CROSS-EXAMINATION

24 BY MR. RICCO:

25 Q Mr. Fitzgerald just asked you whether or not you

1 believed that Emad Salem blew up the World Trade Center and
2 you said absolutely not, that you didn't believe that,
3 right?

4 A I'm sorry?

5 Q Mr. Fitzgerald just asked you whether or not you
6 believe Emad Salem blew up the World Trade Center, and you
7 answered "absolutely not," right?

8 A Right.

9 Q When you were sitting in that car with Agent
10 Napoli having a conversation about the World Trade Center,
11 did you believe then that Emad Salem was taping you?

12 A No.

13 Q Now, Mr. Fitzgerald asked you questions about
14 Brady material. Do you recall those questions?

15 A Yes.

16 Q Did you know when you were speaking to Emad Salem
17 that he had taped conversations with Mr. El-Gabrownny talking
18 about voting?

19 A No.

20 Q Did you know that Emad Salem had conversations
21 with Mr. El-Gabrownny when he was talking about writing
22 letters to judges?

23 A No.

24 Q Have you ever reviewed any of those tapes?

25 A No.

1 Q Did you believe that if Emad Salem had in his
2 possession Brady material that he would turn it over to you,
3 like you requested?

4 A I don't know.

5 Q Now, Mr. Fitzgerald asked you questions about
6 your explanation to Emad Salem of the pictures on the wall,
7 and you said that you explained it to him that it was a part
8 of an investigation to protect his cover, isn't that right?

9 A I think you're getting mixed up with different
10 pictures. We're referring to the pictures that he, like you
11 said yesterday, that he got upset at when, after the
12 conversation in the car, he came back to the office, that
13 picture.

14 Q Right.

15 A OK.

16 Q You gave him an explanation, didn't you?

17 A Yes.

18 Q Did he accept the explanation?

19 A He brought it up again -- no, not really.

20 Q Now, Mr. Fitzgerald asked you questions about
21 running into Sattar in your neighborhood, right, just now?

22 A Yes.

23 Q When you ran into Mr. Sattar in your
24 neighborhood, Mr. Sattar was wearing a postal uniform
25 delivering mail, isn't that correct?

1 A That sure is.

2 Q And what you discovered is that Mr. Sattar is a
3 mailman who delivers mail in your neighborhood, isn't that
4 right?

5 A That's true.

6 Q Now, with respect to this man Mohammed Hassan
7 Abdou, has the Bureau ever prosecuted him for --

8 MR. FITZGERALD: Objection.

9 THE COURT: Sustained as to form.

10 Q Did anybody ever threaten -- withdrawn.

11 Did anyone named Mohammed Hassan Abdou execute
12 any threats against you, your family, your home or anything
13 in your neighborhood, to your knowledge?

14 A No.

15 Q Now, Mr. Fitzgerald asked you questions about
16 what you heard before while you were in the car. He asked
17 you if you had heard the story about the assassination
18 against Judge Schlesinger, you said yes, correct?

19 A Yes.

20 Q He asked you if you had heard the story about the
21 12 bombs, you said yes, correct?

22 A Yes.

23 Q He asked you whether or not you had heard the
24 story about the assemblyman in Brooklyn, and you said yes,
25 correct?

1 A Correct.

2 Q And you had heard all of that back in 1992, isn't
3 that correct?

4 A Yes.

5 Q These were the items that Mr. Salem was asked to
6 verify by either wearing a wire or taking a polygraph, to
7 your knowledge?

8 MR. FITZGERALD: Objection.

9 THE COURT: Sustained.

10 Q Now, in response to Mr. Fitzgerald's questions
11 about whether this was an intelligence investigation, you
12 said it was an intelligence investigation in 1991 and 1992,
13 right?

14 A Yes.

15 Q So that means back in 1991 in November and
16 December, you were merely investigating Mr. El-Gabrowny,
17 isn't that correct?

18 MR. FITZGERALD: Objection just to form.

19 Q It was an intelligence investigation, isn't that
20 correct?

21 A Yes.

22 Q You were attempting to gather information on
23 Mr. El-Gabrowny, isn't that correct?

24 A Yes.

25 Q And in January of 1992, February of 1992, March,

1 April, May and June of 1992 you were still attempting to
2 gather information on Mr. El-Gabrowny, isn't that correct?

3 A That's correct.

4 Q There was no pending criminal proceeding against
5 Mr. El-Gabrowny, isn't that correct?

6 A No.

7 Q And what you later discovered was that Emad Salem
8 was taping Mr. El-Gabrowny as a part of his own personal
9 recordings in that investigation, isn't that correct?

10 MR. FITZGERALD: Objection just to form.

11 THE COURT: Did you later discover that during
12 what period?

13 MR. RICCO: From January 1992, your Honor,
14 through June of 1992.

15 THE COURT: That Mr. Salem had made personal
16 tapes of Mr. El-Gabrowny?

17 THE WITNESS: I don't think so.

18 Q Based on your knowledge, isn't that right?

19 A Based on my knowledge.

20 Q We're talking about the same Emad Salem, right,
21 1992 and 1993, same person, right?

22 A Yes.

23 Q Now, Mr. Fitzgerald asked you questions about the
24 information that Emad Salem gave to the Bureau about Mahmud
25 Abouhalima?

1 A Yes.

2 Q Didn't a man by the name of Abdo Rahman Haggag
3 tell the FBI that Mahmud Abouhalima was in Egypt?

4 A I don't know. I never spoke to Haggag. I know
5 what Emad told me.

6 Q OK. Emad also told you where he got that
7 information from, didn't he?

8 A Yes, he did.

9 Q He told you he got that information from Mohammed
10 Abouhalima, Mr. Mahmud Abouhalima's brother, isn't that
11 correct?

12 A I believe that's incorrect. I think he got it
13 through a third party who said that he got it from Mohammed.

14 Q OK. You subsequently discovered that everybody
15 that went to the El-Salaam mosque in Jersey City knew that
16 Mahmud Abouhalima was in Egypt, isn't that correct?

17 A I don't know.

18 Q Finally, Mr. Fitzgerald asked you questions about
19 Yousef, "Yousef Massin"?

20 A Musab Yasin.

21 Q Musab Yasin. I'm sorry.

22 In response to Mr. Fitzgerald's questions, you
23 indicated that he lived with Mohammed Salameh in Jersey
24 City?

25 A Yes.

1 Q When?

2 A I don't recall.

3 Q Was it 1999?

4 A I don't know.

5 Q 1993?

6 A I know that there was -- that they lived
7 together. I don't know the dates.

8 Q Now, with respect to the \$2 million reward for
9 providing information for the arrest of Musab Yasin or Ramzi
10 Yousef, was any of that money paid to Emad Salem, to
11 your knowledge?

12 A Not to my knowledge.

13 MR. RICCO: No further questions, your Honor.

14 THE COURT: Mr. Jacobs?

15 CROSS-EXAMINATION (Continued)

16 BY MR. JACOBS:

17 Q Agent Anticev, you took an oath when you became a
18 law enforcement officer, didn't you, sir?

19 A Yes.

20 Q That was an oath to protect and defend the laws
21 of this country, correct, sir?

22 A Yes.

23 Q Mr. Fitzgerald asked you questions about planting
24 evidence in connection with this case, correct, sir?

25 A Yes.

1 Q He asked you questions about Emad Salem framing
2 or breaking the law, correct, sir?

3 A Yes.

4 Q I ask you, sir, did you conceal and intentionally
5 conceal the existence of tapes in this case up until June
6 28, 1993? Yes or no.

7 MR. FITZGERALD: Objection.

8 MR. JACOBS: I will withdraw it.

9 Q Did you conceal the existence of tapes in this
10 case? Yes or no.

11 MR. FITZGERALD: Objection.

12 THE COURT: Overruled.

13 A Yes.

14 MR. JACOBS: I have no further questions of the
15 witness.

16 MR. PATEL: May I, your Honor?

17 THE COURT: Mr. Patel.

18 REDIRECT EXAMINATION

19 BY MR. PATEL:

20 Q Agent Anticev, there are a number of surveillance
21 techniques and recording techniques used in this case, is
22 that correct?

23 A Yes.

24 Q Wiretaps, videotapes, the personal tapes that
25 we've been talking about for the last few days, CM's, a

1 number of recordings, correct?

2 A Correct.

3 Q And you over the last few years have reviewed a
4 lot of these recordings, correct?

5 A That is incorrect.

6 Q Transcripts?

7 A I reviewed my own tapes.

8 Q You reviewed --

9 A And the CM's.

10 Q And you reviewed some of the videotapes?

11 A Not really, no.

12 Q You're familiar with what was going on with the
13 investigation, is that fair to say?

14 A Yes.

15 Q On any of these recordings that you're familiar
16 with, did you hear anyone other than Emad Salem talk about
17 the 12-bomb plot or the Dov Hikind plot or the Judge
18 Schlesinger plot?

19 A No.

20 MR. PATEL: Thank you.

21 THE COURT: Ms. Amsterdam?

22 RE-CROSS-EXAMINATION

23 BY MS. AMSTERDAM:

24 Q Sir, regarding Musab Yasin -- is that how you
25 pronounce it?

1 A Yasin.

2 Q You stated that he lived in Jersey City, correct?

3 A Yes.

4 Q You are aware, however, that he is an Iraqi
5 citizen by birth, correct?

6 A I heard that --

7 Q Let me rephrase that.

8 A I'm not sure.

9 Q In the conversation with Emad Salem you said he
10 was an Iraqi, did you not?

11 A Yes.

12 Q Indeed, he has a brother who is an unindicted
13 co-conspirator who is in Baghdad, Iraq, is he not?

14 A I don't know.

15 Q And there were phone calls, were there not, from
16 Mohammed Salameh's apartment to Baghdad, Iraq, were there
17 not?

18 A I don't know.

19 Q Mr. Fitzgerald asked you whether or not you
20 thought Emad Salem had anything to do with the World Trade
21 Center case. First, do you know where Emad Salem was at
22 12:15 on February 26, 1993 from your personal observations?

23 A No.

24 Q But you do know that at 3 o'clock in the
25 afternoon he checked himself into the hospital with an ear

1 problem, correct?

2 A I know that now.

3 Q Now, when he went to FBI headquarters and saw his
4 face up on a board, did you say -- withdrawn.

5 Was there a title to that board that said "World
6 Trade Center Suspects"?

7 A It did not say that.

8 Q It did not say that.

9 He drew that conclusion, did he not?

10 MR. FITZGERALD: Objection.

11 THE COURT: Sustained.

12 Q He raised the question of whether or not he was a
13 suspect in the World Trade Center, did he not?

14 A Yes.

15 Q By the way, sir, you are an attorney by training,
16 are you not?

17 A No.

18 Q Do you have a law degree?

19 A No.

20 Q Mr. Fitzgerald asked you about the Brady rule and
21 whether or not you had explained to Mr. Salem that
22 exculpatory evidence would have to be turned over to the
23 defense, correct?

24 A Yes.

25 Q Isn't it a fact that in that very same

1 conversation with Mr. Salem you talked about cleansing
2 information so that the defense could not get it?

3 A Yes.

4 MR. FITZGERALD: Objection.

5 THE COURT: Overruled.

6 Q The answer was yes?

7 A Yes.

8 Q You talked about building a Chinese wall,
9 correct?

10 A Yes.

11 Q So that Mr. Salem could provide information, but
12 the defense would not be able to get it under discovery,
13 correct?

14 A I tried to explain three concepts at the same
15 time.

16 Q I will rephrase the question. You in the same
17 conversation talked about a method for cleansing information
18 in this prosecution --

19 THE COURT: Ms. Amsterdam, that's been --

20 Q -- did you not?

21 THE COURT: -- asked and answered. You can emote
22 on it during your summation.

23 Do you have anything else to ask?

24 MS. AMSTERDAM: I have one last question.

25 Q Mr. McCarthy asked you whether or not you ever

1 heard a conversation with my client in a car en route to the
2 safe house in which Emad Salem said, "We are just going to
3 pretend that we're doing training," do you recall that
4 question?

5 MR. FITZGERALD: Objection to form.

6 MS. AMSTERDAM: Mr. Fitzgerald.

7 MR. FITZGERALD: That wasn't the objection.

8 THE COURT: Why don't you rephrase it.

9 Q Do you recall Mr. Fitzgerald's conversation
10 regarding my client on a ride out on the safe house?

11 A I'm sorry?

12 Q On redirect -- actually, on cross, Mr. Fitzgerald
13 asked you whether or not you ever heard a tape recording of
14 Fares Khallafalla and Amir Abdelgani en route to the safe
15 house, during which time Emad Salem said in sum or
16 substance, "Let's just pretend we're making bombs," and you
17 said you never heard such a recording.

18 MR. FITZGERALD: Objection.

19 THE COURT: Yes.

20 MS. AMSTERDAM: I will ask your Honor if you
21 could phrase it better.

22 MR. FITZGERALD: Could I have a moment?

23 THE COURT: At least get the names of the players
24 right.

25 MS. AMSTERDAM: Amir Abdelgani.

1 THE COURT: And then you say which Mr. Salem
2 said. The question, I think, from Mr. Fitzgerald was, did
3 he ever hear a recording in which, among others,
4 Mr. Khallafalla said something to the effect that this is
5 all a game. We're just playing. Let's pretend that we're
6 not really building bombs."

7 That was the question that Mr. Fitzgerald asked
8 in substance. Do you recall that question?

9 MS. AMSTERDAM: Thank you, sir.

10 Q Do you recall that question?

11 THE COURT: Or something that sounded like it.
12 It was not a memorable question. In any event, do you have
13 a question to ask?

14 Q In any event, sir, you are aware as you sit
15 there, are you not, that there is no recording of the ride
16 out to the safe house the first night?

17 A I don't know.

18 Q You are aware, are you not, and I direct your
19 attention to the envelope that I placed in front of you,
20 that the tape recording of the conversation en route to the
21 safe house that evening was disconnected, are you not?

22 MR. FITZGERALD: Objection to form.

23 MS. AMSTERDAM: I have no further questions.

24 THE COURT: That objection is sustained.

25 MR. NOOTER: Your Honor, I have some questions.

1 RE CROSS-EXAMINATION

2 BY MR. NOOTER:

3 Q Sir, Mr. Fitzgerald asked you whether you had
4 instructed Emad Salem to frame people or set people up, do
5 you recall that?

6 A Yes.

7 Q Specifically, did you instruct Emad Salem to try
8 to grab Wahid Saleh?

9 A No.

10 Q Did you instruct Emad Salem to ask Siddig Ali to
11 call him over and over and over and over again?

12 A No.

13 Q Did you instruct Emad Salem to try to grab Wahid
14 and bring him to the safe house?

15 A No.

16 Q Did you instruct Emad Salem to get Wahid into the
17 safe house to impress him and ask him for money?

18 A Not that I recall, I don't think so.

19 Q Did you instruct Emad Salem to try to trick him
20 into answering questions in the safe house?

21 A No.

22 Q Did you instruct Emad Salem that it was
23 permissible to participate in a conversation about
24 blackmailing people so that they wouldn't talk?

25 A I don't know what you're talking about.

1 Q Have you seen the tape that was made in the safe
2 house on June 23 into June 24?

3 A No.

4 MR. NOOTER: I have no further questions.

5 THE COURT: Mr. Wasserman?

6 RECROSS-EXAMINATION

7 BY MR. WASSERMAN:

8 Q Sir, you testified about this board of pictures
9 that Emad Salem saw when he was at your headquarters. Was
10 my client's picture, Clement Hampton-El --

11 MR. WASSERMAN: Could you stand up?

12 Q -- was that picture up there?

13 A No.

14 MR. WASSERMAN: Could you sit down.

15 Q Do you know that my client goes by the name
16 Dr. Rashid?

17 A Yes.

18 Q It was pointed out to you by Mr. Fitzgerald and
19 on Exhibit WW/T, Nosair WW/T there was a reference by Emad
20 Salem to Rashid having ready-made bombs, correct?

21 A Yes.

22 Q And that was in 1992 according to Emad Salem,
23 correct?

24 A Yes.

25 Q The fact is that Emad Salem never got any

1 ready-made bombs from Dr. Rashid, isn't that correct?

2 A That's correct.

3 Q The fact is he never got anything from Rashid,
4 isn't that correct?

5 A That's correct.

6 Q The fact is that you or Detective Napoli asked
7 Emad Salem to ask him to get bombs, grenades or C-4, isn't
8 that correct?

9 A Yes.

10 Q The fact is that he didn't provide them to Emad
11 Salem, isn't that correct?

12 A That's correct.

13 Q The fact is that on June 23, the night before the
14 arrests were made, the case was taken down, you and
15 Detective Napoli told Emad Salem that your office was
16 pissed --

17 MR. FITZGERALD: Objection.

18 THE COURT: Sustained.

19 Q You told him that --

20 MR. WASSERMAN: I will rephrase it.

21 Q You told him that your office was unhappy?

22 MR. FITZGERALD: Objection.

23 THE COURT: Sustained.

24 Q Did you not tell him on that night, did you not
25 instruct him to get the doctor to buy ammunition or

1 material?

2 MR. FITZGERALD: Objection.

3 THE COURT: Sustained.

4 Q Did you instruct him at any time to buy
5 ammunition or material?

6 A He was working with -- Siddig Ali was trying to
7 get that stuff from Mr. Hampton-El.

8 Q Did you instruct Emad Salem to get ammunition or
9 material from my client on June 23?

10 A No.

11 Q Were you present when Detective Napoli instructed
12 Emad Salem to do that?

13 MR. FITZGERALD: Objection.

14 THE COURT: Sustained.

15 MR. WASSERMAN: No further questions.

16 THE COURT: We are going to break for lunch.
17 Ladies and gentlemen, please leave your notes and other
18 materials behind. Please don't discuss the case. We will
19 resume this afternoon.

20 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may step down.

3 (Witness excused)

4 THE COURT: I am sorry. Mr. Stavis?

5 MR. STAVIS: Yes.

6 Some of my co-counsel and myself have certain
7 objections to certain portions of 34-3, and we are going to
8 be meeting over lunch to discuss our position with regard to
9 portions of Source Tape 34-3.

10 THE COURT: Talk my language. Which exhibit?

11 MR. RICCO: 634-3.

12 THE COURT: That is the one that Mr. Jacobs
13 offered?

14 MR. STAVIS: No, Ms. Amsterdam offered.

15 MS. AMSTERDAM: I'm sorry. I couldn't hear.

16 THE COURT: Your colleagues are telling you they
17 have some objections to certain portions of the tape that
18 you offered, and you are about to duke it out over lunch.
19 They didn't put it that way, but that's what it sounds like.

20 MS. AMSTERDAM: That's what makes
21 multiple-defendant cases multiple-defendant cases.

22 THE COURT: I guess it does.

23 MR. STAVIS: The other issue is, if I might raise
24 it briefly, at a side bar that some defense counsel did not
25 attend Mr. Fitzgerald indicated that he was going to take

1 certain actions premised on an assumption that each and
2 every defense counsel in the case was joining a frameup
3 defense.

4 I stated to your Honor at that time that I
5 specifically did not join that defense, but because some of
6 my co-counsel were not even present at the side bar where
7 that assumption was made, I think that before Mr. Fitzgerald
8 takes any actions based on what he perceives to be our
9 acquiescence, that he should be well advised that some of us
10 do not take that position.

11 THE COURT: Well, obviously that side bar was not
12 the first time that that theory was lofted. It's been
13 lofted a number of times, principally on Friday, where we
14 spent what? Four hours? Thank you.

15 We spent four hours talking about it. I didn't
16 hear one dissenting voice at that time, from which I
17 concluded that everybody was kind of willing to join the fun
18 as long as it was fun, but I now gather that, if it ceases
19 being fun, they don't want to join.

20 MR. STAVIS: I proffered specifically on Friday,
21 as your Honor -- your Honor just used the word "we" to
22 describe what happened. "We" did not cover everyone who was
23 present at the conference on Friday. I did not want my --
24 if your Honor says it is silence -- I was actually arguing
25 on a different point, but if your Honor has construed my

1 silence as acquiescence, I am now making my record clear.

2 MR. RICCO: Your Honor, I don't know how much fun
3 I am having, but I would just simply say this: A lot of the
4 defendants have different defenses in this case, and
5 naturally we don't all join all of them.

6 My only concern is that if the government, if
7 someone indicates he is arguing a frame, I assume the only
8 thing the government can do in response to that is to prove
9 its case, and if the government is going to say it is going
10 to prove its case, then let it prove its case.

11 MR. FITZGERALD: It was meant as a heads up to
12 all counsel. Under McKoen statements of attorneys are
13 statements of an act of a client. If the position before
14 this court is that certain items or areas of inquiry have
15 been foreclosed because they're not probative or they have
16 been sufficiently covered, and counsel is going to stand up
17 and say, wait a minute, we have this exception under U.S. v.
18 Matthews that we can put in a case, a defense that falls on
19 its face because it is our position, and we're committed,
20 and we are never changing from it, that there's an FBI
21 criminal conspiracy, a frameup here going on, if they are
22 going to use that to trump Rule 403, fine.

23 The price to be paid is they don't get to have
24 their fun and then walk away from it. We then have
25 available to us under McKoen the right to point out to a

1 jury that an attorney speaking as an agent for a client
2 claimed that there was --

3 THE COURT: It seems to me that has to await Mr.
4 Jacobs running away from it.

5 MR. JACOBS: I just want to be clear, that as far
6 as I am concerned, I stand by my remarks. I repeat my
7 remarks again. I heard the witnesses -- I just want to be
8 clear, and if the government wants to take me up on --

9 THE COURT: There are two distinct points to be
10 made here. One is that if you should change your mind about
11 the strategic wisdom of doing what you're doing, which is
12 kind of a high-wire act, then there may be a problem with
13 changing your mind.

14 My point was that when you do what you are doing,
15 you open up certain areas of inquiry that may be
16 uncomfortable for other people. That's a very different
17 point.

18 MR. JACOBS: That's two different points. In any
19 event --

20 THE COURT: It is two different points.

21 MR. JACOBS: What the government raises, and I am
22 not sure if my interpretation is completely correct, my
23 understanding of the case is that --

24 THE COURT: In any event, nobody is going to go
25 around quoting lawyers.

1 MR. JACOBS: That's all right.

2 THE COURT: Unless and until I say they can.

3 MR. JACOBS: In any event, where the --

4 THE COURT: As Mr. Ricco well knows.

5 MR. JACOBS: I think we may need to address,
6 though, some of the remarks -- I assume those proceedings
7 inside were sealed that we had before?

8 THE COURT: Right.

9 MR. JACOBS: With the government's now public
10 remarks on that, I still want to make additional
11 applications based upon the government's statements just now
12 publicly of what they consider to be opening the door. I
13 want to make a further application on a sealed record later
14 today or the next few days.

15 THE COURT: I have no idea what you are talking
16 about.

17 MR. JACOBS: OK.

18 THE COURT: I'm sorry.

19 I really am mystified, but I will let you do it
20 at some later point.

21 THE COURT: Mr. Wasserman?

22 MR. WASSERMAN: May I just inquire, is agent
23 Anticev coming back this afternoon?

24 THE COURT: He's coming back if they have any
25 more questions. He's not if they don't.

1 MR. FITZGERALD: Yes, a few brief questions.

2 MR. WASSERMAN: Thank you.

3 THE COURT: See you this afternoon.

4 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:10 p.m.

3 (Pages 13641 - 13642 sealed)

4 (In open court; jury not present)

5 THE COURT: Before the jury comes in, what is the
6 story with regard to the tape and the various objections to
7 it?

8 MR. FITZGERALD: Unresolved. I know some defense
9 counsel have objections to portions. The government's view
10 is that we would like a proffer as to relevance.

11 THE COURT: Can we do this at the beginning of
12 what would otherwise be the break?

13 MR. FITZGERALD: Fine.

14 MS. AMSTERDAM: If your Honor wouldn't mind,
15 perhaps we could do it at the beginning of tomorrow's
16 session so I can review the minutes of today's session to
17 see whether or not -- I am sorry. Maybe we could table it
18 till Monday because I would like to review the minutes.

19 THE COURT: If it is one of those disputes that
20 would be more easily resolved after a couple of days, fine,
21 we will do that.

22 Mr. Jacobs, lest you hear it from somebody else,
23 I made a joke off the record at your expense inside. I will
24 tell it to you afterwards.

25 MR. MCCARTHY: I was still laughing while we were

1 on the record.

2 (Laughter)

3 JOHN ANTICEV, resumed.

4 (Jury present)

5 THE COURT: Good afternoon, ladies and gentlemen.

6 JURORS: Good afternoon.

7 THE COURT: Mr. Fitzgerald.

8 MR. FITZGERALD: May I proceed? Thank you.

9 THE COURT: Please.

10 (Continued on next page)

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1 RE CROSS-EXAMINATION

2 BY MR. FITZGERALD:

3 Q Good afternoon. Before we broke for lunch, Mr.
4 Jacobs asked you questions about whether or not you
5 concealed the tapes that Emad Salem was making on his own.
6 Do you recall that question?

7 A Yes.

8 Q Can you tell the jury whether or not you were
9 ever asked prior to June 23, '93, by anyone whether or not
10 Emad had these tapes?

11 A No, I was never asked.

12 Q Did you do anything about the tapes?

13 A No.

14 Q What did you do to conceal the tapes?

15 A Nothing.

16 Q You just, you knew he had them and you did
17 nothing about it?

18 A Correct.

19 Q He asked you about your oath to uphold the laws
20 of the United States. Is it your understanding, in the
21 United States, that a person is allowed to tape record
22 conversations he is present for?

23 A Yes.

24 (Continued on next page)

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1 Q When you knew that Emad Salem had in his home
2 taped conversation of conversations that he had with people,
3 did you believe that he had committed a crime?

4 A No.

5 MR. JACOBS: Objection. I would like to see your
6 Honor at the side bar.

7 (At the side bar)

8 MR. JACOBS: It is not necessarily an objection
9 to the question but -- no, no. The point is, it is not what
10 Emad Salem was doing, I asked him what his oath was as an
11 agent. I am sorry, if I could just finish my thought. We
12 had been given instructions by your Honor and objections
13 were sustained concerning rules and regulations of the FBI,
14 and I think --

15 THE COURT: I will pick up where I think you are
16 going.

17 MR. JACOBS: OK. I am glad you know where I am.

18 THE COURT: I did not take your cross-examination
19 to mean that he should have disclosed these tapes because
20 there was some suggestion that Emad Salem had committed a
21 crime by tape recording people.

22 MR. FITZGERALD: I took it that way.

23 THE COURT: I didn't, and therefore I don't think
24 it is appropriate redirect to inquire into. Turning them
25 over to defense counsel is another thing but that happens,

1 as you know, after the indictment, not before. If you want
2 to go into that, that is fine.

3 MR. FITZGERALD: I don't.

4 THE COURT: That is a whole different thing from
5 this.

6 MR. JACOBS: I just --

7 THE COURT: If it's a nonobjection, it is
8 sustained.

9 (Continued on next page)

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1 (In open court)

2 BY MR. FITZGERALD:

3 Q Agent Anticev, you were asked questions by Ms.
4 Amsterdam about whether or not you had a conversation with
5 Emad Salem after the bombing of the World Trade Center where
6 you indicated that certain information was going to be
7 conveyed, and you began to explain the three things that you
8 were explaining to Mr. Salem, and she moved on to another
9 question. Can you tell the jury what it was that you were
10 explaining to Emad Salem in that conversation.

11 A At that time I was trying to explain to Emad that
12 there were great concerns because of his relationship with
13 these people, that he was going to get some or come into
14 contact with attorneys for the people who were charged in
15 the World Trade Center, and that the government is not
16 supposed to know anything about what happens in defense
17 strategy.

18 THE COURT: You mean the lawyers who represented
19 those people?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: Go ahead.

22 A And we were going to set up what we call a
23 Chinese wall, that another agent who has no involvement with
24 the prosecution of the World Trade Center would debrief Emad
25 to make sure that none of that defense strategy or anything

1 regarding the attorneys for the defendants would come into
2 the hands of the agents investigating the crime.

3 Q Was it your understanding that the prosecutors
4 and agents who were prosecuting that first trial of Mohammad
5 Salameh and others were not to hear anything from Emad Salem
6 about what Salameh's defense strategy might be?

7 A Yes.

8 Q Did you indicate to Emad Salem in that
9 conversation that you were doing your best to explain this
10 to him but he could meet with the prosecutor on that case
11 afterward?

12 A Yes. I tried to explain the best I could, and I
13 told him that it would be best also if he wanted to speak to
14 one of the U.S. Attorneys that was prosecuting the case to
15 explain that situation to him.

16 (Continued on next page)

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1 Q Did there come a time later on in the
2 conversation when he started to explain to you why it was
3 that they wanted to hire one attorney instead of another?

4 A Well, he attempted to, and I cut him off.

5 Q What did you tell him?

6 A That's just the kind of stuff I don't want to
7 hear from you.

8 Q Did you tell him to tell you the information, but
9 don't let anyone else know that you know this?

10 A No.

11 Q You told him not to tell you?

12 A Exactly.

13 Q You said that there were three things that you
14 were trying to explain to him during the conversation. What
15 were the other two things?

16 A The second point I was trying to make, I was
17 trying to explain to him in the context that we really
18 didn't know where he stood. This was the preliminary stages
19 of the Trade Bomb investigation, and he was at that time
20 very concerned about testifying.

21 We were trying to go ahead with the Trade Bomb
22 investigation, and we were doing well trying to solve it
23 forensically, and I was trying to explain to him that with
24 the information that we were going to try to keep him off
25 the stand.

1 Q Was he publicly known as an informant at that
2 point in time?

3 A No.

4 Q Were you telling him that you would make your
5 best efforts that no one would ever find out that he was an
6 informant if you could?

7 A Yes.

8 Q Did you tell him there was one exception where
9 you might have to disclose to the world that he was an
10 informant?

11 A I was trying to explain the concept called the
12 Brady rule. And my knowledge of the Brady rule at the time
13 was that if Emad came up with information that would
14 exonerate or prove that somebody that was arrested -- for
15 example, the Trade Bomb -- was totally innocent, I tried to
16 impress upon him that us, as the FBI, as the government,
17 would disclose the information and make him testify that a
18 certain person was innocent.

19 Q Did you tell him in sum and substance that we as
20 a government, as a people could not go ahead in good
21 conscience, we shouldn't prosecute an innocent man because,
22 in order to protect you?

23 A Yes, I said that.

24 Q You were making clear to him that, although you
25 would try to keep his identity a secret, you wouldn't hide

1 any information that any defendant was innocent?

2 A Correct.

3 Q Was it your understanding that you were trying to
4 keep his identity away from the defense but not exculpatory
5 information?

6 A That's the point I was trying to make.

7 Q Were you also trying to make sure that you didn't
8 get any defense strategy?

9 A Yes.

10 MR. FITZGERALD: May I have one second, your
11 Honor.

12 THE COURT: Yes.

13 Q Finally, Mr. Ricco asked you about how Emad Salem
14 came to learn that Mahmud Abouhalima was in Egypt.

15 How did Emad Salem tell you he learned that
16 Mahmud Abouhalima was in Egypt?

17 A He said he found out from Mohammed El-Gabrowny.

18 Q Did he tell you how Mohammed El-Gabrowny learned
19 it?

20 A Yes, that he got it from Mahmud's brother,
21 Mohammed Abouhalima.

22 Q And Mr. Ricco asked you whether or not a lot of
23 people at the El-Salaam mosque knew that Mahmud Abouhalima
24 was in Egypt, can you tell the --

25 THE COURT: And I sustained an objection to that

1 question, I believe.

2 MR. FITZGERALD: Oh, then I'm done.

3 Thank you, Judge.

4 MR. RICCO: I have a couple of questions.

5 THE COURT: Mr. Ricco.

6 RECROSS-EXAMINATION

7 BY MR. RICCO:

8 Q In relation to this Chinese wall that you just
9 testified to, you explained to Emad Salem that what you were
10 talking about was protecting innocent people?

11 A In reference to the Brady rule?

12 Q Yes. That's what you were explaining to Emad
13 Salem, isn't that correct?

14 A Yes, it's one of the points I was trying to
15 explain.

16 Q That was in your mind, isn't that right, and
17 that's what you said, isn't that correct? In other words,
18 those are the words that you used, isn't that right?

19 A What words?

20 Q The words that the Chinese wall and the cleansing
21 of evidence was for the -- cleansing of material was for the
22 purposes of protecting innocent people?

23 A No.

24 Q Those were words you used?

25 A I was trying to explain three separate concepts

1 in one paragraph.

2 Q Did you use the word "cleansing," or did Emad
3 Salem use the word?

4 A No, I believe I did.

5 Q Did you use the words "protecting innocent
6 people" or did Emad Salem use those words?

7 A I used those words.

8 Q Are you aware that there's a tape where Emad
9 Salem explains his interpretation of what you told him? Are
10 you aware of that?

11 MR. FITZGERALD: Objection. Scope.

12 THE COURT: Sustained.

13 Q Do you know if Emad Salem understood what you
14 said to him?

15 MR. FITZGERALD: Objection, competence.

16 THE COURT: Sustained.

17 Q Have you had an occasion to talk to Nancy Floyd
18 about the subject of the Chinese wall as it was explained to
19 Emad Salem?

20 MR. FITZGERALD: Objection.

21 THE COURT: Sustained.

22 Q Now, you said that Emad Salem was concerned about
23 testifying at that point, in March of 1993, right?

24 A Yes.

25 Q What information did Emad Salem provide to you

1 about Nidal Ayyad?

2 A None.

3 Q What information did Emad Salem provide to you
4 about Ramzi Yousef?

5 A None.

6 MR. FITZGERALD: Objection, scope.

7 THE COURT: No, I will allow that.

8 Q What information did Emad Salem provide to you
9 about Mohammed Salameh?

10 A I thought he was providing information about
11 Mohammed Salameh, but I, to date, think he was thinking of
12 someone else.

13 Q The information that he told you to look at about
14 Mohammed Salameh was information he had gotten from Nancy
15 Floyd, isn't that correct?

16 MR. FITZGERALD: Objection.

17 THE COURT: Sustained.

18 Q He mentioned to you that Mohammed Salameh visited
19 Nosair one week before the World Trade Center, isn't that
20 right?

21 A Yes.

22 Q He got that information from Nancy Floyd, isn't
23 that correct?

24 MR. FITZGERALD: Objection.

25 THE COURT: Sustained.

1 Q OK. Now, other than the fact that he got
2 information from Mohammed Abouhalima's brother that Mahmud
3 Abouhalima was in Egypt, what other information had Emad
4 Salem provided to the Bureau about Mahmud Abouhalima's
5 participation in the World Trade Center bombing?

6 A He provided us the name, with a witness, Wahid
7 Moharam, who testified in the case against Mahmud
8 Abouhalima.

9 Q Where did Mr. Salem get that information from?

10 A He got that from another individual that this
11 person existed.

12 MR. RICCO: No further questions.

13 THE COURT: Ms. Amsterdam?

14 RE-CROSS-EXAMINATION

15 BY MS. AMSTERDAM:

16 Q Sir, you stated that you were trying to explain
17 three separate concepts as best you could to Emad Salem in
18 that conversation, correct?

19 A Yes.

20 Q And the third concept that you were attempting to
21 explain was that he should have no dealings with the
22 attorneys that were representing the defendants accused in
23 the World Trade Center case, correct?

24 A Yes.

25 Q And you told him that on many -- by "him" I mean

1 Emad Salem, that on many occasions, right?

2 A Yes.

3 Q And you explained to him that that in fact might
4 compromise the integrity of the prosecution, correct, it was
5 made clear to him, right?

6 A Yes.

7 Q At the same time, however, sir, didn't you once
8 call Emad Salem from the Metropolitan Correctional Center,
9 the prison where the World Trade Center defendants were
10 being housed?

11 A Yes.

12 Q And didn't you state to him that you were in a
13 control booth and you were observing Mahmud Abouhalima
14 meeting with his attorney?

15 MR. FITZGERALD: Objection.

16 THE COURT: Sustained.

17 MS. AMSTERDAM: May I be heard at side bar, your
18 Honor?

19 THE COURT: No.

20 MS. AMSTERDAM: I have no further questions.

21 THE COURT: Anyone else? Anything else?

22 MR. FITZGERALD: Nothing further, Judge.

23 THE COURT: Thank you, you are excused.

24 (Witness excused)

25 MR. PATEL: Your Honor?

1 THE COURT: Yes.

2 MR. PATEL: At this time I would ask to publish
3 Government Exhibit 672A, which was introduced yesterday
4 through Agent Anticev, and if I may pass that to the jurors,
5 your Honor.

6 THE COURT: That is the envelope?

7 MR. PATEL: Yes, it is, your Honor.

8 THE COURT: Do you have copies.

9 MR. PATEL: No, your Honor, I'm sorry, I don't.

10 THE COURT: All right. Go ahead.

11 (Government Exhibit 672A published to the jury)

12 MR. PATEL: Your Honor, next, with your Honor's
13 permission, and this may require a little setup, moving
14 microphones, we would ask to publish Government Exhibit
15 672/T, which is an Attica audiotape that was introduced last
16 week by the government but not read to the jury. It is a
17 tape that was recorded in Attica on December 28, 1992 at
18 10:55 a.m.

19 Mr. Stavis will read the words spoken by Mr. El
20 Sayyid Nosair; Mr. Ricco will read the part of Ibrahim
21 El-Gabrowni; Mr. Serra will read the words spoken by Emad
22 Salem; and Ms. Amsterdam will read the words spoken by the
23 unidentified female and the unidentified child.

24 THE COURT: All right. Do you want to move
25 microphones as necessary, and while that is going on, may I

1 see one of the participants at the side bar.

2 (At the side bar)

3 THE COURT: This is really just a little
4 preventive medicine. I am not asking that you effect a
5 government style monotone; however, I really don't want to
6 have to stop anybody from hamming it up. I hope that it has
7 been discussed and it isn't going to happen.

8 MR. PATEL: It isn't, your Honor. That's why --

9 THE COURT: Good.

10 MR. PATEL: It is our turn to do monotones, but I
11 will let everybody know. It is our chance to be as boring
12 as they were.

13 (Continued on next page)

14 (In open court)

15 THE COURT: This should be in a book marked 500
16 to 699. And it is Exhibit 672/T.

17 MR. PATEL: Your Honor, I think someone is ahead
18 of me, but the transcript is in the jury's notebook.

19 THE COURT: Yes.

20 THE COURT: OK. You can proceed.

21 (Government Exhibit 672/T was read to the jury)

22 MR. STAVIS: The defense calls Michael Urban to
23 the witness stand, your Honor.

24 (Continued on next page)

25

1 MICHAEL URBAN,

2 called as a witness by the Defendant Nosair,

3 having been duly sworn, testified as follows:

4 MR. STAVIS: May I inquire, your Honor?

5 THE COURT: Please.

6 DIRECT EXAMINATION

7 BY MR. STAVIS:

8 Q Mr. Urban, what is your profession?

9 A I am the assistant inspector general for the
10 State of New York Department of Correctional Services.

11 Q Do you have a profession or occupation?

12 A I am an investigator with them, with the
13 Department of Corrections.

14 Q What is your educational background?

15 A I have a bachelor's of criminal justice from
16 Buffalo State University, and I have worked on my master's
17 degree at American University in correctional
18 administration.

19 Q You and I spoke very briefly on Monday, is that
20 correct?

21 A I'm not sure who you are.

22 Q Forgive me. My name is Roger Stavis and I
23 represent Mr. Nosair. I thought you might remember my
24 voice.

25 A No, I don't.

1 Q Did we speak very briefly on Monday?

2 A Yes, we did.

3 Q Did I ask you if you would answer a few questions
4 that I had?

5 A Did you ask me if I would?

6 Q Yes.

7 A Yes, you did.

8 Q Did you tell me that you would talk to me in
9 court on the witness stand?

10 A Yes, I did.

11 Q So here we are?

12 A Here we are.

13 Q Now, what is your present position in the
14 Department of Correctional Services?

15 A I am the assistant inspector general.

16 Q Were you the assistant inspector general in the
17 period 1992 to 1993?

18 A Yes.

19 Q What is the function of the assistant inspector
20 general?

21 A My function at the present time is that I am in
22 charge of all the central monitoring cases within the
23 Department of Corrections, and I am also a liaison with
24 outside law enforcement agents.

25 Q What are the central monitoring cases?

1 A Central monitoring cases are inmates who come
2 into the system who are inmates that may present certain
3 problems within the department that we put special
4 monitoring on.

5 Q And you also mentioned -- withdrawn.
6 Is this also the job you were doing in 1992 to
7 1993?

8 A Yes.

9 Q And you also mentioned that you have a liaison
10 function?

11 A That's correct.

12 Q What is that about?

13 A Well, if an outside law enforcement agency calls
14 into the department, normally whoever in the department
15 would receive that call will forward it to me for any action
16 necessary.

17 Q When were you first made aware that El Sayyid
18 Nosair was a prisoner in the New York State correctional
19 system?

20 A As soon as he came in the system.

21 Q What, if anything, were you told about him as a
22 prisoner?

23 A Well, basically I had been following the case
24 even before he'd come into the system through the papers.
25 When he came in the system, he was referred to me to be made

1 a central monitoring case, and then at that point I received
2 his presentence report, and that was the documentation
3 basically that I had.

4 Q Did your office consider Mr. Nosair to be a
5 high-profile case?

6 A Yes.

7 Q And is that the reason why he came to your
8 attention in the central monitoring aspects of your job?

9 A Yes.

10 Q Now, drawing your attention to June of 1992, did
11 you receive in your capacity as the liaison with outside law
12 enforcement agencies a telephone call from an FBI agent?

13 A Yes.

14 Q What was the name of that FBI agent?

15 A Steve Veyera.

16 Q Did you receive a call from another FBI agent?

17 A I received a lot of calls from FBI agents.

18 Q OK. I will be a little more specific.

19 Did you receive another call in June of 1992 from
20 an FBI agent in reference to Mr. El Sayyid Nosair?

21 A Not that I remember.

22 Q Did you receive a telephone call in June 1992
23 from a New York City police detective in reference to Mr. El
24 Sayyid Nosair?

25 A Yes.

1 Q What was the name of that New York City police
2 detective?

3 A Lou Napoli.

4 Q Was that the same call or different calls or a
5 series of calls?

6 A Could you repeat that question again?

7 Q OK. Was it the same call from Special Agent
8 Veyera and Detective Napoli or separate calls?

9 A They were separate calls.

10 Q Did Special Agent Veyera ask you concerning
11 taping of Mr. Nosair's telephone calls?

12 A Not on that call, no.

13 Q In a subsequent call did Special Agent Steve
14 Veyera inquire of you into the possibility of tape recording
15 Mr. Nosair's telephone calls?

16 A Yes.

17 Q And what action, if any, did you take in response
18 to Special Agent Steve Veyera's inquiry about taping
19 telephone calls?

20 A I asked him why he wanted that done.

21 Q Did you take any action within the Department of
22 Correctional Services in regard to Special Agent Veyera's
23 inquiry to you about taping telephone calls?

24 A Not at that time.

25 Q At a subsequent time did you take any action in

1 response to Special Agent Veyera's inquiry concerning taping
2 Mr. Nosair's telephone calls?

3 A Yes.

4 Q What was that?

5 A I taped his telephone calls.

6 Q How did you go about doing that?

7 A I called the Attica Correctional Facility and
8 requested of them that they tape Inmate Nosair's telephone
9 calls.

10 Q Do you know if they did that?

11 A Yes.

12 Q Do you know when the taping of Mr. Nosair's
13 telephone calls at Attica Correctional Facility started?

14 A I can't give you an exact date. It wasn't too
15 long after I requested it.

16 Q After the time that you started taping the
17 telephone calls, did you have contacts with Special Agent
18 Steve Veyera?

19 A Yes.

20 Q Approximately how often did you -- well,
21 withdrawn.

22 What kind of contacts did you have?

23 A I had phone contacts and mail contacts with him.

24 Q How about with Detective Louis Napoli, what kind
25 of contacts did you have with him after this phone call --

1 withdrawn.

2 What kind of contacts did you have with Detective
3 Napoli following the taping of Mr. Nosair's telephone calls
4 at Attica?

5 A I believe I spoke on the phone with him a couple
6 of times. I may have mailed him some stuff.

7 Q Did you write letters to Special Agent Veyera and
8 to Special Agent Napoli?

9 A I believe I wrote memos to agent Veyera.

10 Q And those memos concerned Mr. Nosair?

11 A Yes, they concerned the telephone calls.

12 Q Now, with regard to Mr. Nosair at Attica Prison,
13 did you have contact with any other Federal Bureau of
14 Investigation personnel?

15 A I believe there may have been one or two other
16 agents that I talked to at different times.

17 Q What were their names?

18 A One that comes off the top of my head is an agent
19 by the name of Crouthamel. Other than that, I can't
20 remember who else.

21 Q How about an Agent Robert McDowell?

22 A That name doesn't ring a bell right off the top
23 of my head.

24 MR. STAVIS: Your Honor, may I approach the
25 witness with Nosair Exhibits XX1 through 13.

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

2 (At the side bar)

3 MR. KHUZAMI: I have a hearsay objection to these
4 items.

5 MR. STAVIS: They are not being offered for the
6 truth, your Honor. They are being offered to show that they
7 were sent. They are demonstrative evidence of the testimony
8 that we just heard.

9 THE COURT: I don't understand what they're being
10 offered to prove. He's already testified that they made
11 tapes.

12 MR. STAVIS: It is akin to the government
13 eliciting testimony about a fax that Mr. Salem sent and then
14 introducing the fax. It is demonstrative evidence that
15 documents what the witness is saying.

16 MR. KHUZAMI: The fax is admissible under a
17 hearsay exception. This is hearsay.

18 MR. STAVIS: I am not offering it for the truth,
19 your Honor, but for the fact that the letters were sent.

20 THE COURT: I don't understand what the fact that
21 the letters were sent shows about this case.

22 MR. STAVIS: Referring your Honor back to
23 Friday's conference, it shows what the witness is testifying
24 to, that the FBI were the ones receiving the tape.

25 THE COURT: I don't think that that was what this

1 witness was being called to testify to. I think he was
2 being called to testify to the fact that he knew that Nosair
3 was being monitored. This doesn't prove that. Although
4 there is something in here, I guess that suggests --

5 MR. STAVIS: It does, your Honor. His wife's
6 letters are intercepted.

7 THE COURT: -- he knew he was being monitored,
8 but the part that suggests it is hearsay; namely, that he
9 was using another inmate's identification number. That does
10 suggest that he knew that he was being monitored, but that
11 is hearsay. The objection is sustained. Let's go.

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1 (In open court)

2 BY MR. STAVIS:

3 Q Mr. Urban, did you send copies -- withdrawn. Did
4 you send the tape recorded telephone conversations to the
5 FBI?

6 A Yes, I did.

7 Q Did you send them the original tapes?

8 A Yes, I did.

9 Q Did you retain a copy of the tapes for the
10 Department of Correctional Services?

11 A No, I did not.

12 Q Drawing your attention to September 21, 1992, did
13 you send Steve Veyera five tape recorded telephone
14 conversations?

15 A I am not sure. I may have.

16 MR. STAVIS: May I approach the witness, your
17 Honor?

18 Q I am showing you what has been marked for
19 identification as Nosair Exhibit XX-2, and I ask you to take
20 a look at that.

21 A That is my signature, yes.

22 Q Along with those tape recordings, did you also
23 send to Agent Veyera at that time copies of the contents of
24 an express mail envelope from K. Nosair, dated September 8,
25 1992?

1 A Yes.

2 Q Having looked at Nosair Exhibit XX-2, did you
3 send five tapes on that day?

4 A Yes.

5 Q And the express mail envelope from Mr. Nosair's
6 wife to Mr. Nosair at the Attica Correctional Facility?

7 A Yes.

8 Q How did you obtain the express mail envelope from
9 K. Nosair that was dated September 8, 1992?

10 A We had a mail watch in progress on Mr. Nosair.

11 Q How did that mail watch work?

12 A I had asked the superintendent of the Attica
13 Correctional Facility to do a mail watch on Mr. Nosair. Of
14 any incoming mail that was coming in, I received copies of
15 it.

16 Q Did you forward copies of various letters to the
17 FBI from the period of April 1992 through the end of 1992?

18 A I sent some mail. I am not sure if it was in
19 that period or not.

20 Q Were the letters that you sent to Mr. Veyera
21 fairly frequent?

22 MR. KHUZAMI: Objection, scope.

23 MR. STAVIS: Withdrawn.

24 Q Were the tapes forwarded to Special Agent Veyera
25 on a regular basis?

1 A Whenever I received them and then reviewed them,
2 they were sent to Mr. Veyera.

3 Q Apart from tape recorded telephone conversations,
4 of Mr. Nosair, and letters that had been sent to Mr. Nosair,
5 is there anything else that you sent to Special Agent
6 Veyera?

7 MR. KHUZAMI: Objection, scope.

8 THE COURT: Sustained.

9 Q On November 10 of 1992, did you send four tape
10 recorded Attica telephone conversations of Mr. Nosair to
11 Special Agent Veyera?

12 A I may have. I don't know.

13 MR. STAVIS: May I approach the witness with
14 Nosair Defense Exhibit XX-6, your Honor?

15 THE COURT: Yes.

16 Q Did you also send a visitor's log for Nosair to
17 Special Agent Steve Veyera on November 10, 1992?

18 A Yes.

19 Q If you recall, how did you sign that letter that
20 you sent to Special Agent Veyera on November 10, 1992?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 Q Do you know how many letters transmitting tapes
24 you sent in total to Special Agent Steve Veyera?

25 MR. KHUZAMI: Objection, scope.

1 THE COURT: Sustained -- that objection is
2 overruled. A relevance objection is sustained.

3 Q Did there come a time that Mr. Nosair was placed
4 in special housing unit?

5 A Yes.

6 Q Do you know when that was?

7 A It wasn't too long after we found out who was
8 involved in the Trade Center bombing.

9 Q What was the reason he was placed in
10 administrative segregation?

11 A He was placed in administrative segregation based
12 on the fact that -- I don't have the actual admin. seg.
13 letter in front of me but I believe it had something to do
14 with the fact that his visitors had been part of the World
15 Trade Center bombing, and for safety and security of the
16 facility, that is why he was placed there.

17 Q Was the reason that some of his visitors had been
18 arrested in connection with the World Trade Center bombing?

19 A That is correct.

20 (Continued on next page)

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1 Q At that time, do you know if the Federal Bureau
2 of Investigation searched Mr. Nosair's cell?

3 A Yes.

4 MR. KHUZAMI: Objection.

5 THE COURT: Sustained.

6 MR. STAVIS: May I be heard on that, your Honor?

7 THE COURT: You certainly may.

8 (At the side bar)

9 THE COURT: Do you recall the reason you asked
10 this witness to testify?

11 MR. STAVIS: Yes, your Honor, the monitoring.

12 THE COURT: Unless you can establish that he knew
13 why your client was being monitored, I am going to strike
14 his testimony. You have to prove that he knew it.

15 MR. STAVIS: Yes, your Honor.

16 THE COURT: As long as we know.

17 MR. STAVIS: The calls were monitored. We just
18 played the tape where he said the calls were monitored, the
19 letters come back, the copy is taken, the letters come back
20 to Mr. Nosair opened -- that's the inference, your Honor.

21 THE COURT: You are telling me you are not going
22 to ask this witness that?

23 MR. STAVIS: Ask the witness what?

24 THE COURT: You proceed as you want. I have
25 sustained the objection with regard to the search of the

1 cell. Let's go.

2 (In open court)

3 (Continued on next page)

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1 BY MR. STAVIS:

2 Q Do you know if the Department of Correctional
3 Services searched Mr. Nosair's cell on a fairly regular
4 basis?

5 A I don't know.

6 MR. STAVIS: I am about to show the witness what
7 will be deemed marked Nosair YY-1 through 8.

8 Q I ask if you can take a look at those.

9 (Pause)

10 Q What do those appear to be?

11 A They appear to be cell search sheets.

12 MR. KHUZAMI: Objection, your Honor.

13 THE COURT: Have you ever seen those documents
14 before?

15 THE WITNESS: Pardon.

16 THE COURT: Have you ever seen those documents
17 before?

18 THE WITNESS: I have never seen these documents,
19 no.

20 Q Have you ever seen documents like those before?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 Q Did it come to your attention in the inspector
24 general's office that Mr. Nosair's cell had been searched by
25 Department of Corrections officials?

1 MR. KHUZAMI: Objection.

2 THE COURT: I will allow him to answer whether it
3 did or it didn't. Did it?

4 A Did it ever come to my attention?

5 Q Yes.

6 A No.

7 THE COURT: Would you come to a convenient break
8 point in the next five minutes, please.

9 MR. STAVIS: Yes, this is it, your Honor.

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

14 (Jury excused)

15 (Witness excused)

16 (Continued on next page)

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1 MICHAEL URBAN, resumed.

2 THE COURT: Go ahead.

3 MR. STAVIS: Your Honor, this is a stipulation
4 between the government and the defense: That Mr. Nosair's
5 prison cell was searched by the Department of Correctional
6 Services personnel on February 10, 1992, March 12, 1992,
7 July 30, 1992, September 6, 1992, December 25, 1992, January
8 10, 1993, January 20, 1993, and January 26, 1993, and that
9 at the time or directly following those searches Mr. Nosair
10 was given a receipt indicating that those searches were
11 made.

12 THE COURT: All right. That fact is stipulated
13 to. The jury will give it whatever weight they believe it
14 deserves. Go ahead.

15 BY MR. STAVIS:

16 Q Now, Mr. Urban, you mentioned that Mr. Nosair was
17 on a mail watch, is that correct?

18 A That's correct.

19 Q Now, you indicated that in a mail watch the
20 Department of Correctional Services opens the mail and reads
21 the mail, is that correct?

22 A I don't believe I said that.

23 Q What does happen?

24 A The mail watch, if I request that a mail watch be
25 done, the department or whatever facility that I request it

1 from will open the mail when it comes in which is routinely
2 done to begin with to search for contraband. On a mail
3 watch, the particular mail that comes in will then be copied
4 and forwarded to me.

5 Q And Mr. Nosair was on a mail watch?

6 A That's correct.

7 Q And after the mail is opened, then it's closed
8 with a stapler, is that correct?

9 A I don't know.

10 Q Do you know how it is closed?

11 A No.

12 Q But it's opened and then it's closed, is that
13 correct?

14 A I don't know.

15 Q The mail is opened by Department of Correctional
16 Services personnel, correct?

17 MR. KHUZAMI: Objection.

18 THE COURT: Overruled.

19 Q Correct?

20 A That's correct.

21 Q How do they open the mail?

22 A I don't know.

23 Q But they open it?

24 A Yes.

25 Q And after that time, they close it?

1 A I don't know if they do or not.

2 Q So they may keep it open and then send the mail
3 to the prisoner, is that correct?

4 A That's possible, yes.

5 MR. STAVIS: I have no further questions of this
6 witness, your Honor.

7 THE COURT: Mr. Ricco?

8 MR. RICCO: Just a few questions.

9 CROSS-EXAMINATION

10 BY MR. RICCO:

11 Q Good afternoon, sir.

12 A How are you?

13 Q The New York State correctional facilities have
14 different type of prison facilities, isn't that correct?

15 A Yes.

16 Q There's a camp, right?

17 A Correct.

18 Q There are minimum-security prisons, correct?

19 A Correct.

20 Q There are medium-security prisons?

21 A Correct.

22 Q And there are maximum-security prisons?

23 A That's correct.

24 Q And the reason for those different
25 classifications has to do with the inmates and the ability

1 to monitor and supervise them adequately, isn't that
2 correct?

3 A Yes.

4 MR. KHUZAMI: Objection.

5 THE COURT: I will allow it. Go ahead.

6 Q Mr. El Sayyid Nosair was housed in Attica
7 Correctional Facility, a maximum correctional facility under
8 the supervision of the New York State Department of
9 Corrections, isn't that correct?

10 A That's correct.

11 Q At Attica Correctional Facility, which is a
12 maximum facility, you have some inmates that are classified
13 as CMC, isn't that correct?

14 A That's correct.

15 Q And CMC means that those inmates that are so
16 designated are monitored by the New York State Department of
17 Corrections, isn't that correct?

18 A That's correct.

19 Q Now, you just gave testimony to the jury with
20 respect to the issue of mail. I would like you to just
21 clarify something, if you would.

22 The mail for all prisoners is opened for
23 contraband, isn't that correct?

24 A That's correct.

25 Q And the reason why that is done is so that

1 illegal items are not mailed into the facilities for the
2 prisoners to have access, isn't that correct?

3 A That's correct.

4 Q And what happens is the envelopes are opened,
5 just for all inmates to determine whether or not there is
6 any contraband, once that's done, the letter then proceeds
7 on to the inmate, isn't that correct?

8 A That's correct.

9 Q For the CMC inmates, the CMC inmates, however,
10 are advised that their mail is subject to being read and
11 reviewed by the New York State Department of Corrections,
12 isn't that correct?

13 A No.

14 Q They are not told that?

15 A No.

16 Q OK. When the inmates receive their letters, the
17 letters are opened, isn't that correct?

18 A Could you repeat question again?

19 Q When the inmates finally receive the letters in
20 their cell, the envelopes show that they were opened, isn't
21 that correct?

22 A Yes.

23 Q And Mr. Nosair's mail was read by yourself, isn't
24 that correct, on occasion?

25 A That's correct.

1 Q After reading his mail you would take a copy of
2 it, send it to the FBI, isn't that correct?

3 MR. KHUZAMI: Objection.

4 THE COURT: Sustained.

5 Q OK. After reading his mail, you would fold it
6 up, put it back in an envelope and send it on to Mr. Nosair,
7 isn't that correct?

8 A That's not correct.

9 Q That's not correct. OK.

10 A letter that comes to Mr. Nosair at the
11 facility, how is it that you are able to read it?

12 A The facility makes a copy of the letter for me
13 and sends it to me.

14 Q And that letter is reviewed by you?

15 A That's correct.

16 Q And what happens to Mr. Nosair's mail, is it ever
17 delivered to him?

18 A Yes.

19 Q In what kind of condition is it received by him?

20 A I have no idea.

21 Q But you do know that his mail has been opened and
22 reviewed, isn't that correct?

23 A Repeat that again. I couldn't hear it.

24 Q You do know that his mail has been opened and
25 reviewed, isn't that correct?

1 A I assume that it's been opened and reviewed.

2 MR. RICCO: I have no further questions.

3 Thank you, your Honor.

4 THE COURT: Anyone else? Any cross?

5 MR. RICCO: Your Honor, I have one more question.

6 I'm sorry.

7 BY MR. RICCO:

8 Q Mr. Stavis asked you about the time period in
9 which Mr. Nosair was a CMC inmate. In December of 1992, was
10 Mr. Nosair a CMC inmate?

11 A He was a CMC inmates since he's come in the
12 system and has remained that way.

13 Q OK. One remaining question: There is a document
14 called the standard of inmate behavior for all institutions,
15 isn't that correct?

16 MR. KHUZAMI: Objection.

17 THE COURT: Overruled.

18 A Yes.

19 Q And that document sets forth the rules and
20 regulations for visiting, isn't that correct?

21 A I believe it does.

22 Q The receipt of mail, isn't that correct?

23 A I believe it does.

24 Q The use of the telephones, isn't that correct?

25 A I believe it does.

1 Q Each facility has institutional rules that the
2 inmates must comply with, isn't that correct?

3 A That's correct.

4 Q If they don't comply with the rules, they are
5 subject to disciplinary proceedings, isn't that correct?

6 MR. KHUZAMI: Objection.

7 THE COURT: Overruled.

8 A Yes.

9 MR. RICCO: No further questions.

10 THE COURT: Any cross?

11 MR. KHUZAMI: Yes, your Honor.

12 CROSS-EXAMINATION

13 BY MR. KHUZAMI:

14 Q Mr. Urban, Mr. Nosair arrived in Attica around
15 February 1992, is that correct?

16 A I believe so, yes.

17 Q He was in general population at Attica at that
18 time, is that correct?

19 A Yes.

20 Q Then in around March of 1993 he was placed in
21 special housing, is that correct?

22 A Yes.

23 Q He remained there until approximately August of
24 1993, is that right?

25 A I believe so, yes.

1 Q Taking the period of time from February 1992 to
2 March of 1993 when he was in general population at Attica,
3 there were no restrictions on Mr. Nosair's use or access to
4 telephones, is that correct?

5 A That's correct.

6 Q Do you have any idea how many phone calls he made
7 or tried to make during that period of time?

8 A I know it's got to be around close on to 300
9 calls that he tried to either make or had completed.

10 Q OK. Now, during some period of that time you
11 were taping his calls, is that right?

12 A That's correct.

13 Q Did that start around August of 1992?

14 A Yes.

15 Q And that ended around February of 1993, is that
16 right?

17 A Yes.

18 Q And do you know how many calls approximately you
19 taped?

20 A I believe it was 43 calls.

21 Q So the difference between approximately 300 calls
22 and approximately 43 calls, those are not taped, is that
23 right?

24 A That's correct.

25 Q Do you have any idea what he said on those other

1 calls, the ones that weren't taped?

2 A The calls that weren't taped? I don't know. I
3 have no idea what he said.

4 Q Now, during the same period of time, February of
5 1992 to March of 1993, inmates in general population at
6 Attica are entitled to have visitors, is that correct?

7 A That's correct.

8 Q These visitors meet with the inmates at a special
9 visitors room at Attica, is that correct?

10 A Well, there's two different visiting rooms. One
11 is for general population, and one is for SHU inmates.

12 Q All right. Speaking about the general population
13 one, which is, correct me if I'm wrong, where Mr. Nosair
14 would meet visitors from February of 1992 to March of 1993
15 when he was placed in special housing, is that right?

16 A That's correct.

17 Q Are those visits videotaped?

18 A Not to my knowledge, no.

19 Q Are they audiotaped?

20 A Not to my knowledge, no.

21 Q Do you have any idea how many visits Mr. Nosair
22 received from approximately February of 1992 to March of
23 1993 while in general population at Attica?

24 A I think it's somewhere around 30 to 35 visits.

25 Q Do you know --

1 A That's actual visits. That doesn't count people.

2 Q Were there more than one person that visited
3 Mr. Nosair on some of those occasions?

4 A Yes.

5 Q Do you have any idea of what was said during
6 those visits?

7 A I have no idea.

8 Q There are no cameras in that visitors room for
9 inmates in general population, is that correct?

10 A Not to my knowledge.

11 Q Was there any restriction during this time
12 period, February of 1992 to March of 1993, on Mr. Nosair's
13 ability to speak to other inmates?

14 A Not to my knowledge there wasn't.

15 Q Do you have any idea whether or not any
16 information given to Mr. Nosair to other inmates was passed
17 to people on the outside?

18 A Could you repeat that question again?

19 Q Do you know whether or not any discussions or
20 information between Mr. Nosair and other inmates was then in
21 turn passed to persons on the outside?

22 A I have no idea.

23 MR. KHUZAMI: No further questions.

24 MR. RICCO: Your Honor, I have a couple of
25 questions.

1 THE COURT: Mr. Stavis?

2 REDIRECT EXAMINATION

3 BY MR. STAVIS:

4 Q Now, Mr. Khuzami asked you some questions about
5 the taping of Mr. Nosair's telephone calls prior to August
6 of 1992, and you indicated on cross-examination that the
7 calls were not taped prior to August of '92, is that
8 correct?

9 A Well, I'm not sure. Can you repeat that question
10 again?

11 Q Mr. Nosair's calls, phone calls, were tape
12 recorded after August or June, around there, of 1992,
13 correct?

14 A Correct.

15 Q Prior to that time they were not tape recorded.
16 That's what Mr. Khuzami asked you.

17 A Not to my knowledge, they weren't taped.

18 Q Now, there were no tape recordings made, but
19 there is monitoring of telephone calls, is that correct, of
20 all inmate telephone calls?

21 A That is not correct.

22 Q Is there a regulation in the Department of
23 Correctional Services that requires the posting of a sign
24 that says, "All telephone calls are subject to monitoring"?

25 A Yes.

1 Q And, to your knowledge, was that sign up at
2 Attica Prison prior to June of 1992?

3 A I have no idea.

4 Q But it was supposed to be, is that correct?

5 A That is correct.

6 THE COURT: May I see you at the side briefly.

7 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I may be confused, but did you make a
3 specific proffer to me at one point in the robing room that
4 that sign was not up in order to obtain exclusion of a
5 tape-recorded conversation between Mr. Nosair and his wife?

6 MR. STAVIS: It is my information that it wasn't
7 up, your Honor.

8 THE COURT: That it was not?

9 MR. STAVIS: It is my information, as I stated
10 two weeks ago in the robing room, that the sign was not up,
11 but it was the government's position that it was up, which
12 gives me a good-faith basis.

13 THE COURT: That is a damned outrage.

14 I want a copy of this transcript.

15 (Continued on next page)

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1 (In open court)

2 MR. STAVIS: I have no further questions of this
3 witness, your Honor.

4 MR. RICCO: Your Honor, just a couple.

5 RECROSS-EXAMINATION

6 BY MR. RICCO:

7 Q Mr. Khuzami asked you some questions about the
8 visitation in general population.

9 Are CMC inmates segregated from other inmates?

10 A No.

11 Q So, in other words, a CMC inmate could be in
12 general population on a Special Housing Unit, isn't that
13 correct?

14 A That's correct.

15 Q Now, Attica Correctional Facility has 40-foot or
16 30-foot walls around it, isn't that correct?

17 A I'm not sure what the size is, but they're high.

18 Q They're high. And they have towers, isn't that
19 correct?

20 A That's correct.

21 Q In order for a visitor to gain access into that
22 facility, they are subject to being searched, isn't that
23 correct?

24 A In what respect?

25 Q Well, can a person walk off the street and just

1 go right into Attica?

2 A No.

3 Q What happens when they show up at the door and
4 say, "I want to visit El Sayyid Nosair"?

5 A It's determined whether they are on the visiting
6 list or not. If they are, then they go through a metal
7 detector.

8 Q They have to produce identification, isn't that
9 correct?

10 A That is correct.

11 Q And they have to sign a log, a visitor's log,
12 isn't that correct?

13 A That's correct.

14 Q And they have to leave certain personal items in
15 the lockers; for example, they can't take keys into the
16 facility, and they can't take certain metal items, isn't
17 that correct?

18 A That's correct.

19 Q And they're required to leave those items in the
20 lockers outside of the area where there's any contact with
21 the inmates, isn't that correct?

22 A I believe that's correct.

23 Q And they're subject, are they not, to be searched
24 even further than going through the metal detectors, isn't
25 that correct?

1 A If they consent to it, yes.

2 MR. RICCO: OK. I have no further questions.

3 Thank you very much.

4 THE COURT: Anything else?

5 MR. KHUZAMI: No, your Honor.

6 THE COURT: You are excused.

7 Thank you.

8 (Witness excused)

9 MR. STAVIS: The defense calls Lawrence George to
10 the witness stand.

11 LARRY B. GEORGE,

12 called as a witness by the Defendant Nosair,
13 having been duly sworn, testified as follows:

14 MR. STAVIS: May I inquire, your Honor?

15 THE COURT: Go ahead.

16 DIRECT EXAMINATION

17 BY MR. STAVIS:

18 Q Mr. George, how are you employed?

19 A I am a lieutenant at the New York State
20 Department of Corrections.

21 Q And is there a particular facility that you work
22 at?

23 A Attica.

24 Q What is your job over there at Attica?

25 A Currently?

1 Q Yes.

2 A Currently I am a planning lieutenant.

3 Q What was your job at Attica in 1993?

4 A I was in charge of the Special Housing Unit.

5 Q What is the Special Housing Unit?

6 A It is an area where they house inmates that are
7 disciplinary problems or administrative segregation inmates.

8 Q Explain to the ladies and gentlemen of the jury
9 what administrative segregation is.

10 A Administrative segregation is a person who is a
11 threat to the safety and security of the facility.

12 Q And what is so special about the Special Housing
13 Unit?

14 A They have limited access to property, they are
15 segregated from the rest of the population.

16 Q Perhaps you could explain for us the difference
17 between an inmate in the general population and in the
18 Special Housing Unit. What are the differences?

19 THE COURT: You mean differences in the inmate,
20 or differences in their housing facilities?

21 Q What are the differences in their housing
22 facilities and their security?

23 A Well, they are only allowed out of their cells
24 one hour a day. They have limited property. They have a
25 special visiting room. They don't recreate with the rest of

1 the population.

2 Q Are inmates in the Special Housing Unit permitted
3 telephone calls?

4 A Only in an emergency situation.

5 Q Like for a family emergency or something like
6 that?

7 A Yes.

8 Q What are the provisions for when an inmate in the
9 Special Housing Unit leaves his cell for any reason?

10 MR. KHUZAMI: Objection.

11 Q How does that work?

12 A I don't understand what you are --

13 MR. KHUZAMI: Objection.

14 MR. STAVIS: OK. I will rephrase it.

15 Q Are there any special provisions -- withdrawn.
16 What security measures are taken when an inmate
17 in the Special Housing Unit leaves his cell?

18 MR. KHUZAMI: Objection; scope, relevance.

19 THE COURT: Sustained.

20 Q In the general population, inmates mingle with
21 other inmates, is that correct?

22 MR. KHUZAMI: Objection, relevance.

23 THE COURT: Sustained.

24 Q Is a two-officer escort required when someone
25 leaves the cell in the Special Housing Unit?

1 MR. KHUZAMI: Objection, relevance.

2 THE COURT: Sustained. May I see counsel at the
3 side, please.

4 (At the side bar)

5 MR. STAVIS: If I may explain, your Honor, where
6 I am headed, these are the foundational questions for the
7 security surrounding the Special Housing Unit visiting room,
8 and I was about to elicit that from Lieutenant George --

9 THE COURT: This has nothing to do with the
10 visiting room. If you want to ask him something about the
11 visiting room -- that was the one we saw on television?

12 MR. STAVIS: Yes, your Honor.

13 THE COURT: Then ask him. I am not going to
14 permit this.

15 MR. RICCO: Your Honor?

16 THE COURT: Yes.

17 MR. RICCO: The only questions that I would have
18 of this witness since he works in Attica is what is the
19 procedure for the delivery of the mail to the inmates in
20 Attica. If the court rules it out, I won't ask it.

21 THE COURT: You can ask him.

22 MR. RICCO: OK.

23 (Continued on next page)

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1 (In open court)

2 BY MR. STAVIS:

3 Q Lieutenant George, when an inmate in the Special
4 Housing Unit receives a visitor, you indicated that there is
5 a special visiting room for that?

6 A Yes.

7 Q Is the inmate searched prior to entering that
8 visiting room?

9 A Yes, he is.

10 Q And is there a video monitor in that visiting
11 room?

12 A Yes, there is.

13 Q How many visiting room --

14 THE COURT: Excuse me. If you would, lean closer
15 to the microphone. Otherwise you can't be heard.

16 Thank you.

17 Q How many visiting rooms are there in the Special
18 Housing Unit?

19 A There are two.

20 Q And are the video cameras in those two visiting
21 rooms readily visible to anyone who is in that visiting
22 room?

23 A Yes, they are.

24 Q The people who are visiting with the inmate in
25 the Special Housing Unit visiting room, what security

1 procedures do they have to go through?

2 A They have to go through a metal detector when
3 they first come into the facility, and basically that is it.
4 And then they walk over to the visiting room, sign in, and
5 then they are let through a gate into the visiting room.

6 Q So they have to present --

7 A Excuse me. There are several gates that they
8 have to go through prior to getting in.

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1 Q Do they have to present identification?

2 A I am not sure if they do.

3 MR. STAVIS: May I approach the witness, your
4 Honor?

5 THE COURT: Yes.

6 Q I am showing you what has been marked as Defense
7 Exhibit YY for purposes of identification.

8 THE COURT: We have already had something that is
9 YY. You had YY1 to 8.

10 MR. STAVIS: OK, ZZ.

11 Q I ask you to take a look at that, at the outside.
12 Is that a videotape that you viewed yesterday?

13 A Yes, it is.

14 Q Does that depict the visiting room in the special
15 housing unit?

16 A Yes, it does.

17 (Continued on next page)

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1 MR. STAVIS: Your Honor, I would move what has
2 been previously marked as Defense Exhibit ZZ for purposes of
3 identification into evidence as Defense Exhibit ZZ.

4 MR. KHUZAMI: Objection under 403.

5 THE COURT: Do you want to come up.

6 (At the side bar)

7 THE COURT: Have you seen this?

8 MR. KHUZAMI: Yes, your Honor.

9 THE COURT: What does it show?

10 MR. KHUZAMI: It shows Mr. Nosair's family
11 meeting in the visitors room, and after that one of his
12 attorneys shows up. Is this any different from what we saw
13 in the other video?

14 MR. KHUZAMI: In addition, it is cumulative to
15 the videotape already in evidence from May 21 of 1993 that
16 shows the visiting room

17 MR. STAVIS: The beginning portion of this
18 videotape, your Honor, which is what I intended to play,
19 shows that the monitoring and the cameras which are visible
20 to the inmate --

21 THE COURT: He already testified it is visible to
22 the inmate.

23 MR. STAVIS: No. If your Honor will allow me to
24 finish, from the time that the inmate leaves his individual
25 cell, he is picked up on one video camera, walks down the

1 hall, is picked up on another video camera -- there are four
2 or five video cameras before you even get to the room. That
3 is what I was trying to establish.

4 THE COURT: ASW.

5 MR. STAVIS: Excuse me?

6 THE COURT: ASW. And so what.

7 MR. STAVIS: Sorry, it's been a long day, your
8 Honor.

9 THE COURT: Me too.

10 MR. STAVIS: Because the cameras are visible to
11 the inmate, it gets into the issue that I have been
12 discussing with the court --

13 THE COURT: I will look at this thing before it
14 gets played.

15 MR. STAVIS: I want to play maybe a two-minute
16 section of it, your Honor.

17 MR. KHUZAMI: I don't see the relevance of his
18 seeing individual cameras on the way to meet other people.

19 THE COURT: There is no dispute. He says he
20 searched before the visit. I am sure he searched
21 afterwards, too.

22 MR. STAVIS: My point is that the level of
23 scrutiny, particularly since he was in the general
24 population, is very great.

25 THE COURT: I will pass on it after I see it. I

1 will not pass on it sight unseen. Do you have anything else
2 to ask this witness?

3 MR. STAVIS: I have very little else to ask, your
4 Honor.

5 THE COURT: Fine, then ask it.

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1 (In open court)

2 BY MR. STAVIS:

3 Q How large are the visiting rooms in the special
4 housing unit?

5 A They are approximately 12 by 24.

6 Q And how many inmates can visit in a single
7 special housing unit visiting room at a given time?

8 A Approximately six.

9 Q And how many video cameras are there in each
10 visiting room in the special housing unit?

11 A Again, I am not positive, but I believe there is
12 three.

13 MR. STAVIS: Subject to your Honor's ruling, I
14 have no further questions.

15 THE COURT: Mr. Ricco.

16 CROSS-EXAMINATION

17 BY MR. RICCO:

18 Q Good afternoon, sir.

19 A Good afternoon.

20 Q For how many years have you been working at
21 Attica?

22 A At Attica?

23 Q Yes.

24 A I have been in and out of Attica for
25 approximately 14 years.

1 Q Are you familiar with the method by which inmates
2 receive their mail?

3 A I didn't understand you.

4 Q Are you familiar with the procedure by which
5 inmates receive their mail, letters that are sent to them?

6 A Their mail?

7 Q Yes.

8 A Somewhat, yes.

9 Q When the inmate gets the letter, the letter is
10 delivered to him in his cell area by a correctional officer,
11 isn't that correct?

12 A That is correct.

13 Q And the inmate is handed the letter by the
14 correctional officer, correct?

15 A Yes.

16 Q That letter would have already been monitored for
17 contraband, isn't that correct?

18 A Yes.

19 Q Or, if it's a CMC inmate, the letter may have
20 been read, isn't that correct?

21 A I am not sure about that.

22 Q OK, but every inmate in the facility's mail is
23 checked for contraband, isn't that correct?

24 A Yes.

25 Q And the way that happens is that someone from the

1 New York State Department of Corrections opens the letter
2 and looks inside.

3 A Yes.

4 Q Is the letter stapled back closed or is it just
5 handed to the inmates open?

6 A No, it's stapled.

7 Q So when the inmates receive the letters in their
8 cell, they have the staples going across the top of the
9 letters, isn't that correct?

10 A I believe usually just one staple.

11 Q OK. Are the inmates notified that their mail is
12 subject to be opened and inspected by the New York State
13 Department of Corrections?

14 A I am not sure.

15 Q But one thing that you do know for sure, when
16 they get the mail, the mail has been opened and stapled
17 closed, isn't that correct?

18 A Their general mail -- if it's legal mail, legal
19 mail is opened in front of the inmate.

20 Q Exactly. Legal mail would be from a lawyer and
21 it would have "legal mail" across the front and those
22 letters are opened in front of the inmate, isn't that
23 correct?

24 A That is correct.

25 Q But the other letters are opened before they even

1 get there, is that right?

2 A Yes.

3 Q Just one other question with respect to the
4 videotape of the special housing unit visiting area. Does
5 the videotape record audio and video or just the video, if
6 you know?

7 A They all record, obviously, the video, and some
8 record audio, not all.

9 Q Is the prime purpose of having the video there,
10 is it to make sure that there is not any unauthorized
11 contact between the visitors and the inmates?

12 A Yes.

13 Q And the videos themselves are reviewed by someone
14 at the New York State Department of Corrections for the
15 purposes of determining whether or not there was some
16 unauthorized contact between a visitor and the inmate?

17 A They have monitors on duty 24 hours a day that
18 watch the tapes, and if they see any unusual circumstances
19 or incidents, they report it.

20 Q Visitors are not allowed to give inmates items in
21 those visiting rooms, are they?

22 A That is correct.

23 Q And inmates are not allowed to have physical
24 contact, that is, touching with the visitors, isn't that
25 correct?

1 A No, they can touch.

2 Q Well, you know what I mean.

3 A They can hold hands.

4 Q They can hold hands.

5 A They can kiss each other.

6 Q But that's about it.

7 A Well, that's physical contact, yes.

8 (Continued on next page)

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1 (Jury laughter)

2 MR. RICCO: I have no further questions. Thank
3 you very much, your Honor.

4 THE COURT: Any cross?

5 MR. KHUZAMI: None, your Honor.

6 THE COURT: You are excused. Thank you very
7 much.

8 MR. STAVIS: Your Honor, before the witness is
9 excused, may I see you at the side very briefly.

10 (At the side bar)

11 MR. STAVIS: Your Honor, this witness has come a
12 long way and he has been languishing around for two days. I
13 had intended to go over the early portion of this tape with
14 him, so I don't know if your Honor wishes to excuse him for
15 three minutes and look at it --

16 THE COURT: What do you mean go over it with him?
17 The tape is not self-explanatory?

18 MR. STAVIS: It will have to be self-explanatory,
19 your Honor.

20 THE COURT: All right.

21 (In open court)

22 THE COURT: You are excused.

23 (Witness excused)

24 MR. PATEL: Kevin Haugh will be our next witness.

25 (Continued on next page)

1 KEVIN HAUGH,
2 called as a witness by the defense,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PATEL:

6 Q Good afternoon, Lieutenant Haugh.

7 Lieutenant Haugh, could you tell the jury how you
8 are employed?

9 A I am a lieutenant special operations for the New
10 York City Emergency Medical Service.

11 Q The New York City Emergency Medical Service is
12 part of a larger agency?

13 A Yes, it is a subdivision of the Health and
14 Hospitals Corporation for the City of New York.

15 Q How long have you worked for -- Emergency Medical
16 Services is often referred to as EMS?

17 A Yes, NYC EMS.

18 Q How long have you worked with EMS?

19 A Thirteen years.

20 Q What is your current position?

21 A My current position is lieutenant in the special
22 operations division.

23 Q What is your background and training?

24 A I am a state-certified emergency medical
25 technician.

1 Q How many people do you supervise?

2 A Currently my direct area of responsibility of
3 supervision are 18 employees.

4 Q Are those ambulance crews?

5 A No. They are -- I am sorry. Of those 18, three
6 are assigned to ambulance duties in our division.

7 Q Is that three individuals or three teams?

8 A Three individuals that are assigned to ambulance
9 duties within my division.

10 Q Going back to 1990, November of 1990, what were
11 your duties at the EMS then?

12 A I was a city-wide patrol supervisor within
13 special operations.

14 Q What does that mean?

15 A The special operations division responds to
16 multiple casualty incidents, which are incidents with five
17 or more patients, or when I am in a borough I will respond
18 on basic or routine 911 calls if there are no MCI's
19 happening in the city at the time.

20 Q Directing your attention to around 9:00 in the
21 evening on November 5, 1990, where were you and where did
22 you go, if anywhere?

23 A I was in the borough of Manhattan, just finished
24 a meal. There was a report of a shooting, to which I
25 responded.

1 Q What location did you respond to?

2 A It was in, I believe at the time the Marriott
3 Hotel.

4 Q Is that on Lexington Avenue?

5 A Lexington Avenue, I believe roughly the cross
6 street is 50th Street.

7 Q When you got there, were you the first EMS person
8 to arrive?

9 A I arrived simultaneously with one ambulance crew.

10 Q Do you remember the names of the ambulance
11 crew -- withdrawn.

12 Q How many people are in an ambulance crew or how
13 many people in 1990 were in an ambulance crew?

14 A Two.

15 Q Do you remember the names of the two people at
16 that time who were in?

17 A Yes.

18 Q Who were they?

19 A Eva Marie Cusack and Simon Klebaner.

20 Q Could you spell that for the record.

21 A I believe it is spelled K-L-E-B-A-N-E-R. He
22 wasn't a direct employee of mine.

23 Q You were the supervising officer, correct?

24 A Yes, I was.

25 Q And you took charge of the scene?

1 A Yes, I was.

2 Q And you remained in charge of the scene that
3 evening, is that fair to say?

4 A Yes, I did.

5 Q And you directed EMT -- is that the correct
6 rating?

7 A Yes.

8 Q For Miss Cusack and EMT Klebaner?

9 A Klebaner.

10 Q And you ended up eventually on the second floor
11 in the Morgan D room, is that correct?

12 A Yes, sir.

13 Q While you were in the Morgan D room, you had a
14 conversation with a woman, is that fair to say?

15 A A conversation? Putting it lightly, yes.

16 Q Tell the jury what happened.

17 A While performing patient care with EMT Cusack, it
18 became known to me that there was a larger scope than just
19 the two persons we had encountered in the hotel that had
20 been injured. My responsibility as a supervisor is to
21 ensure that incidents that are spread out are coordinated
22 effectively. I had stepped away as EMT Cusack was
23 performing her duties to notify the citywide dispatcher,
24 very brief radio transmission. On my return to patient
25 care, the female began to berate me, yell at me and scream

1 at me about what I am supposed to be doing for the patient.
2 Again being that it was a heated moment, I don't think my
3 reply was very courteous, but I continued to do what I had
4 to do.

5 Q Did something unusual happen almost immediately
6 after that?

7 A Shortly after that, yes. As I was assisting EMT
8 Cusack in cutting the patient's clothes off so we could
9 perform effective CPR and apply mask trousers, a gentleman
10 knelt beside me. What appeared to have been a gun was
11 placed in my ribs with the words, just do what she says and
12 save his life.

13 Q You see say a gun was placed in your ribs?

14 A Yes, what appeared to me to have been a weapon.

15 MR. PATEL: Thank you, your Honor. I have no
16 further questions.

17 THE COURT: Mr. Khuzami.

18 CROSS-EXAMINATION

19 BY MR. KHUZAMI:

20 Q Lieutenant Haugh, what were you doing when the
21 woman approached you and spoke to you?

22 A She never actually got out of her chair. She
23 leaned over at me because she was almost at the patient's
24 feet. She was in my face yelling at me as I was attempting
25 to cut the pants off the victim.

1 Q You were attempting to cut the pants off when she
2 spoke to you?

3 A Yes.

4 Q Again, she yelled at you to stop doing what you
5 were doing, is that correct?

6 A She started yelling at me as I finished talking
7 on the radio and was stepping back over and leaning to start
8 to cut the pants.

9 Q Specifically what did she say to you about Rabbi
10 Kahane, who was on the ground?

11 MR. PATEL: Objection.

12 A That I should stop talking on the radio --

13 MR. PATEL: Objection, your Honor.

14 THE COURT: Do you know who it was who was on the
15 ground when you were in the Morgan D room?

16 MR. KHUZAMI: Let me ask the question, your
17 Honor.

18 Q Did you know who the patient was that you were
19 attending that night?

20 A Yes, I knew who it was.

21 Q Who was it?

22 A Rabbi Meir Kahane.

23 Q At the time you were attending to that, what did
24 the woman say?

25 A That I should stop talking on the radio, stop

1 wasting my time, attempt to save his life.

2 Q And the man who you indicated put a gun in your
3 ribs, what did he say about Rabbi Meir Kahane?

4 A That happened shortly after my response to her:
5 Listen to what she's saying, save his life.

6 Q Did anything that either of these two people said
7 inhibit you or prevent you from giving patient care?

8 A It rattled me but I continued to provide what I
9 am trained to do.

10 Q Did either of them indicate that they did not
11 want you to care for Rabbi Meir Kahane?

12 A No, they did not.

13 (Continued on next page)

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1 MR. KHUZAMI: No further questions.

2 THE COURT: Anything else?

3 MR. PATEL: No, your Honor.

4 THE COURT: Thank you very much. You are
5 excused.

6 (Witness excused)

7 THE COURT: Ladies and gentlemen, we are going to
8 break for the day until Monday. Please leave your notes and
9 other materials behind. Have a pleasant evening and
10 weekend. Please don't discuss the case. Please don't read,
11 see or hear anything about this case or any other similar
12 case or related case, and we will see you Monday morning.

13 (Jury excused)

14 MR. STAVIS: May I see your Honor on a personal
15 matter in the robing room?

16 THE COURT: Is this something we talked about at
17 the side?

18 MR. STAVIS: With the stenographer.

19 THE COURT: I will see you, not alone.

20 MR. WASSERMAN: Your Honor, my understanding from
21 conferring with counsel for Nosair is that the witnesses
22 Monday and Tuesday were directly relating to his defense.
23 My client has to attend to certain matters relating to his
24 defense. With the court's permission, the application is
25 that he be excused Monday and Tuesday. If there is a change

1 on Monday, I will inform the court.

2 THE COURT: Do you want him not even to come here
3 and be excused but rather simply not to come at all?

4 MR. WASSERMAN: Correct.

5 THE COURT: With the understanding that if the
6 signals change, then that changes.

7 MR. WASSERMAN: Absolutely.

8 THE COURT: Is that satisfactory to you,
9 Mr. Hampton-El?

10 DEFENDANT HAMPTON-EL: Yes.

11 MR. WASSERMAN: Thank you, your Honor.

12 (Pages 13718 - 13721 sealed)

13 (Proceedings adjourned until 9:30 am, Monday,
14 July 10, 1995)

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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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July 10, 1995
9:45 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 THE COURT: I gather Mr. Ricco is not here, is
4 that right?

5 MR. SERRA: Your Honor, Mr. Ricco called me this
6 morning and, I understand, spoke to Ms. Schwartz as well.
7 He wasn't specific, but I believe something clearly
8 important came up that had to be attended to. He asked me
9 if I would represent, stand in for him for Mr. El-Gabrowny,
10 which I would be glad to do. I have had a brief
11 conversation with both Mr. Stavis and Mr. McCarthy. I am
12 aware that there are certain McKeon issues as far as
13 Mr. Kunstler and Mr. El-Gabrowny are concerned, but it is my
14 understanding that neither Mr. Kunstler nor Mr. Stavis will
15 get into those issues, specifically concerning passports and
16 so forth, until Mr. Ricco is here.

17 MR. MCCARTHY: Let me say what my understanding
18 is. What I told Mr. Serra this morning is that aside from
19 my objections to the way that this is proceeding, which I
20 won't belabor the record with since I sent your Honor a
21 letter last evening and sent copies to counsel, I think that
22 given the lengthy litigation with respect to representation
23 in this case, to proceed on an examination like this which
24 we are really even till now completely in the blind about,
25 without Mr. Ricco present to guard Mr. El-Gabrowny's

1 interests, particularly since the upshot of the litigation
2 was entirely or in large measure devoted to the need to
3 protect Mr. El-Gabrownny --

4 THE COURT: I am not going to go ahead without
5 his lawyer here.

6 THE COURT: That is not just asking for trouble,
7 it is getting down on your knees and begging for it.

8 Also, Mr. Stavis, what is the reason for not
9 disclosing the substance of Mr. Kunstler's testimony?

10 MR. STAVIS: Your Honor, I gave them notice that
11 Mr. Kunstler would be coming today. They are very familiar
12 with him. I told them the general area that I was going to
13 question him on and I don't believe that I was under any
14 statutory or legal obligation --

15 THE COURT: That is right, you're not under any
16 statutory or legal obligation. You know what the norms are
17 here, don't you?

18 MR. STAVIS: Yes, your Honor. I thought I more
19 than comported by giving them the notice that he would be
20 testifying concerning the trial back in 1991 and '92 as to
21 which they had elicited testimony.

22 MR. McCARTHY: Imagine, if you will, your Honor,
23 the defense asking what is Mr. Salem going to testify about,
24 and I tell them 1991 and 1992.

25 MR. STAVIS: We don't have to imagine --

1 MS. AMSTERDAM: That is what we got.

2 THE COURT: You had virtually unprecedented
3 discovery.

4 Ms. Amsterdam, he is not testifying with regard
5 to your client. You will take your seat.

6 You had virtually unprecedented discovery in this
7 case.

8 MR. STAVIS: I disagree with that wholeheartedly,
9 your Honor. Discovery was not complete when we started
10 trial. Witnesses testified that we were given no notice of.

11 THE COURT: And you asked for time when you
12 needed it and you got it.

13 MR. STAVIS: I did not abuse that --

14 THE COURT: Nobody is saying that you did.

15 MR. STAVIS: If I felt I could prepare in the
16 morning while doing it, then I did it, your Honor. When I
17 felt I couldn't, I asked for more time.

18 THE COURT: And you got it, and if they ask for
19 more time they will get it. In addition to which, the jury
20 will be advised if there has to be a break, as to why there
21 has to be a break, unless you have other witnesses to fill
22 in. Do you?

23 MR. STAVIS: I have a witness coming in at 10:30,
24 your Honor, my next witness -- he is here. Mr. Khuzami
25 tells me that my 10:30 witness is here early.

1 THE COURT: Do you want to start with that one?
2 Why don't you start with that.

3 MR. STAVIS: I want to understand what your
4 Honor's ruling is.

5 THE COURT: I haven't ruled. I can't require you
6 to disclose the substance of a witness' testimony any more
7 than I could require the government to turn over 3500
8 material in advance. What I can do and what I will do, if
9 it turns out that nondisclosure occasions a delay, is advise
10 the jury that nondisclosure has occasioned a delay, because
11 I think I owe it to them to tell them that.

12 Do you have a witness that you can call, other
13 than former counsel for Mr. El-Gabrownny?

14 MR. STAVIS: Yes. According to what Mr. Khuzami
15 told me, the witness that I had called for 10:30 is very
16 early, he is here.

17 THE COURT: Good. Then we can begin.

18 (Jury present)

19 THE COURT: Good morning, ladies and gentlemen.

20 JURORS: Good morning.

21 THE COURT: Mr. Stavis.

22 MR. STAVIS: Yes, your Honor. At this time the
23 defense calls Dr. Charles Hirsch to the witness stand.

24 (Continued on next page)

25

1 CHARLES S. HIRSCH,
2 called as a witness by the defense,
3 having been duly sworn, testified as follows:

4 THE COURT: Go ahead.

5 DIRECT EXAMINATION

6 BY MR. STAVIS:

7 Q Dr. Hirsch, how are you employed?

8 A I am the chief medical examiner of the City of
9 New York. I am also employed by the medical school of New
10 York University. I work there as professor and chairman of
11 the department of forensic medicine and professor of
12 pathology.

13 Q Can you tell the ladies and gentlemen of the jury
14 something about your background, training and experience.

15 A I received my Bachelor of Science degree from the
16 University of Illinois in 1958 and my M.D. degree from the
17 same university in 1962. Following graduation from medical
18 school, I went to Cleveland, Ohio, where I had a one-year
19 clinical rotating internship at the university hospitals of
20 Cleveland. Following that, for two years I was a resident
21 in pathology at the institute of pathology of Case Western
22 Reserve University. In mid-1965, I moved to Baltimore,
23 Maryland. There I had one year of residency in
24 neuropathology, which is the study of diseases and injuries
25 of the brain and nervous system, and following that, a

1 second-year fellowship in forensic, or medical-legal
2 pathology.

3 In mid-1967, I went on active duty with the
4 United States Air Force and for two years served as a
5 pathology at an air force hospital. I was honorably
6 discharged in July of 1969 and that same month returned to
7 Cleveland, where I worked for the next 10 years.

8 In Cleveland I was employed by the coroner's
9 office as an associate pathology and deputy coroner. I was
10 also employed by the medical school of Case Western Reserve
11 University, finishing there in 1979 as associate professor
12 of associate professor of forensic pathology.

13 In July of 1979, I moved to Cincinnati, where I
14 worked for the next five and a half years. In Cincinnati I
15 was employed by the coroner's office as the director of
16 forensic pathology and a deputy coroner. I was also
17 employed by the medical school of the University of
18 Cincinnati as professor of forensic pathology.

19 In February of 1985, I moved to New York. I was
20 for four years the chief medical examiner of Suffolk County,
21 New York. I was also employed by the medical school of the
22 State University of New York at Stonybrook as professor of
23 forensic pathology.

24 In January of 1989, I moved to New York City and
25 the positions that I now hold.

1 Q What are your responsibilities as chief medical
2 examiner for New York City?

3 A I am responsible for the administration and
4 functioning of the office of chief medical examiner. The
5 responsibilities of the office include the investigation and
6 evaluation of sudden, unexpected, suspicious and violent
7 deaths of all sorts.

8 Q Do you have a staff that works for you, Dr.
9 Hirsch?

10 A Yes, sir.

11 Q Approximately how many pathologists work at the
12 office of chief medical examiner which you head?

13 A Currently we have a staff of 30 pathologists.

14 Q Dr. Hirsch, what is the American Board of
15 Pathology?

16 A The American Board of Pathology is a group of
17 pathologists who serve a maximum term of 12 years each.
18 Their responsibility is to administer the examinations that
19 pathologists take to be certified as specialists in
20 pathology and in the subspecialties of pathology.

21 Q You used the words neural pathology and forensic
22 pathology. Could you please explain to the ladies and
23 gentlemen of the jury what forensic pathology is.

24 A Forensic pathology is the pathology that we
25 practice at the office of the medical examiner or in a

1 coroner's office. It is that subspecialty of pathology
2 concerned with the evaluation of deaths that are sudden
3 even, unexpected and violent.

4 Q How does a forensic pathologist evaluate those
5 deaths?

6 A In general, the objectives of our evaluations
7 include making observations related to identification of the
8 decedent, time and place of death, cause of death,
9 observations that relates to reconstruction of the fatal
10 episode, and, finally, seeking exchanges of trace evidence
11 between victim and assailant. Those objectives can be
12 achieved either by performing an autopsy or an external
13 examination of the body, and in the evaluation of the
14 circumstances surrounding death.

15 Q What is an autopsy, Dr. Hirsch?

16 A An autopsy is an examination of a body after
17 death that begins with an inspection of the outside of the
18 body, noting pertinent characteristics or injuries.
19 Following that, incisions are made into the body to expose
20 the organs as they lay in their normal, anatomical
21 positions. The organs are examined inside their body
22 cavities and then they are removed from the body and
23 individually dissected.

24 Q Dr. Hirsch, you used the term homicide. What is
25 a homicide?

1 A To the medical examiner, a homicide is death at
2 the hand of another person or a death which results from the
3 illegal act of another person.

4 Q What are some of the things that -- withdrawn.
5 You used the word medical examiner and you used
6 the word coroner. What do those words mean?

7 A Medical examiner is an appointed official.
8 Ordinarily in most jurisdictions the medical examiner is a
9 forensic pathologist, particularly in large jurisdictions
10 such as New York City. The coroner is an elected official
11 whose qualifications are set courting to each state.

12 Q Do they do roughly the same kind of work?

13 A Yes, sir.

14 Q Does the work of a medical examiner sometimes
15 entail testifying at a trial?

16 A Yes, sir.

17 Q Have you testified at trials, Dr. Hirsch?

18 A Yes, sir.

19 Q Do other pathologists in your office testify at
20 trials?

21 A Yes, sir.

22 Q Did you testify for the prosecution at the state
23 trial of my client Mr. Nosair?

24 A I was called by the prosecution. I have never in
25 my life testified for the prosecution or for the defense or

1 against one or the other.

2 Q I will rephrase the question. Were you a
3 prosecution witness at the state trial of Mr. Nosair?

4 A I was called by the prosecutor to testify at that
5 trial.

6 Q Do you know if there was another pathologist from
7 your office who was called as a witness to offer testimony,
8 and called as a witness by the prosecution at the state
9 trial of Mr. Nosair?

10 A Yes, sir.

11 Q What is that person's name?

12 A That is Dr. Vernard Adams.

13 Q Dr. Hirsch, approximately how many autopsies have
14 you performed in your career as a forensic pathologist?

15 A I would estimate that I have performed
16 approximately 6,000 autopsies with my own hand and that I
17 have supervised a large multiple of that number done by
18 other pathologists.

19 Q Dr. Hirsch, in your professional opinion does
20 sticking a finger in a bullet wound constitute an autopsy?

21 A It does not.

22 Q Turning your attention to November 6 of 1990, did
23 the office of chief medical employer receive the body of
24 Rabbi Meir Kahane?

25 A Yes, sir.

1 Q Approximately what time did that occur?

2 A I don't have that information with me.

3 Approximately 7:00 in the morning or shortly before. I
4 don't know for sure.

5 Q When a body comes into the office of chief
6 medical examiner, it is given an M number, is that correct?

7 A Yes, sir.

8 Q And Rabbi Kahane was given an M number by your
9 office, Dr. Hirsch?

10 A I was.

11 Q Would you happen to know the M number?

12 A M90-9367.

13 Q Dr. Hirsch, who in your office was assigned to
14 the case of M90-9367?

15 A Dr. Vernard Adams.

16 Q Who made that assignment?

17 A I did.

18 Q At the time that you made that assignment, was a
19 decision made not to conduct an autopsy on the body of Rabbi
20 Meir Kahane?

21 A That decision was made after Dr. Adams and I
22 examined Rabbi Kahane.

23 Q Who made that decision?

24 A I did.

25 Q At the time that you made that decision, had you

1 spoken to any family or friends of Rabbi Meir Kahane?

2 A I had had a few telephone calls the night before
3 and early in the morning. I don't recall who they were.
4 They were concerned people who called to be sure that I was
5 aware that Rabbi Meir Kahane was an orthodox rabbi. I don't
6 know whether they were relatives of his.

7 Q How many homicide cases per year are handled by
8 your office, Dr. Hirsch?

9 A In the six and a half years that I have been
10 here, they have ranged between 15 or 1,600 as a low to as
11 high as 2250.

12 Q And how many nonhomicide cases are handled by the
13 office of chief medical examiner per year?

14 A We have reported to us annually approximately
15 25,000 deaths. Of those total number of deaths reported to
16 us, we perform approximately 7,500 autopsies.

17 Q Dr. Hirsch, what is the difference between the
18 homicide cases handled by your office and the nonhomicide
19 cases handled by your office?

20 A I don't understand your question.

21 Q Your office handles a lot more nonhomicide cases.

22 A Yes, sir.

23 Q What is the difference, how do you distinguish
24 between the homicide case and the nonhomicide case?

25 MR. KHUZAMI: Objection to form.

1 THE COURT: Sustained.

2 Q These 6,000 autopsies that you testified about
3 that you had performed personally, were those in homicide
4 cases or nonhomicide cases?

5 A I would estimate that more than a thousand of
6 those have been homicides. The rest are natural deaths,
7 accidents and suicides.

8 Q Dr. Hirsch, of those approximately 1,000 homicide
9 cases, in how many of those cases personally handled by you
10 has there not been an autopsy?

11 A A small handful.

12 Q Are you able to approximate for us?

13 A Just a few cases. I can't give you a specific
14 number and I don't keep track of that.

15 Q Would it be something less than 10?

16 A Yes, sir.

17 Q Dr. Hirsch, in how many of those homicide cases,
18 your personal homicide cases, in which no autopsy was
19 performed, was no autopsy performed without an identifiable
20 family member or friend objecting to the autopsy procedure?

21 A I can't answer the question. I don't really
22 understand. The religious objection law, Mr. Stavis, is a
23 New York law. I spent 15 and a half years working in Ohio
24 where there is no such law.

25 Q When you were working in Ohio, -- withdrawn.

1 In how many cases, homicide cases with no
2 autopsy, when you were in Ohio, how many of those cases were
3 there?

4 A Just a few. I don't think I need the fingers of
5 one hand to count them.

6 Q Between your experience with -- withdrawn.
7 Let's take your experience here in New York. In
8 how many homicide cases where there hasn't been an autopsy
9 has that decision been made without a family member stating
10 the objection?

11 A I don't know the answer to that question, because
12 in New York the critical thing to me is a religious
13 objection to autopsy, and the law requires that I be aware
14 in certain circumstances that a person's religion as opposed
15 to autopsy. So it doesn't matter to me whether I am made
16 aware of the person's religion from a friend, from a
17 relative or from the way they are dressed or some other
18 characteristic.

19 Q Did there come a time on November 6, 1990, where
20 you did receive a letter from a family member of Rabbi
21 Kahane objecting to an autopsy?

22 A That was in the afternoon, after the decision had
23 been made.

24 Q Were you present for the external examination of
25 Rabbi Meir Kahane?

1 A Yes, sir.

2 Q Dr. Hirsch, could you please explain to the
3 ladies and gentlemen of the jury the term known as
4 stippling, what stippling is.

5 A Stippling is commonly referring to as powder
6 burns in lay literature and in common speech. What it
7 refers to is a series of fine, dot-like impressions on the
8 target area or skin surrounding the entrance hole made by a
9 bullet. Stippling is produced by tiny particles of
10 partially burned and unburned gunpowder that leave the
11 muzzle of the gun with the bullet. They usually travel a
12 maximum distance of two to three feet.

13 Q What is fouling?

14 A Fouling is a black, soot-like deposit that is
15 present on a target when a gun is fired at ranges generally
16 less than six inches. Fouling is the result of the complete
17 burning or combustion of gunpowder, and that very fine dust
18 like residue leaves the muzzle of the gun with the bullet,
19 but because it is so fine and so light, it usually doesn't
20 travel more than approximately six inches. When there is a
21 black smudge from fouling on the target, that is what we
22 refer to as fouling.

23 Q Is the stippling sometimes deposited on the skin
24 in a pattern?

25 A It always makes a pattern of some sort.

1 Q What is the relationship between the pattern and
2 the distance of the muzzle of the gun to the victim?

3 A The shorter the distance, the more dense or
4 compact is the deposit of stippling and the smaller in area
5 it occupies. As the range of fire becomes progressively
6 larger, the density, meaning the spacing between the
7 stippled marks, becomes larger and the total distribution on
8 the target area becomes greater.

9 Q When you talk about the density of the stippling,
10 are you referring to the number of little dots in a fixed
11 area?

12 A Yes, the number of dots and their proximity to
13 each other.

14 Q So if it is a very dense pattern, there are a lot
15 of little dots in an area, is that correct?

16 A In a small area.

17 Q In a small area.

18 Q Upon your external examination of the body of
19 Rabbi Meir Kahane, did you did you make any notation
20 regarding gunpowder stippling?

21 A I observed it and Dr. Adams described it in his
22 report.

23 Q What if anything did you at that time notice
24 about the pattern of the stippling?

25 A The entrance wound on Rabbi Kahane's neck was

1 below and behind his left ear. The stippling extended
2 downward to a horizontal line where the collar of his shirt
3 would have been. The collar of the shirt shielded the
4 underlying skin. The stippling extended upward onto his
5 left ear, forward into the area of his beard, and backward
6 onto the neck until you reach the back border of the neck.

7 Q What if anything did you notice about the density
8 of the stippling?

9 A It was described as moderately dense.

10 Q What does that indicate, or what did that
11 indicate to you regarding whether or not the gun was fired
12 at close range?

13 A It is my opinion that the gun was fired at a
14 range beyond that which one would expect to find fouling,
15 meaning more than approximately six inches, and less than
16 two to three feet.

17 Q Dr. Hirsch, what does the term point blank range
18 mean to you?

19 A Close.

20 Q What would be the implications of that with
21 regard to a stippling pattern?

22 A It would depend on how close you would expect in
23 a close range shot to see stippling of the sort that was
24 observed on Rabbi Meir Kahane. If the gun was closer the
25 stippling would have been more close and would have been

1 associated with fouling.

2 Q Dr. Hirsch, I am going to ask you a few questions
3 about the stippling pattern, and if you wish to refer to
4 your report, you may. If we view the stippling area as a
5 clock, Dr. Hirsch, how far was the stippling in the 12:00
6 position?

7 A Above the gunshot perforation in the 12:00
8 position, the stippling extended three and a half inches.

9 Q How far did the stippling extend in the 3:00
10 position?

11 A That's backward, an inch and three quarters to
12 the back edge of the neck.

13 Q And how far did the stippling extend in the 9:00
14 position?

15 A Two and a half inches where it was terminated by
16 his beard.

17 Q The 6:00 position, the stippling extended on the
18 to the collar, right?

19 A Yes, sir.

20 Q That made precise measurements difficult?

21 A There was no attempt made to measure how far down
22 on his collar it went.

23 Q Dr. Hirsch, based on these dimensions and the
24 moderately dense gunpowder stippling that you saw, do you
25 have an opinion regarding how many inches separated the

1 muzzle of the .357 magnum from the entrance wound?

2 A I have such an opinion.

3 Q How many inches was it?

4 A It is my opinion that it was several inches.

5 MR. STAVIS: I have no further questions of this
6 witness, your Honor.

7 THE COURT: Anyone else? Cross? Mr. Khuzami?

8 MR. KHUZAMI: Yes, your Honor.

9 CROSS-EXAMINATION

10 BY MR. KHUZAMI:

11 Q Dr. Hirsch, is the medical examiner responsible
12 for making decisions regarding whether or not to perform an
13 autopsy pursuant to the religious objections law?

14 A Yes, sir.

15 Q What does that religious objections law provide,
16 in your understanding?

17 A Religious objections to autopsy in New York are
18 empowered and cannot be overridden unless the autopsy is
19 necessary for the criminal investigation of a homicide or to
20 evaluate an imminent threat to public health.

21 Q Is it common during your tenure as chief medical
22 examiner to receive religious objections by persons who
23 don't want autopsies done?

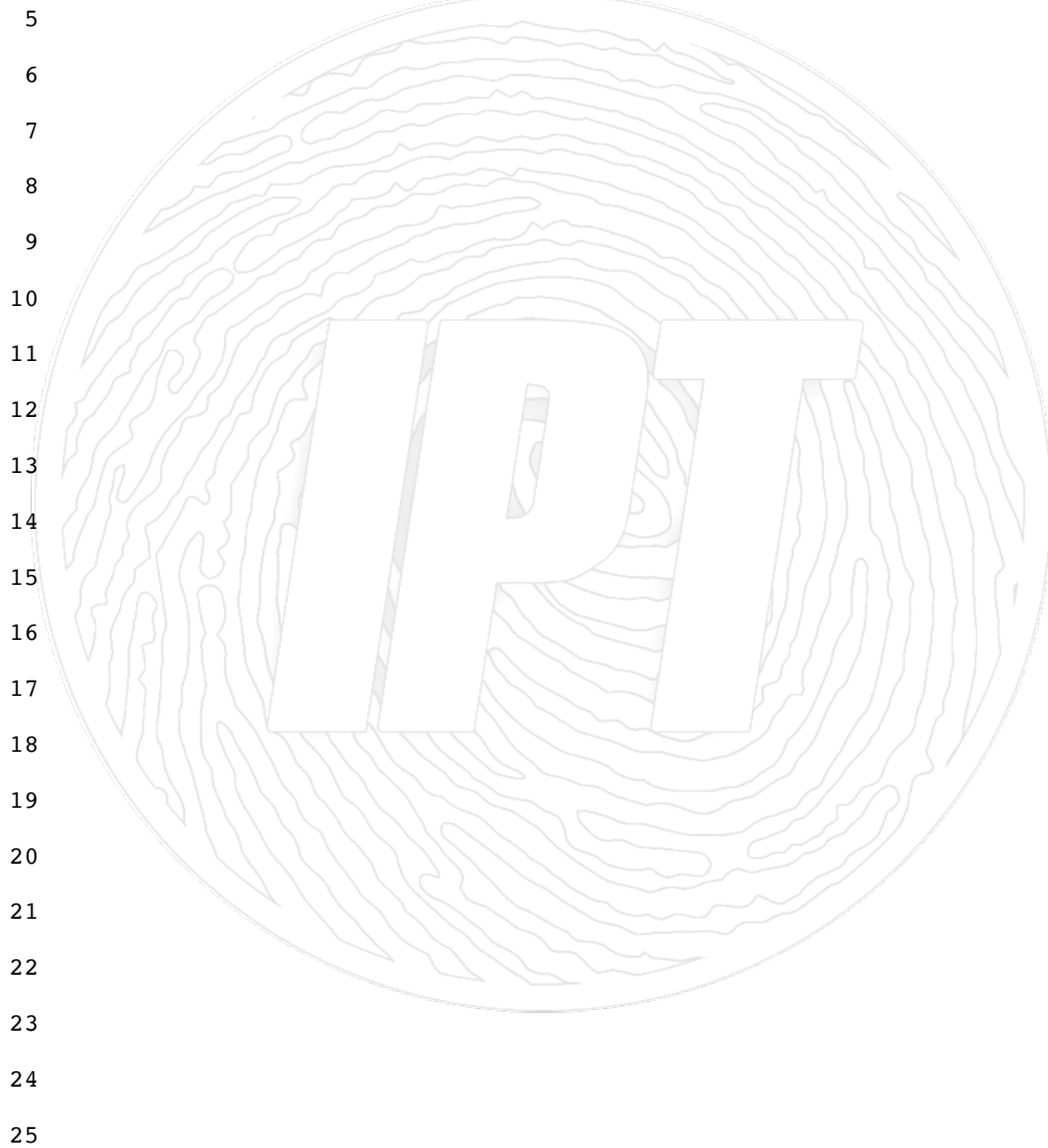
24 A Yes, sir.

25 Q Do those objections come from any one particular

1 religious faith or more than one?

2 A The two frequent religions in New York which
3 oppose autopsy are Judaism and Islam.

4 (Continued on next page)



1 Q Have you in fact honored those requests on
2 occasion?

3 A Yes, sir, for both Jews and Muslims.

4 Q What sort of things do you do in honoring those
5 requests?

6 A If the autopsy is not absolutely necessary to
7 fulfill our public responsibility, we investigate the death
8 by being aware of the circumstances surrounding death and
9 the environment of death. We take X-rays, we take
10 photographs, and then we do an inspection or external
11 examination, as was done in the case of Rabbi Kahane, and
12 release the body without autopsy.

13 Q Why is it that you decided not to perform an
14 autopsy in the case of Rabbi Kahane?

15 A Based on everything I knew about his death and
16 the appearance of his body, it was my conclusion that
17 dissecting his neck would not have added any information of
18 practical significance. In other words, from a scientific
19 standpoint, it was my conclusion that there was nothing to
20 be gained by violating his religious principles. There was
21 no ballistic evidence to recover internally and, therefore,
22 there was, in my opinion, no point in doing it.

23 Q Can you describe for the jury what you did when
24 you physically examined Rabbi Kahane's body.

25 A Looked at him.

1 Q Did examine any particular portions of him?

2 A I looked at all of him.

3 Q Did you examine the entrance and exit wounds of
4 the bullet?

5 A Yes, sir.

6 Q And did you also examine X-rays that showed that
7 area?

8 A Yes, sir.

9 Q Based on that examination, do you have an
10 opinion --

11 MR. STAVIS: Objection, your Honor. May I be
12 heard at the side bar?

13 THE COURT: Yes.

14 (Continued on next page)
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1 (At the side bar)

2 MR. STAVIS: Your Honor, in my direct
3 examination, I did not elicit any testimony concerning the
4 path of the bullet.

5 THE COURT: Your examination was clearly intended
6 to suggest that there was something that might have been
7 learned in an autopsy that was not learned, in aid of other
8 examination that took place during the government's case in
9 which the question was raised about the cause of death and
10 whether negligence contributed to it and so on.

11 I can't take this evidence and put it in
12 isolation. I am going to permit the questioning.

13 (Continued on next page)

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1 (In open court)

2 Q Dr. Hirsch, based on your physical examination of
3 the entry and exit wounds, as well as the X-rays, do you
4 have an opinion to a reasonable degree of medical certainty
5 as to the path of the bullet that struck Rabbi Kahane?

6 A I do.

7 Q What is that opinion?

8 A It's my opinion that the bullet traveled from
9 Rabbi Kahane's left to his right, from back to front and
10 upward. At the initial part of its path, it passed through
11 the side of one of his cervical vertebrae, and near the exit
12 site it passed through the right side of his lower jawbone.

13 Q Did you see any evidence on the X-rays of Rabbi
14 Kahane that corroborate that conclusion?

15 A Yes, sir. There are tiny metal fragments both on
16 the left side of the cervical vertebrae and near the right
17 side of his lower jawbone.

18 Q Based on your experience, what is the cause of
19 the existence of these tiny metal fragments?

20 A These are little shavings of metal that adhere to
21 bone when they perforate and fracture bone.

22 Q Based on your examination of Rabbi Kahane as well
23 as the X-rays -- withdrawn.

24 Based on your examination of Rabbi Kahane and the
25 X-rays, do you have an opinion as to the cause of death of

1 Rabbi Kahane?

2 A I do.

3 Q What is that?

4 A Rabbi Kahane died as a result of a gunshot wound
5 of his neck and face.

6 MR. KHUZAMI: No further questions.

7 MR. STAVIS: I have no further questions of this
8 witness, your Honor.

9 THE COURT: You are excused. Thank you.

10 (Witness excused)

11 THE COURT: May I see counsel briefly at the
12 side.

13 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Obviously, I don't see Mr. Ricco, so
3 unless there is something else that you have or someone else
4 that you have I would propose just to take a break and wait
5 until he gets here.

6 MR. STAVIS: OK. I expect to have another
7 witness within the half hour.

8 THE COURT: OK. Can you check on him? Do you
9 know where he is supposed to arrive?

10 MR. STAVIS: Yes. The witness is from the
11 Marriott Hotel, and the counsel for the Marriott Hotel is
12 flying up on the shuttle and said she'd be here by 11.

13 THE COURT: So she's not here yet, right?

14 MR. STAVIS: I have to doublecheck with the
15 office, Judge.

16 THE COURT: Rather than have you walk out and us
17 sit here and drum our fingers, I will tell the jury we need
18 to take a break and we will take a break.

19 MR. STAVIS: Thank you.

20 (In open court)

21 THE COURT: Ladies and gentlemen, we need to take
22 a short break. Please leave your notes and other materials
23 behind and please don't discuss the case and we will resume
24 in a few minutes.

25 (Jury not present)

1 MR. STAVIS: Your Honor, two things for the court
2 for scheduling purposes: There was an exhibit Defense ZZ
3 for purposes of identification, that I left with your Honor
4 at the close of business on Thursday. There's also another
5 exhibit which will be marked Defense AAA that I spoke to the
6 government about over the weekend, which is a short,
7 20-second snippet of another videotape that we can play when
8 it is time.

9 THE COURT: With regard to ZZ, the record should
10 reflect that what that portrays, as I can perceive it, is
11 Mr. Nosair in what is apparently a transfer elevator with a
12 couple of guards. The elevator then eventually moves. He
13 leaves the elevator and is picked up by another camera;
14 walks down a corridor, and is picked up by yet another
15 camera; eventually is no longer in handcuffs and emerges
16 into a visiting room where he visits with his wife and
17 child, and they go over papers for a period of time that I
18 can't tell you, because I stopped it at some point.

19 I don't see what it proves.

20 MR. STAVIS: I ask only to play that beginning
21 part of the video, your Honor, to show the video
22 surveillance, and it was very obvious to anyone walking down
23 the hall the video cameras would keep picking you up.

24 THE COURT: I don't know of any suggestion in
25 this case that Mr. Nosair is accused of doing anything while

1 he was being transferred from one point to another, so I
2 don't see that it goes to any issue.

3 MR. STAVIS: I believe that under Rule 401, your
4 Honor, it makes it -- again, his knowledge of the video, of
5 the total video surveillance he was under makes it less
6 likely that he directed a war of urban terrorism from inside
7 the walls of Attica Prison.

8 THE COURT: Well, I think you somewhat overstate
9 the government's theory, but, regardless of that, I don't
10 see the probative value, and accordingly the objection is
11 sustained. The other video I gather there is no objection
12 to, is that right?

13 MR. KHUZAMI: That's correct, your Honor. No
14 objection.

15 THE COURT: Good.

16 MS. AMSTERDAM: Your Honor, at some point I have
17 another legal argument that I would like to address to the
18 court. I didn't know if this was the time that we were
19 looking for something to do while we were waiting for the
20 arrival of Mr. Ricco.

21 THE COURT: I don't want issues generated simply
22 to fill the time, but if you tell me the issue is there, now
23 is the time.

24 MS. AMSTERDAM: Last week at the close of
25 business Thursday we had Agent Anticev on the stand, and I

1 had moved into evidence a specific tape, and there was an
2 objection by the government and an objection I think by some
3 counsel. It is a conversation between Mr. Salem and Agent
4 Anticev, and what I said at the close of business on
5 Thursday was I wanted to be able to review the record to see
6 if the question had come in and whether or not I needed the
7 tape.

8 As it turns out, the question that I asked, which
9 in summary is something to the effect, didn't Mr. Salem
10 basically threaten you and say that he would go public and
11 tell the world that he had built the World Trade Center bomb
12 under the supervision of the FBI, with the knowledge of the
13 FBI and the knowledge of the DA's office? That objection to
14 that question was sustained and no answer was given. I then
15 moved the tape into evidence and that's how we come to be
16 here today.

17 THE COURT: I don't remember the question being
18 phrased that way.

19 MS. AMSTERDAM: I will give you the --

20 THE COURT: Do you have the page?

21 MS. AMSTERDAM: Yes.

22 THE COURT: There were a number of questions
23 about threats.

24 MS. AMSTERDAM: It is on page 13595, line 17.

25 And the question was:

1 "Q In the course of the conversation, did
2 you --

3 THE COURT: I have the question.

4 MS. AMSTERDAM: I'm sorry, sir.

5 THE COURT: Yes, there was an objection to form
6 which I sustained.

7 MS. AMSTERDAM: This area of inquiry was an
8 attempt on my part to develop the fact that Mr. Salem was
9 making demands, what I would argue to the jury were threats
10 to the FBI, that it came in the course of a conversation
11 where he demanded \$200,000 for information regarding the
12 whereabouts of Mahmud Abouhalima, that when that was denied
13 by Anticev, he got very angry. He said that we are not
14 selling tomatoes here. He continued being very angry, and
15 at that point he made the statement about, that he would go
16 public, and that is actually -- the way the question is
17 phrased is actually a literal reading of what was said in
18 the transcript.

19 In light of the fact that that objection was
20 sustained, I would ask first that the entire conversation be
21 admitted to show that he was in indeed threatening the FBI,
22 and it is my contention that as a result of those threats
23 they allowed him latitude and looked the other way when he
24 engaged in acts of impropriety, either affirmatively
25 encouraged or affirmatively allowed him to do things that

1 were part of the frame.

2 In the alternative, I would at least ask for that
3 portion of the conversation to either be played to the
4 jury -- I have transcripts -- or be published to the jury in
5 the form of the transcript.

6 THE COURT: OK.

7 MR. FITZGERALD: Your Honor, I object for three
8 reasons: First, I don't think it is an issue. My
9 recollection of Mr. Salem's direct testimony was that he did
10 say at times he threatened the FBI. This is not one --

11 THE COURT: Would you hold on one second.

12 MS. AMSTERDAM: I'm sorry. Mr. Stavis was
13 asking -- never mind. I apologize.

14 MR. FITZGERALD: Secondly, the objection to the
15 question Ms. Amsterdam put to Agent Anticev was the fact
16 that she said didn't Salem threaten to go public with the
17 fact that the DA and the FBI built the bomb, which was
18 hardly a fact. So that was the objection to the form, one
19 of the objections to form.

20 The last point is that that is not what is borne
21 out by transcript 34-3. Salem is just lamenting that they
22 started off building the bomb and what a great case it would
23 have been and then it got shut down. It seems to me that to
24 offer that to prove that there was a threat, and to imply
25 that the FBI and the DA built the bomb is just misleading.

1 THE COURT: I do not have the transcript with me.
2 Do you have it, Ms. Amsterdam?

3 MS. AMSTERDAM: Yes.

4 THE COURT: Mr. Stavis has it.

5 MS. AMSTERDAM: Mr. Stavis has a copy, but it is
6 important to know in response to the last part of what Mr.
7 Fitzgerald said, he's not simply lamenting, and if the court
8 wishes to actually hear the conversation, he is screaming at
9 him: "This is what I am going to do."

10 THE COURT: What is a threat and what is a lament
11 it seems to me is for the --

12 MS. AMSTERDAM: It is a question for the jury.
13 That is why I offered to play it.

14 THE COURT: It seems to me it is not for me. I
15 would like to look at the transcript because this is a tape
16 that I may have heard at some time in connection with
17 another issue, and I could have examined it.

18 MR. STAVIS: I had not an objection to the
19 playing of the tape, but there are portions of the tape that
20 concern Dr. Abdel Rahman and that concern Mr. Nosair,
21 namely, pages 20 for Mr. Nosair --

22 THE COURT: You are telling me you don't want the
23 whole thing shoveled in.

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

25 MS. AMSTERDAM: But that he would take in

1 redacted form --

2 MR. STAVIS: Yes. I don't have an objection to
3 the exhibit except insofar --

4 THE COURT: I take it, Ms. Stewart, you don't
5 want the whole thing shoveled in either?

6 MS. STEWART: Exactly.

7 THE COURT: Then the question becomes whether a
8 redacted version conveys fairly what is proper and excludes
9 what's improper. Let me take a look at the transcript.

10 MS. AMSTERDAM: Thank you, sir.

11 THE COURT: Where in particular do you want to
12 focus me? I mean tell me where, as we used to say in junior
13 high school, the good parts are.

14 MS. AMSTERDAM: If you could -- actually, I will
15 hand you back the transcript.

16 MR. FITZGERALD: I will tell you, Judge. Her
17 good part is page 26 at the bottom.

18 THE COURT: OK.

19 MR. FITZGERALD: That's the part where he talks
20 about the bomb being built.

21 THE COURT: OK.

22 MS. AMSTERDAM: Then the initial part about the
23 \$200,000 and Mahmud Abouhalima starts on page 5 and then
24 continues on, so that you get on page 7, "We're not selling
25 tomatoes here."

1 THE COURT: Let me look at the transcript.

2 MS. AMSTERDAM: All right. Thank you, sir.

3 THE COURT: OK. We will take a short break.

4 (Recess)

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1 (Pages 13760 - 13769 sealed)

2 (In open court; jury not present)

3 MR. STAVIS: May I be excused for one minute?

4 THE COURT: While we are waiting -- the jury is
5 going to come in in a minute. Just to make specific what I
6 think was clear this morning, Mr. Serra, you indicated that
7 you were asked by Mr. Ricco to fill in, and you did in a
8 sense. There was a witness who testified who had no
9 particular testimony that was relevant to Mr. El-Gabrownny,
10 but I want to ask if that was satisfactory to
11 Mr. El-Gabrownny that we went ahead this morning in Mr.
12 Ricco's absence with that witness. Is that all right?

13 DEFENDANT EL-GABROWNNY: Yes.

14 MS. STEWART: Your Honor, I have a matter that I
15 would just ask inquiry of. It was brought to our attention
16 today that the marshals will not permit the public to be in
17 the courtroom if the jury is not in the courtroom, in other
18 words, during legal arguments.

19 THE COURT: I don't think that is accurate.
20 There may be times when we are waiting for the jury to come
21 in --

22 MS. STEWART: I just appreciate your making
23 inquiry.

24 THE COURT: I will find out about it.

25 (Jury present)

1 THE COURT: Mr. Stavis will be in in a minute.

2 MR. STAVIS: Your Honor, the defense calls
3 Lynn-Marie Lentz. She will be walking through the door any
4 minute.

5 THE COURT: That door?

6 MR. STAVIS: That is the government door, this is
7 the defense door.

8 MR. McCARTHY: I will take curtain number 3.

9 (Pause)

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1 LYNN-MARIE LENTZ,

2 called as a witness by the defense,

3 having been duly sworn, testified as follows:

4 THE COURT: Ms. Lentz, if you could talk into the
5 microphone and lean forward.

6 THE WITNESS: OK. I am kind of nervous.

7 THE COURT: I am sure. Don't worry, you know the
8 answers to the questions and nobody else does. So you have
9 that advantage. Go ahead.

10 DIRECT EXAMINATION

11 BY MR. STAVIS:

12 Q Miss Lentz, are you here pursuant to a subpoena
13 that I issued?

14 A Yes, I am.

15 Q Is your lawyer here this morning?

16 A Yes, she is.

17 Q Miss Lentz, what company did you work for on
18 November 5 of 1990?

19 A Marriott.

20 Q Did you work for a specific Marriott Hotel?

21 A I worked for the New York Marriott East Side.

22 Q Where is the New York Marriott East Side located?

23 A 49th Street and Lexington Avenue.

24 Q What position did you hold at the New York

25 Marriott East Side Hotel?

1 A I was in banquet sales.

2 Q What does that entail?

3 A We get inquiries for people that want to have
4 meetings or occasions of some sort in one of the banquet
5 rooms, and take the information and help them make it
6 happen.

7 Q Drawing your attention to October of 1990, what
8 hotel were you working at at that time?

9 A The Halloran House.

10 Q Could you explain to the ladies and gentlemen of
11 the jury the difference between the Halloran House and the
12 Marriott East Side?

13 A The Halloran House was a privately owned and run
14 hotel, and the Marriott came in and took the management
15 contract.

16 THE COURT: So it is the same hotel?

17 THE WITNESS: Yes, it is.

18 THE COURT: Physically?

19 THE WITNESS: Yes.

20 THE COURT: Go ahead.

21 Q And you kept your job when the Marriott took over
22 the hotel?

23 A Yes, I did.

24 Q When did the change occur from Halloran House
25 over to Marriott East Side?

1 A November 3.

2 Q Of what year, ma'am?

3 A '90.

4 Q Drawing your attention back to October of 1990,
5 did you book a function for the Morgan D room for the date
6 of 11/5/1990, November 5, 1990?

7 A Yes, I did.

8 Q What function was that?

9 A It was under the group name Jewish Idea. It was
10 an evening meeting.

11 Q Who contacted you about that meeting?

12 A Shareen Levine.

13 MR. STAVIS: Your Honor, I would like to approach
14 the witness with what has been marked for identification as
15 Nosair Defense Exhibit AAA.

16 THE COURT: Go ahead.

17 MR. STAVIS: It is actually, your Honor, AAA-1
18 through 3.

19 THE COURT: Go ahead.

20 Q We are going to have to share the microphone.

21 Miss Lentz, Nosair AAA-1, have you seen that
22 document before?

23 A Yes, I have.

24 Q Do you recognize it?

25 A Yes, I do.

1 Q What do you recognize it to be?

2 A It is a banquet contract.

3 Q Is that the banquet contract that you were
4 referring to? I asked you questions about booking the
5 Morgan D room. What is the relationship between this
6 banquet contract and booking the Morgan D room?

7 A This banquet contract would be the detail on the
8 event.

9 MR. STAVIS: Your Honor, I move Defense AAA-1
10 into evidence.

11 MR. KHUZAMI: No objection.

12 THE COURT: Nosair Defense Exhibit AAA-1 received
13 without objection

14 (Nosair Defense Exhibit AAA-1 received in
15 evidence)

16 Q I am now showing you AAA-2 and ask you if you
17 recognize that?

18 A Yes, I do.

19 Q What is that?

20 A It is a confirmation agreement.

21 Q The confirmation agreement with regard to what
22 banquet or meeting?

23 A It was the confirmation agreement for Jewish Idea
24 event for November 3 -- November 5, excuse me, 1990.

25 Q Where was that supposed to be located?

1 A In the banquet room Morgan D.

2 MR. STAVIS: I offer Nosair Defense AAA-2 into
3 evidence.

4 MR. KHUZAMI: No objection.

5 THE COURT: AAA-2 received without objection
6 (Nosair Defense Exhibit AAA-2 received in
7 evidence)

8 Q Drawing your attention to the bottom of Nosair
9 AAA-2, it refers to a check. Do you see that notation?

10 A Yes, I did.

11 Q It said that Kach check, K-A-C-H, check was going
12 to be used. Do you see that?

13 A Yes, sir.

14 Q I am showing you what has been previously marked
15 as Nosair Exhibit AAA-3, and I ask you to take a look at
16 that.

17 A Yes, sir.

18 Q Do you recognize that?

19 A Yes, sir.

20 Q What do you recognize that to be?

21 A A deposit check.

22 Q A deposit check for what?

23 A For a meeting room.

24 Q How does Nosair AAA-3 relate to what is written
25 on the bottom Nosair AAA-2, which is the confirmation

1 letter?

2 A It matches.

3 MR. STAVIS: Your Honor, I would offer Nosair
4 AAA-3 into evidence.

5 MR. KHUZAMI: No objection.

6 THE COURT: AAA-3 is received without objection.
7 (Defendant Nosair Exhibit OAAA-3 received in
8 evidence)

9 Q Drawing your attention to Nosair Exhibit AAA-1,
10 what is the stationery on that banquet contract?

11 A The Halloran House.

12 Q And what is the date on the bottom of Nosair
13 AAA-1?

14 A This one?

15 Q Yes.

16 A October 31, 1990.

17 Q Thank you.

18 You mentioned a woman's name, Shareen Levine. Do
19 you recall that?

20 A Yes, sir.

21 Q How often did you have occasion to speak to
22 Shareen Levine prior to November 5, 1990, in connection with
23 booking this event for the Morgan D room?

24 A I don't recall, sir.

25 Q Did you speak more than once?

1 A Yes, sir.

2 Q You are in banquet sales, right?

3 A Excuse me.

4 Q You are in the banquet sales department?

5 A Not at this time, no.

6 Q No, I am going back to -- we are only talking
7 about October and November of 1990.

8 A Yes, sir.

9 THE COURT: You were in banquet sales?

10 THE WITNESS: Yes.

11 THE COURT: That is the question.

12 Q Did you have a title in banquet sales, director
13 of banquet sales or assistant director of banquet sales,
14 something like that?

15 A During that time with Marriott taking over, my
16 title was in transition. So prior to, I was the assistant
17 with director of catering, afterwards I was a catering
18 assistant.

19 Q As assistant director of catering, did you have
20 occasion to book events for people who lived outside of New
21 York?

22 A Yes, sir.

23 Q Did you have occasion to deal with, in your
24 capacity as assistant director of catering, people from
25 Europe?

1 A Yes, sir.

2 Q People from Asia?

3 A Yes, sir, I believe so.

4 Q People from the Middle East?

5 A Yes, sir.

6 Q People from Africa?

7 A Yes, sir.

8 Q Drawing your attention out to November 5, 1990,
9 what time did you come to work on that day?

10 A I don't recall.

11 Q What time did you ordinarily come to work around
12 that time period?

13 A Between 8 and 10 a.m.

14 Q Did there come a time that day that you received
15 a strange telephone call?

16 A Yes, sir.

17 Q What was that telephone call?

18 A Somebody called asking about security for Meir
19 Kahane's speaking engagement that evening.

20 Q What did you say to that person?

21 A I told him I wasn't sure and I asked for their
22 name and number and that I would call back with more
23 information.

24 Q What if anything did that person do in response
25 to your telling him that?

1 A That it wasn't important, and hung up.

2 Q Was the person -- I said his phone call but was
3 it a man or a woman on the telephone?

4 A It was a man.

5 Q What if anything distinctive do you remember
6 about that man's accents?

7 A Nothing I can recall.

8 Q What if anything did you do after that man hung
9 up the phone on you?

10 A I contacted Shareen Levine of Jewish Idea.

11 Q What if anything did you say to her?

12 A I believe I left a message on her answering
13 machine, telling her it was important she call me back.

14 Q Did there come a time that day that you spoke to
15 her?

16 A Yes.

17 Q What if anything did you say to her at that time?

18 A I asked her why she hadn't told me that Rabbi
19 Kahane would be at the hotel.

20 Q Was that phone call that you received on the
21 afternoon of November 5, 1990, where the person hung up, was
22 that the first time you realized that Rabbi Kahane was going
23 to be speaking at your hotel?

24 A Yes, sir.

25 Q Did you know who Rabbi Kahane was at that time?

1 A Yes, sir.

2 Q After speaking to Shareen Levine, what if
3 anything did you do in response to the telephone
4 conversation that you had?

5 A I called my boss and told her that she should
6 know about this phone call, and I called my security
7 department, and I believe I called my general manager.

8 Q Did there come a time that you left work on
9 November 5, 1990?

10 A Yes, sir.

11 Q Around what time did you leave? You didn't sneak
12 out early, did you?

13 A No.

14 Q What time did you leave?

15 A After 5. I don't really remember.

16 Q At the time that you left, had Rabbi Kahane come
17 to the hotel yet?

18 A Not that I was aware of.

19 Q Did there come a time after you got home from
20 work that evening of November 5, 1990, that you received a
21 call from a coworker of yours at the Marriott Hotel?

22 A Yes.

23 (Continued on next page)

24

25

1 Q What did that call consist of?

2 MR. KHUZAMI: Objection.

3 A It was a co-worker telling me that --

4 THE COURT: Sustained.

5 Q Describe, if you would, the tone of voice of the
6 person on the telephone call.

7 MR. KHUZAMI: Objection.

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

10 (At the side bar)

11 MR. STAVIS: Your Honor, it is a foundational
12 question to get her back to the Morgan D room. The person
13 tells her of the incident. I am introducing it for the
14 effect on the listener rather than for the truth that Meir
15 Kahane got shot.

16 MR. KHUZAMI: My objection is relevance.

17 THE COURT: That is my point. So she goes back,
18 so what?

19 MR. STAVIS: Something significant happens when
20 she goes back, your Honor.

21 THE COURT: OK. Just ask her, you got a call
22 telling her Meir Kahane has been shot and you go back to the
23 Morgan D room.

24 MR. STAVIS: OK.

25 (In open court)

1 BY MR. STAVIS:

2 Q Did you receive a call at home telling you that
3 Rabbi Kahane had been shot?

4 A Didn't specify who was shot.

5 Q You received a call about a shooting?

6 A Yes.

7 Q Then you went back to the Marriott Hotel?

8 A Yes.

9 Q When you returned, did you speak to police
10 detectives?

11 A I spoke to many people. I believe a police
12 detective, yes, sir.

13 Q Did you tell him about the strange call that you
14 had received earlier in the afternoon?

15 A Yes, sir.

16 Q Did you tell him that the person who called you
17 had a Jewish accent, like a person from Brooklyn?

18 A I don't recall that.

19 MR. STAVIS: May I approach the witness with
20 Nosair defense Exhibit BBB-1 and 2?

21 THE COURT: Yes.

22 Q Miss Lentz, I am showing you what has been marked
23 as Defense Exhibit BBB-1 through 2, and ask you to take a
24 look at the fifth line down in the middle, to the seventh
25 line down in the middle.

1 Having looked at that, does that refresh your
2 recollection as to whether or not you told a police
3 detective that the caller sounded like he had a Brooklyn
4 Jewish accent?

5 A No, it doesn't, sir.

6 Q Did the caller have a Brooklyn Jewish accent?

7 MR. KHUZAMI: Objection.

8 THE COURT: I will allow it. Go ahead.

9 A I don't recall, sir.

10 Q And that is your answer after having refreshed
11 your recollection?

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 MR. STAVIS: I have no further questions of this
15 witness, your Honor.

16 MR. KHUZAMI: No questions, your Honor.

17 THE COURT: You are excused. Thank you.

18 (Witness excused)

19 MR. STAVIS: Your Honor, at this time I would
20 offer into evidence Nosair Defense Exhibit CCC, which is a
21 videotape made at Attica prison of El Sayyid Nosair and
22 Lieutenant Lawrence George. I am offering only a short
23 section, which I am now going to play.

24 MR. KHUZAMI: No objection.

25 THE COURT: That segment of CCC is received

1 without objection.

2 (Nosair Defense Exhibit CCC received in evidence)

3 THE COURT: Do you want to go ahead and do it
4 now?

5 (Pause)

6 MR. STAVIS: We are experiencing technical
7 difficulties.

8 THE COURT: I think we're OK.

9 (Videotape played)

10 MR. STAVIS: Please stop the video. The video
11 was started at counters number 9:00 and 00 seconds and it
12 ran to 9:00 and 45 seconds.

13 THE COURT: Is there any stipulation as to who is
14 depicted on the tape?

15 MR. KHUZAMI: Yes, your Honor.

16 MR. STAVIS: Prior to playing the tape I
17 indicated after agreement --

18 THE COURT: That it was Mr. Nosair and Lieutenant
19 George?

20 MR. STAVIS: Yes, your Honor.

21 THE COURT: Mr. Nosair was the figure closer in
22 and Lieutenant George was on the other side of the screen?

23 MR. STAVIS: Yes, your Honor, and it was on March
24 5, 1993.

25 MR. KHUZAMI: So stipulated.

1 THE COURT: Ladies and gentlemen, there are some
2 issues that I need to talk to the lawyers about, and, rather
3 than delay you, what I am going to do is break now early for
4 lunch, do what talking I have to do, and we will reconvene
5 this afternoon. So I will ask you please to leave your
6 notes and other materials behind. Please don't discuss the
7 case, and we will see you this afternoon.

8 (Jury not present)

9 THE COURT: This, in essence, continues the
10 discussion that started in the robing room about
11 Mr. Kunstler's proffered testimony, and, particularly in
12 view of the fact that Mr. Ricco was not here this morning,
13 we thought it wiser to wait until he got here before we
14 dealt with that.

15 My question, in essence, is whether we need to
16 make a preliminary determination about the areas of Mr.
17 Kunstler's testimony to make sure we don't get into
18 problematic areas, because he did represent at least two --
19 actually, well, he represented three -- but he represented
20 two other of the defendants here who, as I understand it,
21 are not calling him, and, at least in Mr. Ricco's case,
22 don't plan to question him. I don't know about Ms. Stewart.

23 MS. STEWART: I didn't hear what you just said,
24 Judge.

25 THE COURT: I'm sorry. What I said was that he

1 represented two other defendants other than the one who is
2 calling him. Mr. Ricco, as I understand it, does not plan
3 to question him.

4 MS. STEWART: I also do not plan to question him.

5 THE COURT: So, then, the question is whether we
6 ought to make sure, and I think we should make sure that his
7 testimony is not going to have any impact on those two
8 defendants that it shouldn't and also make sure that it is
9 relevant. So can we talk about it?

10 MR. STAVIS: Yes, your Honor.

11 THE COURT: OK.

12 MR. STAVIS: Mr. Kunstler will be testifying
13 concerning Government's Exhibit 146, your Honor.
14 Government's Exhibit 146 are still photographs from the
15 Kahane video, Government's Exhibit 5, along with an envelope
16 from Blind Justice Identifications.

17 Mr. Fitzgerald said on page 8916 at the time he
18 introduced this exhibit, over my objection, your Honor, that
19 it shows that Mr. El-Gabrownny had photos of Alkaisi and
20 Salameh in his apartment. Mr. Kunstler will explain the
21 exhibit, why it was prepared and how it came to be in
22 Mr. El-Gabrownny's possession. He will also explain what
23 Blind Justice Investigations was.

24 The second point, your Honor, at page 4712 of the
25 record Emad Salem testified that Ibrahim El-Gabrownny

1 possessed post mortem photographs of Rabbi Kahane.
2 Mr. Kunstler will explain why El-Gabrownny had the
3 photographs and how he obtained them.

4 Three, at page 4702 to 4710 of the record,
5 Mr. Salem testified, quote, that he met Mahmud Abouhalima in
6 the courtroom during Mr. Sayyid Nosair's trial.
7 Mr. Kunstler will explain the role of Mahmud Abouhalima
8 during the Nosair trial.

9 Fourth, Government Exhibits 387 A through J were
10 introduced into evidence at page 4874 of the record. Your
11 Honor, these were the photographs that Emad Salem took off
12 of the television showing what occurred outside of the
13 courthouse during the Nosair trial and identifying
14 individuals who were in those photographs. Mr. Kunstler
15 will explain what is occurring in these photographs,
16 particularly in the photograph that he is depicted in,
17 Government Exhibit 387C. There was testimony on
18 Government's Exhibit 387C.

19 THE COURT: Was that the series in which there
20 was some sort of fight going on?

21 MR. STAVIS: Yes, your Honor.

22 THE COURT: Go ahead.

23 MR. STAVIS: Mr. Sattar is pictured next to
24 Mr. Kunstler allegedly involved in a fight at Government
25 Exhibit 387C.

1 THE COURT: OK.

2 MR. STAVIS: The fifth item, at page 4701 to 4702
3 of the record, Mr. Salem testified that Imad Abdou would
4 call Sheik Omar to tell him what is going on in Mr. Sayyid
5 Nosair's trial. Mr. Kunstler will explain that Sheik Omar
6 never attended Sayyid Nosair's trial and never met or spoke
7 with any of the lawyers involved in Sayyid Nosair's trial in
8 the period 1991 to 1992 and, indeed, Mr. Kunstler will
9 testify that he did not meet Sheik Omar until 1993.

10 The sixth item is at page 4722 to 4729 of the
11 record. Mr. McCarthy asked Mr. Salem: "Now, Mr. Salem,
12 following the conclusion of the Nosair trial, but prior to
13 sentencing, were you involved in some meetings about
14 security arrangements?"

15 Mr. Kunstler will explain the security
16 arrangements, which were actually for Mr. Kunstler and the
17 lawyers.

18 The seventh item that I have is again getting
19 back to Government's Exhibit 387A through J and 384A through
20 I concerning Muslims attending the trial. Mr. Kunstler will
21 identify the roles of Nidal Ayyad, Mohammed Salameh, Siddig
22 Ali, Ahmed Abdel Sattar, Mohammed Saad, Ali Shinawy and
23 Tarek Kattaria. And the significance, your Honor, is that
24 the charge in Counts Seven through Nine is a murder in aid
25 of racketeering activity, and the element that must be

1 proven by the government is that there was a racketeering
2 enterprise and they have alleged that the jihad organization
3 is the racketeering enterprise.

4 In presenting their direct case, they elicited
5 testimony concerning the individuals that they would allege
6 were involved in a racketeering enterprise and what they
7 were doing at the Nosair trial and how they were keeping in
8 touch with each other and Mr. Kunstler is being offered to
9 rebut that element.

10 THE COURT: All right. I guess first I should
11 hear, to the extent that any of this impacts on
12 Mr. El-Gabrownny and Dr. Abdel Rahman, whether either counsel
13 wants to be heard.

14 MR. RICCO: Your Honor, my only concern about
15 Mr. Kunstler related to the McKoen issue that was raised
16 prior to trial, and so long as Mr. Stavis stays away from
17 the issues related to that, I don't have an objection to Mr.
18 Stavis's offer.

19 THE COURT: OK.

20 MS. STEWART: I have no objection to the one
21 series of questions that involve Dr. Abdel Rahman.

22 THE COURT: That was, in essence, whether he had
23 ever attended the trial or whether he had spoken to him and
24 so forth.

25 MS. STEWART: Yes.

1 THE COURT: Fine. Now why don't I hear from the
2 government.

3 MR. McCARTHY: Can I have a couple of minutes,
4 please.

5 THE COURT: Sure.

6 (Counsel conferred)

7 MR. McCARTHY: Your Honor, I guess two things:
8 Number one, just to be certain that we've covered all the
9 areas, whether the court wants to do it before or after I
10 raise my concerns, I don't really have a strong preference,
11 but --

12 THE COURT: I assume since Mr. Stavis just made a
13 point-by-point proffer that we covered the areas.

14 MR. McCARTHY: What I mean is, we looked at the
15 other two clients that Mr. Kunstler has represented at one
16 point other another. I don't know whether the areas that
17 Mr. Stavis has said that he's going to open up have other
18 counsel now thinking that they are going to adopt
19 Mr. Kunstler's --

20 THE COURT: I don't know whether anybody else
21 plans to question him. I didn't ask. I suppose I should
22 have. Does anybody else plan to question him?

23 MR. JACOBS: I was going to ask him --

24 THE COURT: Excuse me?

25 MR. JACOBS: Nothing. I was going to make a

1 joke.

2 THE COURT: Please don't.

3 MS. AMSTERDAM: I apologize. I do not intend to
4 ask Mr. Kunstler any questions, but I want to just alert the
5 court to something that I do think is a possible thing down
6 the road. I had made a motion regarding 806 information
7 regarding Siddig Ali. There are a series of things where
8 Siddig Ali goes on CNN and goes on New York One and rebuts,
9 I would assert, rebuts the co-conspirators' statements.
10 Thereafter, when he went over to the government, he did say
11 in sum and substance, "Mr. Kunstler made me go on TV or go
12 on radio."

13 THE COURT: He didn't say "he made me." I think
14 he said he advised him to do it.

15 MS. AMSTERDAM: Advised him to do it. I am just
16 saying that I have no questions now, but I would not, if
17 this became a future issue down the road, would not want to
18 be in a situation where the court said to me, "Why didn't
19 you raise it while Mr. Kunstler was here?" So I am --

20 THE COURT: I promise you I will not. In essence
21 what you're telling me that you are reserving the right to
22 re-call Mr. Kunstler should that be necessary?

23 MS. AMSTERDAM: Yes.

24 THE COURT: Good.

25 MS. AMSTERDAM: I have heard the "one bite of the

1 apple" theory, so I just wanted to make sure.

2 THE COURT: But this particular apple will be an
3 exception to that rule.

4 Go ahead.

5 MR. McCARTHY: Thank you, your Honor.

6 For the most part, I don't think I have any
7 strong objection. I think that --

8 THE COURT: Strong or weak, why don't you just
9 tell me what they are.

10 MR. McCARTHY: I am a little concerned with the
11 testimony that Mr. Stavis characterizes about the role of
12 different people. I am curious as to whether that is going
13 to be on the basis of something that Mr. Kunstler directly
14 perceived, something he planned, what Mr. Stavis means by
15 Mr. --

16 THE COURT: I assume what he means is a role that
17 Mr. Kunstler assigned them.

18 MR. STAVIS: Yes, your Honor.

19 I listed several people. For some he doesn't
20 know; for some he does. I can go point by point through
21 that if your Honor wishes.

22 MR. McCARTHY: I simply point out that other than
23 Salem giving testimony about particular conversations that
24 he had that were relevant, we didn't make anything more out
25 of the fact that the people were present at the trial than

1 the fact that they were present at the trial to show
2 association.

3 THE COURT: I understand that. But he, I think,
4 can show that not only were they there, but that they had a
5 good and specific purpose for being there.

6 MR. McCARTHY: Right.

7 THE COURT: And they weren't simply hanging out
8 and planning nefarious things.

9 MR. McCARTHY: As long as it's on the basis of
10 something that he's competent to testify to, I am not going
11 to press that point because I don't think I have a colorable
12 objection.

13 THE COURT: OK. Neither do I.

14 MR. McCARTHY: I do think with respect to how
15 Mr. El-Gabrownny came into possession of the videotapes,
16 there's no dispute at least from the government that he
17 got --

18 THE COURT: Not videotapes.

19 MR. McCARTHY: I apologize, your Honor.

20 THE COURT: The photographs.

21 MR. McCARTHY: The photographs were in
22 Mr. El-Gabrownny's home.

23 THE COURT: Right.

24 MR. McCARTHY: The government doesn't dispute
25 that he got them either from Mr. Kunstler or from an

1 intermediary acting on behalf of Mr. Kunstler. What I am
2 concerned about with respect to that, if Mr. Kunstler wants
3 to give testimony about how it was that Mr. El-Gabrowny came
4 into possession of these things, that's all well and good.
5 If that testimony is going to be about why the pictures were
6 made in the first place and what Mr. Kunstler thinks they
7 show, then I think that gets into his conclusions about the
8 events that they --

9 THE COURT: Mr. Stavis is shaking his head no.

10 MR. STAVIS: No. It gets into his actions, your
11 Honor.

12 THE COURT: All right. I assume that what he
13 will testify to, in essence, is that Mr. El-Gabrowny had
14 some particular function in connection with an appeal or
15 something else related to the trial, and that as a result
16 Mr. Kunstler caused these photographs or other items,
17 whatever they were, to be sent to Mr. El-Gabrowny.

18 Is that it?

19 MR. STAVIS: Yes, your Honor.

20 THE COURT: Fine.

21 MR. McCARTHY: Thank you.

22 THE COURT: Obviously not what he thinks they
23 show or don't.

24 MR. STAVIS: Two issues: He will say the reason
25 why he made them in relation to what Mr. El-Gabrowny had to

1 do with them.

2 THE COURT: No. That I will sustain an objection
3 to because it's irrelevant.

4 MR. STAVIS: Mr. Fitzgerald made that a relevant
5 issue, your Honor, and he made it a relevant issue by
6 proffering that evidence as showing that Ibrahim El-Gabrownny
7 had pictures of Mohammed Salameh in his house, and I have to
8 explain that Mr. Kunstler did not reproduce photographs of
9 Mohammed Salameh.

10 MR. McCARTHY: Why Mr. Kunstler made them has
11 nothing to do with why Mr. El-Gabrownny kept them.

12 THE COURT: He can testify to which photographs
13 he gave him. If he didn't give him the photographs of
14 Mr. Salameh, then he didn't give it to him.

15 MR. STAVIS: It isn't a photograph of
16 Mr. Salameh, your Honor. That's the difference in the
17 facts. It was prepared not because it showed Mohammed
18 Salameh, but because it showed something other than that.

19 I believe that Mr. Kunstler should be permitted
20 to testify because of the inference that was left based on
21 what Mr. Fitzgerald did in admitting that exhibit, which I
22 argued was work product at the time, your Honor, and your
23 Honor on overruled my objection. I also argued that it was
24 misleading the jury to introduce that as showing
25 Mr. El-Gabrownny's knowledge that Mohammed Salameh was

1 involved in the Marriott Morgan D Room, and that goes
2 directly to the racketeering element where the government is
3 now trying to show he was there.

4 MR. MCCARTHY: Your Honor, I think that, again,
5 Mr. Kunstler's thought process in making a litigation
6 decision doesn't get imputed to Mr. El-Gabrowny in any
7 event. Mr. El-Gabrowny has photographs in his house of
8 people. Why Mr. Kunstler made them is quite -- it just
9 doesn't have anything to do with El-Gabrowny's state of
10 mind.

11 Now, I suppose if the court wants to permit Mr.
12 Kunstler to testify that the photographs were made on the
13 basis of a litigation decision, and that it did not have
14 anything to do with a particular person depicted in them,
15 that's another story. But the affirmative reason of why Mr.
16 Kunstler thinks the pictures are relevant is really beside
17 the point in this trial, and is really hearsay as to, or at
18 least incompetent testimony as to the Kahane events.

19 MR. STAVIS: I don't believe that the government
20 should limit our proof so long as it's relevant. When the
21 piece of evidence came in, your Honor, I said if they're
22 showing a photograph made from the video, they've showed
23 that already. Why is this being introduced? And I cited
24 the page to your Honor when I was just making my proffer.

25 THE COURT: The point we are talking about here

1 is whether Mr. Kunstler's opinion about what the photograph
2 shows or doesn't show is admissible or not. That is the
3 subject under discussion.

4 MR. STAVIS: I am not offering his opinion as to
5 what it shows. I am not offering it for his opinion, your
6 Honor. I am asking him why did you ask that this exhibit be
7 reproduced and given to Mr. El-Gabrowny? That was put in
8 play by the government, your Honor.

9 THE COURT: That depends in part on what the
10 answer is. It seems to me you're unlikely to ask a "why"
11 question without knowing the answer, so why don't you tell
12 us what the answer is and we can deal with it. There is a
13 variety of answers that you might give to that question,
14 some of which may be admissible, others of which may not.

15 MR. STAVIS: His offer with regard to 146A, which
16 is the photograph that purports to show, or that was
17 introduced into evidence by the government to show
18 Mr. Salameh, a photograph of Mr. Salameh in the possession
19 of Mr. El-Gabrowny, he will state that the people in the
20 photograph, including the person of Mr. Salameh, who he
21 recognized as being one of the people who attended the
22 trial, that he was looking -- and Mr. El-Gabrowny performed
23 an investigative and paralegal function -- he was looking
24 for leads to find out information about the people depicted,
25 including the person that the government says is Mohammed

1 Salameh and Mr. Kunstler recognizes as one of the JDL
2 supporters of Rabbi Kahane. That includes the people in the
3 front row and in the back on Government's Exhibit 146.

4 THE COURT: He is going to say he thinks it's not
5 Mohammed Salameh, is that correct?

6 MR. STAVIS: He's going to say who it is, not who
7 it is not.

8 THE COURT: OK.

9 MR. MCCARTHY: My concern, your Honor, and I'm
10 reading from page 8916 of the transcript, is Mr. Stavis's
11 representation at that time, and that was April 24, 1995,
12 when he said, referring to the same photograph: They are
13 blowup photographs from the Kahane videotape that were made
14 at the request of William Kunstler, who was Mr. Nosair's
15 attorney in his state trial, and they were made to show a
16 point. The point is not being that the government now
17 alleges it was Mohammed Salameh and Bilal Alkaisi. That
18 wasn't the point they were made for. They were made to show
19 Nosair's innocence at his first trial. They were prepared
20 for purposes of litigation and so on.

21 THE COURT: I don't understand how that's
22 responsive to what he just said.

23 MR. MCCARTHY: What I am concerned about is if
24 what we're doing is a photo ID --

25 MR. STAVIS: Your Honor, I asked for Mr. Kunstler

1 to come in here just now because we are talking about the
2 proffer on his specific testimony.

3 THE COURT: I think that is a good reason for not
4 having him here.

5 MR. STAVIS: For not having him here?

6 MR. KUNSTLER: I'm in and out and in and out.

7 THE COURT: I am sorry.

8 MR. STAVIS: Would you stand outside the door,
9 please, Mr. Kunstler.

10 MR. MCCARTHY: I mean, if it is for a proper
11 purpose, if it's for a photo ID, I think that's fine. But
12 if it's being done to slide in Mr. Kunstler's view that it
13 was to show that Mr. Nosair was innocent, I object to that.

14 THE COURT: I think he can testify, and I will
15 allow him to testify to who he thinks is depicted in the
16 photograph, period. That's the kind of lay opinion you can
17 take from anybody. But not the reason or the theory. If
18 you can instruct him on that, things will go a lot smoother.

19 Is that it? Good. See you at 2 o'clock.

20 MR. STAVIS: Your Honor?

21 THE COURT: Yes.

22 MR. STAVIS: I may have -- your Honor is aware of
23 some scheduling difficulties due to Mr. Patel's illness.

24 THE COURT: I am.

25 MR. STAVIS: There are also some scheduling

1 difficulties with regard to Mr. Kunstler, who has a doctor's
2 appointment. I would ask if we could do Mr. Kunstler's
3 testimony and then break for the day since we do not have
4 additional testimony other than Mr. Kunstler, who has a
5 doctor's appointment at 2:30.

6 THE COURT: His doctor appointment is at 2:30?

7 MR. STAVIS: Yes.

8 THE COURT: Well, I don't know how long your
9 direct is, and I don't know how long their cross is.

10 MR. STAVIS: Should I ask Mr. Kunstler if he --

11 THE COURT: See if Mr. Kunstler can pull a switch
12 and keep the doctor waiting instead of the doctor keeping
13 him waiting, which is the norm.

14 (Pause)

15 MR. STAVIS: Mr. Kunstler's direct will take
16 about a half an hour, your Honor. He says his appointment
17 is at 2:30, and he can't cancel it. If there is a need
18 for cross-examination and it can't be completed, he can
19 return tomorrow.

20 THE COURT: I would prefer to have direct and
21 cross at the same time. Where is his appointment?

22 MR. STAVIS: Excuse me.

23 THE COURT: Where is his appointment?

24 MR. STAVIS: I don't know precisely. Somewhere
25 in Manhattan.

1 THE COURT: Presumably it's not in this immediate
2 area.

3 MR. STAVIS: Presumably.

4 THE COURT: We will take him tomorrow morning. I
5 don't want to break up his testimony if I can avoid it. And
6 I don't want people looking at the clock and telling me,
7 "Well, sorry. He's now got to go, and he's going to come
8 back tomorrow morning." That's just no way to do it.

9 MR. RICCO: Your Honor, can we have a side bar on
10 an issue? I would like to discuss something --

11 THE COURT: Something that came up?

12 MR. RICCO: Yes.

13 MR. STAVIS: Excuse me, your Honor. This won't
14 change the scheduling? I am going to alert Mr. Kunstler.

15 THE COURT: I don't know what he's going to say,
16 so why don't you wait.

17 MR. RICCO: It won't change the scheduling.

18 (AT side bar)

19 THE COURT: There is no jury here, so I am a
20 little bit --

21 MR. RICCO: I don't --

22 THE COURT: You don't want the reporters to hear?

23 MR. RICCO: Yes.

24 THE COURT: I understand that, but it is a public
25 trial.

1 MR. RICCO: Yes. I will do it in open court.

2 THE COURT: All right.

3 MR. RICCO: I don't want them to think that
4 we're --

5 THE COURT: That we're hiding the ball.

6 MR. RICCO: OK.

7 (In open court)

8 THE COURT: Yes?

9 MR. RICCO: Yes, your Honor. With respect to the
10 photograph that was seized from Mr. El-Gabrowny's apartment,
11 I guess the best way to put it is this: From the
12 perspective of my defense, the defense of Mr. El-Gabrowny, I
13 am not very interested in Mr. Kunstler's opinion as to who
14 is or is not in that photograph.

15 What is more important is why the photograph
16 existed in Mr. El-Gabrowny's apartment. Ultimately the jury
17 is going to decide whether or not it is Mr. Salameh or isn't
18 Mr. Salameh. Mr. Kunstler's opinion of that, to me, has no
19 more value or less value than Mr. Salem's opinion of who
20 that person is.

21 However, I am concerned about the issue as to why
22 all of this, all of the documents and exhibits from
23 Mr. Nosair's trial were existing in Mr. El-Gabrowny's
24 apartment and the reason why they were there. I am not
25 interested in the jury hearing that it had something to do

1 with Mr. Kunstler trying to prove that Mr. Nosair was
2 innocent, but it is very important to me that the jury know
3 that the photograph was developed in connection with his
4 state court trial, period. His opinion as to who it is and
5 who it isn't is irrelevant for my purposes, but the reason
6 why the photograph exists, without getting into his theories
7 behind it, is important to me.

8 MR. STAVIS: I have no response to that. I don't
9 think that there's any dispute. I was not going into the
10 opinion. I was going into why -- you know, what is depicted
11 in that. There were a lot of materials that were recovered
12 from Mr. El-Gabrownny's apartment that I don't have any
13 intention of going into.

14 MR. RICCO: Your Honor, my only point is I think
15 Mr. Stavis doesn't understand the point.

16 THE COURT: I think he doesn't either.

17 MR. RICCO: My only point is this: I would
18 request that Mr. Kunstler be permitted to testify that the
19 photograph was in fact developed in connection with
20 Mr. Nosair's state court trial proceedings, without his
21 theory about the photograph, just that it was developed --

22 THE COURT: You mean that he not be permitted to
23 express an opinion as to who is in it?

24 MR. RICCO: Well, if I had to make a choice
25 between the two, I would choose just the reasons why it

1 existed. I think the government's concern about Mr.
2 Kunstler's testimony on this subject was the potential for
3 Mr. Kunstler to begin to theorize about the guilt or
4 innocence of Mr. Nosair. I think perhaps both can be
5 accomplished, both the interests of Mr. Nosair and the
6 interests of Mr. El-Gabrownny could be accomplished without
7 Mr. Kunstler testifying as to the theories behind how the
8 document relates to his guilt or innocence.

9 MR. STAVIS: Since we are breaking for the
10 afternoon, I think gives Mr. Ricco ample opportunity to work
11 together with me to satisfy whatever issues he has.

12 MR. RICCO: I only raise it because your Honor
13 indicated that he would not permit Mr. Kunstler to testify
14 about why the photograph was taken.

15 THE COURT: The record will disclose what I said.
16 I will not permit him to get into defense theories, and I
17 think Mr. Stavis understands that. But if you can work it
18 out, fine.

19 MR. STAVIS: Thank you, your Honor.

20 THE COURT: I will see you this afternoon -- I'm
21 sorry. No, I won't see you this afternoon. I will see you
22 tomorrow morning. If you can't work it out, then would you
23 please tell me that you can't and I will work it out for
24 you.

25 MR. STAVIS: I don't think that will be

1 necessary, your Honor.

2 THE COURT: One more thing, and that is telling
3 the jury that we're not sitting this afternoon. Is it
4 satisfactory that Ms. Schwartz impart that news?

5 MR. STAVIS: Yes, your Honor.

6 THE COURT: One more second.

7 (Pause)

8 THE COURT: There is one other scheduling matter
9 that has arisen and that is that one of the jurors lost a
10 relative over the weekend.

11 MS. AMSTERDAM: I'm sorry?

12 THE COURT: Lost a relative over the weekend, and
13 the funeral is Wednesday. It is out of town. She would
14 prefer strongly to go to the funeral because it is somebody
15 that, as it happens, she was very close to. I would like to
16 let her go.

17 MR. STAVIS: This is Wednesday, your Honor?

18 THE COURT: Yes. It would mean that we would not
19 sit Wednesday. I guess the question is whether there's
20 anybody who's coming on Wednesday who absolutely cannot come
21 back.

22 MR. STAVIS: I will just juggle things, I will
23 get on the phone right after I leave the court.

24 THE COURT: It is Juror No. 3, and her proximity
25 to this particular relative is legitimate.

1 MR. STAVIS: I have an appreciation for these
2 kinds of things.

3 THE COURT: OK. See you tomorrow morning.

4 MR. LAVINE: Your Honor?

5 THE COURT: Yes.

6 MR. LAVINE: Just very briefly, tomorrow morning
7 I have another matter that is on very early, but it may keep
8 me away from this courtroom until close to 10 o'clock.
9 Ms. London has consented to sitting in my place. I would
10 very much doubt we will have anything that concerns my
11 client tomorrow morning, and I should be back by about 10.
12 I have my client's consent for that.

13 THE COURT: Mr. Abdelgani, is that satisfactory
14 to you.

15 DEFENDANT FADIL ABDELGANI: Yes.

16 THE COURT: Thank you very much.

17 MR. LAVINE: Thank you.

18 THE COURT: Thanks a lot.

19 (Proceedings adjourned to Tuesday, July 11, 1995
20 at 9:30 a.m.)

21

22

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,

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

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

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

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

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

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

Defendants.

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July 11, 1995
9:40 p.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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LYNNE STEWART and

RAMSEY CLARK

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ROGER STAVIS and

ANDREW PATEL

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ANTHONY RICCO

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KENNETH D. WASSERMAN

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1 APPEARANCES CONTINUED

2 GROSSMAN, LAVINE & RINALDO
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3 BY: CHARLES D. LAVINE

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

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1 (In the robing room)

2 THE COURT: This may be in an excess of caution,
3 but I just want to make sure of a couple of things.

4 First of all, did whatever have to get worked out
5 between you gentlemen get worked out.

6 MR. STAVIS: Yes, your Honor.

7 MR. RICCO: Yes.

8 MR. STAVIS: Indicating Mr. Ricco and myself.

9 THE COURT: I don't want any accidents out there,
10 to be very blunt about it. The second thing is, again
11 perhaps out of an excess of caution, I am not going to
12 permit any history of Mr. Kunstler's career. I don't know
13 whether you were planning to ask him about that or not. He
14 is a lawyer. He represented Mr. Nosair, and we cut to
15 whatever the chase is.

16 MR. STAVIS: If that is what your Honor wishes.

17 THE COURT: That is what I direct.

18 MR. STAVIS: Can I go into where he went to law
19 school?

20 THE COURT: Sure.

21 (Counsel conferred)

22 MR. STAVIS: I understand. His case history of
23 representing people?

24 THE COURT: Correct.

25 MR. STAVIS: I understand.

1 THE COURT: It is not relevant to him any more
2 than I would let an FBI agent testify to all the miraculous
3 investigations he has solved.

4 MR. STAVIS: I understand, your Honor.

5 THE COURT: OK. Because we will be here all day
6 if we do that. OK?

7 MR. STAVIS: We seem to have a pretty good
8 complement of witnesses for today.

9 THE COURT: Good. Then let's go hear them.

10 MR. STAVIS: Would your Honor allow me a moment
11 to speak to Mr. Kunstler?

12 THE COURT: Yes.

13 MR. STAVIS: To communicate your Honor's order to
14 him?

15 THE COURT: Yes.

16 MR. STAVIS: Thank you.

17 THE COURT: Thank you.

18 (In open court)

19 THE COURT: Good morning, ladies and gentlemen.

20 JURORS: Good morning.

21 THE COURT: Mr. Stavis?

22 MR. STAVIS: Your Honor, at this time the defense
23 introduces into evidence Nosair Defense Exhibit DDD. I
24 think we are up to DDD.

25 THE DEPUTY CLERK: Yes.

1 MR. STAVIS: Which is a photographic enlargement
2 of a portion of Government's Exhibit 24, which are the
3 medical records of Irving Franklin. I would ask if I could
4 just hold this exhibit up before the jury.

5 THE COURT: OK. I assume that is received on
6 stipulation.

7 MR. KHUZAMI: Yes, your Honor.

8 (Defense Exhibit Nosair DDD for identification
9 was received in evidence)

10 (Exhibit published to the jury)

11 THE COURT: Go ahead.

12 MR. STAVIS: Your Honor, at this time the defense
13 calls William M. Kunstler to the witness stand.

14 THE DEPUTY CLERK: Please step into the witness
15 box.

16 THE WITNESS: Hi, Judge.

17 THE COURT: Good morning.

18 THE WITNESS: We meet again.

19 THE DEPUTY CLERK: Step into the witness box.

20 THE WITNESS: I am in the witness box.

21 WILLIAM M. KUNSTLER,

22 called as a witness by the Defendant Nosair,
23 having been duly sworn, testified as follows:

24 THE COURT: Go ahead.

25 THE WITNESS: Good morning, Mr. McCarthy.

1 MR. McCARTHY: Good morning, Mr. Kunstler.

2 Good to see you again.

3 THE WITNESS: Mr. Fitzgerald.

4 MR. FITZGERALD: Good morning.

5 DIRECT EXAMINATION

6 BY MR. STAVIS:

7 Q Mr. Kunstler, what is your occupation?

8 A I am an attorney.

9 Q Tell us something about your educational
10 background.

11 A I graduated from Yale in 1941. Then after six
12 years in the Army, I went to law school, and I graduated
13 from Columbia Law School. Then I went into private
14 practice, but I also became a professor of law at New York
15 Law School, Pace College, now Pace University, and the New
16 School for Social Research.

17 I am the author of about 14 or 15 books, Law
18 Review articles, and I've lectured throughout the United
19 States at various law schools and universities.

20 Q How long have you been practicing law, Mr.
21 Kunstler?

22 A I hate to say this, but I think about 48 years or
23 so, 47.

24 THE WITNESS: Am I talking into the microphone?

25 THE COURT: Yes. Go ahead.

1 Q Are you still at it now?

2 A Unfortunately, yes.

3 Q Mr. Kunstler, are you here under a defense
4 subpoena?

5 A I am.

6 Q Mr. Kunstler, I would ask you to draw your
7 attention to this gentleman over here on my left.

8 Do you know who he is?

9 A Yes, he was my client during a murder case, the
10 Rabbi Kahane murder case.

11 Q What is his name?

12 A His name is El Sayyid Nosair.

13 Q When did you first begin to represent Mr. Nosair?

14 A It was after he was indicted and he was held at
15 Rikers Island in the infirmary. He had been shot. And I
16 was asked by his wife and Michael Warren, another attorney
17 in the case, to go see him, and I did go see him.

18 Q Excuse me. Did you say another attorney in the
19 case?

20 A Yes, Michael Warren was also one of the
21 attorneys. He was the original attorney and stayed on
22 throughout the entire trial. I went out to see him, and at
23 first I believed what the newspapers said --

24 MR. McCARTHY: Objection.

25 A -- which at my age I shouldn't have, and I had --

1 THE COURT: Objection sustained.

2 Mr. Kunstler, the question was when you first
3 began to represent Mr. Nosair. Could you put a date on it?

4 THE WITNESS: You make a good point. I went out
5 to Rikers Island and I agreed to represent him. That must
6 have been a month or two after the incident at the Marriott
7 Hotel.

8 Q Would that be in late 1990 or early 1991?

9 A Yes.

10 Q Did there come a time that Mr. Nosair's case came
11 to trial?

12 A It did.

13 Q And where did his case come to trial?

14 A It was in the state court before Judge Alvin
15 Schlesinger. I think it's Part 92 at 100 Centre Street,
16 just a block or two up the road.

17 Q When did that happen?

18 A It began, I believe, in November of '91, and it
19 ended, I think on December 21, 22, right before Christmas,
20 in '91, December, with his acquittal of the murder.

21 Q How many defendants were on trial with
22 Mr. Nosair?

23 A One. Mr. Nosair.

24 Q During the -- withdrawn.

25 Prior to the trial, was there a preparation phase

1 of this case, of Mr. Nosair's case?

2 A Yes. There was. In the beginning, as I said, I
3 sort of believed what I read in the newspapers --

4 THE COURT: That wasn't the question. The
5 question was whether there was a preparation phase. The
6 answer is yes?

7 THE WITNESS: Yes. There was a preparation.

8 THE COURT: Go ahead.

9 Q Mr. Kunstler, during the course of your
10 preparation, did you learn that a video had been made in the
11 Marriott Hotel on the evening of November 5 of 1990?

12 A Yes.

13 MR. MCCARTHY: Is that a yes or a no?

14 MR. STAVIS: I didn't hear.

15 MR. MCCARTHY: I apologize. Withdrawn.

16 THE COURT: Go ahead.

17 Do you want to ask the question again.

18 MR. STAVIS: I can't hear.

19 MR. MCCARTHY: I withdrew the objection.

20 THE COURT: Ask the question again.

21 Q During the course of the preparation phase of
22 Mr. Nosair's case, did you learn that a video was made in
23 the Marriott ballroom on November 5 of 1990?

24 A I did.

25 Q Did you at that time during the preparation phase

1 have an opportunity to view that video?

2 A I did.

3 Q Now, have you recently reviewed a copy of that
4 video at my request?

5 A I have.

6 Q During the preparation phase of this case, did
7 you have occasion to have the photographs made from that
8 video?

9 A We did, frame by frame, certain ones.

10 Q That was before the trial had commenced?

11 A That's correct.

12 MR. STAVIS: May I approach the witness your
13 Honor?

14 THE COURT: Yes.

15 Q I am approaching you, Mr. Kunstler, with what is
16 in evidence as Government Exhibits 146A through E. I ask
17 you to take a look at them.

18 A Yes.

19 MR. McCARTHY: Mr. Stavis, may I trouble you for
20 one second. I have seen these, your Honor. I just want to
21 make sure they are the same exhibits I thought I had in
22 front of me.

23 THE COURT: It is 146A through D?

24 MR. STAVIS: A through E, your Honor.

25 THE COURT: All right.

1 Q What is Government's Exhibit 146A through E, Mr.
2 Kunstler?

3 A They are photographs taken from the frames of
4 that videotape of the scene just after Rabbi Kahane had
5 finished his lecture and his question-and-answer period.

6 Q Are those some of the photographs that you had
7 asked to be made during your preparation for the Nosair
8 state trial?

9 A Yes, they are.

10 Q Now, drawing your attention to Government's
11 Exhibit 146D and E. That is the envelope --

12 A This envelope, or this envelope?

13 Q Well, both of them.

14 A All I have is these. That's it?

15 Q No, the other one. This one.

16 A This one?

17 Q E.

18 A E.

19 Q 146E.

20 A Well, if 146E was in here, it has disappeared.

21 Q No, 146E is the envelope, Mr. Kunstler.

22 A Is the envelope, all right. All right.

23 Q Is there a return address, a company or something
24 on that envelope?

25 A Yes, Blind Justice.

1 Q What is Blind Justice?

2 A Blind Justice was the name of the investigative
3 agency of Roland Thomas, who was our investigator.

4 Q Was he your investigator during the Nosair state
5 trial?

6 A He was.

7 Q And was he also your investigator during the
8 preparation phase of the Nosair state trial?

9 A He was.

10 Q Now, Mr. Kunstler, I would like to draw your
11 attention to Government's Exhibit 146A.

12 A I have it.

13 Q That is the first in the series of photographs.
14 Do you recognize -- well, let me ask you to do this, Mr.
15 Kunstler: If you would be so kind, can you come off the
16 witness stand and show the jury that photograph, and then I
17 will ask you some questions.

18 THE WITNESS: OK.

19 MR. McCARTHY: May I move for just a second?

20 THE COURT: Yes.

21 (The witness stepped down from the stand)

22 Q Now, while I have you up here --

23 A Yes.

24 THE COURT: Mr. Stavis, please don't pose a
25 question there because the witness doesn't have a microphone

1 and the translators can't hear him. So either get him a
2 microphone or let him resume the stand.

3 MR. STAVIS: Yes.

4 MR. FITZGERALD: Here.

5 THE WITNESS: The only thing the government has
6 ever done for me.

7 MR. FITZGERALD: Don't let it fall off.

8 THE WITNESS: Hold it here?

9 MR. FITZGERALD: Yes.

10 THE WITNESS: OK.

11 Q Ready?

12 A Yes.

13 Q We have to share this.

14 A OK. I'm willing to share.

15 Q Drawing your attention to 146A, do you recall why
16 this particular photograph was made?

17 MR. MCCARTHY: Objection.

18 THE COURT: Sustained.

19 Q Drawing your attention again to Government
20 Exhibit 146A, do you recognize anyone in this photograph?

21 A I do.

22 Q If you could turn it around to the jury while
23 you're explaining to them, and I will hold the microphone.

24 A I recognize this gentleman who's coming into view
25 behind I think a gentleman known as Hoffman, if I'm not

1 mistaken, the yarmulke is Hoffman. Then this gentleman, the
2 bearded gentleman who is coming out, I didn't recognize him,
3 but I knew why I was interested in him.

4 Q Why were you interested in him?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 THE WITNESS: Is that coming from you?

8 THE COURT: It's Mr. McCarthy.

9 THE WITNESS: It seems like it's coming from
10 everywhere.

11 Q Where did you recognize that gentleman from?

12 A On the successive pictures on the videotape,
13 Mr. Nosair is emerging, somewhat behind this gentleman, and
14 Mr. Nosair is going across the back of the room heading for
15 the exit, and I was interested in talking to this gentleman.

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 Q The man that you're pointing to, did you have
19 occasion to see him during the Nosair state trial?

20 A I saw someone that looked exactly like him
21 sitting on what we call the Jewish side of the courtroom.
22 It was the right-hand side. And the Islamic people sat on
23 the left-hand side. And I tried to talk to him, but the
24 rabbi's son prevented me from doing so.

25 Q Please resume your seat.

1 (The witness resumed the stand)

2 Q Now, did there come a -- withdrawn.

3 Do you know this gentleman over here?

4 A Yes, another former client, Mr. El-Gabrowny.

5 Q When did you first meet Mr. El-Gabrowny?

6 A Mr. El-Gabrowny I met very early in the
7 preparations for El Sayyid's trial, and he became virtually
8 my paralegal, and was also the contact I had with the
9 Islamic community and the support group.

10 Q Did Mr. El-Gabrowny assist you in working with
11 the investigators on the case during the preparation phase
12 of the Nosair state trial?

13 A He assisted me in every phase of it. Not only in
14 the investigative, during the trial itself. He's
15 Mr. Nosair's cousin. He was very much interested in his
16 welfare.

17 Q During the time of the Nosair state trial in the
18 preparation phase for the Nosair state trial, was
19 Mr. El-Gabrowny entrusted with photographs and other defense
20 materials?

21 A Yes. He was virtually the paralegal. Even
22 though he didn't have paralegal training, he was very, very
23 useful. He was the head of the committee, the support
24 committee.

25 THE COURT: The question was focused on his

1 activities in handling items of evidence, such as --

2 THE WITNESS: Yes. Yes. The judge is right.

3 The answer is that he did handle evidence and did
4 investigative work for us outside of what Mr. Roland Thomas
5 was doing.

6 Q Now I am going to take back from you Government's
7 Exhibit 146, and I am going to trade it in for Government's
8 Exhibit 387A through J and ask you to take a look at that.

9 A OK. I'm finished.

10 MR. STAVIS: I believe these are in the jurors
11 books, your Honor.

12 THE COURT: OK.

13 MR. STAVIS: 387A through J.

14 THE COURT: These are in a volume marked 371
15 through 499. They are behind a tab marked 387A-1.

16 Q Now drawing your attention to 387A, to the middle
17 of the photograph, to an individual with some half glasses
18 perched on his forehead. Do you see that?

19 A Yes.

20 Q Who might that individual be?

21 A That might be me.

22 Q What's going on in that photograph?

23 A We were outside of the Criminal Courts building,
24 you see Chris Borgan of Channel 2 there.

25 THE COURT: Excuse me, Mr. Kunstler. You need to

1 talk directly into one of those microphones or the
2 translators can't hear you. Go ahead.

3 A We were outside the Criminal Courts building, and
4 I don't know if that was -- that was not after the
5 acquittal, that was sometime earlier, and we came out every
6 day -- there was press there, and you'll notice I'm sort of
7 surrounded by Islamic people. Because we had --

8 MR. McCARTHY: Objection.

9 THE WITNESS: Did I hear something?

10 THE COURT: You heard something.

11 THE WITNESS: I did?

12 THE COURT: Yes. Overruled.

13 THE WITNESS: OK.

14 THE COURT: You heard that, too?

15 THE WITNESS: I thought I was having a small
16 stroke.

17 A Islamic people guarded us because there was some
18 very heavy doings from the Jewish Defense League, threats
19 and actual attacks.

20 Q Now, in the top left-hand corner there is a note
21 that says "Siddig Ali." Do you see that?

22 A I see --

23 Q No, do you see that note that's --

24 A I see the note.

25 Q Do you know a man by the name of Ibrahim Siddig

1 Ali?

2 A Yes, I do. I didn't know him then, but I know
3 him now.

4 Q Did you know what role, if any, he played at the
5 trial, at the Nosair state trial?

6 A No. If he's here, he's just one of the, many
7 Islamic people who came to the trial.

8 Q Directing your attention to Government's Exhibit
9 387C, toward the right-hand side, there is that same
10 gentleman with the half glasses perched on his forehead, do
11 you see him?

12 A A very handsome young man. I think that is I.

13 Q What is going on in this photograph, Government's
14 Exhibit 387C?

15 A The same thing. I think we are outside the
16 Criminal Courts building. I'm wearing that blue coat of
17 mine, so it had to be a cold day for me to wear that coat.
18 So I don't know if that was -- it was not the acquittal
19 because we were sneaked in on that one. It was outside the
20 courthouse.

21 THE COURT: Mr. Kunstler, I am going to tell you,
22 and I'm sure it is no surprise to you, that the jury has
23 already been instructed that the verdict in the state trial
24 has no weight in this trial, and yet this is the third time
25 you've mentioned it. Can we make it the last?

1 THE WITNESS: Should I make it the last?

2 THE COURT: Would you?

3 THE WITNESS: I agree.

4 THE COURT: Thank you.

5 Q Now, on the left-hand side of the photograph,
6 which would be to your right in the photograph, there is a
7 gentleman with a beard, do you recognize that gentleman?

8 A I do.

9 Q And what is his name?

10 A Mr. Sattar.

11 Q And do you know what, if anything, is going on
12 with Mr. Sattar in that photograph?

13 A I think he's telling people, if I remember, you
14 know, because he did it every day, to be orderly and to
15 protect the lawyers when they come out of the courthouse.
16 And they would arrange -- I'm sure I was leaving the
17 courthouse to go home. It looks like night. They would
18 arrange to get a cab for us. We had Mr. Abouhalima who
19 drove that cab and would get us home safely.

20 Q You mentioned Mr. Abouhalima. What
21 Mr. Abouhalima's first name?

22 A Mahmud.

23 Q Was he -- withdrawn.

24 Did he perform any function for the defense team
25 at the Nosair state trial?

1 A He in essence was at least my bodyguard, in
2 essence because it was always he -- he was very big, bigger
3 than most, and it was always Mahmud who escorted me from the
4 courthouse. He had a cab, I believe. I don't know if it
5 was his cab or someone else's, but would he get me into a
6 cab and send me on my way.

7 So he was very important to me because there were
8 death threats, bullets into my house and so on. Three
9 bullets were fired through the house and terrible messages
10 on the answering machine --

11 THE COURT: Mr. Kunstler, the question, I think,
12 was --

13 THE WITNESS: I didn't mention the verdict,
14 Judge.

15 THE COURT: I know. But the question was who was
16 Mahmud Abouhalima.

17 THE WITNESS: You're right.

18 THE COURT: I think --

19 THE WITNESS: I was rambling a bit.

20 THE COURT: Just a bit. Go ahead.

21 THE WITNESS: It is a curse of age.

22 Q Was Mahmud Abouhalima the person who lifted you
23 up on his shoulder at the end of the case?

24 A He certainly did and, boy, I was scared to death.
25 If that man had dropped me, I wouldn't be here today.

1 Q Now, Mr. Kunstler, do you know the gentleman at
2 the end of the table over there wearing a red and white cap
3 and having a beard?

4 A I know him now. I represented him briefly in
5 this case.

6 Q And what is his name?

7 A His name is -- God almighty, I am going into one
8 of those --

9 Q It starts with "sheik."

10 A Sheik Omar Rahman.

11 THE COURT: I think it's Abdel Rahman, and
12 there's --

13 THE WITNESS: I will accept that, Judge.

14 THE COURT: Thank you.

15 THE WITNESS: Your memory is better than mine.

16 THE COURT: There's been a point made of it at
17 the trial. Go ahead.

18 THE WITNESS: All right.

19 Q Did Sheik Omar Abdel Rahman attend the Nosair
20 state trial on any day?

21 A No. I never heard his name before this case.

22 Q Did you meet with Sheik Omar Abdel Rahman during
23 the Nosair state trial?

24 A No.

25 Q Did you speak with Sheik Omar Abdel Rahman during

1 the Nosair state trial?

2 A No.

3 Q When did you first meet Sheik Omar Abdel Rahman?

4 A After he was into this case, I went up to
5 Otisville where --

6 Q What year would that be?

7 A That was in '93, I guess. Maybe in the summer of
8 '93. I'm not sure -- it was after he was pulled into this
9 case, some weeks after the original indictment.

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained and stricken.

12 Q And the Nosair state trial had been earlier?

13 A It had been over for over two years.

14 Q Mr. Kunstler, you mentioned earlier a person
15 performing a security function for you.

16 Do you recall that?

17 A Yes.

18 Q How was your security organized for the Nosair
19 state trial?

20 A Well, we did it through El-Gabrownny.

21 Mr. El-Gabrownny was the man I consulted all the time. He
22 was the one that appointed Mr. Abouhalima and a few others
23 to get me out of that courthouse each night without being
24 mobbed by anybody.

25 Then we had also, Roland Thomas was our

1 investigator, but he also served, because he was licensed to
2 have a weapon, he served also as security, and did prevent
3 the rabbi's son and others from --

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 A OK.

7 Q Why did you have a need for security at that
8 trial, Mr. Kunstler?

9 A Well --

10 MR. McCARTHY: Objection. Asked and answered.
11 Or answered.

12 THE COURT: No. It was answered without its
13 being asked. I will now allow it to be answered when it has
14 been asked.

15 THE WITNESS: May I answer the question?

16 THE COURT: Yes.

17 A We were attacked in the courtroom itself by the
18 rabbi's son's followers and the rabbi's son to such an
19 extent that the judge had to put a cord up in the middle of
20 the center aisle to prevent that from happening again. I
21 remember going under the table when that happened, and they
22 were stopped by court officers and that heightened our need,
23 our feeling that we needed plenty of security in that case.

24 Q Well, was the courtroom crowded during the Nosair
25 state trial?

1 A Yes, every day on the left-hand side were the
2 Islamic people, who were quiet and dignified. On the
3 right-hand side was the Jewish Defense Organization and
4 Jewish Defense League, who were pretty obstreperous during
5 the trial. Many were thrown out.

6 Q You mentioned the Jewish Defense Organization and
7 the Jewish Defense League. What are those?

8 A Those are two organizations. They hate each
9 other for some reason, and they have had a lot of problems
10 that way. But they are, I would say, very Orthodox, very
11 aggressive young Jewish organizations. They believe a lot
12 in the use of weapons, self-defense, offense and so on.

13 Q What relation, if any, did they have to the late
14 Rabbi Meir Kahane?

15 MR. MCCARTHY: Objection.

16 A Well, the Jewish Defense League --

17 THE COURT: That's sustained. Go ahead.

18 THE WITNESS: Did you say, "Go ahead"?

19 THE COURT: No, I said, "Objection sustained."

20 The "go ahead" was directed to Mr. Stavis.

21 THE WITNESS: Oh, go ahead. I understand.

22 Q Did you meet Emad Salem during the Nosair state
23 trial?

24 A I am not sure I did. I am not sure I was even
25 conscious of his existence, though in some of the

1 photographs he does appear.

2 My meetings with him were, I think, after
3 Mr. El-Gabrownny was charged with passport violations and so
4 on.

5 MR. McCARTHY: Objection. Move to strike. It's
6 not responsive.

7 THE COURT: That is stricken. The question was
8 whether you met him during the trial. You answered that.

9 Go ahead.

10 A It would be in '93, anyway.

11 Q What efforts, if any, did you undertake during
12 the Nosair state trial to publicize the cause of Mr. El
13 Sayyid Nosair?

14 A Well, both myself and --

15 THE COURT: Sustained.

16 MR. STAVIS: May I be heard at the side bar, your
17 Honor?

18 THE COURT: Sure.

19 (Continued on next page)

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1 (At the side bar)

2 MR. STAVIS: Your Honor, the reason that I asked
3 that question is because the racketeering count alleges that
4 Mr. Nosair performed the act to enhance his stature, and I
5 am seeking to elicit testimony that it was the others such
6 as Mr. Kunstler and Mr. El-Gabrowny who promoted --

7 THE COURT: That is ridiculous. The objection is
8 sustained.

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1 (In open court)

2 BY MR. STAVIS:

3 Q Mr. Kunstler, when I was just asking you about
4 the security, and you mentioned something about threats. In
5 addition to the threats on you, were there threats as to Mr.
6 Nosair and his family as well?

7 MR. McCARTHY: Objection.

8 A There certainly were --

9 THE COURT: Sustained.

10 Q Mr. Kunstler, what efforts, if any, did you
11 undertake to get the Muslim community behind the cause of
12 Mr. Nosair during the time of the Nosair state trial?

13 MR. McCARTHY: Objection, relevance.

14 THE COURT: Sustained.

15 MR. STAVIS: I refer your Honor to my remarks at
16 the side bar.

17 THE COURT: And I refer you to my ruling.

18 Q After the verdict in the Nosair state trial,
19 Mr. Kunstler, did you become aware that there was a
20 celebration party at the Abu Bakr Mosque --

21 MR. McCARTHY: Objection, relevance.

22 THE COURT: Let's go up there again.

23 (At the side bar)

24 MR. STAVIS: Your Honor, during the government's
25 case they introduced a videotape from the Abu Bakr Mosque

1 and they had people, they had witnesses -- Mr. Salem, as I
2 recall, showed the different people. I wanted to show that
3 some of the lawyers did attend the same celebration, that it
4 was not some sort of terrorist celebration.

5 THE COURT: Was he there?

6 MR. McCARTHY: No.

7 MR. STAVIS: He was not there but he knows of the
8 people who did attend, and he was invited.

9 MR. McCARTHY: I should point out also, this is
10 all in the record already.

11 THE COURT: I will allow you to establish that he
12 was invited, that's all.

13 MR. STAVIS: OK.

14 THE COURT: Thank you.

15 (In open court)

16 (Continued on next page)

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1 BY MR. STAVIS:

2 Q Mr. Kunstler, were you invited to the celebration
3 at the Abu Bakr Mosque after the verdict?

4 A I was.

5 (Continued on next page)

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1 MR. STAVIS: I have no further questions of this
2 witness, your Honor.

3 MS. AMSTERDAM: Your Honor, may we have a side
4 bar?

5 THE COURT: Yes.

6 MS. AMSTERDAM: Thank you.

7 (At the side bar)

8 MS. AMSTERDAM: I have two questions that I did
9 not vet yesterday that occurred to me today, where I am
10 prepared to tell you what they are now, to obviate the need
11 of bringing back Mr. Kunstler at some other time.

12 THE COURT: What are they?

13 MS. AMSTERDAM: After the arrest in this case,
14 there are a lot of CM transcripts that refer to the fact
15 that people should stay away from the mosques. Salem and
16 Siddig tell the defendants, including my defendant, that it
17 is necessary to keep a low profile and not go to the mosque.
18 Haggag, who was a government witness, asked Mr. Kunstler to
19 come out to the mosque and lecture to members of the mosque
20 about their rights, and I would just like to ask two
21 questions to establish that there was concern in the Muslim
22 community after the arrest and that in fact he, without
23 going into what it was, actually went out and gave a lecture
24 at one of the mosques, specifically to thwart the argument
25 that the reason they were staying out of the mosque was

1 because they were planning on making a bomb. There was an
2 alternative reason for staying out of the mosque.

3 THE COURT: You would have to establish that he
4 counseled them to stay out of the mosques.

5 MS. AMSTERDAM: Yes, but that is what Haggag
6 asked him to come to the mosque to do, to speak to people
7 about their fears about not wanting to be at the mosque. I
8 will ask it as narrowly as possible. I just thought of it
9 now and I apologize for springing it on you at this point.

10 MS. STEWART: Can I have a moment with Ms.
11 Amsterdam?

12 MR. RICCO: While she is speaking to Miss
13 Stewart, this relates to an objection sustained by the
14 court. Mr. Stavis said that he was going to go into the
15 death threats against Nosair and his family, including Mr.
16 El-Gabrownny because he was present for one of them. The
17 government made a relevancy objection. I thought it was
18 relevant because it went to the issue of the reason the
19 passports were possessed. I certainly had planned to go
20 into the threats in my case with Roland Thomas. The
21 government has made a relevancy objection. Another point
22 also is that the government put in Mr. El-Gabrownny's gun
23 permit.

24 THE COURT: He was present?

25 MR. MCCARTHY: Having a good reason for the

1 passport is not a defense.

2 MR. RICCO: It is not relevant to the passport.

3 THE COURT: It is not relevant to the passport,
4 but it is certainly relevant to the sedition count if the
5 theory is that it was part of a breakout plan. I will allow
6 it. But it has to be threats that he was directly aware of.

7 Did you have your conversation?

8 MS. AMSTERDAM: Yes, and it is fine with Miss
9 Stewart. I have two questions.

10 THE COURT: You are undeterred?

11 MS. AMSTERDAM: Yes.

12 THE COURT: Why don't I let Mr. Stavis ask his
13 questions and then you can start.

14 MR. STAVIS: One other thing, I asked for efforts
15 in the Muslim community to rally the community behind Mr.
16 Nosair. The reason I asked for that is because it
17 challenges the government's contention that a racketeering
18 enterprise came together around that trial. The entire
19 community came together around that trial, and the inference
20 that was left to the jury is only that the Siddig Ali's and
21 the people like that came together around the trial.

22 THE COURT: That is not the inference at all, and
23 the testimony you called minor, to the extent it adds what
24 you say it adds, is simply duplicative of what has been
25 asked in many ways and answered. You can ask the question

1 we talked about about the threats, and Miss Amsterdam can
2 ask hers.

3 (In open court)

4 THE COURT: Mr. Stavis, you had two more
5 questions?

6 MR. STAVIS: Yes.

7 THE COURT: Or so?

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1 BY MR. STAVIS:

2 Q I'm back.

3 A I see you are back.

4 Q Mr. Kunstler, were you present when threats were
5 made against Mr. Nosair and his family at any time during
6 the pretrial or trial phase of the Nosair state trial?

7 A Yes.

8 Q What happened?

9 A There were threats from the people who were on
10 the right side of the courtroom, outside. In the elevator
11 it said "Death to Nosair" and I think "Death to Kunstler" as
12 well. Then, of course, I got these terrible telephone calls
13 on my answering machine. They were going to kill Mr.
14 Nosair --

15 Q I am directing your attention to the threats
16 against Mr. Nosair and members of his family.

17 THE COURT: He was testifying to a threat against
18 Mr. Nosair.

19 MR. STAVIS: He was testifying --

20 THE WITNESS: No, the telephone mentions Mr.
21 Nosair.

22 THE COURT: On his machine.

23 A And then there were letters that came with
24 bullets in the envelope, also saying death to Mr. Nosair and
25 his family. One of them specifically mentioned his

1 children. I wouldn't say it was an everyday occurrence but
2 it did occur.

3 Q Was there a press conference with Mr. Thomas that
4 involved threats?

5 A We did. We had one up at a local hotel.

6 Q What happened there?

7 A We were attacked in the hotel by Rabbi Kahane's
8 son and four or five other people with him, who rushed up to
9 the table we were standing at, and finally Mr. Roland Thomas
10 had to pull out his weapon and forced them to the floor,
11 and, I think, had them arrested.

12 Q Were there any threats against Mr. Nosair and his
13 family that were printed in newspapers?

14 A I can't specifically remember whether there were
15 or there weren't. I know there were a lot of ones in the
16 elevators and over my machine and from the courthouse.

17 THE COURT: He asked you about newspapers. Go
18 ahead.

19 A I don't remember.

20 THE COURT: Anything else?

21 MR. STAVIS: Yes.

22 Q Did any of the parties -- withdrawn.

23 Mr. Kunstler, I am going to refresh your
24 recollection by showing you a piece of paper.

25 THE COURT: That piece of paper is marked?

1 MR. STAVIS: Defense EEE for purposes of
2 identification.

3 THE COURT: Go ahead.

4 Q Mr. Kunstler, does that refresh your recollection
5 as to whether there were any threats printed in the
6 newspaper?

7 A Yes, it certainly does.

8 Q Do you recall that?

9 A I can remember seeing this myself. When this
10 came out I was in Puerto Rico. I had left after the
11 verdict, which shall go nameless, the verdict in this case,
12 and I went to Puerto Rico, and my partner Ron Kuby cut this
13 out. When I came back, I saw this very dramatic front page
14 of New York Newsday.

15 Q Were bulletproof vests used by participants in
16 the Nosair defense during the Nosair state trial?

17 A The authorities, state authorities put Mr. Nosair
18 in a bulletproof vest.

19 (Continued on next page)

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1 Q After the verdict in the Nosair state trial,
2 Mr. Kunstler, did the Jewish community demand that Nosair be
3 tried for the same offense in Israel?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Ms. Amsterdam.

7 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MS. AMSTERDAM:

3 Q Good morning, Mr. Kunstler.

4 A Good morning, Valerie.

5 Q How are you?

6 A OK.

7 Q Do you know a man by the name of Abdel Rahman
8 Haggag?

9 A Haggag.

10 Q I assume you do?

11 A A defendant in another case.

12 Q Yes.

13 A Yes, I do.

14 Q In the spring of 1993 did Haggag request that
15 either you or your partner Ron Kuby come to El Salaam Mosque
16 or Abu Bakr Mosque to lecture or speak to the Muslims of the
17 congregation about harassment by FBI authorities?

18 A Yes, and I think Mr. Kuby went.

19 Q Was this in response to your personal
20 observations that there was an increased level --

21 MR. McCARTHY: Objection.

22 THE COURT: Ms. Amsterdam, it is direct.

23 MS. AMSTERDAM: It's direct for me?

24 THE COURT: Yes.

25 MS. AMSTERDAM: OK. I apologize. I am sorry.

1 THE COURT: It is all right.

2 Q Why were you and Mr. Kuby asked to go to El
3 Salaam and Abu Bakr mosques?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Q You went at Mr. Haggag's request?

7 MR. McCARTHY: Objection.

8 THE COURT: That I will allow.

9 MR. McCARTHY: It misstates the testimony, he
10 didn't go.

11 THE COURT: He said his partner went.

12 Q You were invited by Mr. Haggag?

13 A Yes.

14 (Continued on next page)

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1 Q Why did you say that he was inviting you to go
2 there?

3 MR. McCARTHY: Objection.

4 THE COURT: That is sustained.

5 Q Could you describe your observations in the
6 Muslim community in the spring of 1993 regarding Muslims and
7 FBI?

8 MR. McCARTHY: Objection.

9 THE COURT: Objection sustained.

10 Ms. Amsterdam, may I see you at the side.

11 (At the side bar)

12 THE COURT: He is clearly not a competent witness
13 to testify about what the subject of the talk was. Kuby
14 gave it, he didn't. If you want to call Kuby, you can call
15 Kuby but let's not have -- thanks.

16 (In open court)

17 (Continued on next page)

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1 BY MS. AMSTERDAM:

2 Q It was Mr. Kuby, sir, that actually went to the
3 mosques to lecture?

4 A Yes.

5 MS. AMSTERDAM: Thank you.

6 THE COURT: Anyone else? Cross?

7 MR. MCCARTHY: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. MCCARTHY:

10 Q Good morning again, Mr. Kunstler.

11 A Good morning.

12 Q How are you, sir?

13 A Well, I got that old pain back. What are you, my
14 doctor now?

15 Q No thanks.

16 A All right.

17 Q You told us a lot on direct examination about Mr.
18 El-Gabrowny's role on the Nosair defense team. Do you
19 recall that?

20 A Yes.

21 Q And I believe you told us that he became involved
22 in the Nosair defense very early on after you came into the
23 case in late 1990 or early 1991, correct?

24 A He might have been before. I don't know my first
25 meeting with him when I came into the case.

1 Q And I think you told us that he became so
2 integrally involved in the defense that he was virtually
3 your paralegal?

4 A Virtually in my office. I called him all the
5 time, he called me.

6 Q Had contact with him on almost a daily basis
7 during that year?

8 A A lot of times.

9 Q He participated in obtaining witnesses for the
10 Nosair defense?

11 A Witnesses, investigation, anything you would
12 expect a paralegal -- he wasn't a true paralegal in that he
13 didn't have any legal training, but he was very willing and
14 eager, and he did serve a very valuable function.

15 Q One of the functions that he served that you
16 didn't mention on direct examination was that he coordinated
17 the fund-raising committees for Mr. Nosair, isn't that
18 right?

19 A I didn't even know that. My only dealings with
20 money were with Mrs. Nosair.

21 Q Is that right?

22 A That is right.

23 Q So as you sit here today, it is your recollection
24 that the only thing you knew about money on the Nosair
25 defense case was on the basis of your conversations or

1 dealings directly with Mrs. Nosair?

2 A Mrs. Nosair would come in from time to time and
3 give me a check, and I would deposit it.

4 Q And as you sit here today, it is your testimony
5 that you don't have any knowledge of the fund-raising work
6 that was done by the Nosair defense committees?

7 A No.

8 Q Mr. Kunstler, it is a fact, is it not, that on
9 January 24, 1993, you filed an affidavit in New York State
10 court in connection with the appeal of Mr. Nosair's case?

11 A I might have. If I could see it, I would tell
12 you.

13 Q Do you recall whether you made statements under
14 oath about whether you knew there was a fund for Mr.
15 Nosair's defense?

16 A I have no recollection.

17 Q I am placing before you what I have marked as
18 Government's Exhibit 35144-B for identification.

19 MR. STAVIS: May I see the exhibit? May I see
20 the exhibit?

21 MR. STAVIS: I have a copy for you.

22 A I have read it.

23 Q Is it not true, Mr. Kunstler, that on January 23,
24 or, I guess, 24, 1993, in the affirmation that you filed in
25 New York State you made the following statement:

1 "While it is true that Mr. Nosair had a defense
2 committee which raised money in his behalf, that money was
3 never his personally, and in any event is now for the most
4 part spent."

5 Did you make that statement?

6 A I did.

7 Q Is it your testimony as you sit here today that
8 you don't know anything about the Nosair defense fund?

9 A I know nothing about it. When we did that
10 affidavit to get him status as a poor person, I asked around
11 whether there were any funds for him, that the Appellate
12 Division might not appoint if there were funds available,
13 and I don't know who I spoke to, but someone said that there
14 was some funds somewhere in some defense committee but they
15 didn't exist any longer. So I put that in just as it is in
16 the affidavit.

17 Q Did you tell the New York State court under oath
18 like you have told this jury that you didn't know anything
19 about the Nosair defense fund?

20 MR. STAVIS: Can I have a date for that, your
21 Honor?

22 THE COURT: At any time, presumably.

23 Q Did you tell the New York State court on January
24 24, 1993, in the affirmation that you filed under oath --

25 MR. STAVIS: Objection.

1 Q -- that you didn't know anything about the Nosair
2 defense fund?

3 A Overruled.

4 A I didn't say it one way or the other. I said
5 there had been an exhausted fund somewhere that I was told
6 about, so I put that in there so he would get poor person's
7 status. I think it was raised by the district attorney
8 originally --

9 THE COURT: He didn't ask you who raised it. He
10 asked you if you put it in the affidavit. The answer is no.

11 THE WITNESS: That was in response to claims by
12 the district attorney's office?

13 THE COURT: That is stricken.

14 Q Did you finish your answer?

15 A It is.

16 Q Did you tell the New York State court on January
17 24, 1993, like you have told this jury, that you didn't know
18 or have any information about the Nosair defense fund?

19 A No, I told them exactly what I just told you.

20 Q Exactly?

21 A I put what is in the affidavit. I put it in
22 there, that I inquired around and I found that there had
23 been some sort of defense fund mentioned somewhere, with no
24 money it, and I told the New York court that so he would
25 have a counsel appointed to him as an indigent person.

1 Q It is a fact, is it not, Mr. Kunstler, that you
2 told the New York State in that affirmation: "Upon
3 information and belief, it," meaning the fund, "was used for
4 expenses during the trial, for my fees, for the fees of Mr.
5 Warren and Miss Gilbert, my cocounsel, and for the support
6 of the defendant's unemployed wife and and his three
7 children"?

8 A That is why I put "information and belief,"
9 because that is where I believed the funds came from but I
10 had no direct knowledge. All I knew was that Mrs. Nosair
11 would come in the office and give me a check -- there were
12 three or four or five of them -- over the time of the trial.

13 Q Are you done?

14 A I think I am. Period.

15 Q In fact, you knew for quite sometime that there
16 was fund raising going on in Mr. Nosair's behalf, isn't that
17 right?

18 A I didn't know that at all. I was asked that by
19 Judge Schlesinger. I had no personal knowledge of that.
20 That is why we use the term, as you know, "on information
21 and belief."

22 Q You didn't always use the term "on information
23 and belief," did you, Mr. Kunstler?

24 A What's that?

25 Q You didn't always use the term "on information

1 and belief"?

2 A No, but I put it in that paragraph that you read.

3 Q As a matter of fact, on occasions during the
4 trial or during the pretrial proceedings -- I think Mr.
5 Stavis referred to it as the preparation period -- you were
6 asked direct questions by the judge about whether there was
7 a fund, correct?

8 A Yes. The judge kept insisting --

9 Q Is "yes" your answer to my question?

10 A What's that?

11 Q Is "yes" your answer to my question?

12 MR. STAVIS: I object and ask that the witness be
13 permitted to complete his answer.

14 THE COURT: This being cross, that is a question
15 that can be answered yes or no. Were you asked in sum or
16 substance by the judge whether there was a fund?

17 A Yes, he asked such questions.

18 Q He asked directly, sometimes?

19 A More than direct sometimes. He accused us.

20 Q On this matter, this wasn't accusatory, this was
21 a question to you as Mr. Nosair's counsel, right?

22 A He asked the question because he wanted us to
23 justify getting free copies of the transcript, and he raised
24 the question, not me, as to whether there was a defense
25 fund. I told him I knew nothing about a defense fund. The

1 judge did his own investigation and granted us poor person
2 status.

3 Q So my question was, the judge asked you the
4 questions and your answer is the judge asked you the
5 question?

6 A I guess that sums it up very neatly.

7 Q The fact of the matter, Mr. Kunstler, is, the
8 judge asked you very direct questions about whether a fund
9 existed and you didn't answer upon information and belief,
10 you answered no.

11 A I can't remember what the judge asked. If you
12 have a transcript I can at least refer to it, but I can't
13 remember, but he brought it up, I know that, Mr. McCarthy,
14 he brought it up in order to see whether he would grant poor
15 person status in order that we would get a free copy of the
16 transcript. He was satisfied with the answers and he gave
17 us the transcript.

18 Q Now you told us what the judge was thinking. My
19 question to you was, did he put those questions to you and
20 did you tell him no?

21 A If you show me a transcript, I will tell you. I
22 can't even remember that.

23 Q You had daily contact with Mr. El-Gabrownly from
24 the beginning of 1991?

25 A I wouldn't say daily every day. We didn't meet

1 on Fridays because of the Muslim holiday, but we had a lot
2 of contact.

3 Q A lot of contact?

4 A Um-hum.

5 Q And that was from early on in your involvement in
6 the case?

7 A From the moment I came in.

8 Q And it is your testimony that you didn't know
9 that -- withdrawn.

10 It is your testimony that it never came up in the
11 contacts that you were having with him on a daily basis or a
12 frequent basis, that he was in charge of raising funds for
13 Mr. Nosair's defense?

14 A No. You know, my practice is such that I rarely
15 had a fee anyway.

16 THE COURT: The question is simply --

17 THE WITNESS: No, it didn't come up.

18 THE COURT: Go ahead.

19 Q In February of 1991, shortly after you came
20 involved in the case, it is a fact, is it not, that you made
21 an application to the New York State court for public funds?

22 A That is correct. I believe if you show me the
23 application -- we made an application, I know, for the
24 transcript. Whether we asked for fees -- we didn't ask for
25 fees, I know that.

1 Q You asked for expenses for expert witnesses and
2 for transcripts?

3 A That is right.

4 Q And you did that on the basis of your
5 representation that there were not sufficient funds at Mr.
6 Nosair's disposal in order to pay for those items, is that
7 correct?

8 A Well, he didn't have the money. He was an
9 indigent.

10 Q And you represented to the court that he didn't
11 have the money, right?

12 A That is correct.

13 Q And that he had no funds?

14 A That he had no funds.

15 Q Did the coordinator of your defense committee,
16 Mr. El-Gabrowny, tell you at the time that you made that
17 representation to the court that there were \$104,000 in bank
18 accounts for Mr. Nosair's defense?

19 A No, and of course they weren't Mr. Nosair's. Mr.
20 Nosair was an indigent.

21 Q You were asked pretty direct questions on May 9,
22 1991, about the Nosair defense fund, correct?

23 A If I could remember May 9, 1991, you know, I
24 would be a better man than I am today, I will tell you this.

25 (Continued on next page)

1 Q Do you remember during the course of the
2 proceedings in the spring of 1991 being asked direct
3 questions by Judge Schlesinger about the Nosair defense
4 fund?

5 MR. STAVIS: Your Honor, I object to the scope of
6 the questions concerning the Nosair defense fund. If they
7 concern Mr. Kunstler --

8 THE COURT: Let's go up to the side.

9 (At the side bar)

10 THE COURT: Where are we going with this?

11 MR. MCCARTHY: He testified that El-Gabrownny was
12 his chief assistant in the Nosair defense fund beginning in
13 1991 on. In May of 1991, while he was in court, present
14 with Mr. Warren and Mr. Nosair, he was asked direct
15 questions by Judge Schlesinger about the existence of the
16 fund and he made direct answers that there was no fund.

17 THE COURT: And as I have said on occasion to Mr.
18 Stavis, ASW.

19 MR. MCCARTHY: Because he has testified that
20 El-Gabrownny had a role, he has suggested to the jury that he
21 was aware of El-Gabrownny's activities. The whole point of
22 the testimony was to put an innocent spin on all of the
23 witness' activities, and to suggest that this witness had
24 frequent contact with El-Gabrownny and nothing untoward was
25 going on. I have evidence that at the time he made those

1 representations, there were \$107,000 in that fund and he had
2 every reason to know it.

3 THE COURT: And?

4 MR. MCCARTHY: And he did not tell the court what
5 he knew.

6 THE COURT: So?

7 MR. MCCARTHY: It goes to his credibility.

8 THE COURT: No. A specific representation going
9 to his credibility?

10 MR. MCCARTHY: Yes, a specific representation to
11 a judge who asked him a direct question. Your Honor, this
12 isn't ambiguous. He was asked pointed questions.

13 THE COURT: Is it your position that you can
14 bring out on cross specific instances of conduct to prove
15 credibility?

16 MR. MCCARTHY: Of the witness?

17 THE COURT: Yes.

18 MR. MCCARTHY: I can inquire into them, yes.

19 MR. STAVIS: I have a problem. Under my proffer
20 yesterday concerning Government's Exhibit -- I just want
21 your Honor to be aware how far afield we are.

22 THE COURT: I don't believe we are far afield at
23 all. Whatever you proffered yesterday and what you did
24 today are two different things. You asked questions going
25 to the scope of what El-Gabrownny was doing.

1 MR. STAVIS: And why he would have the materials
2 like Government's Exhibit 146.

3 THE COURT: The impression created was that
4 El-Gabrownny was doing legal activities and so forth.
5 You may very well have opened a door that you didn't intend
6 to open. What you intended or not is irrelevant.

7 MR. STAVIS: Look how far afield we are if we are
8 talking about numbers in a defense fund,, your Honor.

9 MR. McCARTHY: I asked yesterday, I implored,
10 whether he was going to characterize El-Gabrownny's role
11 precisely because I didn't want to have to do it. This
12 isn't an accident. This isn't an inadvertent opening of the
13 door.

14 THE COURT: Unless you tell me you are going to
15 tie \$104,000 to this case --

16 MR. McCARTHY: \$104,000 to this defense fund?

17 THE COURT: -- to the charges in this case. The
18 objection is sustained.

19 MR. McCARTHY: May I inquire as to whether he
20 made direct misrepresentations to the court?

21 THE COURT: I will let you ask that.

22 (In open court)

23 BY MR. McCARTHY:

24 Q Mr. Kunstler, I want to show you what I am going
25 to mark as 35144-C.

1 MR. STAVIS: May I have a copy, Mr. McCarthy?

2 MR. McCARTHY: Eventually.

3 MR. STAVIS: May I see the exhibit, your Honor?

4 THE COURT: Yes.

5 May I see counsel briefly at the side again.

6 MR. McCARTHY: Mr. Stavis, I have a copy for you.

7 (At the side bar)

8 THE COURT: I just want to clarify something
9 because I asked the question in a way that may have
10 expressed a misunderstanding of the rule that I have now
11 looked at and now understand better. You can inquire into
12 specific instances of misrepresentation. However, I don't
13 want inquiry into the details of the functioning of the fund
14 unless it goes to misrepresentations made to the court. I
15 don't want a general exploration of the functioning of the
16 Nosair defense fund. That is the point.

17 MR. PATEL: Your Honor, just a housekeeping
18 matter. Could I request that after Mr. Kunstler's testimony
19 we take a morning break? We have to move some furniture
20 around.

21 THE COURT: No. I want to move this thing along.

22 (In open court)

23 (Continued on next page)

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25

1 BY MR. McCARTHY:

2 Q Mr. Kunstler, does looking at that transcript
3 refresh your recollection that you were in court, that is,
4 New York State court --

5 A That is correct, on May 9, 1991.

6 Q And present with you at the time were Mr. Nosair?

7 A Yes.

8 Q And Mr. Warren?

9 A Well, he came in late. I remember that from the
10 transcript. But he was here at sometime. It is mentioned
11 on the transcript.

12 Q Mr. Warren was with you, in any event, during the
13 course of the proceedings reflected in the transcript I have
14 just provided to you?

15 A He was.

16 Q Is it not true, Mr. Kunstler, that by the time of
17 this proceeding on May 9, 1991, you had already received a
18 retainer?

19 A Part of a retainer.

20 MR. STAVIS: I have an objection, your Honor.

21 MR. McCARTHY: I am not going to ask the amount,
22 if that is the --

23 THE COURT: The objection is overruled. Go
24 ahead.

25 THE WITNESS: I have no objection giving you the

1 amount.

2 MR. McCARTHY: I know you don't.

3 THE COURT: In any event, the retainer was
4 received.

5 Q And the retainer was paid to you by Mrs. Nosair?

6 A Yes, she paid in installments. Mr. Warren and I
7 had exactly the same fee.

8 Q And it was paid to you on a check that Mrs.
9 Nosair gave to you?

10 A Mrs. Nosair's personal check.

11 Q And it was a fund check, is that not correct?

12 A It was a check in her -- I don't know -- it had
13 her name on it. I don't think it had the name "fund" on it.
14 I just can't remember. I thought it was from her personal
15 account.

16 Q Mr. Kunstler, do you recall being present in New
17 York State court on June 25, 1991 about a month and a half
18 after this appearance?

19 A Mr. McCarthy, if you say I was there, you have a
20 transcript. I will accept that.

21 Q Do you recall representing to Judge Schlesinger
22 at that time: "What I'm saying is, we received, I received
23 one check from a K.A. Nosair Fund of \$5,000. I expect to
24 receive more somewhere along the line"?

25 A I don't recall that at all. I can't remember

1 what was on those checks.

2 Q Do you recall whether you told Judge Schlesinger
3 that that's what was on the check?

4 A All I can say is that if it was in the
5 transcript, and I have told them what is in the transcript.

6 Q I am going to approach you with what is marked
7 35144-D for identification and I will show it to Mr. Stavis.

8 MR. STAVIS: I have an objection, your Honor.

9 THE COURT: Overruled.

10 Q Mr. Kunstler, does looking at page 18 of 35144-D
11 refresh your recollection that you represented to Judge
12 Schlesinger that you had received a check from the K.A.
13 Nosair fund?

14 A It says that, but K.A. Nosair is Khadijah Nosair.
15 That is his wife's name.

16 Q Do you see that four letter word after K.A.
17 Nosair, F-U-N-D?

18 A I see it, yes, but that is her funds.

19 Q Is it your testimony that you did or did not make
20 that statement --

21 A The statement is here but you should know what
22 the initials are.

23 Q Is it your understanding, Mr. Kunstler, that I
24 was asking you about Mrs. Nosair's initials?

25 A Those are her initials, yes, Khadijah A. Nosair.

1 Q The check that you had received from the K.A.
2 Nosair Fund, had you received that already by the time you
3 were in court on May 9?

4 A I don't know. We got this, the total fee for
5 each lawyer was \$25,000.

6 THE COURT: He didn't ask you what the total fee
7 was. The question was whether you had gotten the check that
8 you referred to in June, whether you had already gotten that
9 in May. Had you?

10 THE WITNESS: I didn't hear the judge.

11 THE COURT: I am sorry. The question was simply
12 whether the check that you referred to in June was one that
13 you had already received in May.

14 THE WITNESS: I don't know. It came in four or
15 five installments, so I don't know.

16 Q Is it not a fact, Mr. Kunstler, that on May 9,
17 1991, reflected in the other transcript that I have placed
18 before you -- that is 35144-C -- at page 134 of that
19 transcript, is it not true that Judge Schlesinger pointed
20 out to you that you had made a prior application for public
21 money and that Mr. Nosair made a reference to the
22 possibility of a fund being set up on his behalf?

23 MR. STAVIS: Objection to what Mr. Nosair said.

24 Q And you --

25 MR. STAVIS: I have an objection.

1 THE COURT: Overruled. Go ahead.

2 Q -- and you then told Judge Schlesinger:

3 "There is no fund, Judge. What he was told was
4 people, supporters are going to try to raise funds for him,
5 both to pay lawyers and the expense of the trial, but as of
6 this moment we have not received any funds for purchasing
7 transcripts or doing any investigation whatsoever."

8 A Right, but I don't think I was present at the
9 earlier application. I don't think I was in the case then,
10 so I really have no recollection of any earlier application.
11 This is the May 9 one, which was about five months before
12 trial was to begin in November.

13 THE COURT: The question was whether you told him
14 that. Did you?

15 A What was the question again?

16 THE COURT: The question was whether you told
17 him --

18 Q The question was whether you told Judge
19 Schlesinger what I read to you.

20 A Right, I did tell him. I had no knowledge of any
21 funds.

22 Q Is it not a fact that Judge Schlesinger continued
23 to ask you about the existence of the fund?

24 A Well, let me see.

25 Q Directing your attention still to page 134, and I

1 would ask you to answer that question yes or no.

2 A 134, he mention mentions a previous application
3 which I have just discussed, and that is all that is on that
4 page.

5 Q Mr. Kunstler, let me ask you this, were you asked
6 by the court "Have funds been received," and did you answer
7 "No"?

8 A I did.

9 Q Were you then asked by the court, "None
10 whatsoever?" You answered "none"?

11 A And then I mentioned a retainer had been paid to
12 each one of us.

13 Q When you made these representations, Mr. Nosair
14 was seated in court?

15 A And he mentioned as well.

16 Q And you were speaking in his capacity, is that
17 correct?

18 A That is correct, and the judge questioned him, I
19 believe.

20 Q Let me direct your attention to page 136 of the
21 transcript.

22 A Right.

23 Q At that point did the assistant district attorney
24 ask the judge to inquire of the defense whether or not
25 specific bank accounts have been set up to receive donations

1 for either the defendant's defense or for the support of his
2 family, and you said, "There have been none, Judge, that I
3 have heard of whatsoever"?

4 A True.

5 Q Mr. Nosair was sitting next to you at the time?

6 A He was.

7 (Continued on next page)

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1 Q Did Mr. Nosair mention to you that there had been
2 funds set up in his wife's name?

3 MR. STAVIS: Objection.

4 THE COURT: Sustained.

5 MR. STAVIS: And I request a side bar.

6 THE COURT: Sustained. May I see you at the side
7 bar.

8 (At the side bar)

9 THE COURT: Whose credibility are you now seeking
10 to impeach?

11 MR. MCCARTHY: His credibility.

12 THE COURT: By impeaching the credibility of
13 Nosair?

14 MR. MCCARTHY: He was speaking --

15 THE COURT: Move it along to something else. I
16 think you have exhausted this, unless you have some other
17 specific statement from him. I will let you ask him, if you
18 have a specific statement, two or three questions. Then
19 move on to something else.

20 MR. STAVIS: I would move to strike any specific
21 testimony about what Mr. Nosair said or did.

22 THE COURT: That is granted.

23 (In open court)

24 BY MR. MCCARTHY:

25 Q Mr. Nosair -- I apologize. Mr. Kunstler.

1 A We are sort of interchangeable. Go ahead.

2 Q You said it.

3 THE COURT: That's stricken.

4 MR. MCCARTHY: I apologize, your Honor. It won't
5 happen again.

6 THE COURT: It sure won't.

7 (Continued on next page)

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1 Q Mr. Kunstler, in the affidavit that you filed in
2 New York State court in January of 1993, you stated that you
3 received a fee of \$25,000?

4 A If it's in there, I said it.

5 Q Do you know whether \$400,000 were actually raised
6 by the Nosair defense --

7 MR. STAVIS: Objection, your Honor, and I move to
8 strike, based on prior side bars.

9 THE COURT: The question was do you know. I will
10 allow that.

11 THE WITNESS: I can answer the question?

12 THE COURT: Yes.

13 A I don't know to this day.

14 THE COURT: And I remind the jury again that
15 lawyers' questions are not evidence. Move on to something
16 else.

17 MR. MCCARTHY: Yes, your Honor.

18 Q Mr. Kunstler, Mr. Stavis showed you a photograph
19 before, correct?

20 A Yes.

21 Q And you pointed out an individual in front of the
22 jury?

23 A That is correct, that one gentleman.

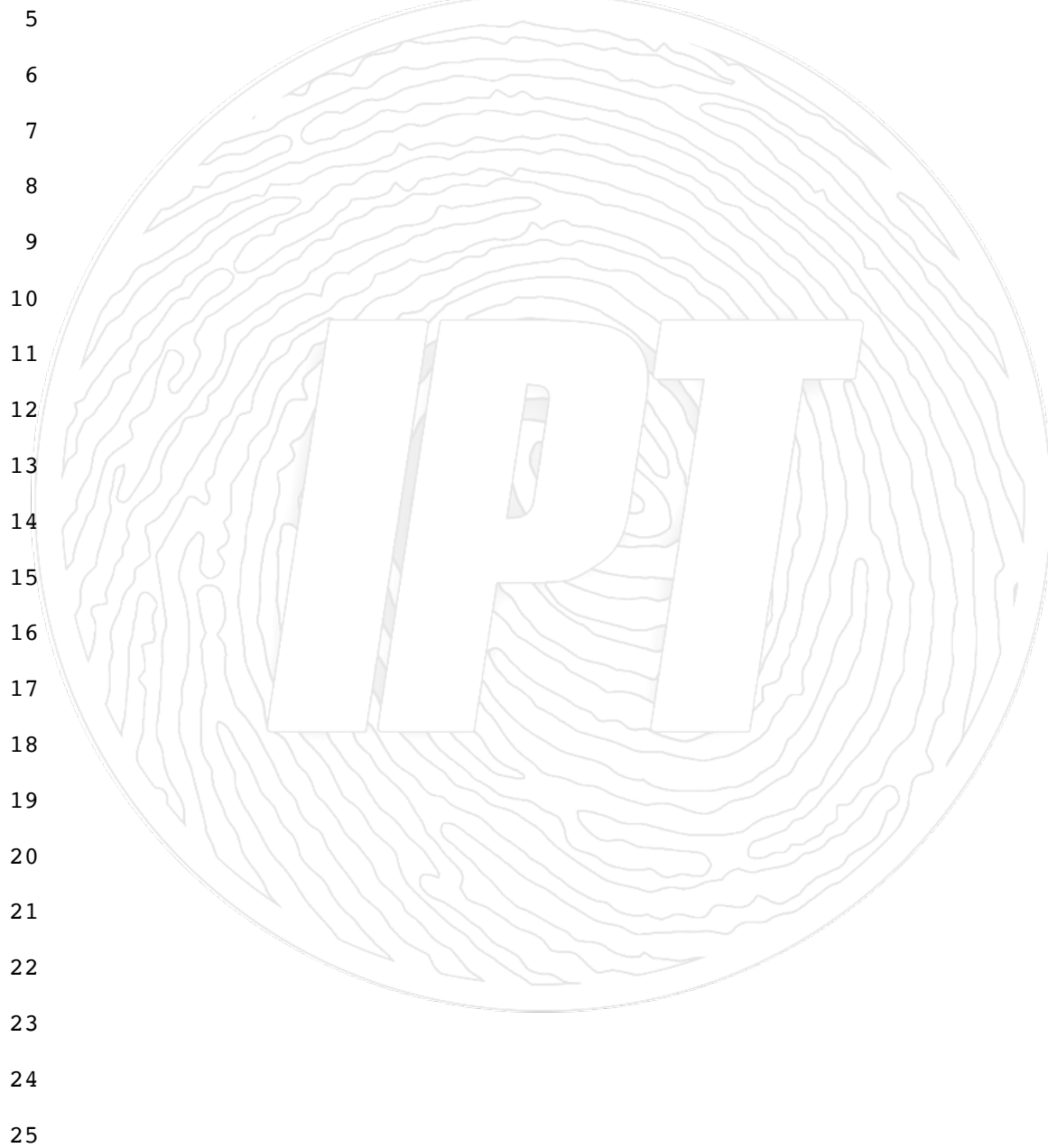
24 Q Do you know the name of that person?

25 A No.

1 Q Do you know whether that person's fingerprints
2 were in Mr. Nosair's car after November 5, 1990?

3 A I have no idea.

4 (Continued on next page)



1 MR. McCARTHY: I have no further questions.

2 THE COURT: Anything else?

3 MR. STAVIS: No, your Honor.

4 THE COURT: Thank you. You are excused.

5 THE WITNESS: I am finished?

6 THE COURT: I wouldn't put it that way.

7 THE WITNESS: In a manner of speaking.

8 THE COURT: Right, in a manner of speaking.

9 THE WITNESS: You ought to speak to my urologist.

10 THE COURT: Spare me. Have a nice day.

11 THE WITNESS: Mr. McCarthy, do you want these?

12 THE COURT: You can leave them behind. He will
13 pick them up.

14 THE WITNESS: Thank you.

15 (Witness excused)

16 MR. STAVIS: May we go to the side bar?

17 THE COURT: Yes.

18 (At the side bar)

19 MR. McCARTHY: May I just put something on the
20 record? Your Honor, I allowed myself to get out of control.
21 I apologize, and it won't happen again. It was inexcusable.

22 THE COURT: Yes, it was inexcusable and yes, it
23 won't happen again.

24 MR. McCARTHY: I am embarrassed and I apologize.

25 THE COURT: In the spirit of private apologies

1 for public outrages, we have had a lot of these.

2 THE COURT: You need time to move something?

3 MR. PATEL: The model.

4 THE COURT: Let's take a break.

5 MR. PATEL: Thank you, your Honor.

6 (In open court)

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

11 (Recess)

12 (Continued on next page)

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1 (Jury present)

2 THE COURT: Mr. Stavis?

3 MR. STAVIS: The defense called George L.
4 Schmelzer to the witness stand.

5 GEORGE L. SCHMELZER,

6 called as a witness by Defendant Nosair,
7 having been duly sworn, testified as follows:

8 THE COURT: Go ahead.

9 Q How are you this morning, Mr. Schmelzer?

10 A Well, like usual, I got Lyme disease, so I can't
11 walk too well.

12 Q You can keep your voice up, though, can you?

13 A Yeah, it's not my voice. It's my knees.

14 (Laughter)

15 THE COURT: Mr. Stavis, the clinic is closed.
16 Let's go.

17 Q Why don't you tell the ladies and gentlemen of
18 the jury what kind of work you do.

19 A I have a shooting range.

20 Q And where is that shooting range located?

21 A 395 Nugent Drive, Calverton Shooting Range, Inc.,
22 Town of Brookhaven, County of Suffolk, State of New York.

23 Q Is there a name for that shooting range?

24 A I said Calverton Shooting Range, Inc.

25 Q How long -- excuse me. Have you finished?

1 A I guess so.

2 Q How long have you owned the Calverton Shooting
3 Range?

4 A You mean running it as a shooting range?

5 Q Yes.

6 A Or the property?

7 Q Well, tell us the property, and then tell us --

8 A Well, we used it as a shooting range -- sometime
9 in 1965 I started as a shooting range.

10 Q Are there signs from the highway which direct
11 people to the Calverton Shooting Range?

12 A Yeah.

13 MR. STAVIS: Your Honor, I am going to approach
14 the witness with Nosair FFF1 and 2.

15 THE COURT: Go ahead.

16 Q I am showing you these two photos, and I ask you
17 to take a look at them, if you could.

18 A OK.

19 Q Are those signs that direct people to the range
20 from the highway?

21 A One of them is.

22 Q When you say one of them, which one?

23 A This, the bottom one.

24 Q That's FFF1?

25 A Whatever you want to call it.

1 Q What is depicted in FFF2?

2 A You have to drive in quite a ways. You have to
3 make a left turn to get to the range. This shows it so
4 people won't be confused.

5 Q Were signs like that posted at your range in
6 1989?

7 A Yes, there's always been signs like that. Maybe
8 not the same sign, but similar to it.

9 Q I would offer FFF1 and FFF2 into evidence.

10 MR. KHUZAMI: No objection.

11 THE WITNESS: What does that "FFF" mean. What is
12 that for farmers?

13 THE COURT: FFF1 and FFF2 are received without
14 objection.

15 (Nosair Defense Exhibits FFF1 and FFF2 for
16 identification were received in evidence)

17 Q I am going to show you now FFF3, FFF4, and FFF5.

18 I ask you to take a look at those, Mr. Schmelzer.

19 A Yeah.

20 Q Now, directing your attention to FFF3, what is
21 depicted in that photograph?

22 A A red sign and a gate.

23 Q And is your name and telephone number on that
24 sign?

25 A Yeah.

1 Q Was there a sign like that on the gate to your
2 range around 1989?

3 A I don't remember exactly when it was put up. I
4 don't put any dates on these signs. That gate was put there
5 to separate the range from the asphalt company so trucks
6 wouldn't come in when it's not open, when the range isn't
7 open, to keep people out that shouldn't be there.

8 Q Has the sign in FFF3 been there for a while?

9 A Yeah, yeah. When it was put up I can't remember
10 exactly. I had no reason to note it down.

11 Q Drawing your attention to FFF4 --

12 A Yes.

13 Q -- what is depicted in that photograph?

14 A Instructions for people entering the rifle and
15 pistol section to what they can do and what they shouldn't
16 do.

17 Q And where is that located in relation to the
18 entrance to the range?

19 A You mean the fenced-in area or off the highway?
20 This is not off the highway. It's quite a ways
21 in.

22 Q Where is it? Is it near the entrance to the
23 range?

24 A Yeah, at the entrance to the range is a separate
25 gate, and then they go down an incline because the range is

1 below ground level for safety.

2 Q Was there a sign like that posted around 1989?

3 A I think so. I forget how long it's been there.
4 It's been there a few years. I didn't mark down when it was
5 put up.

6 Q And I'm showing you Nosair FFF5 --

7 A Yeah.

8 Q -- is that also a sign that's at the front of
9 your range?

10 A Yeah. That's on the left side going down. It's
11 been there longer, I think. That's to eliminate people from
12 stealing each other's brass, empty brass. They're only
13 allowed to pick up their own.

14 Q Is that brass shell casings?

15 A Yeah.

16 MR. STAVIS: May I have that back.

17 Your Honor, I would offer into evidence FFF3, 4
18 and 5.

19 MR. KHUZAMI: May I see them.

20 No objection.

21 THE COURT: 3, 4 and 5 are received without
22 objection.

23 (Nosair Defense Exhibits FFF3, FFF4 and FFF5 for
24 identification were received in evidence)

25 Q Do you ever have children at your range?

1 A What age do you mean?

2 Q Well, let's take children under 12 years old.

3 A 12 and under 12 are not allowed to shoot under
4 any condition. They must stay in the car.

5 Q Have you had children staying in the car?

6 A Yeah.

7 Q And how about children above 12?

8 A They can shoot with an elder nearby.

9 Q Is that one of the rules of the Calverton range?

10 A Yeah.

11 Q When people enter the Calverton range, is there
12 any provision for checking pistol permits?

13 A Yeah.

14 Q Who does that?

15 A When we let them in, "Let me see your pistol
16 permit." That's all.

17 Q Now --

18 A Except if he's a law officer. Law officers who
19 have jurisdiction in the area we don't charge, which
20 includes all local, county, state and federal, like FBI and
21 Secret Service, court officers.

22 Q Do those law enforcement officers use the
23 Calverton Shooting Range?

24 A Yeah, quite often, yeah. Even we -- the FBI
25 caught somebody because we cooperated with them --

1 THE COURT: Don't just volunteer information.

2 OK. Thank you.

3 Q Are there different sections to the Calverton
4 Shooting Range?

5 A Yeah.

6 Q What are the different sections?

7 A Well, facing south you can shoot a rifle because
8 there's no houses there for miles in that direction. West
9 you can shoot pistol, and muzzle loaders, shotgun slugs.
10 And way out in back we have stalls with high walls where
11 they can shoot trap with their own throwers.

12 MR. STAVIS: I would ask to approach the witness
13 with Nosair FFF6.

14 Q Is that part of the Calverton range depicted in
15 that photograph?

16 A Yes.

17 THE COURT: You can't be heard.

18 MR. STAVIS: Me?

19 THE COURT: Yes.

20 MR. STAVIS: OK.

21 Q Is that part of the Calverton range?

22 A Yes.

23 Q Which part of the range is that?

24 A That's the -- on the right of the picture is the
25 pistol section, and the left is where they shoot muzzle

1 loaders or shotgun slugs.

2 MR. STAVIS: Your Honor, I would offer what has
3 been marked as defense FFF6 for identification into evidence
4 as Nosair Defense Exhibit FFF6.

5 MR. KHUZAMI: May I see it, please.

6 No objection.

7 THE COURT: FFF6 is received without objection.

8 (Nosair Defense Exhibit FFF6 for identification
9 was received in evidence)

10 Q In FFF6 in evidence, Mr. Schmelzer, are the
11 targets stationary, or are they moving?

12 A Stationary I guess you would call them. The only
13 time they're moving is if we have a little wind.

14 Q Do you have any moving targets at the Calverton
15 range?

16 A No.

17 Q Do you have an obstacle course at the Calverton
18 range?

19 A What do you mean by that?

20 Q I mean do you have at the Calverton range where
21 people crawl on their stomachs and have people fire over
22 them?

23 A No. That sounds like a training camp. I don't
24 have that.

25 MR. STAVIS: I have no further questions of this

1 witness, your Honor.

2 THE COURT: Anyone else? Any cross?

3 MR. KHUZAMI: Just briefly.

4 CROSS-EXAMINATION

5 BY MR. KHUZAMI:

6 Q Mr. Schmelzer, you don't keep track of what
7 people do with their guns after they leave your shooting
8 range, do you?

9 A How could I possibly do that?

10 Q You don't --

11 A How would I keep track when they leave the range
12 what they do with their guns? I don't understand what you
13 mean.

14 Q You don't know where else they might shoot them,
15 do you?

16 A No.

17 MR. KHUZAMI: No further questions.

18 THE WITNESS: I don't follow them around like a
19 puppy dog.

20 THE COURT: OK. Thank you. You're excused.

21 Have a nice day.

22 THE WITNESS: That's all?

23 THE COURT: That's it.

24 THE WITNESS: Thank you, your Honor. Glad to get
25 out of here. I got this Lyme disease. It's bad. It makes

1 me stiff all over except in the right place.

2 (Laughter)

3 MR. STAVIS: Your Honor, may I publish the Nosair
4 FFF exhibits?

5 THE COURT: Yes, you may. You can pass them
6 around.

7 (Exhibits published to the jury)

8 THE COURT: Mr. Patel?

9 MR. PATEL: Your Honor, the defense calls as our
10 next witness Mr. Thomas Farrelly.

11 THOMAS FARRELLY,

12 called as a witness by Defendant Nosair,

13 having been duly sworn, testified as follows:

14 THE COURT: Mr. Farrelly, if you could, try to
15 move up close to the microphone, because otherwise you can't
16 be heard.

17 THE WITNESS: Is that better?

18 THE COURT: That's much better.

19 Go ahead.

20 MR. PATEL: May I, your Honor.

21 THE COURT: Please.

22 DIRECT EXAMINATION

23 BY MR. PATEL:

24 Q Mr. Farrelly, could you please tell the ladies
25 and gentlemen of the jury how you are employed?

1 A I work for security at the Marriott East Side.

2 Q Where is the Marriott East Side?

3 A It's 525 Lexington Avenue.

4 Q What are the cross streets?

5 A That is between 49th and 48th.

6 Q How long have you worked at the hotel?

7 A I've been there at that location for ten years
8 now.

9 Q Do you have any military or law enforcement
10 background?

11 A Yes. I was in the Army, and I was a sergeant
12 with the health and hospital police.

13 Q I would like to direct your attention to November
14 5, 1990. Were you working in the hotel that day?

15 A Yes, I was.

16 Q And do you recall what shift you were working?

17 A I was working the 4-to-12 shift.

18 Q That's 4 in the afternoon to 12 midnight?

19 A Right.

20 Q At around 9 p.m. or shortly thereafter did
21 something unusual happen?

22 A Yes.

23 Q Can you tell the ladies and gentlemen of the
24 jury, please, what happened that night.

25 A I was stationed in the lobby of the hotel, and I

1 heard two shots from a gun, two reports. Would you like me
2 to go on?

3 Q Sure.

4 A Well, then I heard people -- well, people running
5 down the hall from above and running down the stairs, and
6 they ran out the door.

7 Q Did you see people running down the stairs?

8 A I saw them run past me. I was facing the front
9 desk at the time.

10 Q And how many people ran down the stairs?

11 A I would say between 15 and 20.

12 Q Where they all together in a pack?

13 A I wouldn't say that they were all tightly
14 together.

15 Q Was there any one person in front of -- in the
16 lead?

17 A I really couldn't tell you for sure.

18 Q At any point that evening did you go upstairs?

19 A Yes. After the pack had gone out the door, I
20 went up the stairs to see what had happened, and I went to
21 the end of the foyer by Morgan D Room, and there was a man
22 lying on the ground who had been shot in the leg.

23 Q Did you call 911?

24 A No. I had instructed the girls at the front desk
25 to do that after the shots.

1 Q Having worked in the hotel for ten years, it's
2 fair to say that you're familiar with the layout of the
3 hotel?

4 A Yes, that's fair to say.

5 MR. PATEL: Your Honor, could I ask Mr. Farrelly
6 to step down by the model?

7 THE COURT: Sure.

8 (The witness stepped down from the stand)

9 THE COURT: Mr. Patel, if you are going to
10 question him near the model, please arrange for the
11 microphone.

12 MR. PATEL: Yes.

13 Thank you, Mr. Khuzami.

14 Q Now, could you maybe step to the side of the
15 model, and could you indicate for the ladies and gentlemen
16 of the jury where you were standing when you heard those
17 shots.

18 A This is the area I was standing in, right by the
19 bell desk here.

20 Q And when you heard the shots, could you show the
21 ladies and gentlemen where your attention was immediately
22 drawn.

23 A These are the stairs leading to the second floor.
24 Now, right after the shots, I heard people running and
25 someone shouted, "He's got a gun."

1 Q That is when you saw the pack of people?

2 A Directly after that.

3 Q About how long after you heard the shots did you
4 see that crowd of people running down the stairs?

5 A It was a very short time. Less than a minute.

6 Q OK. Could you just indicate with your hand where
7 the crowd ran.

8 A They came -- I'm trying to picture it. It is a
9 little different now. But they came down these stairs right
10 around here and out the door. I am trying to remember how
11 it was before the construction. I believe they went out the
12 center door.

13 Q So the crowd ran right past you?

14 A Yes.

15 Q Now, the stairs that you indicated before lead to
16 this, what's marked as the west corridor, is that correct?

17 A Correct.

18 Q At the north end of the west corridor is the
19 Morgan D Room?

20 A Right again.

21 Q And how many doorways are there leading into the
22 Morgan D Room?

23 A There's two.

24 Q Could you indicate where the main doorway to the
25 Morgan D Room is.

1 A That would be right over here.

2 Q OK. Could you indicate to the ladies and
3 gentlemen of the jury where the other doorway is.

4 A That's the small door here that leads into like a
5 little closet almost.

6 Q OK.

7 A And then another door right here.

8 Q Now, let me show you what's been marked
9 Government Exhibit 6EE.

10 Maybe you can hold that up over here.

11 Is the door of the north end of the Morgan D Room
12 depicted in that photograph?

13 A Yes, it's right here.

14 THE COURT: Excuse me?

15 THE WITNESS: Yes, it's right here.

16 Q Could you show that to the ladies and gentlemen
17 of the jury, where that door is, while I hold it up.

18 A Right here.

19 Q OK.

20 A Right there.

21 Q That has what's called a panic bar lock on it, is
22 that correct?

23 A That's right.

24 Q That means basically it can't be locked from the
25 inside?

1 A That's right. You just push the bar and it
2 opens.

3 Q Now, that doorway leads into a small vestibule
4 area, then leads back into the west corridor?

5 A Right.

6 Q And directly across from the double-door entry at
7 the rear of the Morgan D Room there's a flight of stairs, is
8 that correct?

9 A Yes, yes.

10 Q Let me show you Government Exhibit 6GG. Is that
11 the handrail on the flight of stairs right across from the
12 Morgan D Room?

13 A Yes, it is.

14 Q Is this the flight of stairs that we are talking
15 about leading to the north corridor?

16 A Right there, yes.

17 Q OK. And just at the top of the stairs there's
18 another doorway, is that correct?

19 MR. KHUZAMI: Your Honor, objection to leading.

20 THE COURT: Well, I mean, if it's depicted on the
21 model I will allow it. Go ahead.

22 Q Is there an exit door at the top of the stairway
23 in the north corridor?

24 A Yes, there is.

25 Q And if you go out through that doorway, where

1 does that lead?

2 A It leads to a stairway that goes down to the
3 mezzanine area.

4 Q If you go to the end of that hallway in the
5 mezzanine area, where do you end up?

6 A That depends on which way you go. If you go to
7 the right -- going straight ahead, yes, it goes to, past the
8 cafeteria to another exit.

9 Q And that exit door leads to what?

10 A Downstairs to the employees' entrance.

11 Q And is that the employee entrance depicted at the
12 rear of the model here?

13 A Yes.

14 Q What does the employee entrance exit onto?

15 A That exits onto 49th Street.

16 Q And about how far down from Lexington Avenue is
17 that entrance, if you know?

18 A I guess it would be about a hundred feet.

19 Q Do you know if there was a video camera
20 surveilling the employee entrance on the night of November
21 5, 1990?

22 A I couldn't say if it was operational at that
23 time.

24 MR. PATEL: Your Honor, I have no further
25 questions.

1 THE COURT: Any other direct?

2 Any cross?

3 MR. KHUZAMI: No, your Honor.

4 THE COURT: Thank you, Mr. Farrelly, you're
5 excused.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 MR. PATEL: Your Honor, as our next witness we
9 would call Mr. Robert Aanonsen.

10 THE DEPUTY CLERK: Please step into the witness
11 box.

12 ROBERT AANONSEN,

13 called as a witness by the Defendant Nosair,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PATEL:

17 Q Mr. Aanonsen, if you could, speak into the
18 microphone so everyone can hear you.

19 A OK.

20 Q Mr. Aanonsen, could you tell the ladies and
21 gentlemen of the jury where you are employed.

22 A New York Marriott East Side Hotel.

23 Q And where is that?

24 A 49th Street and Lexington Avenue.

25 Q And how long have you worked at the Marriott?

1 A Approximately five years.

2 Q Do you recall the day you started working there?

3 A November 3, 1990.

4 Q Who was the general manager of the hotel back
5 then?

6 A Anton Najjar.

7 Q Did he also start on November 3, 1990, if you
8 know?

9 A No, I believe he started before I did. I know he
10 started before I did.

11 Q OK. Did the name of the hotel change on November
12 3, 1990?

13 A Yes, sir.

14 Q What had the hotel been known as before?

15 A The Halloran House Hotel.

16 Q On November 3, it became the Marriott, is that
17 correct?

18 A Yes, sir.

19 Q What is your position at the Marriott?

20 A Director of loss prevention.

21 Q Is that the same as being the head of security?

22 A Yes, sir.

23 Q Was that your position in 1990, November of 1990
24 as well?

25 A Yes, sir.

1 Q OK. Directing your attention to November 5,
2 1990, were you at work that day?

3 A Yes, I was.

4 Q And do you recall what shift you worked that day?

5 A 8 a.m. to approximately 6, 6:15 p.m.

6 Q Did you return to the hotel that evening?

7 A Yes.

8 Q Do you recall about what time you arrived back at
9 the hotel?

10 A I believe about 9:45, 10 p.m.

11 Q Now, on November 5, 1990, was there any kind of
12 video monitoring system in the lobby of the hotel?

13 A No, sir.

14 Q Any video monitoring anywhere near the lobby of
15 the hotel?

16 A No, sir.

17 Q Was there any office that was monitored off the
18 lobby?

19 A Yes, sir.

20 Q And what office was that?

21 A The general cashier's office.

22 Q Now, in November 1990, could that video monitor
23 see into the lobby?

24 A No.

25 Q I'm sorry. I --

1 THE COURT: He said, "No."

2 THE WITNESS: No.

3 MR. PATEL: Thank you.

4 Q On November 5, 1990, was there video monitoring
5 anywhere else in the hotel?

6 A Yes, sir.

7 Q And where was that?

8 A At the employee entrance of the hotel.

9 (Continued on next page)

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1 Q Do you know where that employee entrance is
2 located?

3 A On 49th Street.

4 Q Could I ask you to step down and just indicate
5 for the ladies and gentlemen of the jury where that was on
6 the model, which, for the record, your Honor, is Exhibit
7 Nosair G. Perhaps you could step around to the side. About
8 how far from Lexington Avenue is that?

9 THE COURT: Please provide the witness with a
10 microphone or have him return to the witness stand.

11 A My guess would be 100 feet.

12 Q Could I ask you to write EE for employee entrance
13 on the model. Thank you very much.

14 Q On November 5, 1990, was that video monitor
15 attached to a recording device of any kind?

16 A Yes, it was.

17 Q On the evening of November 5, did you remove that
18 videotape from the recorder?

19 A No, I did not.

20 Q Did anyone ask you or direct you to remove that
21 videotape on November 5, 1990?

22 A No.

23 Q On November 5, 1990, or in the days subsequent to
24 that, did any police officer, FBI agent, postal police
25 officer or postal inspector ask you to remove that

1 videotape?

2 A No.

3 Q Would that tape, had it been preserved --
4 withdrawn.

5 Would that tape show who went in and out of that
6 hotel entrance, the employee entrance that night?

7 A Yes.

8 Q If that tape had not been removed shortly
9 thereafter, would it still show the events of 1990?

10 A No.

11 Q Why is that?

12 A At the time it was recycled every 72 hours.

13 Q So if the tape was not removed within 72 hours,
14 it would just record over the events?

15 A Yes.

16 Q Do you have any idea where that tape is now?

17 A No.

18 (Continued on next page)

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1 MR. PATEL: Your Honor, I have no further
2 questions of this witness.

3 MR. KHUZAMI: No questions, your Honor.

4 THE COURT: You are excused. Thank you very
5 much.

6 (Witness excused)

7 MR. PATEL: Your Honor, as our next witness we
8 would call Mr. Ali El Shinawy.

9 MR. MCCARTHY: Your Honor, while the witness is
10 coming in, may I approach briefly with Mr. Patel?

11 THE COURT: Yes.

12 (At the side bar)

13 MR. MCCARTHY: I just wanted to inquire as to
14 whether counsel have asked this witness if he intends to
15 answer questions on cross. He is a person that we have
16 heard a lot of evidence about.

17 THE COURT: I know. Is he going to invoke his
18 rights on cross? Do you have any reason to believe --

19 MR. PATEL: Absolutely not.

20 THE COURT: Fine. That is the question.

21 MR. PATEL: I am sorry. It was just an
22 unexpected question.

23 (Continued on next page)

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25

1 (In open court)

2 ALI AHMED EL SHINAWY,

3 called as a witness by the defense,

4 having duly affirmed, testified as follows:

5 THE COURT: Go ahead, Mr. Patel.

6 MR. PATEL: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MR. PATEL:

9 Q Mr. El Shinawy, could you tell the ladies and
10 gentlemen of the jury where you were born.

11 A I was born in Egypt.

12 Q When did you come to the United States?

13 A I came in July 2, '76.

14 Q Are you an American citizen?

15 A Yes.

16 Q When did you become an American citizen?

17 A 1991, '2.

18 Q Could you -- sorry.

19 A 1982.

20 Q Could you explain to the ladies and gentlemen of
21 the jury how you became an American citizen.

22 A I came over here with a green card, legally, and
23 after five years, I apply with the application. Then they
24 send to me to go to immigration building. I went over
25 there. I oath, I gave the oath, and became citizenship.

1 MR. JACOBS: Please speak up a bit.

2 MR. PATEL: May I, your Honor?

3 THE COURT: Yes, do you want to move the
4 microphone over.

5 Q Mr. El Shinawy, when you took your oath of
6 citizenship, was that in the immigration building or in the
7 United States District Court?

8 A In United States building.

9 Q Was that in the court building?

10 A Yes, the court, and the judge asked me to give
11 the oath, and we did that.

12 Q Will you tell the ladies and gentlemen of the
13 jury where you live now.

14 A I am living in the same address since 15 years,
15 1772 46th Street, Brooklyn, New York.

16 Q Who do you live with?

17 A Where?

18 Q With who?

19 A With my family, my wife and my kids.

20 Q Tell the ladies and gentlemen what you do for a
21 living.

22 A My field, electrical mechanical. I work since I
23 came, second day I came over here in United States, I got a
24 job and I work by about four or five companies, industrial
25 companies, and the last job I got, New York City Transit

1 Authority, since 1980 to 1990, '89, '90.

2 Q What did you do for the New York City Transit
3 Authority?

4 A Repair any stalled, any part for the trains, in
5 main shop and sometimes in the road.

6 Q You said you stopped working for the Transit
7 Authority in 1990. Why was that?

8 A I start in December 15, 1980 as CME. CME means
9 car maintainer equipment. That's my title was.

10 Q When did you leave the Transit Authority?

11 A I left Transit Authority because I injured in
12 1989, my back.

13 Q When you started working for the Transit
14 Authority, did you receive any training?

15 A Yes.

16 Q As part of your training when you worked at the
17 Transit Authority, did that include how to testify in court?

18 A No.

19 Q Have you ever testified in court before?

20 A No.

21 Q Do you regularly attend any particular mosque?

22 A Mostly Abu Bakr Seddique in Foster, Brooklyn.

23 Q I am sorry, where is Abu Bakr Seddique?

24 A 115 Foster Avenue, Brooklyn, the corner of Foster
25 and McDonald Avenue.

1 Q Is that near Ocean Parkway?

2 A This where I live, close to my house.

3 Q But is the mosque close to Ocean Parkway?

4 A Yes, is one block, two blocks from Ocean Parkway.

5 Q Ocean Parkway has a large Jewish community?

6 A Yes. Around the mosque a lot of Muslims, and it
7 is close to Borough Park.

8 Q And how long have you been attending Abu Bakr
9 Seddique Mosque?

10 A Since 1980, '82, I was attending there.

11 Q In the 13 or 15 years that you have been
12 attending to that mosque, have there ever been any problems
13 with the neighboring Jewish community?

14 A We never get problem but we have always good
15 relationship, perfect relationship with the neighbors, could
16 be Jewish, could be Christian, could be different religion.
17 We have.

18 Q Are you a member of any committees or are you an
19 officer of the Abu Bakr Mosque?

20 A Yes. I was, during the 1993 and 1994, two years.

21 Q What position did you hold then?

22 A I was selected as a secretary of the community in
23 that mosque, and then I became a chairman or president of
24 that community, of that mosque.

25 Q Is that the same mosque that Ibrahim El-Gabrownny

1 attended?

2 A Excuse me.

3 Q Is that the same mosque that Ibrahim El-Gabrownny
4 attended?

5 A Yes, Ibrahim El-Gabrownny was elected as chairman,
6 as director of that board of trustees.

7 Q Could you point out Mr. El-Gabrownny. Do you see
8 him here in court today?

9 A Yes, Mr. Ibrahim El-Gabrownny, yes.

10 Q Could you tell the ladies and gentlemen of the
11 jury what kind of activities go on at Abu Bakr Seddique
12 Mosque?

13 A We try to protect our children -- this is the
14 main purpose -- from, you know, going outside and learn
15 something bad. We teach them the Arabic language, which the
16 Koran language, teach them the religion, and in the same
17 time we try to solve the family's problems, we try to give
18 lectures about Islam to Muslims and non-Muslims.

19 Q Does the mosque distribute audio or videotapes?

20 A No. Sometimes scholars comes give lectures, and
21 we record that and we distribute it to the people.

22 Q What are the subject batters of matters of these
23 tapes?

24 A The subjects mostly about Islam, describe the
25 Islam to the people, and the benefit from following that

1 religion.

2 Q These tapes, what languages are they available
3 in?

4 A Tapes?

5 Q Yes.

6 A About worship, how you deal with God, how you
7 deal with people, how you deal with family, how you act, you
8 know. That's all about these things.

9 Q Are all these tapes in Arabic?

10 A Most of them, mostly in Arabic, but sometimes,
11 some scholars come and give lectures in English.

12 Q Do you have tapes in any other languages?

13 A Yes. We have in Spanish, we have in English, and
14 we have in Arabic.

15 Q Have you ever sent tapes on Islamic subjects to
16 anyone in prison?

17 A Yes.

18 Q Does the mosque have any tapes of Sheik Omar
19 Abdel Rahman?

20 A Usually when he give lectures, once or twice a
21 week, we record that lectures and whoever ask, request for
22 it, we will give it to him, yes.

23 Q Have you met Sheik Omar Abdel Rahman?

24 A Yes.

25 Q Do you recall when you first met him?

1 A Say again, please.

2 Q Do you recall when you first met Sheik Omar Abdel
3 Rahman?

4 A Yes.

5 Q Can you tell the ladies and gentlemen of the jury
6 about that?

7 A I meet him here in United States, not in Egypt,
8 but I was heard about him, that he tell the truth, he don't
9 hide any truths when he explains God's word. And I meet him
10 in Masjid Farooq the first time. I meet and pray behind him
11 when he was imam over there.

12 Q Do you recall when that was?

13 A Really, if my memory helps me, is 1985, something
14 around that.

15 Q Could you explain to the ladies and gentlemen of
16 the jury what a masjid is.

17 A The mosque?

18 Q A masjid.

19 A Masjid, yes.

20 Q What is it?

21 A Masjid open for worshipping, learning the
22 religion, learning the Koran, and in the same time, when
23 couple has a problem, we sit with them -- or the imam, imam
24 sit with them and tell them your right, your duty, your
25 responsibility according to God will, according to Koran,

1 and they solve the problem and go out satisfied.

2 Q Mr. Shinawy, is the masjid the same thing as a
3 mosque?

4 A Yes, the same meaning, masjid or mosque, the
5 same.

6 Q You used the term imam. What is an imam?

7 A Imam who leads the Muslims in the Salah, in the
8 pray, five times a day and night, and who give the lectures,
9 explain the religion and talk about, you know, everyone
10 needs in this life and the hereafter. That is the purpose
11 of the mosque, to teach the people how they act, how they
12 should be with their family, with God, with the neighbors,
13 and all these things.

14 Q We were talking about Sheik Omar Abdel Rahman
15 before. Do you consider yourself to be a follower of Sheik
16 Omar Abdel Rahman?

17 A Yes.

18 Q What does that mean to you, to be a follower of
19 Sheik Omar Abdel Rahman?

20 A Follow him as he explain to me every difficult
21 things in the Koran or in hadith, the speech of Mohammed.
22 Whatever he said in his life we call hadith, speech.
23 Advices.

24 Q Have you ever pledged complete loyalty to Sheik
25 Omar Abdel Rahman?

1 A Pledge? We pledge Allah only. We pledge human
2 being like us. God only is our pledge.

3 Q When was the last time that you spoke either
4 personally or on the telephone with Sheik Omar Abdel Rahman?

5 A Sometimes when I am in the mosque, in the last
6 prayer between the fourth prayer and the fifth prayer, Sheik
7 Omar Abdel Rahman give a lecture through the telephone to
8 the mosque, mostly every Saturday. If I am there, I use
9 him, use him to the people, and they welcome with his
10 speech.

11 Q When is the last time that he gave one of these
12 lectures over the telephone on a Saturday?

13 A Last week, last week was giving a lecture.

14 Q How often does he speak at the mosque?

15 A Is about 45 minutes, 40 minutes every time.

16 Q How often are these lectures?

17 A Twice a week or mostly once a week, but sometimes
18 twice a week.

19 Q Have you heard the sheik, Sheik Omar Abdel Rahman
20 speak about jihad?

21 A Yes, he explain, you know, to the people as part
22 of his lectures, his lessons.

23 Q What do you understand the word jihad to mean?

24 A Jihad, you have the right by, there is an order
25 from God to protect yourself, to defend yourself from

1 somebody attack you or invade your country or your family,
2 so you have to protect yourself. This is jihad. Again,
3 it's enemy comes to invade, to harm, to kill, to take your
4 country or your home or your money or your family, that we
5 have to jihad, yujahid, mujahid, resist, try to stop that
6 from happening.

7 Q Have you ever heard Sheik Omar speak of a jihad
8 in the United States?

9 A In the United States?

10 Q In the United States.

11 A He explain the jihad in United States but not for
12 the United States or against United States. These are two
13 different things.

14 Q Have you ever heard Sheik Omar refer to the
15 United States as an enemy of Islam?

16 A No. But he said, you know, in the ear, you know,
17 through different channels that we choose United States to
18 explain our problems in Egypt because this land has a free
19 speech, has free religion and has solid, you know, doesn't
20 have any doubt or any problems, to explain your problem
21 came. That I hear him say that many times.

22 Q Mr. Shinawy, do you know what a fatwa is?

23 A Fatwa?

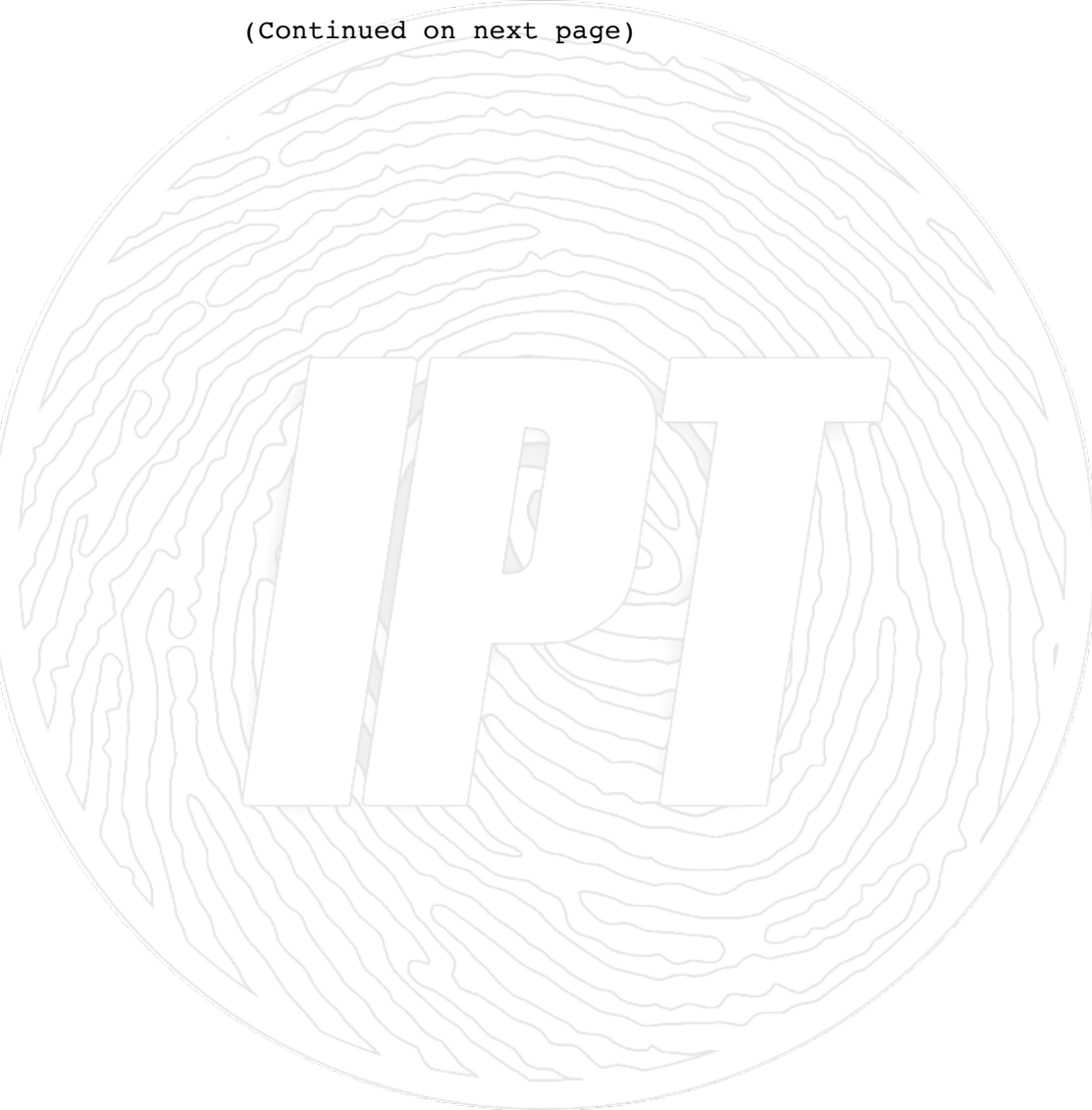
24 Q Yes.

25 A Fatwa means when you have a confusion about

1 anything, so you ask the imam, who is a scholar and knows
2 everything about the Koran and hadith, he is giving you
3 fatwa to solve your problem. Advice or the rules according
4 to the religion. That is a fatwa.

5 (Continued on next page)

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1 Q Have you ever asked Sheik Omar Abdel Rahman for a
2 fatwa of any kind?

3 A I hear him answer many fatwas during my listening
4 to him in the mosque, and if I remember -- yes. Some of the
5 people ask him --

6 MR. McCARTHY: Objection.

7 A -- as long as we know that United States, United
8 States --

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

10 (At the side bar)

11 THE COURT: This is a specific instance?

12 MR. PATEL: There was a specific instance
13 where --

14 THE COURT: Where, to use the drug sale analogy,
15 he stood on the street corner and did not sell drugs?

16 MR. PATEL: No, your Honor. I am sorry, your
17 Honor. I am just having a little problem articulating
18 things today.

19 THE COURT: Do you want to break for lunch?

20 MR. PATEL: It might be helpful. I have been
21 vertical for a long time.

22 MR. McCARTHY: I just want you to know, Judge, my
23 only objection was that the answer was not responsive to the
24 question. I think I understand what Mr. Patel is doing. I
25 don't have an objection in principle but I don't think his

1 answer any longer has anything to do with your question.

2 MR. STAVIS: I don't know if he understood what
3 to do with an objection, but if we break now we can make it
4 clear to him.

5 THE COURT: Why don't we break now and you can
6 talk to the witness, and if we have to talk about it further
7 we will talk about it.

8 MR. PATEL: Thank you, Judge.

9 (In open court)

10 THE COURT: Ladies and gentlemen, we are going to
11 break now for lunch. Please leave your notes and other
12 materials behind. Please don't discuss the case, and we
13 will resume after lunch.

14 (Jury excused)

15 THE COURT: You can step down.

16 (Witness excused)

17 MR. PATEL: Your Honor, there is just one thing
18 that I didn't have a chance to advise the court or the
19 government.

20 MS. AMSTERDAM: Nobody can hear you.

21 MR. PATEL: There is one thing that I forgot to
22 advise the court or the government before I called this
23 witness. His back injury is not healed and your Honor may
24 see he starts to fidget in his chair. He hasn't done it yet
25 but he may have to stand up for a few minutes.

1 THE COURT: If he needs a break, if you can
2 arrange some way for him to signal to you and you can signal
3 to me, we can take a break.

4 MR. PATEL: It is actually quite apparent, your
5 Honor. I will advise the court.

6 THE COURT: Does he need a pillow? I think I can
7 provide that.

8 MR. PATEL: No, he literally needs to stand up.
9 I don't think that would help, Judge.

10 THE COURT: At least he doesn't have Lyme
11 disease.

12 (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 (Jury present)

4 ALI AHMED EL SHINAWY, resumed.

5 THE COURT: Good afternoon, ladies and gentlemen.

6 JURORS: Good afternoon.

7 THE COURT: Mr. Patel.

8 MR. PATEL: Thank you, your Honor.

9 DIRECT EXAMINATION (Continued)

10 BY MR. PATEL:

11 Q Mr. Shinawy, when we broke for lunch, I believe
12 we were discussing fatwas. Have you ever been present when
13 Sheik Omar Abdel Rahman gave a fatwa?

14 A Yes.

15 Q Would you tell the ladies and gentlemen of the
16 jury about that, please.

17 A Yes. One time after he finish his lectures --
18 usually any scholar giving lectures in the mosque, they
19 leave time for questions and answers. After he finish his
20 lecture, someone ask him: As long as we know that America
21 supports Israel, who's the enemy, have we the right to stop
22 paying taxes to America, and we're living here?

23 One person asked him that question.

24 And his answer, he said: Of course not, because
25 when you came over here and you signed to accept the laws of

1 this country, you have to respect that, and Muslim never be
2 lie or cheat or break his promise.

3 That his fatwa, his answer to that person.

4 Q Let me make sure I understand. The sheik said
5 that the United States did support Israel, an enemy of
6 Islam, but that American citizens, or Muslims living in the
7 United States still had to pay taxes to the United States?

8 A Pay taxes, and he has to follow all rules of the
9 country he accept, you know, to live in it, he has to
10 respect the law.

11 Q Mr. Shinawy, were you involved in the formation
12 of the Afghan Refugee Services, Inc.?

13 A Yes.

14 Q Were you one of the incorporators of that
15 organization?

16 A I was one of three in the Alkifah office. It was
17 in Atlantic Avenue and -- in Brooklyn.

18 MR. PATEL: Your Honor, may I approach the
19 witness with what's been marked Nosair GGG?

20 THE COURT: Sure.

21 Q Mr. Shinawy, does your name and address appear on
22 the second page of that document?

23 A Yes, it is my name and my address, the third one,
24 three.

25 MR. PATEL: Your Honor, I would offer Nosair

1 Exhibit GGG.

2 THE COURT: Is that the certificate of
3 incorporation?

4 MR. PATEL: Yes, it is, your Honor.

5 MR. McCARTHY: No objection.

6 THE COURT: Nosair GGG the certificate of
7 incorporation of -- the entity is called?

8 MR. PATEL: The Afghan Refugee Services, Inc.

9 THE COURT: That is received without objection.
10 Go ahead.

11 (Nosair Defense Exhibit GGG for identification
12 was received in evidence)

13 Q Mr. Shinawy, Afghan Refugee Services, Inc., you
14 say that was -- well, was that known by any other name?

15 A There was three of us, myself and Fawaz Damra,
16 and Mustafa Shalabi.

17 Q But the organization, was that known by any other
18 name, or was it referred to as anything else?

19 A Yes. Alkifah office, or jihad office.

20 Q And this was --

21 A The same meaning.

22 Q This was a nonprofit organization?

23 A Yes.

24 Q Established under the laws of New York State?

25 A Yes.

1 MR. PATEL: Your Honor, may I read three
2 paragraphs from this exhibit now in evidence?

3 THE COURT: Yes.

4 MR. PATEL: "1. The name of this corporation is
5 the Afghan Refugee Services Inc.

6 "2. The corporation is a corporation defined in
7 subparagraph (a)(5) of Section 102 of the Nonprofit
8 Corporation Law.

9 "3. The purpose, or purposes for which this
10 corporation is formed are as follows:

11 "To provide for the need and welfare of Afghan
12 people, particularly the refugees due to Soviet invasion;
13 assisting refugees to establish themselves in life; and
14 general helping and caring for the Afghan people
15 everywhere."

16 Q Mr. Shinawy, where was the Alkifah or jihad
17 office located?

18 A It was in between 3rd and 4th Avenue -- Atlantic
19 Avenue between 3rd and 4th Avenue. It's like, according to
20 my memory, 152 Atlantic Avenue.

21 Q Was there any other Islamic institution in the
22 same building?

23 A Yes. It was a mosque, mainly a mosque.

24 Q Which mosque was that?

25 A Masjid Al Farooq, Farooq mosque.

1 Q And what was the purpose of the Alkifah or jihad
2 office?

3 A Alkifah office --

4 MR. MCCARTHY: Objection.

5 THE COURT: Sustained.

6 Q What kind of activities went on in that office?

7 A We called the families of the men who went to
8 Afghanistan for jihad in Afghanistan to help them, and we
9 studied their needs, food, clothing, medicine, any needs to
10 the family living without their men.

11 Q Did you provide assistance or guidance to people
12 who wanted to go to Afghanistan?

13 A Yes. Our, also, duties, to easy to get job, the
14 procedure to get, I mean, a visa to whoever wants to
15 Pakistan.

16 Q Did you distribute information on going to
17 Afghanistan?

18 MR. MCCARTHY: Objection to form.

19 THE COURT: Sustained.

20 Q Did you distribute any flyers of any kind?

21 A Yes, yes.

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

24 THE COURT: Yes.

25 Q Mr. Shinawy, I am going to show you what's been

1 marked Nosair HHH.

2 A Yes. This one of flyers we used to distribute to
3 the mosques, to the public, to everyone, to let them know,
4 update about what happening in Afghanistan, and this written
5 by Dr. Abdel Azim.

6 Q Was this something that was distributed at the
7 Alkifah office?

8 A Yes.

9 Q Mr. Shinawy, did you ever go to Afghanistan
10 yourself?

11 A Yes.

12 Q When did you go?

13 A I went in 1988.

14 Q Do you remember the exact date?

15 A March, April -- excuse me, my memory is going
16 apart.

17 Q Let me see --

18 A March, April 1988.

19 Q Is there anything that I could show you that
20 might refresh your recollection as to the date, or --
21 withdrawn.

22 MR. PATEL: Your Honor, may I approach the
23 witness with a document?

24 THE COURT: Yes.

25 A It is shown anyway in my -- yes. United States

1 customs. Yes, I got the visa --

2 Q OK. Just one second.

3 A Yes.

4 THE COURT: Excuse me. If everybody else can't
5 hear, it's just a private conversation.

6 MR. PATEL: Your Honor, there was no question.

7 THE COURT: OK. Good.

8 Q Mr. Shinawy --

9 A Yes.

10 Q -- having looked at that document, does that
11 refresh your recollection as to the date that you went to
12 Afghanistan?

13 A Yes.

14 Q What was the date that you went to Afghanistan?

15 A The date was April 15, '88.

16 Q Could you just put that aside for me.

17 When you went to Afghanistan, did you go directly
18 to Afghanistan or did you go someplace else first?

19 A We go to Islamabad airport.

20 Q In what country is that?

21 A Pakistan.

22 Q And from Islamabad airport, where did you go?

23 A We moved to Peshawar by cars. They admit us in a
24 house.

25 MR. PATEL: Your Honor, may I approach with

1 what's been marked Nosair III?

2 THE COURT: Yes.

3 A That's the place we went to stay, in this house.

4 THE COURT: He hasn't asked you a question yet.

5 THE WITNESS: I am sorry.

6 THE COURT: That's all right.

7 Q Have you seen Nosair III before?

8 A I saw him --

9 Q Have you seen that document before?

10 THE COURT: That picture.

11 A No. He wasn't in my time, he wasn't in my --

12 THE COURT: The question is simply have you ever
13 seen that picture before?

14 THE WITNESS: Yes.

15 THE COURT: Has anybody ever shown you that
16 picture before?

17 THE WITNESS: Yes.

18 THE COURT: OK. Go ahead.

19 Q Is your photograph in that picture?

20 A This given us from there.

21 Q Please listen to my question.

22 A No.

23 Q Is your photograph in that picture?

24 A Yes.

25 Q And where was that picture taken?

1 A Taken in Peshawar.

2 Q And when was that photograph taken?

3 A This after April 15 '88, two days or three days
4 after.

5 MR. PATEL: Your Honor, I would offer Nosair III.

6 MR. McCARTHY: No objection.

7 THE COURT: Nosair III is received without
8 objection.

9 (Nosair Defense Exhibit III for identification
10 was received in evidence)

11 Q After you left -- you can just put that down.
12 After you left -- well, where did you go from
13 Peshawar?

14 A From Peshawar they send us to a training place,
15 camp, teach us on the equipment, the troops, whatever used
16 in Afghanistan.

17 Q When you say "equipment," do you mean weapons?

18 A Weapons, yes, guns, different guns.

19 Q Now, prior to going to that place, had you ever
20 fired a gun before?

21 A Before? No.

22 Q What kind of weapons were you trained to use --
23 by the way, was this training in Pakistan or Afghanistan?

24 A In Pakistan.

25 Q And what kind of weapons were you trained to use?

1 A We used like RPG, and the Houn. I don't know in
2 English Houn, but we used this in our country as a Houn. We
3 call it as a Houn.

4 Q Is that some kind of cannon?

5 A Yes. And one bullet, about 12 inches, United
6 States made.

7 THE COURT: An "RPG" is a rocket-propelled
8 grenade?

9 MR. PATEL: So stipulated, your Honor.

10 Q Did you ever go into Afghanistan?

11 A Yes.

12 Q When you went into Afghanistan, what did you do?

13 A We really -- as myself and the group with me,
14 trained in most troops, most weapons except one weapon,
15 which is Houn.

16 Q Howitzer?

17 A Houn gun. Houn gun. It has one bullet every
18 time and a long distance. So this is the only one we didn't
19 get trained on. But we went over there, we -- put us in a
20 place has this kind of weapon. And the leader of that place
21 explained to us how we use it and show us how we adjust the
22 distance and we start to use it.

23 Q How did you get from Pakistan into Afghanistan?

24 A By cars through the mountains. Cars, like Jeeps,
25 like --

1 Q Did you participate in a battle or any battles
2 when you were in Afghanistan?

3 A Yes.

4 Q Who were you fighting when you were in
5 Afghanistan?

6 A We fought the Russian, the Russian people who
7 invade Afghanistan.

8 Q Had you received any training in the United
9 States before you went to Afghanistan?

10 A No.

11 Q Do you recall when you returned to the United
12 States?

13 A Yes. When we come back?

14 Q Yes. When was that?

15 A When?

16 Q Yes.

17 A In May the same year. I spent one month over
18 there.

19 Q When you returned to the United States, did you
20 continue to work in the Alkifah office?

21 A Yes. To show the people, to help the people
22 whatever they need.

23 Q Did the Alkifah office, to your knowledge,
24 organize any training for people who wanted to go to
25 Afghanistan?

1 A No, no.

2 Q Have you had anything to do with guns since you
3 returned from Afghanistan?

4 A No.

5 Q Do you know Mr. Nosair who is sitting over here?

6 A Yes.

7 Q Do you recall when you first met him?

8 A I met him, I saw him first time passing by
9 Alkifah office, going to make a prayer in Masjid Farooq.

10 Q Did you attend Mr. Nosair's state trial?

11 A Yes. I was -- attended the trial.

12 Q How often did you attend Mr. Nosair's state
13 trial?

14 A Maybe 60 percent or 70 percent of the period in
15 the trial.

16 Q Do you know a man named Emad Salem?

17 A Yes.

18 Q Could you tell the ladies and gentlemen of the
19 jury when you met Mr. Salem.

20 A Emad Salem, I meet him in masjid, the mosque of
21 Abu Bakr Seddiq. And he came to us and tell us, you know,
22 "I'm poor in the religion. I didn't learn enough about
23 Islam, and I would like you to help me, and especially I
24 have problems always."

25 Then we start to help him, you know. Any

1 question he admit to us, we help him. He used to go to the
2 imam upstairs in the mosque also to keep studying the
3 religion and getting fatwa from him. Sometimes he comes
4 with his wife, which is not Muslim in that time. I don't
5 know what about now. He used to go upstairs to the imam to
6 solve some problems between them.

7 And from that day he start to get involved, you
8 know, in our announcements and anything. And we take him as
9 somebody seeking to learn his religion. And all of us deal
10 with him to help him.

11 Q Do you recall about when it was that you met
12 Mr. Salem?

13 A Say again, please?

14 Q When, at what period of time that you met
15 Mr. Salem.

16 A Maybe in '90.

17 Q Was it around the time of Mr. Nosair's state
18 trial?

19 A Yes. And the time was even he joined, if we saw
20 him came to the court, attend the trial with us.

21 Q Now, did there come a time that you went with
22 Mr. Salem to Attica Prison?

23 A Yes.

24 Q Mr. Shinawy, is your back hurting you?

25 A Yes, a little bit. I'm sorry to ask to stand.

1 THE COURT: We will take a short break.

2 MR. PATEL: Thank you, your Honor.

3 THE COURT: Ladies and gentlemen, please leave
4 your notes and other materials behind. Please don't discuss
5 the case. We will resume in a few minutes.

6 (Jury not present)

7 THE WITNESS: I'm sorry. I have to stand.

8 MR. PATEL: Thank you, your Honor.

9 THE COURT: I hadn't intended for it to happen
10 quite that way.

11 MR. PATEL: I'm sorry, your Honor.

12 THE COURT: We will take a short break.

13 (Recess)

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1 (In open court; jury not present)

2 MR. PATEL: Your Honor, Ms. Schwartz and I have
3 worked out communications to avoid that. I apologize.

4 (Jury present)

5 (Witness resumed)

6 THE COURT: Go ahead.

7 MR. PATEL: Thank you, your Honor.

8 (Continued on next page)

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1 BY MR. PATEL:

2 Q Mr. Shinawy, I would like to ask you a few more
3 questions about Afghanistan. How long did it take you --
4 you left from -- withdrawn. Did you leave from Peshawar to
5 go to Afghanistan?

6 A Yes, after I got training.

7 Q How long did it take you to get from Peshawar
8 into Afghanistan?

9 A In that day about two hours or two and a half
10 hours.

11 Q What are the roads like between Peshawar and
12 Afghanistan?

13 A Like hills, mountains, tell you get to
14 Afghanistan border.

15 Q You said that you went in cars. What kind of
16 cars were they?

17 A I just said, Jeeps and Dodge half truck.

18 Q 4-wheel drive vehicles?

19 A Yes.

20 Q While you were in Afghanistan, you were involved
21 in a battle?

22 A Yes. I said I was involved.

23 Q What did you do in that battle?

24 A Shooting bullets, which was I just mentioned,

25 How --

1 Q Howitzer?

2 A Howizter. Maybe in English Howitzer. We call it
3 How.

4 Q How large were these bullets?

5 A It was like 2 and a half feet, and the bullet has
6 12, one foot. 12 inches.

7 Q The whole thing was about 2 and a half feet and
8 the bullet was --

9 A Yes, the whole thing was two and a half to three
10 feet, like 36 inches, and the bullet like, you know, 10, 12
11 inches.

12 Q Can you hold your hand up so the jury can see how
13 large it was?

14 A The bullet?

15 Q The whole thing?

16 A The whole thing, like three feet, something like
17 that.

18 Q Do you know where those bullets were
19 manufactured?

20 A United States made.

21 Q How do you know that?

22 A All the boxes, all the boxes written unit -- U.S.
23 made -- and we take bullet by bullet, put it, and shoot,
24 after we adjust the distance, as I mentioned before.

25 Q The Alkifah office, were there flyers about

1 firearms training distributed at the Alkifah office?

2 A There is, sometimes there is flyers to tell the
3 people there is a place, public place for training,
4 shooting. It's America, not belong to the office. So they
5 show them whoever wants to go to get that training, give
6 names and we save the right for them, flyers.

7 Q Did you ever go to the Calverton Shooting Range
8 yourself?

9 A Never. I got my training all in Peshawar.

10 Q In June of 1992, did you go with Mr. Salem to
11 visit Mr. Nosair in Attica prison?

12 A Yes, I went once with Emad Salem, yes.

13 Q Who made the arrangements for that trip?

14 A The reference, he is one called, Emad Salem.
15 Pronounce Emad Salem. He the one.

16 Q How did you get up to Attica?

17 A By car. We took a car from Manhattan, about 8, 9
18 p.m., we move like 10, we arrive there about 7:00 in the
19 morning.

20 Q Was that someone --

21 A Bus. It was a bus.

22 Q So it was not anyone's private car?

23 A No. Some of them go with the private cars.

24 Q But on this trip you and Mr. Salem went up on a
25 bus?

1 A Yes.

2 Q Did anyone else go with you?

3 A It should be three people, but one didn't come
4 over there. That's why we went to two.

5 Q How long did it take in total for you to get up
6 there?

7 A 9, 10 to 7, like 10 hours, 12 hours sometimes.

8 Q Do you recall what you discussed on the way up
9 there?

10 A We talk about, you know, sometimes we were
11 talking about his problems and his habit. He is happy to
12 know us and join us and, you know, he like everybody he met.
13 Then he was talking about Sayyid Nosair, Allah Insha Allah
14 we help him, and we will prove that he is innocent, and
15 something like that. But at the same time, we took a nap,
16 each one first took a nap, because long distance traveling,
17 so we took like two hours nap, three hours, on the chairs.

18 Q When you arrived in Attica, could you explain to
19 the ladies and gentlemen of the jury what the process for
20 getting inside was like.

21 A What you mean? In the bus?

22 Q Did the bus go inside the prison?

23 A OK. The bus arrive over there. There is a gate
24 and people by the gate, and the driver gave him a paper,
25 piece of paper, then they let him get in, then he drive like

1 another 5, 10 minutes till we get another gate. Then from
2 that gate the bus stop and we went out, go to a building,
3 you know, about two, three minutes walking. We enter the
4 building, submit our ID's, and before we gave our names
5 advance, before we did the trip, before we do the trip.

6 Q So you called Attica before you went up?

7 A Yes, we called and gave the names as visitors and
8 the name who going to visit. When we went over there, we
9 submit our ID, as requested, and they look the paper and let
10 us go in the front building. When we go -- yes.

11 Q When you gave your identification, did you have
12 to sign your name in a logbook of any kind?

13 A They put our names, our address, all the
14 information in a sheet paper. Then I don't remember if I
15 sign or not, if they ask me sign or not. Then they send us
16 to another building, we enter through that building, through
17 a machine. We have to get searching, and ask us to take off
18 the shirt and trouser, even the shoes. We took it off,
19 search us by hand, then after that by machine. Then we went
20 through. All our money, our keys, everything, put it in a
21 bag and put it in locker, gave us key, put them in the
22 locker. That is the procedure.

23 Q When you got past that search procedure, where
24 did you go?

25 A They direct us to a hall, big hall. As soon as

1 we arrive the hall, the visiting hall, we see two officers
2 in a desk, high desk, and they direct us who going to visit,
3 we mention Sayyid Nosair, he say all right, will be in that
4 table, gone to the table, we went to the table and Sayyid
5 Nosair came, shake hands together.

6 Q The officers directed you to a specific table?

7 A Yes.

8 Q This visiting room, was there more than one table
9 in this visiting room?

10 A This hold about five by eight, about 40 tables,
11 40 round tables.

12 Q How large was this visiting hall?

13 A If it is not the same size of the courtroom,
14 maybe little bit bigger, little bit deeper. The same size
15 mostly. It has about five rows by eight, about 40 tables.

16 Q How much time did you spend with Mr. Nosair that
17 day?

18 A According to my memory is about two and a half,
19 three hours, something like that.

20 Q And Mr. Salem was with you the entire time?

21 A Yes, he was with me step by step.

22 Q Do you recall what you talked about with Mr.
23 Nosair?

24 A Say again.

25 Q Do you recall what you talked about with Mr.

1 Nosair?

2 A Yes.

3 Q What did you talk about?

4 A He welcome us, and we talk how you feel. Then he
5 said Al hamdulelah, praise to Allah, I'm fine, great. And
6 he was smiling. That why make us feel better when we see
7 him quiet, smiling. Then we also talk to him that Allah
8 will never, you know, neglect him or forget him, and Allah
9 with him and Insha Allah everything will be clear, so you
10 have to be patient. Something like that. And your family
11 is OK.

12 Q Did Mr. Nosair talk about what he was doing
13 inside Attica at all?

14 A Yes, I remember he said many things like, he said
15 no, I'm not upset, I'm happy, and whatever I done over here,
16 I wouldn't expect myself to do it outside.

17 Q What did he mean by that? What did you
18 understand?

19 A He said Allah reward him by giving him the
20 opportunity to talk to the people in the jail and explain
21 about the Islam, and by the time we visited him about 22, 23
22 convert to the Islam. That why he said, and he was blaming
23 us, you are free outside and you don't do your part, so I am
24 not free over here but Al hamdulelah, praise to Allah, I did
25 something by support of Allah, and 22 people, 23 people

1 convert to Islam. So I did my part, you people don't forget
2 your responsibility front of God and you try to show the
3 people the Islam. That one of the things we talked about.

4 Q While you were in the visits room that day --

5 A Why?

6 Q While. During the time that you were in the
7 visiting room, did you see any fuse?

8 A Confuse?

9 Q Fuse?

10 A Fuse?

11 Q Fuse.

12 A I am electrician anyway. What kind of fuse?

13 Q Did Mr. Salem show Mr. Nosair some green,
14 rope-like object about 6 inches long?

15 A No, never.

16 Q Did you discuss obtaining timers?

17 A What talk about? What timers?

18 Q For setting off bombs.

19 A No such. No.

20 Q Did you discuss obtaining M60 fuse light errs?

21 A No. My God.

22 Q Did you discuss a plot to build 12 bombs?

23 A What for? No.

24 Q Did you discuss a plot to kill Dov Hikind?

25 A Dov Hikind?

1 Q Dov Hikind.

2 A Oh my God. We are not killers Mus --

3 Q Was there any such discussion that day in Attica
4 prison?

5 A No, never.

6 Q You know who Dov Hikind is --

7 A Who said that?

8 Q We have a rule around here. I ask --

9 A I am sorry, I no understand.

10 Q Did you discuss a plot to kidnap the judge that
11 supervised Mr. Nosair's state trial?

12 A No.

13 Q Did you discuss getting a fatwa from Sheik Omar
14 Abdel Rahman to do any of the things I have just mentioned?

15 A I never hear Sheik Omar Abdel Rahman said
16 something against United States but he was blaming --

17 THE COURT: That was not the question.

18 THE WITNESS: I am sorry.

19 THE COURT: The question was, did you during that
20 visit discuss with Mr. Nosair getting a fatwa to do any of
21 the things that Mr. Patel discussed before?

22 A No, sir. No.

23 Q Did you see Mr. Nosair point his finger like a
24 gun?

25 A No.

1 Q Did he talk about killing Meir Kahane?

2 A Till now I do not, I don't know that, you know, I
3 never hear from him that.

4 Q Did you discuss any of these subjects with
5 Mr. Salem on the trip home from Attica?

6 A The same thing. We Insha Allah saying we hoping
7 and he be OK and his position, nothing wrong against him and
8 Insha Allah he will be out soon, something like that, you
9 know.

10 Q Was there any discussion of bombing or killing or
11 kidnapping?

12 A No, sir, no. He cannot talk to me in something
13 like that, never.

14 Q After you visited Mr. Nosair in Attica, were you
15 interviewed by the FBI?

16 A Did I?

17 Q Were you interviewed by the FBI?

18 A For fingerprint, yes. They send me, what you
19 call it?

20 Q Subpoena?

21 A Subpoena, and they tell me we need you in that
22 day, that time. They took fingerprint for me.

23 Q Did they take your photograph as well?

24 A No, I don't remember, unless something taken -- I
25 didn't see them take the picture.

1 Q When you received the subpoena from the FBI, you
2 went to where the subpoena directed you to go?

3 A Yes.

4 Q Mr. Shinawy, are you still active in the Muslim
5 community?

6 A Yes.

7 Q Is there any particular project you are currently
8 working on?

9 A Yes. I keep teaching the kids, and summer
10 program, teach them the religion, teach them the language,
11 you know. And also in winter, we have weekend school,
12 Saturday and Sunday, whoever wants to come Saturday or
13 Sunday, and we save them transportation to attend that
14 education. We have the day care. We have weekend school,
15 and we have summer school. When the public schools finish
16 we start summer school four days a week. I am in charge of
17 that.

18 Q Do I understand that you are in charge of the
19 Muslim schools?

20 A Yes, like a principal, like, you know, put the
21 curriculum, what they should learn, small souras of the
22 Koran, how they make a pray, how they deal with their
23 parents, you know.

24 Q Where is this school located?

25 A The school in Abu Bakr Seddique.

1 MR. PATEL: Thank you. Your Honor, I have no
2 further questions.

3 THE COURT: Cross.

4 MR. RICCO: Judge, I have a couple of questions.

5 MR. SERRA: I have a couple of questions.

6 THE COURT: Sorry. Mr. Ricco representing Mr.
7 El-Gabrowny. Go ahead.

8 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MR. RICCO:

3 Q Good afternoon, sheik.

4 A Good afternoon.

5 Q Before Mr. El-Gabrowny was arrested, you knew
6 him, isn't that right?

7 A Yes.

8 Q Can you tell the jury the kind of work that Mr.
9 El-Gabrowny did at the mosque?

10 A Mr. Ibrahim El-Gabrowny selected as the president
11 of the mosque, and as I mentioned before, I was secretary of
12 that board of trustees. And everybody knows him, that he
13 has big heart --

14 THE COURT: No. He asked you specifically what
15 kind of work he did.

16 Q Sheik Shinawy, to your knowledge, did Mr.
17 El-Gabrowny perform any construction work at the mosque?

18 MR. McCARTHY: Objection.

19 A Yes, outside the mosque. He is contractor.

20 MR. McCARTHY: I withdraw the objection.

21 THE COURT: Go ahead.

22 Q Can you tell the jury the type of contracting
23 work that Mr. El-Gabrowny did at the mosque?

24 A Yes, constructions, stores, houses, mosques.

25 Q Specifically at Abu Bakr Mosque, did Mr.

1 El-Gabrownny work on any construction projects for the
2 extension of the mosque?

3 A He did part of the construction done in the
4 mosque but not all of it, because some parts given to
5 certain people, and he did some of the construction.

6 Q Were tapes ever sent to Nosair up to Attica
7 prison?

8 A Yes. I forget to mention about when we visit him
9 and he said I did my part, I am in jail and the people
10 response and became Muslims, and I ask him what kind of help
11 you need, to help you. He said if you have some videotapes
12 show, like discourse, lectures, dialogue about different
13 religion, this will be helpful. Then I sent already to him
14 Spanish and English tapes.

15 Q Did you get the permission from the imam at
16 Attica, Naji Allah?

17 A Naji Allah, yes.

18 Q For permission to send those tapes to the prison?

19 A He was telling me that Naji Allah is ready to
20 receive that kind of tapes.

21 Q So the tapes went to Attica, to your knowledge --

22 MR. McCARTHY: Object to form.

23 Q Through Imam Naji?

24 A Naji Allah --

25 THE COURT: Let's let him testify, shall we?

1 MR. RICCO: Sure.

2 Q Tell the jury how the tapes got to Attica.

3 A When I promise him, I met Emad Salem, he said I
4 am ready to take the tapes with me next visit. Then he call
5 me in the phone, remind me with the tapes. Then I tell him
6 give me like, you know, day or -- then I prepare the tapes,
7 and the day he is going to make a visit, he was, I think,
8 saying that he and Ibrahim El-Gabrownny according to my
9 memory, and another person -- Moustafa -- Ibrahim
10 El-Gabrownny, Moustafa and himself, Emad Salem. Then I tell
11 him all right, stop by me, I give it to you, then you take
12 them with you.

13 Q Do you know the imam at the Attica Correctional
14 Facility?

15 A No, I didn't meet him. That why I said through
16 Nosair, you know, he was telling me that he is ready to
17 help.

18 Q Do you know the name of the imam at the Attica
19 Correctional Facility?

20 A Yes.

21 Q Tell the jury.

22 A Naji Allah. That why I correct the pronunciation
23 a couple of times. Naji Al, his name.

24 MR. RICCO: I have no further questions. Thank
25 you.

1 THE COURT: Mr. Serra, representing Mr. Alvarez.

2 Go ahead.

3 MR. SERRA: Thank you.

4 CROSS-EXAMINATION

5 BY MR. SERRA:

6 Q Good afternoon, Mr. Shinawy.

7 A Good afternoon, sir.

8 Q Mr. Shinawy, my name is Wesley Serra. I
9 represent Victor Alvarez, the gentleman seated with the
10 headphones there, also known as Mohammed. Do you know
11 Mr. Alvarez?

12 A Yes. He change a little bit.

13 Q Could you describe for the jury, please, how you
14 know him.

15 A When my son graduated from the college, he ask me
16 to help him to do business, he don't want to work by
17 somebody or something like that. I tell him choose a
18 business and let me know. Then he found out a place, he
19 said is good for restaurant. I tell him all right, let me
20 talk to the owner of the restaurant. We talk, and it we set
21 agreement, and I get the restaurant and I try to use people
22 has experience to build or to renewal places. Then I
23 prepare the restaurant for him, and most the Egyptian
24 people, Arab people, Muslim people used to come to eat in
25 that restaurant. And Mr. Mohammed was one of them.

1 Q So, Mr. Shinawy, you knew him from the restaurant
2 from getting food there, in one way, is that right?

3 A Yes.

4 Q Did he ever do any work for you?

5 A Yes, he did some works in the restaurant
6 downstairs, and he used to repair cars also, as a mechanic,
7 in the streets. He used to do many cars for us. And he
8 keep coming to me to ask if I could find steady work for him
9 or better work. That's the relation.

10 And also, the main thing he used to come asking
11 about questions in the religion, what that mean, what this
12 for, when this -- something related to religion.

13 Q Mr. Shinawy, when you say questions in the
14 religion, do you mean he would ask you questions about
15 Islam?

16 A Yes.

17 Q Seeking to learn about Islam?

18 A Yes, that what.

19 MR. SERRA: Your Honor, may I approach the
20 witness with Government's Exhibit 520?

21 THE COURT: Yes.

22 Q Mr. Shinawy, we are going to have to share a
23 microphone here. I show you a line in Government's Exhibit
24 520 -- which your Honor, for the record is entitled "Chart
25 of Victor Alvarez Telephone Numbers." I show you a line

1 which I am indicating to you, which concludes "Ali Shinawy
2 restaurant," and ask you if you recognize the phone number?

3 A Yes. This was his phone.

4 THE COURT: The witness cannot be heard.

5 Q My question was, do you recognize the phone
6 number?

7 A Yes, I remember that this telephone number in the
8 paper was the restaurant number, yes. Otherwise restaurant
9 telephone number.

10 Q One more question, Mr. Shinawy. You told the
11 jury a minute ago that from time to time you would help Mr.
12 Alvarez, Mohammed, in his learning of Islam. Would you ever
13 have to explain things to him more than once?

14 MR. MCCARTHY: Objection to form.

15 THE COURT: Sustained as to form.

16 A Yes.

17 Q Mr. Shinawy, I have to ask the question again, if
18 you would allow me, please.

19 A OK.

20 Q When you were explaining things about Islam to
21 Mr. Alvarez, would you have ever to explain them more than
22 once?

23 A I hope my answer don't hurt him, you know,
24 because I have to tell the truth all time. Mr. Mohammed
25 used to good person and I love him because he asking many

1 questions about religion and he was serious about that,
2 but --

3 THE COURT: But the question --

4 THE WITNESS: Yes, I am coming to it.

5 THE COURT: Thank you. The question was simply
6 whether you had to explain things more than once.

7 A Yes, more than once, because, you know, has
8 difficulty to understand him sometimes and maybe he forgets
9 sometimes -- yes, it happens. I am sorry if this hurt him.

10 MR. SERRA: I have nothing further, your Honor.

11 THE COURT: May I see -- I am sorry. Ms.
12 Stewart, go ahead.

13 CROSS-EXAMINATION

14 BY MS. STEWART:

15 Q Good afternoon, Mr. Shinawy.

16 A Good afternoon.

17 Q We have met before, is that right?

18 A Yes.

19 Q About three Saturday nights ago in the downstairs
20 room at Abu Bakr Mosque?

21 A Yes, I remember that.

22 Q Let me ask you something, Mr. Shinawy, about
23 Pakistan. Mr. Patel showed you a picture of a house there,
24 is that right?

25 A Yes.

1 Q Do you know if there was a house there called the
2 Bit Al-Ansar?

3 A Yes, there is a house called Bit Al-Ansar but not
4 in the picture, yes.

5 Q Do you know what was the connection of that house
6 and how it got that name?

7 A I don't think so, because there was in that time
8 many tribes, many, you know, working each separately than
9 each other. But one of these houses, Bitel Al-Ansar, was
10 there.

11 Q And it was one of the houses where the mujahideen
12 stayed prior to going to Afghanistan?

13 A Yes, the same thing that house, yes.

14 Q If you know, did Bit Al-Ansar have a telephone?

15 A Of course, yes.

16 Q You indicated that you first heard Sheik Omar in
17 this country at the Farook mosque, is that right?

18 A Farook mosque, yes.

19 Q And he was the imam there, is that correct?

20 A He was giving lectures and Jummah, Friday's
21 ceremony, but I don't think that he was a permanent imam,
22 you know.

23 Q After he would give a lecture would there
24 sometimes be a question and answer period from the people
25 who were attending?

1 A Yes.

2 Q Did you ever on any occasion at Farook mosque
3 hear someone from the audience ask him about whether or not
4 jihad was permissible in America?

5 A No, I didn't hear that, but maybe happened when I
6 wasn't there.

7 Q You told us, I think, that you consider yourself
8 to be a follower of Sheik Omar, is that correct?

9 A Yes, I am follower to any Muslim scholar as long
10 as he follow the guidance, God's word and hadith, Mohammed
11 speech, Mohammed advices.

12 Q You also told us that you went to one of the
13 fields of jihad, is that correct?

14 MR. McCARTHY: Objection to form.

15 A Yes.

16 THE COURT: Sustained as to form.

17 MR. McCARTHY: Move to strike.

18 THE COURT: Stricken.

19 Q Did you go to Afghanistan, Mr. Shinawy?

20 A Yes.

21 Q And you are a mujahid, is that --

22 MR. McCARTHY: Objection to form.

23 THE COURT: Sustained.

24 A Yes, I was one of mujahideen, yes.

25 Q You can't answer that. It's stricken. I have to

1 ask the question first.

2 In Arabic and in Koranic parlance --

3 A Yes.

4 Q -- what would you consider yourself for having
5 fought in Afghanistan?

6 A Mujahid.

7 (Continued on next page)

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1 MS. STEWART: Thank you. Nothing further.

2 THE COURT: Anyone else? May I see counsel
3 briefly at the side.

4 (At the side bar)

5 THE COURT: We had a fairly short break before.
6 Did everybody go out or did they not go out?

7 MR. SERRA: The defendants, I don't think, had an
8 opportunity to, Judge.

9 THE COURT: Then we will break now.

10 MR. STAVIS: I don't know whether Mr. Patel has
11 told you but we don't have another witness available. I
12 expect a lengthy cross.

13 THE COURT: That is not a suggestion that you
14 fill up the remaining time if you don't have it.

15 MR. MCCARTHY: Yes, your Honor.

16 MR. STAVIS: I am just alerting your Honor.

17 THE COURT: I am aware of it then.

18 (In open court)

19 THE COURT: We are going to take the real break
20 now. Please leave your notes and other materials behind.
21 Please don't discuss the case and we will resume in a few
22 minutes.

23 (Recess)

24 (Continued on next page)

25

1 THE COURT: Notwithstanding that we are not going
2 to be sitting in trial tomorrow, I would like to see the
3 lawyers at some time that is convenient. In the afternoon,
4 if that is all right.

5 MS. AMSTERDAM: Your Honor, I have a doctor's
6 appointment which I scheduled for the afternoon knowing that
7 we wouldn't be sitting tomorrow.

8 THE COURT: How about in the morning?

9 MS. AMSTERDAM: I would do it in the morning.
10 Fine.

11 THE COURT: Fine.

12 MR. LAVINE: Judge, I scheduled a trip to see a
13 witness in this case in Jersey City. I wonder if I might be
14 able to delegate authority to do whatever I could do to
15 somebody else for tomorrow.

16 THE COURT: You mean delegate to somebody else to
17 do whatever you could do.

18 MR. LAVINE: Yes.

19 THE COURT: OK.

20 MR. WASSERMAN: Might the court indicate what
21 topics your Honor wants to cover?

22 THE COURT: Sure, I would like to cover the
23 various proposed expert testimony that's been offered, and
24 there is a motion relating to that. I would like to cover
25 the subpoenas, and talk about the remainder of the case.

1 THE COURT: Mr. Jacobs?

2 MR. JACOBS: Judge, I was going to go to
3 Otisville tomorrow. I have to visit some people up there.

4 THE COURT: I know you do. Scratch it.

5 MR. JACOBS: I guess so.

6 THE COURT: How about 11?

7 MS. STEWART: Judge, can we make it earlier?

8 THE COURT: Fine.

9 Do you want to do it at 10 o'clock?

10 10 o'clock.

11 (Jury present)

12 THE COURT: Cross?

13 MR. MCCARTHY: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. MCCARTHY:

16 Q Good afternoon, Mr. Shinawy.

17 A Good afternoon, sir.

18 Q Mr. Shinawy, you told us on your direct
19 examination that, as you saw it, one of the main functions,
20 if not the main function of the mosque is to instruct the
21 children, right?

22 A Yes.

23 Q I'm sorry. I didn't hear your answer.

24 A Yes.

25 Q In fact, you yourself have taken a very personal

1 interest in that, isn't that right?

2 A Yes.

3 Q You have become, I think, as you put it, the
4 chief instructor at the mosque?

5 A For the school, yes.

6 Q And that means that you're in charge of deciding
7 what it is the children should learn, right?

8 A Yes.

9 Q In that role, you have sort of held yourself out
10 as a sort of a model for the children to look up to, right?

11 A Repeat again, please?

12 Q You have held yourself out, sir, as a model to
13 those children?

14 A Yes.

15 Q In order so that they learn how to conduct
16 themselves in the correct way, right?

17 A That's right.

18 Q As you would do with your own children?

19 A With the share the imam of the masjid, the leader
20 who lead the Moslems and who give the fatwa and lectures and
21 advices, I have to share him. You know, I have to ask him,
22 you know, "This right or not?"

23 Q But, as far as you and the children are
24 concerned, and your instructing the children, you try to
25 treat them the same way you would treat your own children?

1 A Yes.

2 Q And teach them the right thing to do?

3 A Right.

4 Q And teach them the right way to do it?

5 A Exactly.

6 Q I believe you told us in answer to some of Mr.
7 Patel's questions that you came to the United States in July
8 of 1976, right?

9 A Exactly.

10 Q Right. July 2, 1976?

11 A Right.

12 Q And then you said, I believe, that you stayed
13 here for five years and you applied for citizenship?

14 A Yes.

15 Q And in around 1982 or so, you became an American
16 citizen?

17 A Yes.

18 Q That's not quite how it happened, right?

19 A This according to my memory. It could be '81,
20 '82, you know.

21 Q Could it be '84?

22 A No.

23 Q You don't think so?

24 A No.

25 Q OK. Now, did you succeed in becoming an American

1 citizen the first time that you tried?

2 A Yes.

3 Q You did?

4 A Hamdulelah, praise to Allah.

5 Q As you sit here today, your recollection is that
6 the first time you applied, there was no problem, you became
7 a citizen?

8 A No.

9 Q That's not your recollection?

10 A I said I didn't have problem. I said, no, means
11 I didn't have a problem.

12 Q Now, you came here on July 2, 1976?

13 A Exactly.

14 Q And you came here alone, sponsored by one of your
15 relatives here, right?

16 A Yes.

17 Q And then your family followed shortly afterwards?

18 A No, I came with big son in the beginning.

19 Q I'm sorry, sir?

20 A In the beginning I came with the big son. In
21 July 2, '76, I came with one son, and the rest of the family
22 was in Egypt.

23 Q OK. So you and your oldest son came --

24 A Yes.

25 Q -- when you first came?

1 A Yes.

2 Q And that was in July '76?

3 A Yes.

4 Q And the rest of your family at that time was in
5 Egypt?

6 A Yes.

7 Q Now, your oldest son at that time was about 15,
8 right?

9 A Maybe 13, maybe.

10 Q At that time you had three other children,
11 correct?

12 A Yes.

13 Q And your wife in Egypt?

14 A Yes.

15 Q And they came in February of 1977, right?

16 A Yes, till I prepare my apartment for them.

17 Q Do you recall where it was that you prepared your
18 apartment for them?

19 A Yes.

20 Q Where was that, sir?

21 A Where?

22 Q Where was that?

23 A This was in Brooklyn. At 20th Avenue and 50th
24 Street.

25 Q Do you recall exactly where it was that you were

1 living?

2 A Excuse me?

3 Q Do you recall where it was that you were living
4 when you first came to the United States?

5 A Let me try.

6 1901 49th Street -- no, 51st Street. This since
7 '76.

8 Q But you lived there from 1976 until 1980, right?

9 A No.

10 Q You changed your residence a couple of times
11 along the way?

12 A Yes, but after '80, I didn't change. Since '80,
13 I didn't change --

14 Q All right. Now --

15 A -- my address.

16 Q Your wife and your three youngest children came
17 in February of '77?

18 A About that.

19 Q And at that time the oldest of those three was
20 14?

21 A Yes.

22 Q And the next one down was 11?

23 A Yes.

24 Q And the youngest was 6?

25 A Yes. I could tell you the birth dates just to be

1 sure. The ages you mentioned is right, but I -- yes.

2 Q As an estimate that's about right, right?

3 A Yes, about that.

4 Q Now, you lived with your wife and your four
5 children here in the United States for about four and a half
6 years or so, right?

7 A From '77 till '80. Then I moved to another
8 address, which is the recent address since 1980.

9 Q Now, before you moved --

10 A Yes.

11 Q -- I am directing your attention now to the
12 period of 1980 prior to the time that you moved. Do you
13 recall taking a trip to Egypt?

14 A I went to Egypt?

15 Q Right.

16 A Why not? Yes.

17 Q Is it your recollection as you sit here that you
18 took a trip to Egypt?

19 A To visit my family.

20 Q OK. You were there in Egypt for about a month
21 during 1980, right?

22 A I don't remember. Two weeks, three weeks, one
23 month, I don't remember.

24 Q Do you recall it was about May or so of 1980 when
25 you left?

1 A I just said I don't remember the date. But
2 mostly, according to my vacation, three weeks or one month.

3 Q Do you recall that you were in Egypt in June of
4 1980?

5 A I'm not sure.

6 Q OK. Now, when you came back from your trip to
7 Egypt -- by the way, your family was in New York when you
8 went to Egypt, right?

9 A Yes.

10 Q All right. When you came back from your trip to
11 Egypt, you moved obviously right back in with your family
12 and continued on, right?

13 A Yes.

14 Q Now, when you got back, was there anything about
15 what had happened in Egypt that you forgot to mention to
16 your wife when you came back?

17 A Really, I don't know what you mean I mentioned to
18 my wife when I came back from Egypt.

19 Q Did you tell her how your trip went?

20 A The trip was OK. I was -- in 1980 I went for a
21 purpose, for a reason. That reason, my mother, they call
22 me, they told me that she's sick and get stroke. And I am
23 the only son to her, the only son. That why I went to find
24 out her condition. Then I brought my mother with me over
25 here. That's the reason why I went.

1 Q Did you mention to your wife when you got back to
2 New York that you had gotten married when you were in Egypt?

3 A I got married? No.

4 Q Are you sure?

5 A Yes. I said no.

6 Q As you sit here today, are you sure that you
7 didn't get married in Egypt in June of 1980?

8 A When I came back, I didn't tell her that. But
9 when I went over there, after she reject my mother to be
10 with me, I try to move to another address to keep my mother
11 under my care. That's what happened.

12 Q Did you mention to your wife --

13 A Yes.

14 Q -- when you came back to the United States in
15 June of 1980 --

16 A Not right away.

17 Q -- that you had gotten married when you were in
18 Egypt?

19 A No, I didn't marry before I tell her. After she
20 reject my mother to be with me, and I have no choice, I have
21 to get apartment to care about my mother.

22 Q You didn't get an apartment right away, did you,
23 Mr. Shinawy?

24 A I got it after three months, three months when I
25 came back.

1 Q After three months living with your wife Karima?

2 A Yes.

3 Q All right. Just to go back for a moment, the
4 woman that you married, your current wife is named Samia
5 Abou-Moussa?

6 A Exactly.

7 Q And you married her in June of 1980, in Egypt?

8 A Maybe that is the date, yes.

9 Q When you came back to the United States, you
10 didn't mention to Karima that you had married Samia when you
11 were in Egypt, right? Yes or no.

12 A No.

13 Q And you continued to live with your wife Karima
14 for about three months, right?

15 A Yes.

16 Q Never mentioning to her that you had married
17 somebody else while you with were in Egypt?

18 A Because I didn't marry. When I was in Egypt, I
19 didn't marry, I tried to explain to you. I just give
20 authorization to my relative to do the procedure. It takes
21 like two, three months. So it doesn't make sense to say
22 something advance before I done it.

23 Q So your testimony is that you didn't get married?

24 MR. JACOBS: Objection, asked and answered.

25 THE COURT: Overruled.

1 Q What is it, Mr. Shinawy?

2 A What the purpose? I don't understand, you know.
3 Marriage -- Muslim has a right to divorce for reasons, to
4 show the court the reasons and has a right to divorce.
5 Secondly, he has the right to marry up to four, but not in
6 America.

7 That why I cannot hold two wives in America in
8 the same time. My religion allowed me to marry for reasons,
9 if there is reasons, up to four. OK? So I cannot marry the
10 second -- second one unless I divorce the first one. It is
11 our religion.

12 Q You told us a few minutes ago during your direct
13 testimony that you are a follower of Sheik Abdel Rahman,
14 right?

15 A As long as he follow God's word and prophet,
16 Hadis.

17 Q And you told us that one of those rules that
18 absolutely must be followed is that if you're going to live
19 here in America you have got to follow the rules, right?

20 A That why I said I cannot break the American laws
21 which I accepted when I came over here. That why I cannot
22 get two wives in the same time. But I have the right to
23 marry second or third, according to my religion.

24 Q Did you tell the United States government, sir,
25 the Immigration & Naturalization Service that you got

1 married when you were in Egypt in June of 1980?

2 A No, later on she went to the court --

3 Q Sir, my question to you, is: Did you make a
4 representation to the United States government, to the
5 Immigration & Naturalization Service, that while you were in
6 Egypt in June of 1980, --

7 A No.

8 Q -- you got married?

9 A No.

10 Q You didn't?

11 A No.

12 Q You are sure about that, as sure as you're
13 sitting there, right?

14 A I don't remember that.

15 Q Mr. Shinawy, do you recall that you made an
16 application to become a citizen of the United States in June
17 of 1980 -- I apologize, in March of 1981?

18 A Mm-hmm.

19 Q Is your answer "yes," sir?

20 THE COURT: Is that "yes"?

21 THE WITNESS: I'm not sure about the dates
22 really. I don't remember the dates, but you know --

23 Q Let me see if I can't refresh your recollection.
24 I'm showing you, Mr. Shinawy, what's marked as 35145D for
25 identification.

1 A Yes.

2 Q Let me show you the original.

3 A Yes.

4 Q Do you recognize that document, sir?

5 A It's my handwriting. The date --

6 Q Let me direct your attention to the bottom
7 right-hand corner.

8 A Yes. March '81. March 10, '81.

9 Q All right. That's a biographical statement that
10 you filed with the Immigration & Naturalization Service in
11 connection with your petition to become a naturalized
12 American citizen, right?

13 MR. JACOBS: Objection, 608(b).

14 THE COURT: Overruled.

15 A Yes. This is an application. What did I say
16 before? I said '81, '82, according to my memory.

17 Q Now, you filed this in connection with becoming a
18 citizen? Yes or no.

19 A Yes.

20 Q Is it not a fact that you represented to the
21 government on March 10 of 1981 that you had gotten married
22 in Egypt in June of 1980?

23 A This before I go to Egypt. This March. If you
24 said I went to Egypt in June, that means I put this
25 application before I go to Egypt.

1 Q You went to Egypt in 1980, sir, right?

2 A This -- yeah, for my mother, yes.

3 Q Right. And that document was filed in 1981,
4 correct?

5 A All right.

6 Q Yes or no.

7 A Yes.

8 Q Did you represent to the United States government
9 in that document in March of 1981 that you had gotten
10 married in Egypt in June of 1980?

11 A No.

12 Q You didn't?

13 A No.

14 Q All right.

15 A Yes, this after I got divorced.

16 Q I have directed your attention, sir --

17 A Sir, I cannot tell you from me memory. My
18 memory, really -- I was mistaken by dates. But the
19 procedures is done legally. I married after --

20 THE COURT: The question was simply whether you
21 told the United States government on that application that
22 you had gotten married in Egypt in June of 1980.

23 Did you say that on that application?

24 THE WITNESS: Yes. That's what happened in the
25 application, yes. So I didn't hide anything. But my memory

1 cannot remember, you know, dates, something like that.

2 THE COURT: There's no question pending.

3 Q All right. Sir, I understand that you didn't
4 hide anything. Can you tell us when it was that you told
5 your wife Karima that she was being replaced?

6 MR. JACOBS: Objection, asked and answered.

7 THE COURT: Overruled.

8 A The question again, please?

9 Q Can you tell us when it was that you told your
10 wife, Karima --

11 A Yes.

12 Q -- she was being replaced by a new wife?

13 A Yes. After I received the divorce certificate
14 from Egypt.

15 Q Now, when you returned to the United States --

16 A Yes.

17 Q -- in June of 1980, you had gotten married in
18 Egypt to Samia Abu Moussa, correct?

19 A Yes.

20 Q And you were still married to your wife Karima in
21 New York, the mother of your four children?

22 A Right, yes.

23 Q Is that correct?

24 A No. Because she reject the Egyptian --

25 THE COURT: That is not the question. The

1 question is: Were you still married to your wife in New
2 York at the time that you returned after having gotten
3 married in June? Were you?

4 THE WITNESS: It wasn't married. It wasn't
5 marriage. It was authorization to some relative to do the
6 procedure of marriage.

7 Q Mr. Shinawy, you are a little too close to the
8 microphone. My question to you, sir, is: When you came
9 back in June of 1980 to the United States --

10 A Yes.

11 Q -- and you lived with your wife Karima --

12 A Yes.

13 Q -- and your four children --

14 A Yes.

15 MS. AMSTERDAM: Objection to form, your Honor.

16 THE COURT: Overruled.

17 Q -- did you mention to Karima during June of 1980
18 that you had gotten married to Samia?

19 MR. PATEL: Objection, your Honor.

20 Can we approach?

21 THE COURT: That's sustained until you clear up
22 whether his testimony is that he got married or not.

23 MR. MCCARTHY: That he got married legitimately?

24 THE COURT: No, that he got married in Egypt in
25 June of 1980.

1 Q You represented to the United States government
2 that you got married in Egypt in June of 1980?

3 A Yes, it says in the application.

4 Q And that is one of the things that you did on the
5 trip when you went to Egypt in June of 1980? Do you
6 remember a few minutes ago you told us that you had gone
7 to --

8 MS. AMSTERDAM: Objection as to form.

9 MR. MCCARTHY: Let me withdraw that question and
10 ask a different one.

11 THE COURT: Go ahead.

12 Q Do you remember a few minutes ago you told us
13 that you had gone to Egypt to visit your family and because
14 of your mother?

15 A And bring my mother with me, yes.

16 Q While you were on that trip, it turns out that
17 you got married to Samia, correct?

18 A Not for that. I went for to get my mother.

19 THE COURT: No, no. The question was simply did
20 you on that trip get married to Samia? Did you?

21 THE WITNESS: I give authorization to somebody to
22 do this procedure, right, but I didn't marry her in that
23 time during Egypt visit.

24 THE COURT: You are saying you gave authorization
25 to somebody else to go through the marriage ceremony on your

1 behalf?

2 THE WITNESS: Yes, I gave the authorization,
3 written authorization, power law authorization to somebody
4 to do the procedure of marriage.

5 THE COURT: At a later date?

6 THE WITNESS: Before I came here, yes.

7 MR. PATEL: Your Honor, can we approach? There
8 seems to be some --

9 MR. MCCARTHY: Your Honor, can I move on to the
10 next area or ask some questions that I think will clear it
11 up?

12 MR. RICCO: Your Honor, can we have a side bar to
13 clear this up?

14 THE COURT: He is offering to clear it up.

15 A Really, I don't understand the purpose of
16 marriage and divorce. Marriage and divorce by the court is
17 approved.

18 THE COURT: Mr. Shinawy, there is no question
19 pending.

20 Q You came back to New York in June of 1980? Yes
21 or no.

22 A 1983?

23 THE COURT: 1980.

24 A '80, yes.

25 Q And in June of 1980, you lived with Karima and

1 your children in New York?

2 A Yes.

3 Q And in July of 1980, you lived with Karima and
4 your children in New York.

5 A July, maybe, yes.

6 Q In August of 1980, you lived with Karima and your
7 children --

8 A I don't know. I am not sure about that.

9 Q You obtained, did you not, Mr. Shinawy, in
10 September of 1980 a divorce in Egypt?

11 A Yes.

12 Q You were in the United States, correct?

13 A Yes.

14 Q But you got a divorce from the authorities in
15 Egypt, where you had been married originally.

16 A Exactly.

17 Q You got your divorce by mail, correct?

18 A Yes.

19 (Continued on next page)

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25

1 Q You didn't tell Karima while you were living with
2 her that you were divorcing her by mail in Egypt, did you?

3 MR. JACOBS: Objection, 403.

4 MR. PATEL: Also 501, I believe.

5 THE COURT: That is sustained.

6 MR. McCARTHY: May I approach on this?

7 THE COURT: Yes.

8 (At the side bar)

9 THE COURT: The 501 objection is overruled, just
10 as long as that is clear.

11 MR. McCARTHY: Judge, let me tell you where I am
12 going. He was portrayed in his testimony as a caretaker of
13 children.

14 THE COURT: I know.

15 MR. McCARTHY: That is the way they picture him.

16 THE COURT: I know.

17 MR. McCARTHY: The fact of the matter is that the
18 guy is lying through his teeth --

19 THE COURT: Don't tell me what he is lying about,
20 do it on cross. Now you are starting to sound like Jacobs.

21 The record should reflect that there was
22 laughter.

23 MS. AMSTERDAM: Knowing laughter.

24 MR. McCARTHY: I am not going to take much longer
25 doing this but I am going to tie it up with his children.

1 MR. RICCO: Is the government aware that under
2 Islamic law you can be married and divorced by proxy? Is
3 the government aware of that?

4 MR. MCCARTHY: The government is fully aware of
5 it. Under American law he is supposed to fill the forms
6 that you file with the Immigration Service.

7 MS. AMSTERDAM: Except my objection is that the
8 government appears to be making a bad act or arguing a bad
9 act from something that by his religion is not a bad act.

10 THE COURT: As I understand it, they are arguing
11 falsehood, which by anybody's religion is a bad act. I
12 assume that Mr. Jacobs' objection is that it was extrinsic.
13 His testimony is not extrinsic evidence.

14 MR. JACOBS: I understand that.

15 MS. STEWART: Could I ask what the good-faith
16 basis is for asking the questions of the wife, what he told
17 his wife?

18 THE COURT: He represents that he has a basis.
19 Given the answers, it is fairly clear.

20 MS. STEWART: But he asked the question before he
21 had the answer.

22 THE COURT: I understand that. Let's go.

23 (In open court)

24 (Continued on next page)

25

1 BY MR. McCARTHY:

2 Q Mr. Shinawy, you obtained your divorce in Egypt
3 in September of 1980, correct?

4 A Yes.

5 Q You continued to live with your wife, your first
6 wife, in New York while you were divorcing her by mail,
7 correct?

8 A No.

9 Q You did not?

10 A No.

11 Q There came a time in October of 1980 that you
12 moved out of your home in Brooklyn?

13 A Yes, I moved after she reject my mother to live
14 with me.

15 Q That was in October 1980?

16 A About that, yes.

17 Q About a month after your divorce in Egypt?

18 A If they did say, that's so.

19 Q In the meantime, you had petitioned the United
20 States government for an immigrant visa for your second
21 wife, correct?

22 A Yes.

23 Q Is it not correct that after you left your wife
24 in October of 1980, you cut all support off from her and
25 your children?

1 A That's not true.

2 Q That is not true?

3 A That's not true.

4 Q Is it not a fact, sir, that your wife obtained
5 from the family court in Brooklyn an order directing you to
6 pay support for your children?

7 MR. PATEL: Objection.

8 THE COURT: Overruled.

9 A Is not true.

10 Q That is not true?

11 A Yes. I have the proof.

12 Q Nor is it true that you were repeatedly in
13 arrears for your child support?

14 A Every single week. I never miss one week.
15 Before she go to court I was giving her every single week,
16 and I have checks say that.

17 MR. JACOBS: Your Honor, I have a 608(b) and 403
18 objection to this area.

19 THE COURT: 608(b) is overruled, as is the 403
20 objection in view of the direct. Go ahead.

21 Q Your children continued to live with your first
22 wife, correct?

23 A Yes.

24 Q I am going to place before you Government's
25 Exhibit 35145-F.

1 A This shows '83, not '80.

2 Q There is no question, sir.

3 Have you looked at the document?

4 A Yes, I looked.

5 Q Does that document refresh your recollection that
6 you went about 11 months between 1982 --

7 MS. AMSTERDAM: Objection, your Honor. The
8 witness did not say that he had no recollection.

9 THE COURT: Do you want to change that.

10 MR. MCCARTHY: I will rephrase it.

11 THE COURT: Would you.

12 Q Isn't it a fact that you went 11 months from 1982
13 to 1983 without making the \$90 a week support payments that
14 you were required to make under a family court order?

15 A No, I was paying without the court \$75 every
16 single week since I left the house because she reject my
17 mother. Then we went the court, the judge found out that I
18 paying, I never stopped paying. Then he ask me all right,
19 you want to raise 75 -- I tell him I don't mind, this my
20 kids, and I stopped pay since I left the house, and I have
21 the checks home till today.

22 Q Mr. Shinawy, on October 8, 1991, did you go to
23 the Immigration Service at 26 Federal Plaza in connection
24 with your petition to become a United States citizen?

25 A Yes.

1 Q You told us earlier in your testimony that there
2 was no problem involved in your application for citizenship,
3 right?

4 A Yes.

5 Q Isn't it a fact, sir, that you spoke with an
6 immigration examiner on October 9, 1981?

7 A Um-hum.

8 Q Isn't it a fact that he reviewed your petition
9 with you?

10 A Yes.

11 Q Isn't it a fact that he told you that you could
12 not be processed because you were married to two different
13 women?

14 A I don't remember. I don't remember.

15 Q As you sit here today, you are saying you don't
16 remember, right?

17 A Yes. Something you said '81. I don't remember
18 the procedure, because --

19 Q Is it still your testimony --

20 A If I get a chance to explain what happened, then
21 you ask any question you want, you know. Let me explain.

22 Q How about answering my question. Isn't it a fact
23 that the first time you made application to become a United
24 States citizen you were rejected?

25 A Yes.

1 Q In fact, you ended up not becoming a United
2 States citizen in 1981 or 1982, correct?

3 A I am telling the truth. I don't remember the
4 dates, and maybe I was wrong because I didn't remember the
5 first obligation.

6 Q Mr. Shinawy, when you met with the examiner in
7 October 1981, he asked you whether you had gotten married in
8 June of 1980, right?

9 A Um-hum.

10 Q And you told him you did?

11 A Yes.

12 Q And then he indicated to you that that might cost
13 you your citizenship, right?

14 A Yes.

15 Q So you told him you didn't.

16 A Yes.

17 Q You told him that you had only contracted to make
18 a marriage, that you hadn't really gotten married, right?

19 A That's what happened.

20 Q At that point, the immigration examiner showed
21 you some correspondence that he had gotten from your first
22 wife in Brooklyn, right?

23 A Show me what?

24 Q A letter that he had received from your first
25 wife in Brooklyn?

1 A Yes, she complain and she send a letter even to
2 the president of Egypt in that time and everywhere. She try
3 to stop that divorce.

4 Q And you acknowledged to the examiner that the way
5 that your first wife found out about your second wife is she
6 got a piece of mail from the Immigration Service, right?

7 A Um-hum.

8 Q And the piece of mail was your visa application
9 for your second wife.

10 A Yes.

11 Q And when the examiner looked at your file with
12 you, he said, Mr. Shinawy, if we try to proceed today,
13 you're going to have a problem, right?

14 A Maybe, yes. Yes.

15 Q So you didn't proceed that day, correct?

16 A Yes.

17 Q And in fact, your citizenship didn't occur in
18 1982, it occurred in 1984.

19 A '84?

20 Q Correct?

21 A I don't remember really. It could be, but I
22 don't remember.

23 Q Mr. Shinawy, you told us in your testimony about
24 a trip you took to Attica in June of 1992?

25 A Yes.

1 Q And that was to see Mr. Nosair?

2 A Yes.

3 Q That was not the first time that you had gone to
4 see Mr. Nosair in jail, was it?

5 A The first time.

6 Q It was the first time?

7 A Yes.

8 MR. PATEL: Your Honor, could we approach?

9 THE COURT: No.

10 Q Mr. Shinawy, I have placed before you a series of
11 photographs. I direct your attention to 145F in evidence.
12 Do you recognize any of the people depicted in that
13 photograph?

14 A Yes. That's me and Nosair and one child, and
15 Ibrahim El-Gabrownny, yes.

16 Q I am directing your attention, sir, first to 145F
17 in evidence. Let me show you.

18 A 145F, this one? Yes.

19 Q That child wasn't with you and Emad Salem when
20 you went to see Mr. Nosair in June of 1992, right --
21 withdrawn.

22 Do you recognize the people depicted in the
23 photograph? There are three, right?

24 A Yes.

25 Q Who do you recognize them to be?

1 A Ibrahim El-Gabrowny, and I think his son and
2 Sayyid Nosair.

3 Q I am referring you, sir, to 145F, the picture
4 that I put my finger on when I was back over there.

5 A 145, February 24.

6 Q Excuse me, Mr. Shinawy. Perhaps we can share the
7 microphone for a moment. 145F is the photograph in the
8 bottom left-hand corner.

9 A Yes.

10 Q There are three people in that photograph,
11 correct?

12 A Yes.

13 Q Tell us who the three people are, if you
14 recognize them.

15 A Myself, Sayyid Nosair and child, I think son of
16 Ibrahim.

17 Q Ibrahim's son didn't go with you the day that you
18 went to Attica with Mr. Salem, did he?

19 A No.

20 Q That's a different visit that you made to Mr.
21 Sayyid Nosair in jail, right?

22 A I was with Emad Salem.

23 Q On that day?

24 A Yes.

25 Q It is your testimony that the photograph 145F in

1 evidence is a photograph that was taken the day you went to
2 visit Sayyid Nosair in jail with Mr. Salem?

3 A Yes, I went with Sayyid Nosair to visit Sayyid
4 Nosair, yes.

5 Q Mr. Shinawy, let me try to be more clear in my
6 questions. The day that you went to see Mr. Salem in June
7 of 1992 --

8 THE COURT: No. The day that you went to see Mr.
9 Nosair, is what you mean.

10 MR. MCCARTHY: I keep doing that. Sorry.

11 Q The date that you went to see Mr. Nosair up in
12 Attica was June 14, 1992, and the only -- is that correct?

13 A I cannot remember dates. Dates since '80 or '82,
14 I never hide anything. I cannot remember dates. But
15 events, you could remind me, I tell you yes or no. That's
16 true.

17 Q Mr. Shinawy, you do recall the day, whatever the
18 date was, that you went to Attica with Mr. Salem, correct?

19 A Yes.

20 Q Mr. Ibrahim El-Gabrownny's child was not with you
21 on that day, correct?

22 A No.

23 Q It was just you and Mr. Salem?

24 A Yes.

25 Q The photograph I have showed you, Government's

1 Exhibit 145F in evidence, the picture that I just showed you
2 up at the witness stand --

3 A Yes, yes.

4 Q The picture with the child in it, that is you
5 visiting Mr. Nosair in jail, right?

6 A Maybe we went, we find both of them there. I
7 don't remember, that's what I mean. In the time I went with
8 Emad Salem, the child was there and his father, maybe they
9 went by another ride. Really, I don't remember, and I
10 cannot lie, say something I don't remember it. Maybe in the
11 same day Ibrahim and his son was there.

12 Q That's your recollection, sir?

13 A I am not sure.

14 Q You told us that you and Mr. Salem and Mr. Nosair
15 met together for about two and a half or three hours, right?

16 A Yes.

17 Q During the course of that time, what you talked
18 about was Mr. Nosair's family --

19 A Yes.

20 Q I believe you said you talked about -- I am
21 sorry, sir. Is there --

22 A No. Yes, you were reminding me that I was
23 talking about Sayyid Nosair family, don't worry about them,
24 they will be OK, and Allah will benefit you, and the same
25 time we sit together, talk, you know, about the people is

1 all right, all of them, you know, missing you. That's the
2 general talk.

3 Q For two and a half hours?

4 A Yes. And sometimes he stop, ask to bring
5 photograph or to take pictures like what you said.

6 Q Like to take pictures of Ibrahim El-Gabrownny's
7 child?

8 A Yes. There is like Chinese or Korean person, he
9 call him to take pictures.

10 Q You told us on direct examination that Mr. Salem
11 never showed a fuse to Mr. Nosair, right?

12 A Absolutely not.

13 Q Because if that had happened, you would have
14 remembered it, right?

15 A That I remember?

16 Q Yes. If that had happened, you would remember
17 it?

18 A Yes.

19 Q Before you testified here in court today, did you
20 talk to Mr. Patel about your testimony?

21 A Which testimony? This today testimony?

22 Q The testimony that you gave here in court today.

23 A Yes.

24 Q Did you talk to Mr. Patel about your testimony
25 before you came into court today?

1 A Yes, I visit him couple of times in the office.

2 Q In his office?

3 A Yes.

4 Q Anyplace else you and Mr. Patel went over your
5 testimony?

6 A He call us and he told me that we need you
7 today -- tomorrow --

8 THE COURT: No. The question was simply was
9 there anyplace other than Mr. Patel's office where you
10 discussed your testimony. Did you discuss it anyplace else?

11 THE WITNESS: Yes. Beside that, he came to the
12 mosque and he ask if you remember that you visit Sayyid
13 Nosair.

14 Q So you met with Mr. Patel two or three times?

15 A Yes, about two, three times.

16 Q And he told you that he was going to ask you
17 about the trip that you and Mr. Salem had made to Attica,
18 right?

19 A Yes.

20 Q And he went over the questions that he was going
21 to ask you about, right?

22 A That why I didn't deny that I went with Emad
23 Salem to --

24 THE COURT: The question was simply did he go
25 over the questions that he was going to ask you. Did he

1 review with you the questions that he was going to ask?

2 THE WITNESS: No.

3 Q He didn't?

4 A No.

5 Q Mr. El Shinawy, you told us in your testimony
6 that you had met with -- withdrawn.

7 You told us in your testimony -- one moment,
8 please, your Honor.

9 Mr. Shinawy, after you came back from your trip
10 to Attica --

11 A Yes.

12 Q -- the trip that you made with Mr. Salem --

13 A Yes.

14 Q -- you came back to Brooklyn and went home?

15 A Manhattan, Brooklyn, yes, and went home.

16 Q And you never had anything to do with guns after
17 that, right?

18 A No.

19 Q You told us in your testimony that you never ever
20 had anything to do with guns after Afghanistan, right?

21 A No.

22 Q Do you know the defendant Clement Hampton-El?

23 A Clement --

24 Q Hampton-El.

25 A No.

1 Q Do you know a man by the name of Dr. Rashid?

2 A Yes.

3 Q How long do you know Dr. Rashid?

4 A Few years, like since he went to Afghanistan I
5 know him.

6 Q How frequently do you see him after he came back
7 from Afghanistan?

8 A Twice, yes, twice like twice or maximum three
9 times.

10 Q Did you ever talk to him other than the times
11 that you see him?

12 A I never talk to him about --

13 Q Where have you spoken with Mr. Hampton-El?

14 A Masjid Abu Bakr Seddique mosque.

15 Q Other than at the Masjid Abu Bakr Seddique
16 mosque, have you spoken with Clement Hampton-El or
17 Dr. Rashid any other place?

18 A I don't know the other person you mentioned the
19 name twice now.

20 Q I apologize. I am directing your attention now
21 to the person you know as Dr. Rashid.

22 A Yes.

23 Q Other than the Abu Bakr Mosque --

24 A Yes.

25 Q -- have you spoken with Dr. Rashid anyplace else?

1 A Yes. We see him every holiday Eid, when the
2 Muslims gather together, celebrate, in Prospect Park or
3 different place.

4 Q Isn't it a fact that after you came back from
5 your trip to Attica with Mr. Salem, that you met at the Abu
6 Bakr Mosque with Dr. Rashid?

7 A Yes.

8 Q And at the same meeting was Emad Salem, correct?

9 A Meeting? Everyone was praying in the mosque, and
10 salaam, salaam, we shake hands, like any Muslim comes to the
11 mosque to make a pray.

12 Q You call --

13 A Yes, I agree. I introduce Emad Salem to
14 Dr. Abdel Rashid.

15 Q And you recall doing that, right? Do you recall
16 introducing Emad Salem to Dr. Rashid?

17 A Yes.

18 Q But that was just a chance meeting, right?

19 A Yes, chance. I didn't --

20 Q It wasn't something that you prearranged in order
21 to sell a gun to him or anything?

22 A No. No.

23 Q And it is your testimony that you never sat down
24 with him -- withdrawn. Did you ever sit down with Mr. Salem
25 and the person you know as Dr. Rashid to discuss explosives

1 and firearms?

2 A Never.

3 Q Never happened?

4 A Never happened.

5 Q Just a chance meeting at the mosque?

6 A Yes, like any other.

7 Q And you recall that that occurred in June of '92
8 shortly after you came back from going to see Mr. Nosair at
9 Attica?

10 A Yes, after I came, but I don't remember the
11 dates. Please excuse me from remembering dates.

12 Q Mr. El Shinawy, I am going to show you what is in
13 evidence as Government Exhibit 515, the telephone records of
14 the person you know as Dr. Rashid, Clement Hampton-El. I am
15 directing your attention, sir, to the page of the telephone
16 records that relates to the date of June 18, 1992. I would
17 ask you to take a look at those telephone records that are
18 in evidence --

19 MR. PATEL: Objection, your Honor.

20 THE COURT: Overruled.

21 Q I would ask you to take a look at Dr. Rashid's
22 telephone records and tell us for the date of June 18, 1992,
23 at the time of 3:49 p.m., if you recognize a phone number.
24 718-436-7589.

25 A Is my telephone number.

1 Q Is that right?

2 A Is my telephone number, yes.

3 Q How about the entry right underneath that, June
4 18, 1992, at 7:00 p.m., the number 718-436-7589.

5 A What about? It's my telephone number twice.
6 What that mean did I meet him, sit with him?

7 Q Is it your testimony that you recognize your
8 telephone number on those two times, that is, 3:49 and 7
9 p.m. on June 18?

10 A Yes. What happened?

11 Q My question, sir, is, do you recognize your
12 telephone number in those two instances?

13 A Yes, my number --

14 THE COURT: Excuse me. The witness can't be
15 heard unless he is talking into the microphone.

16 Q Mr. Shinawy, if we were to look at all of
17 Mr. Hampton-El's records, do you know if we would find a
18 single other telephone call to your number here?

19 MR. PATEL: Objection, your Honor.

20 MS. AMSTERDAM: Calls for speculation.

21 THE COURT: No, it doesn't.

22 A I don't understand what the purpose --

23 THE COURT: It calls for testimony. The question
24 is, did Mr. -- do you want to ask the question a different
25 way.

1 MR. McCARTHY: Yes, your Honor.

2 Q Other than June 18, 1992, did you make any other
3 telephone call, ever, to the telephone number -- withdrawn.
4 Other than June 18, 1992, did you ever receive a telephone
5 call, that you know of, from Clement Hampton-El's home --
6 from Dr. Rashid's home?

7 A This telephones, yes, we call each other, yes,
8 but we meet and we sit is something else.

9 Q Do you know a man named Mahmoud Abouhalima?

10 A Yes.

11 Q How long have you known Mahmoud Abouhalima?

12 A In eighties, 1980 --

13 Q He is another mujahid, right?

14 A Yes, he went to Afghanistan, yes.

15 Q You knew that Mr. Mahmoud Abouhalima in 1991 was
16 living at Fifth Avenue in Brooklyn?

17 A Where?

18 Q Fifth Avenue in Brooklyn?

19 A I don't know his address, but I meet him, yes,
20 and I know him, yes.

21 Q Did you know he was living in Brooklyn a short
22 distance from Dr. Abdel Rahman?

23 MS. STEWART: Objection.

24 Q In 1991?

25 A I never know his address and I never know that he

1 is living in Brooklyn where.

2 THE COURT: The objection is overruled.

3 A I am trying to tell you --

4 Q Did you know that he was driving a yellow cab in
5 1991?

6 A Yes, I see him driving a yellow cab, yes.

7 Q I am going to show you what I am marking as
8 35145-Z for identification. Directing your attention to the
9 26th page of that document, can you tell us if you recognize
10 any telephone numbers?

11 A Yes, my telephone number, the first one. The top
12 telephone is my telephone number, as I mentioned in the
13 other page.

14 Q Have you ever had a criminal conversation with
15 Mahmoud Abouhalima?

16 MR. PATEL: Objection.

17 THE COURT: Sustained as to form.

18 Q Did you ever discuss a crime with Mahmoud
19 Abouhalima, in your life?

20 A No.

21 Q Do you know a man named Mohammad Salameh?

22 A Yes, I see him twice, yes.

23 Q You have seen him twice?

24 A Yes.

25 Q That's your best recollection of him?

1 A It's the best to my memory, yes.

2 Q Let me show you two telephone books in evidence,
3 W2611 and W2602.

4 A My telephone, everyone take my telephone number.
5 Is no problem.

6 Q Directing your attention first to 2611 in
7 evidence, I am opening that book to a page I have marked
8 with a yellow tag. Do you recognize any telephone numbers
9 there?

10 A It's my telephone number.

11 Q You have to speak into the microphone.

12 A This my telephone number. What's wrong with
13 that? What the question?

14 Q You don't understand my question, sir?

15 A I answer you, that this my telephone number.

16 Q Directing your attention again -- I am sorry.
17 Directing your attention to W2602 in evidence, do you
18 recognize any telephone numbers on that page of the
19 telephone address book?

20 A Yes, Ala Ibrahim. I know Ala Ibrahim.

21 Q How about 718-436-7589?

22 A Is the fourth time I say this my telephone
23 number.

24 Q Met him twice, Mr. Salameh?

25 A Yes, about two times.

1 Q Talk about any crimes?

2 A Crimes?

3 Q Right.

4 A No.

5 Q Crimes, you know, stuff against the law.

6 A Of course not.

7 Q You told us that you have known Dr. Abdel Rahman
8 since the late 1980's?

9 A Yes, '88, '87, something like that, yes.

10 Q And you have heard him preach frequently in the
11 mosque?

12 A In Abu Bakr Seddique.

13 Q Two to three times a week sometimes?

14 A I didn't say three, four times a week. I didn't
15 never say that. I said once or twice.

16 Q Couple of times a week or once, right?

17 A Yes, once, mostly one Saturdays or twice. That
18 what did I say?

19 Q You have heard him many, many times? Is that not
20 correct?

21 A I met him, yes. I see him, yes. I hear him,
22 yes.

23 Q You have heard him preach many times?

24 A Any times?

25 Q Many.

1 A Many times, yes.

2 Q And as recently as last Saturday, according to
3 your testimony, correct?

4 A Mostly Saturdays, yes.

5 Q And it is your testimony that in all the times
6 that you have heard Dr. Abdel Rahman, you have never heard
7 him say that America is the enemy of Islam?

8 A No, I didn't hear him myself say that, but he was
9 blaming America to support the enemy of Islam.

10 Q Were you present for a talk that he gave on
11 January 16, 1993, in Brooklyn?

12 A I don't remember the date again.

13 THE COURT: Mr. McCarthy, could you come to a
14 convenient break point in the next five minutes.

15 MR. MCCARTHY: I am just about done, your Honor.

16 Q I am referring to Government's Exhibit 451T.
17 Have you ever heard Dr. Abdel Rahman say: "There are two
18 main enemies. The enemy who is at the foremost of the work
19 against Islam are America and the allies." Ever hear him
20 say anything like that?

21 A No.

22 Q Mr. Shinawy, is your testimony that you never
23 heard Dr. Abdel Rahman say that America is the enemy of
24 Islam as truthful as all the rest of the testimony that you
25 have given us here this afternoon?

1 COUNSEL: Objection, Judge.

2 THE COURT: Sustained.

3 MR. MCCARTHY: I have no further questions.

4 MR. RICCO: I have a couple of questions.

5 THE COURT: Mr. Ricco.

6 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MR. RICCO:

3 Q Good afternoon, sheik.

4 A Good afternoon, sir.

5 Q That picture that Mr. McCarthy showed you,
6 standing there with Ibrahim and his son, I showed you that
7 picture before, didn't I?

8 A Yes.

9 Q And you told me that you didn't remember when it
10 was taken, isn't that correct?

11 A Yes.

12 (Continued on next page)

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1 Q I asked you, was this picture taken at Rikers
2 Island? And you said you didn't remember. Do you recall
3 that conversation?

4 THE COURT: I think this is redirect, so let's
5 ask direct questions.

6 MR. RICCO: I am trying my best, Judge.

7 THE COURT: Excuse me.

8 MR. RICCO: I am trying my best, your Honor.

9 THE COURT: May I see you at the side briefly.

10 MR. RICCO: Certainly.

11 (At the side bar)

12 MR. RICCO: I am sorry, Judge. Sorry.

13 THE COURT: I don't mind you saying yes or I am
14 sorry or whatever, but when you are asking classic
15 cross-examination questions, please don't tell me with a
16 straight face that you are doing your best to ask straight
17 questions. You are more experienced than that and I am not
18 that stupid.

19 MS. STEWART: I thought we were on cross, Judge.

20 THE COURT: You are not.

21 Also, the objection that you made, I think I
22 should have sustained. However, he said he didn't know. Is
23 there anything you want me to do about it?

24 MS. STEWART: I think it is just better to let it
25 go.

1 THE COURT: I thought about it afterwards and I
2 should have sustained it, but I believe it was a "no" or "I
3 don't know."

4 MS. STEWART: Mr. McCarthy of course knows that
5 the sheik was living in Jersey City in 1991.

6 MR. McCARTHY: I didn't realize that, I am sorry.

7 MR. RICCO: Judge, I am sorry.

8 THE COURT: Let's go.

9 (In open court)

10 THE COURT: Go ahead.

11 (Continued on next page)

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1 BY MR. RICCO:

2 Q Sheik Shinawy, do you have any recollection at
3 all as to when that picture was taken with the boy?

4 THE COURT: You mean any recollection of the
5 date?

6 MR. RICCO: Of the date when the picture was
7 taken.

8 A This picture taking when I visit Sayyid Nosair --
9 really, the dates, I have a problem to remember dates.

10 Q Do you recall, Sheik Shinawy, if you ever visited
11 Nosair while he was at the Rikers Island Correctional
12 Facility?

13 A No.

14 Q You just don't remember?

15 A Yes, I don't know.

16 MR. McCARTHY: Objection.

17 THE COURT: That is overruled. Is it that you
18 don't remember or you didn't visit him at Rikers Island?

19 THE WITNESS: Say again, please.

20 THE COURT: Is it that you don't remember whether
21 you visited him at Rikers Island or are you saying you did
22 not visit him at Rikers Island?

23 THE WITNESS: I don't remember that I visit. I
24 don't remember, I not sure.

25 (Continued on next page)

1 Q Is it possible that you might have visited him at
2 Rikers, but you don't remember?

3 A Possible.

4 Q I want to ask you a question about Islamic law.

5 A Yes.

6 Q Is it permissible for a person to be married or
7 divorced by proxy under Islamic law?

8 A I think instead of my answer this question, ask
9 the scholar, Sheik Omar. He knows better than I do.

10 THE COURT: You're testifying, and he's not.

11 THE WITNESS: I see, OK.

12 THE COURT: He's asking you. So do you know the
13 answer?

14 THE WITNESS: Yes.

15 MR. RICCO: I would ask to try it one more time,
16 Judge.

17 THE COURT: All right.

18 Q Sheik Shinawy, do you know whether or not under
19 Islamic law it is permissible for a person to be married or
20 divorced by proxy? Yes or no.

21 THE COURT: Do you know whether it is allowed
22 under Islamic law?

23 A By proxy?

24 Q By proxy.

25 THE COURT: In other words, to be married or

1 divorced using somebody else --

2 THE WITNESS: Oh.

3 THE COURT: -- to go through the process for you.

4 THE WITNESS: I get the meaning now, yes.

5 A Yes, yes.

6 Q In other words, can your father arrange for a
7 marriage?

8 MR. McCARTHY: Objection to form.

9 A Yes.

10 THE COURT: I will allow it.

11 A Or anyone else, even if it's not your father.
12 You give a written authorization and get registered,
13 register in certain office over there, and they do that.

14 Q To your knowledge, is that true also under
15 Egyptian law?

16 A Yes.

17 Q Now, under American law, it is the law to come
18 over here and tell the truth about it, isn't that right?

19 A That's why I came here, yes.

20 MR. RICCO: I have no further questions. Thank
21 you.

22 THE COURT: Mr. Jacobs?

23 MR. JACOBS: Ms. Schwartz. I need my exhibits,
24 the photo array.

25 One question, Judge.

1 May I approach the witness?

2 THE COURT: Yes, you may. You are showing him
3 exhibit which?

4 MR. JACOBS: This is defendant Mohammed Saleh's
5 Exhibit --

6 THE DEPUTY CLERK: J.

7 MR. JACOBS: -- J in evidence.

8 CROSS-EXAMINATION

9 BY MR. JACOBS:

10 Q Let me show you a photograph of someone who has
11 been identified as Ramzi Yousef. Have you ever met this
12 man?

13 A No.

14 Q Picture No. 2, did you ever see him or meet him?

15 A No.

16 MR. JACOBS: No further questions.

17 MR. JACOBS: Thank you.

18 THE COURT: Anyone else? Any other questions?

19 MR. MCCARTHY: No, thank you.

20 THE COURT: I'm sorry. Mr. Patel?

21 MR. PATEL: Very brief.

22 THE COURT: Go ahead.

23 REDIRECT EXAMINATION

24 BY MR. PATEL:

25 Q Mr. Shinawy --

1 A Yes.

2 Q -- Mr. McCarthy asked you a number of questions
3 on cross-examination. Did you ever commit arson for profit?

4 MR. MCCARTHY: Objection?

5 A Did I ever commit what?

6 MR. MCCARTHY: Objection.

7 THE COURT: Sustained.

8 Q Are you being paid for your testimony here today?

9 MR. MCCARTHY: Objection.

10 A Did I get --

11 Q Are you being paid?

12 A No.

13 THE COURT: I will allow that.

14 MR. PATEL: I have no further questions, your
15 Honor.

16 THE COURT: Anything else?

17 MR. MCCARTHY: No, thank you.

18 THE COURT: You are excused.

19 Thank you very much.

20 THE WITNESS: OK.

21 (Witness excused)

22 (Continued on next page)

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1 THE COURT: OK. Ladies and gentlemen, we are
2 going to break for today, and, as I indicated, or as has
3 already been indicated to you, I think, we will not sit
4 tomorrow. We will, however, sit on Thursday. So we will
5 see you on Thursday. Have a pleasant evening. Please don't
6 discuss the case or read or see or hear anything about the
7 case, and we will continue on Thursday.

8 Good night.

9 (Jury not present)

10 THE COURT: Ms. Amsterdam?

11 MS. AMSTERDAM: Yes, your Honor. Since we are
12 going to be addressing legal matters tomorrow, do the
13 defendants, if they don't wish to be present -- or is their
14 presence required?

15 THE COURT: Not at all. In fact, I do not plan
16 on their being here. I plan on their not being here. I am
17 going to meet with the lawyers only. In other words, it's
18 strictly legal questions.

19 Yes?

20 MS. STEWART: Judge, would you order the
21 interpreters?

22 THE COURT: That's already been taken care of.

23 I understand there was a problem last time. It
24 won't repeat.

25 MS. STEWART: It is helpful.

1 THE COURT: I know. That's why it's been done.

2 MS. STEWART: Thank you.

3 THE COURT: See you tomorrow. Good night.

4 (Proceedings adjourned to Wednesday, July 12,
5 1995 at 10:00 a.m.)

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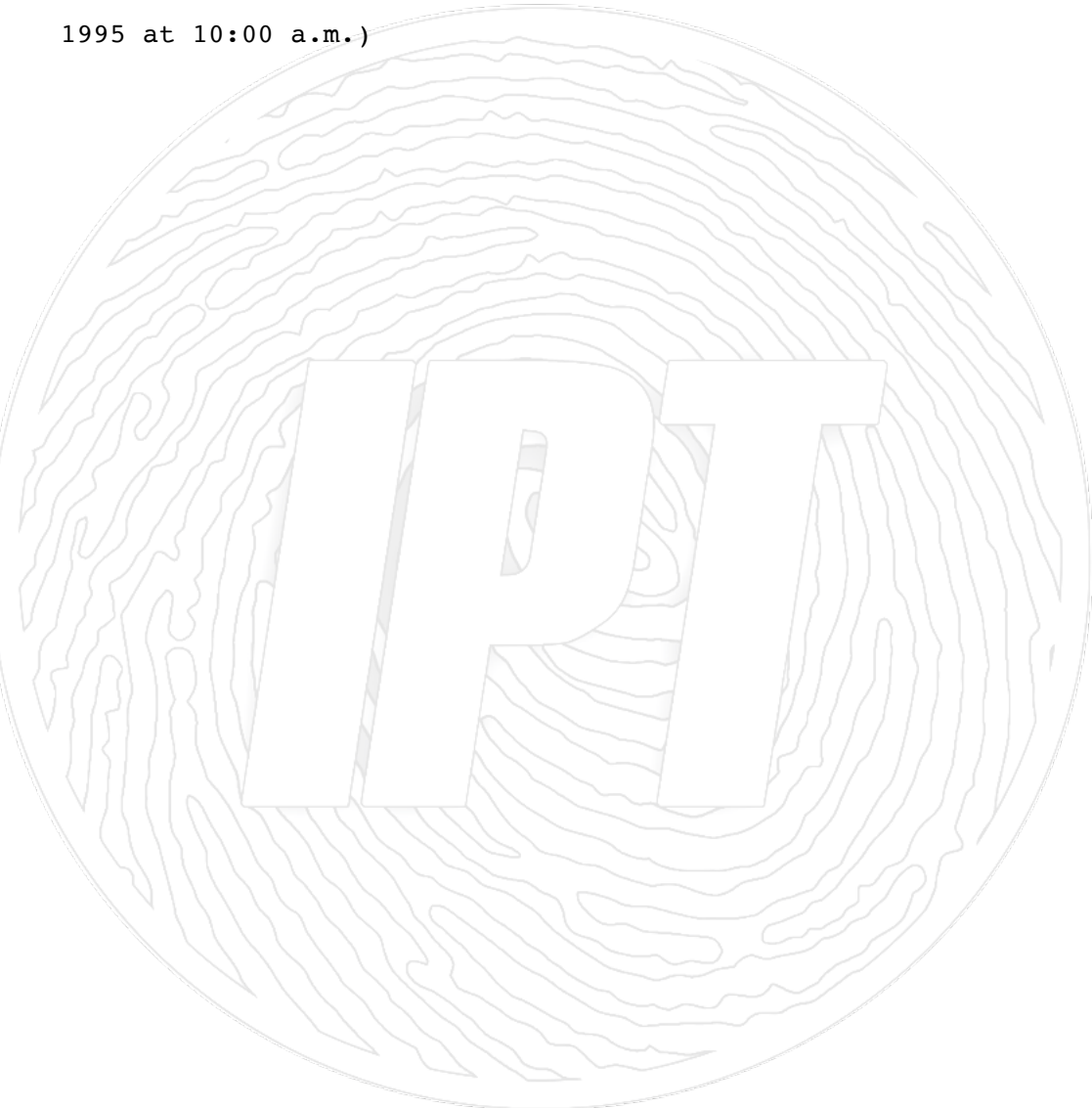
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,

16 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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July 12, 1995
10:101 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

ROBERT KHUZAMI

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1 (In open court; jury not present)

2 THE COURT: I don't want to destroy the good
3 fellowship at the back table, but I got a letter this
4 morning from the government relating to the proposed
5 introduction of medical records by Mr. Nosair.

6 MR. STAVIS: Yes, your Honor.

7 THE COURT: You are offering that under what, the
8 official records exception?

9 MR. STAVIS: The public records exception.

10 THE COURT: Right.

11 MR. STAVIS: Subdivision (8), I believe, your
12 Honor.

13 THE COURT: Does somebody want to be heard?

14 MR. KHUZAMI: Yes, your Honor.

15 THE COURT: Mr. Khuzami?

16 MR. KHUZAMI: I think the bottom line is that the
17 document is simply untrustworthy for a variety of reasons
18 and shouldn't come in. Evidence of trustworthiness is one
19 of the elements of the exception. This document is prepared
20 in connection with workmen's compensation litigation. It
21 gives a percentage disability, 15 percent disability of the
22 left hand.

23 MS. STEWART: I cannot hear Mr. Khuzami and
24 neither can the translator.

25 MR. KHUZAMI: I'm sorry. It was prepared in

1 connection with workmen's compensation litigation. It is
2 not a medical opinion that is relied upon by other doctors,
3 which is one of the factors taken into account. It is
4 relied upon by the --

5 THE COURT: It sounds as if I ought to look at
6 something other than -- I mean, I would like to look at the
7 document, but I would like to look at the rule. I would
8 also like to look at some cases if you have any. Yes?

9 MR. STAVIS: One matter, the entire workmen's
10 compensation file was subpoenaed. I gave it over and
11 Mr. Khuzami has the original file.

12 THE COURT: Right.

13 MR. STAVIS: This is one document, but there are
14 other documents in it. Depending upon what the government's
15 position is, I mean I would offer any other documents that
16 they want to offer from the official file.

17 THE COURT: I don't think that's the problem. It
18 doesn't sound like that's what the problem is.

19 MR. STAVIS: My research has not come up with any
20 specific worker's compensation issue under 803(8), but --

21 THE COURT: This is like horseshoes. Come as
22 close as you can.

23 MR. STAVIS: I may have some citations for the
24 court.

25 MR. KHUZAMI: We will submit something today,

1 your Honor.

2 THE COURT: All right. Mr. Stavis?

3 MR. STAVIS: Your Honor, the other thing that I
4 wanted to indicate was the reason why I was introducing
5 something from the worker's compensation file is because on
6 page 9243 of the record Mr. Khuzami asked Dr. Nunn about the
7 condition of Mr. Nosair's hands.

8 THE COURT: I recall it.

9 MR. STAVIS: And whether he was able to grasp
10 with them.

11 THE COURT: I recall it. The challenge is not to
12 relevance, I am sure. They are not claiming it is not
13 relevant.

14 MR. STAVIS: The other thing is, I believe, that
15 it is the government's position, although they will correct
16 me if I am wrong, that the problem is not an authenticity
17 problem because I could have someone from the worker's
18 compensation --

19 THE COURT: Not authenticity. It is the
20 reliability and probative value of the document.

21 You said you had some citations for me?

22 MR. STAVIS: Well, these are cases on the public
23 records exception, 803(8): There is Wetherill v. University
24 of Chicago, 518 F.Supp. 1387. It is a district court case
25 from Illinois.

1 I have an Eighth Circuit case, Simmons v. Chicago
2 and Northwestern Transportation Company, 993 F.2d 1326, (8th
3 Cir., 1993). And Judge Weinstein in his Agent Orange case,
4 611 F.Supp. 1223 at page 1240 speaks of the public records
5 exception, 803(8).

6 THE COURT: He's got something to say about it in
7 his treatise, too.

8 MR. STAVIS: Yes, your Honor.

9 THE COURT: That I will find -- unless there's
10 some particularly relevant passage you want to point me to.

11 MR. STAVIS: I don't seem to have that here with
12 me, your Honor.

13 THE COURT: OK. That I have. All right.

14 The government will have something for me later?

15 MR. KHUZAMI: Yes, your Honor.

16 THE COURT: Let's talk first, I guess, about the
17 subpoenas on the Attorney General and the Senator. I have
18 read the submission from defense counsel, and this appears,
19 as I understand it, to go to a claim of selective
20 prosecution. Which is, number one, a matter for the court
21 and, number two, a matter to be raised pretrial. To the
22 extent that there is any challenge to sufficiency of the
23 evidence underlying the indictment, that I think is barred
24 by Costello and it's progeny, which say in essence that any
25 indictment returned by a duly constituted grand jury ends

1 the dispute about that issue.

2 MS. STEWART: We have a motion pending for
3 discovery and to the degree that the --

4 THE COURT: For discovery of what?

5 MS. STEWART: We called it a motion for
6 disclosure of Brady material. The government answered us by
7 letter. This was a demand that was made in the first weeks
8 of the trial for a wide-ranging variety -- it included at
9 least a footnote to the effect that to the extent that it
10 implicated CIPA, the government should please try to conform
11 as soon as possible.

12 They responded with silence until about a week
13 ago after we served the motion, and to the extent that our
14 notice may be infirm, I think that it is infirm because we
15 have never received any of the materials we requested
16 pursuant to that demand.

17 THE COURT: I have read that motion. I have to
18 say that it puzzled me, but do you want to respond?

19 MR. MCCARTHY: That is simply not correct. We
20 had a pretrial conference before Salem got on the stand
21 where, point by point, we went through the matters raised by
22 Dr. Abdel Rahman. Nothing has changed since that day.
23 There isn't anything discoverable. Most of what they seek
24 would have to be generated in order to exist because it
25 never happened that way.

1 THE COURT: Also, the government's Brady
2 obligation it seems to me doesn't depend on a motion.

3 MS. STEWART: To the degree that the case law
4 says we have to sort of tell them what we are we are looking
5 for, to the degree we have to particularize at all --

6 THE COURT: What in your Brady motion goes to the
7 validity of these subpoenas?

8 MS. STEWART: Judge, because we are subpoenaing
9 the Attorney General, who we believe, and based upon media
10 reports and upon press conferences held by Ms. Reno, that
11 there was indeed contact between her and the State
12 Department, that this was a consideration based on matters
13 of foreign policy as opposed to --

14 THE COURT: So what?

15 MS. STEWART: I think the "so what" is that we do
16 not prosecute people because we accommodate foreign
17 governments. I think that it goes to the fairness of the
18 prosecution.

19 THE COURT: You think that is a jury issue?

20 MS. STEWART: I think the jury has a right to
21 know that.

22 THE COURT: I don't. The only thing the jury
23 decides is whether the government has presented enough
24 evidence to prove the charges in the indictment. If they
25 have, they have; if they haven't, they haven't. The motive

1 of prosecutors or attorneys general or the State Department
2 doesn't bear on that in the slightest.

3 MS. STEWART: Judge, I would borrow from my
4 brother Jacobs in saying that if there is a frame put around
5 a person -- not an entrapment, but a frame, in other words,
6 we are going to present evidence against this person in an
7 attempt to reinterpret what is in the past, and you have a
8 person saying within a week of the indictment that that
9 person there is not enough evidence to indict and that
10 person is the highest judicial -- not judicial, the highest
11 nonjudicial legally responsible person in the government,
12 then I think that is probative of whether or not he is here
13 because he is part of a criminal conspiracy or because he is
14 here because there is a conspiracy against him.

15 MR. MCCARTHY: Not that that happened, because it
16 didn't, but what if the Attorney General or the grand jury
17 or somebody else said there was enough evidence, at least to
18 charge, if not to convict. If the government ever tried to
19 get something like that in -- I mean it's completely
20 inadmissible.

21 THE COURT: I don't know whether that is
22 necessarily a two-way street, though. It may be. But in
23 any event --

24 MR. MCCARTHY: As your Honor said at page 4221 of
25 the record when this issue first came up, the only decision

1 on the quantity of the evidence and the persuasiveness of it
2 that makes any difference is the 12 people who will decide
3 the case at the end, not the Attorney General.

4 THE COURT: In that event, it sounds like I'm
5 repeating myself about 10,000 pages later, but I am
6 repeating myself, and I do think that is the only place for
7 that decision to be made.

8 MS. STEWART: With regard to Senator D'Amato, I
9 don't know how the government represents him here. They, I
10 don't believe have --

11 MR. MCCARTHY: We don't purport to represent
12 Senator D'Amato. We purport to represent an a party as to
13 whom somebody is trying to get inadmissible evidence in
14 against.

15 MS. STEWART: It is my understanding that he
16 would be willing to appear but for your raising the motion
17 to quash. Is that --

18 THE COURT: I assume the government's position is
19 based on the question of whether he has admissible evidence
20 to offer or not.

21 MR. MCCARTHY: That's correct.

22 THE COURT: Do you want to hear from his lawyer?
23 It seems to me that if he were called as a witness and he
24 couldn't offer any admissible evidence, then there would be
25 no point in calling him.

1 MS. STEWART: I'm sorry, Judge?

2 THE COURT: I said if he were called as a witness
3 and he could not offer any evidence that I believe is
4 admissible, then I can't let you call him and I won't. So
5 those motions are quashed.

6 MS. STEWART: There case law, United States v.
7 Moon, that says that when a senator has called publicly for
8 the prosecution of a person, that is admissible, and that is
9 relevant evidence.

10 THE COURT: I don't think Moon says that.

11 MS. STEWART: Pardon me?

12 THE COURT: I said I don't think Moon says that.

13 MR. KHUZAMI: In fact it says the opposite. In
14 that case a letter from Senator Dole was offered posttrial
15 on a selective prosecution claim, a much stronger claim than
16 defendant Abdel Rahman makes here, and the court said that
17 the trial court didn't abuse its discretion in denying both
18 discovery and a hearing on the selective prosecuting issue.

19 THE COURT: Also, that would have been a hearing
20 before the court. It has nothing to do with admissible
21 evidence in front of a jury.

22 MS. STEWART: To the extent that the dicta says
23 that it is material on the issue of an impermissible motive
24 by the government to prosecute --

25 THE COURT: As to an issue which, if it is

1 directed to anybody, is directed to the court. Those are
2 quashed.

3 Let's talk about the expert testimony. It fits
4 into two categories, as far as I can tell. The first
5 category is experts on Islamic law. Again, I don't see what
6 issue that is supposed to illuminate in this case.

7 MS. STEWART: Well, Judge, it is there to aid the
8 jury to understand what exactly is going on. I think if you
9 took the jury and you gave them a ten-question quiz right
10 now and listed the names and the number of Islamic terms
11 that were bandied about here, they would have no clear
12 notion -- the indictment is replete with references to
13 Islamic concepts. The last tape played for the jury, and
14 indeed all the tapes that have been played throughout,
15 including the CM's, including all of the sermons, are
16 replete with Islamic references. To the extent that the
17 government has placed that before the jury, it would appear
18 to me that we have the right to call an expert to explain
19 those concepts which are foreign to this jury.

20 THE COURT: To the extent those concepts in any
21 way relate to the evidence here, there is ample evidence
22 already in the record. They don't have to have a subtle
23 understanding of any of those terms in order to determine
24 whether people did what they're charged in the indictment
25 with doing. You have offered to take them in essence on a

1 little course through Islamic law, which I guess could
2 enrich their understanding in a very general sense, but I
3 don't think it is going to help them decide any fact issue
4 in this case.

5 MS. STEWART: Let me use one example, Judge. The
6 word fatwa has been used, various people have expressed
7 opinions as to what it is, how it operates, but nobody who
8 is an expert, nobody who really has any grounding or
9 background in this -- it's as if somebody got up and talked
10 about --

11 THE COURT: Ms. Stewart, the issue is not what it
12 really means. The issue is what your client is doing.

13 MS. STEWART: No, it isn't, Judge.

14 They have used this word to mean a command, and
15 the fact of the matter is it's an opinion, and that is what
16 Islamic law says it is, and that is what it is commonly
17 known throughout a different part of the world from the
18 United States to mean.

19 I think we have the right to have someone on that
20 witness stand who is not a translator with a college
21 education who happens to come from Egypt to tell us what it
22 means. We also have a right to rebut some of the things
23 that the translator said which were untrue. We did our best
24 to help to explain the tapes people were listening to by
25 asking the translators questions, but we are not bound by

1 their answers. We have a right to counter their answers.
2 When they say Abraham in the Bible is different from the
3 Abraham in the Koran, we have a right to put someone on to
4 say that is untrue.

5 THE COURT: Mr. McCarthy?

6 MR. MCCARTHY: I think that argument, if it had
7 any persuasive force at all would be a lot more persuasive
8 if it weren't a case of Ms. Stewart sort of correcting her
9 own confusion. Most of the testimony that she's now talking
10 about is stuff that she elicited from witnesses she
11 shouldn't have asked the questions to.

12 I don't think you can create your own confusion
13 and now say, "Gee, I want to come around and fix up what I
14 did and say that you're doing it because the government's
15 case is confusing. If there's confusion in the record about
16 those terms, and I don't think there is, as late as
17 yesterday we had Mr. Shinawy, without any objection from
18 Ms. Stewart or anyone else, opining on a number of the
19 Islamic terms, including fatwa. But if there is, the record
20 has, as the court has pointed out, abundant evidence about
21 these terms -- most of it elicited by Ms. Stewart's
22 cross-examinations of the witnesses.

23 At this point in time, their record, to the
24 extent they need to have one in order to have the jury
25 understand the terms that have --

1 THE COURT: There is also another problem here,
2 and to the extent that you have an expert testifying as to
3 what something means or what it means when somebody does
4 something, that creates, I think, a possible confusion of an
5 expert in essence acting as a surrogate for your client.

6 MS. STEWART: That is not true, Judge. They can
7 weigh what he says against what the government has proven.

8 THE COURT: The issue is what your client
9 intended. Not what the generally accepted meaning is of a
10 particular term.

11 MS. STEWART: Judge, I quote from the first page
12 of the indictment: The first sentence, "Did not share the
13 group's particular radical interpretation of Islamic law."

14 We have an expert who will say this is not a
15 particular radical interpretation. This goes directly to
16 the indictment. This goes on the surplusage which we
17 attempted way back when I first got in this case to have
18 struck. To not be able to explain that this is not a
19 particular radical interpretation, not to have an expert to
20 say that this is mainstream Islamic law, that this is
21 something that has been preached for 1400 years and that the
22 sheik is no more a radical in that sense than is Emad
23 Salem --

24 THE COURT: Ms. Stewart, if the defense is that
25 it is mainstream Islamic law to counsel people on selecting

1 bombing targets, I don't --

2 MS. STEWART: That is their argument, Judge.

3 THE COURT: That is guilty with an explanation,
4 and that is not a defense of --

5 MS. STEWART: That is their argument. I am
6 talking about our argument.

7 MS. AMSTERDAM: Your Honor, may I weigh in,
8 because I do feel as if this impacts on my client.

9 THE COURT: How?

10 MS. AMSTERDAM: I will tell you specifically.
11 The word "jihad," the indictment Mr. Khuzami opened on, they
12 called their war jihad. The indictment states this is a
13 jihad organization. Throughout the CM's the word "jihad" is
14 replete. The suggestion by Mr. Khuzami's opening, the
15 indictment, and the usage in the CM's is that "jihad" means
16 an armed combat, battle.

17 From my understanding that's just not true.
18 "Jihad" means struggle in many ways. It means you can go to
19 college and that can be your jihad. You can support your
20 family and that can be your jihad.

21 THE COURT: Yes, except that the defendant who
22 proposes to offer this evidence is quoted as saying that any
23 jihad other than bullets, bombs and other destructive
24 devices is a copout. That is the issue.

25 MS. STEWART: That's their cross-examination.

1 That's what they can ask a witness on the witness stand.

2 THE COURT: That is the issue, and that is the
3 only issue. It is not what it means in the abstract.

4 MS. AMSTERDAM: I had considered when we had the
5 interpreter on asking for an interpretation of jihad. But
6 at that point I thought to myself: This is a government
7 witness. He is not trained. He's not an expert. Why would
8 I elicit from him? I think that jihad, the two words, jihad
9 and fatwa run throughout this case. The government is going
10 to use jihad as synonymous with war, and they are going to
11 use fatwa as synonymous with a contract, the way that in an
12 organized crime case you get out a contract.

13 I think that the defense as a whole has the right
14 to, for a limited purpose, call a person who has
15 credentials, who is a scholar to explain the meaning of
16 those words. Because when Siddig Ali says to my client,
17 "You are going to do jihad," I don't want to be bound by
18 their interpretation of that word. I want to argue that my
19 client took that to mean something different and he was
20 reasonable to take that to mean something different.

21 THE COURT: Yes?

22 MR. MCCARTHY: There is no issue about that. The
23 defense has gotten in through several witnesses in this case
24 again and again and again that there are other
25 interpretations of jihad, including personal struggle. They

1 got it in through Salem --

2 MR. JACOBS: Salem? Salem presented evidence of
3 that?

4 THE COURT: No. The point is that it was
5 elicited by defense counsel on his examination. That is the
6 only point.

7 MR. JACOBS: Your Honor --

8 THE COURT: One second. Take your seat.

9 MS. AMSTERDAM: May I just finish my point?

10 THE COURT: No. I understand your point.

11 MS. AMSTERDAM: I didn't mean to finish it. I
12 want to add this one last part, your Honor: If this were a
13 drug case, the government clearly would call a witness to
14 explain what white powder meant and what all the code words
15 to drug dealing meant.

16 THE COURT: And under Cruz if it was the within
17 the ken of the jury, they would be barred from doing it,
18 and, if they did it, it would be reversible error to do it.
19 Ms. Stewart, if this --

20 MS. AMSTERDAM: Ms. Amsterdam.

21 THE COURT: Ms. Amsterdam. This is the second
22 time I've done that.

23 MS. AMSTERDAM: Third, actually, but who's
24 counting.

25 THE COURT: But who's counting.

1 If this were an intersection accident case and
2 the question was whether the light was red or green, I
3 suppose you could call a physicist to testify to where on
4 the spectrum red and green lie, and how the waves travel
5 through the air and so forth. And you could call, I guess,
6 a neurologist to testify how the signals are processed by
7 the brain; and an ophthalmologist to testify how they are
8 picked up by the rods and cones; and an electronics engineer
9 to testify how the electrons go through the wires to the
10 bulb and they meet the filament and the bulb lights and
11 turns the right red or green. And when all that gets done,
12 it would not help the jury decide really whether the light
13 was red or green. It might enrich them slightly, but it
14 wouldn't help them decide that issue.

15 MS. STEWART: Carrying your analogy one step
16 further, if we were trying a case in a country that did not use
17 red and green in their traffic lights and did not have an
18 understanding that red means stop and green means go, it
19 would be necessary to put someone on the witness stand to
20 explain that to them if it hadn't been explained before
21 properly.

22 And I think that we are not trying an
23 intersection case. We are trying a sedition case. Sedition
24 which goes to the speech, which goes to the thought, which
25 goings to the entire background of the person who was

1 accused of the crime. It is a looser standard than it is in
2 a straight -- if it were a RICO case, perhaps you might be
3 right, but in a sedition case to not allow to Dr. Abdel
4 Rahman to show the background of his speeches, his thoughts,
5 his intentions, robs us completely of our defense. It is
6 central to our defense.

7 MR. RICCO: Your Honor, may I make a point?

8 THE COURT: I will hear all of you, then I will
9 hear from the government. Yes, Mr. Ricco?

10 MR. RICCO: The government questioned Ali Shinawy
11 yesterday about his religious practice of marriage, and they
12 did it in cross-examination. It wasn't done on direct.
13 Now, ultimately the government said that they were
14 interested in the falsehood, that falsehood being him not
15 telling that to his wife.

16 THE COURT: Or initially Immigration, but go
17 ahead.

18 MR. RICCO: I was under the impression, your
19 Honor, during this testimony that it was in the immigration
20 application, but I could be wrong. I was under the
21 impression that he put it down and he was told that that was
22 a problem. Be it as it may, what the government did was,
23 the government put before the jury this concept that this
24 man somehow had two wives at the same time and that he was
25 doing something that he wasn't supposed to be doing.

1 To the extent that an explanation of whether or
2 not the bottom line of his actions, the fact that he had
3 more than one wife, is something that is accepted, is
4 lawfully done in his religion is certainly something the
5 jury should know with respect to whether or not --

6 THE COURT: And they do know it because you
7 brought it out, and that is not the issue we are talking
8 about here.

9 MR. RICCO: Judge, but I am not qualified to give
10 testimony as -- I am not qualified to question a witness on
11 something that goes to his religious beliefs. If his
12 religious beliefs and Egyptian law say that the man could
13 have more than one wife, then that is something that an
14 expert in this area should be able to testify to. If the
15 government is somehow --

16 THE COURT: Are you telling me you want to call
17 an expert to testify that Ali Shinawy was permitted by
18 Islamic law to have two wives?

19 MR. RICCO: Judge, that is not what I am saying.

20 THE COURT: I don't understand what you are
21 saying.

22 MR. RICCO: What I am saying is if the government
23 questions a witness about his religious practices and
24 beliefs, the government at the same time can't shield itself
25 from the context in which those practices are done.

1 THE COURT: We are talking about particular
2 testimony that was proffered by the defense and what issue
3 in this case it goes to. The only issue in this case is
4 what -- it is his lawyer who is the proponent of this
5 principally -- it is what he intended or didn't intend.

6 MR. RICCO: That is true, Judge. That's true.
7 And so when the government is cross-examining Ali Shinawy
8 the only thing that they are supposed to be questioning him
9 about is what he did and what he didn't do, not his
10 religious practices. And when they bring in his religious
11 practices, there should be some context for that.

12 THE COURT: You are confusing two issues. Ali
13 Shinawy has nothing to do with this.

14 MR. RICCO: Ali Shinawy had nothing to do with
15 this until the government questioned him about his religious
16 practices, and I think that is just another example of
17 why --

18 THE COURT: I understand your point.

19 Mr. Jacobs?

20 MR. RICCO: One other point, before you dismiss
21 me, your Honor, and that's this: If the government wants to
22 make the argument that it is Dr. Rahman's --

23 THE COURT: Abdel Rahman's. He makes a point of
24 that.

25 MR. RICCO: If it is Ms. Stewart's clients

1 actions that are on trial here, and it's Ms. Stewart's
2 client's interpretation that counts, there's no prejudice
3 whatsoever to the government to have an expert explain after
4 a half a year of testimony what an expert determines what
5 "jihad" is.

6 If the government wants to stand up and say to
7 the jury, "Dr. So and So as an expert told you what jihad
8 was and what jihad meant, now compare that to Dr. Abdel
9 Rahman," I don't see where the prejudice at all is to the
10 government to have someone get on the witness stand and
11 explain these few concepts to the jury.

12 THE COURT: The prejudice is to the process.
13 It's called confusion.

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

15 THE COURT: I said the prejudice is to the
16 process and it's called confusion.

17 MR. RICCO: I don't think, your Honor, having
18 someone explain that Ali Shinawy's second wife was done
19 under Islamic law takes away from confusion. It doesn't add
20 to confusion. I think that having an expert --

21 THE COURT: Talk about confusion, are you seeking
22 to call an expert to testify that Ali Shinawy was entitled
23 to have two wives? You say no, and then you keep talking
24 about it.

25 MR. RICCO: I keep using it as an example.

1 THE COURT: Forget examples. Why don't we talk
2 about the reality.

3 MR. RICCO: The government opened up by saying
4 "jihad" means struggle.

5 THE COURT: That argument was made.
6 Mr. Jacobs?

7 MR. JACOBS: Your Honor, to start off where
8 Ms. Stewart left off a little bit, almost every defendant in
9 this case who is on tape discusses their opinions about
10 jihad and Islamic law. The entire --

11 THE COURT: Really?

12 MR. JACOBS: The entire case is based upon
13 different defendants' interpretation of whether they believe
14 they were following some radical interpretation of Islamic
15 law. It is on my tape all over. It is on the safe house
16 tapes. I think your Honor has mentioned several times
17 during the case the question of whether the Koran, Islamic
18 law allow certain acts of violence. It's been --

19 THE COURT: I have?

20 MR. JACOBS: Yes. I think your Honor has said,
21 does anyone suggest that the Koran permits a violent act
22 against the United States? I mean --

23 THE COURT: I said that? When did I say that?

24 MR. JACOBS: I think when we were talking
25 about First Amendment speech and whether the sheik was

1 permitted to make certain statements and whether those
2 statements --

3 THE COURT: The sheik can say anything he wants.
4 Nobody argues with that. It is a question of whether a
5 First Amendment speech is admissible, and it is.

6 MR. JACOBS: The question is this: Under Rule
7 702 of the Federal Rule of Evidence, does this jury
8 understand what Islamic law is?

9 THE COURT: No. The question is, do they
10 understand what the defendants intended?

11 MR. JACOBS: Your Honor, let's step back.

12 THE COURT: That is the only issue.

13 MR. JACOBS: This is an indictment. It charges a
14 very unusual conspiracy. It is no different, and I use this
15 as an example because we constantly do this, of the Mafia
16 expert when we try our Mafia cases. The Court of Appeals
17 now has, over the last 20 years, permitted Mafia experts to
18 testify what is the Mafia, what does it mean, how is it
19 organized, what is the structure of it. To me, this is no
20 different than your Honor permitting a scholar to get up and
21 state -- within reason. I am not talking about going on for
22 four days -- what is Islamic law.

23 To me, the government has a very simple
24 cross-examination: Where in the Koran is it permitted to do
25 this? Or, where in the Koran is it permitted to do that?

1 Or where in the Koran are terrorists?

2 I mean, the question is this: Does your Honor
3 feel satisfied under Rule 702 and under the cases that this
4 jury has any comprehension of what Islamic law is? Your
5 Honor cited the example that we have had the testimony.
6 Now, if we are stuck with Salem's testimony or an FBI
7 agent's testimony --

8 THE COURT: Forget Salem's testimony or an FBI
9 agent's testimony. There's been repeated reference elicited
10 by defense counsel as recently as yesterday --

11 MR. JACOBS: But, your Honor, the question is
12 this: The government has been continually permitted over
13 the last few years to call experts on organization --

14 THE COURT: They haven't called one in this case.
15 If they had, I suppose you might be arguing about something.
16 They haven't.

17 MR. JACOBS: It all depends what they are
18 calling -- to the extent they never asked Salem the question
19 about the authorization I find interesting.

20 THE COURT: Salem, as I recall, was not called as
21 an expert.

22 MR. JACOBS: I know. But the point is this: We
23 referred to the indictment, we referred to specific matters
24 that we don't think this jury understands. We think, within
25 reason, calling an expert to have some terms defined, to

1 have some knowledge -- this is a lay jury. There is not one
2 practicing Muslim on this jury. To expect that these people
3 have even a faintest idea what this religion is about and to
4 say that we have to rely on the government's direct case for
5 them to understand it I think is unfair. And we are all on
6 the tapes discussing these things.

7 My client rambles on about Islam and Allah and
8 what it means. I think to the extent we have all adopted
9 Ms. Stewart's argument that we think we have some right
10 under 702 to get some general background before the jury so
11 that they understand what we are talking about here. I
12 mean, they charged it this way. It isn't just a question of
13 someone's intent.

14 This isn't a straight murder case where an expert
15 is not needed. They have chosen to formulate an indictment
16 in a quite unusual way. It is no different than if they had
17 said, "a radical interpretation by members of the Mafia."
18 If the government can put on a Mafia expert, why can't we,
19 within certain groundrules, put in an Islamic law expert to
20 at least let this jury have some idea of what this religion
21 is about, and the government is free to cross on it and
22 bring out their points about violence and things like that.

23 It is not a complicated point, but at least the
24 issue is square before the jury and we feel we've gotten, at
25 least to the extent possible, a shot at these people

1 understanding who our clients are.

2 These people are not members of our religion, and
3 I think it is unfair to have people -- I don't know anything
4 about it, frankly, other than what I have heard, too. I
5 would like some expert to tell me what it is about. I don't
6 understand it, and I don't think anybody else does. How can
7 these 12 people who are going to decide this case not have,
8 as I said, the bounds that your Honor is going to set, at
9 least an hour's worth or two hours' worth of testimony of
10 what Islamic law is about? I don't think that is confusion.
11 I don't think it's misleading, and the government is sure
12 going to be allowed to get up there and say, but you don't
13 find this and you don't find that, and you are not saying
14 that the Koran permits this or the Koran permits that. At
15 least the issues are before the jury, and there is some
16 framework to argue from.

17 MS. AMSTERDAM: I would like to give the court
18 one very specific example of this: The first night at the
19 safe house, when Siddig and Emad are with my client, they
20 say to my client and Amir Abdelgani, we have had a
21 Shari'a -- I may be mispronouncing it, and I apologize -- a
22 Shari'a consultation about this and it's OK.

23 Now, if my client is to testify, I would tell you
24 candidly that he would have viewed that statement as saying
25 to him: Nothing bad is going on here. We have run it by

1 our minister or priest or imam and they have approved these
2 actions.

3 Now, that goes to whether or not he in fact
4 formed the requisite intent, because if his argument is that
5 he believed that what they were doing was legitimate
6 training and someone says to him, "Don't worry,
7 Mr. Khallafalla. We've had a Shari'a consultation here," it
8 bolsters his argument that he in fact believed that this was
9 legitimate conduct. To have that phrase in the CM without
10 any explanation as to what it means makes it sound to me, in
11 the worst-case scenario, that the government can kind of
12 with a wink and a nod suggest they've got a Shari'a
13 consultation, they have got the contract, we're down for the
14 deed, it's something bad, when the contrary is true.

15 This is like saying I've gone to the minister, I
16 have talked to him, I have run this by him, and he has said
17 this is fine. My client has a right to say that that
18 allowed him to believe that what was going on was innocent.
19 Without being able to explain what that term means, I lose
20 the full impact of our argument.

21 MR. McCARTHY: What Ms. Amsterdam asked for is
22 exactly what the Supreme Court for a hundred years has said
23 you can't do. It matters not a whit whether their minister
24 or whoever they chose to rely upon thought it was proper
25 behavior or not. It's simply not a defense to the charges.

1 THE COURT: I think she's making a somewhat
2 different argument, which is that something about the
3 context determined his understanding of what was actually
4 happening, namely, that they were not talking about bombing,
5 they were talking about training -- for Bosnia presumably,
6 right?

7 MS. AMSTERDAM: That's correct.

8 THE COURT: That I suppose in turn depends on
9 what he testifies to. So we could revisit it at that point,
10 and we could have much more focused discussion than we are
11 having now.

12 MR. LAVINE: But, Judge, I think that if we vary
13 a little bit from the abstract concerns about what is
14 Islamic law and things like that, I fear that the jury is
15 still at some point going to be left with a problem when
16 they have to evaluate Salem's testimony and his credibility
17 and what he describes as a fatwa.

18 They are going to then have to come to terms with
19 what is a fatwa, and that is not something that's within
20 their knowledge or understanding. I think that an expert
21 might very well be able to establish, and could assist the
22 jury with what is a fatwa, what is the rule of a respective
23 religion in terms of the issue --

24 THE COURT: They are going to have to decide a
25 couple of things: Number one, whether if a number of things

1 that he said happened or didn't happen, and, number two,
2 what particular people on trial here meant. That is all
3 they are going to have to decide.

4 MR. LAVINE: Your Honor, I appreciate that. And
5 yet I still can't --

6 THE COURT: Not what it means to an Islamic
7 scholar to use a particular term.

8 MR. LAVINE: Your Honor, if he were a chief
9 executive officer or a treasurer of a corporation, for
10 example, or, another example, if he were a psychiatrist
11 charged with giving unlawful counsel or dangerous counsel to
12 a patient, wouldn't it be within the proper realm of the
13 evidence to develop what is the role of a chief executive
14 officer or a treasurer in a corporation, or more --

15 THE COURT: No is the answer to that, the first
16 part of that. Go ahead.

17 MR. LAVINE: What about, your Honor, the role of
18 a psychiatrist who counsels his patients --

19 THE COURT: No to that also.

20 MR. BERNSTEIN: There is a concern that is
21 crystallizing for me: What happens if the jury sends out
22 notes during the deliberations: "What is a fatwa? What is
23 Shari'a? We're having trouble understanding that." The
24 problem is that if it was an English-language, western
25 concept, the court's response to such a thing like, "What is

1 democracy?" is it is what you take it to be in your normal,
2 everyday whatever.

3 If that issue comes up, it is a word that comes
4 out of another language, it is not translated in a pure
5 sense for this jury right now. There is no framed
6 definition. If they ask for it, I am at a loss as to how we
7 would resolve that with the court trying to give them
8 resolution of their needs. There are a number of words that
9 the jury may be forced to grapple with in a way that
10 post-evidence we can't resolve for them, and you can't send
11 them a note saying, "According to the dictionary 'Shari'a'
12 means..." because at that point we have tremendous problems.
13 And experts, if called by the defense, can be countered by
14 the government, and that is what they have to grapple with,
15 which is --

16 THE COURT: This case isn't going to turn on
17 dictionary meanings, foreign-language dictionary or any
18 other.

19 MR. BERNSTEIN: I am not saying it is going to.
20 What I am saying is the jurors could very possibly struggle
21 with that, ask for definitions, and they won't have them
22 either from the defense experts' standpoint or the
23 government's. They can choose between the two. That's
24 their weight to give. But if they don't have either, they
25 are forced to grapple in the dark with concepts that they

1 don't have definitions for.

2 MS. AMSTERDAM: Let me give your Honor one last
3 specific example: There was a tape that was played at the
4 end of the government's case where people were mixing,
5 allegedly mixing bombs. During the course of that tape
6 Mr. Amir Abdelgani prays for an extended period of time. My
7 personal emotional reaction to that was that it looked
8 horrible, that these people looked as if they were religious
9 fundamentalists with a small F. Yet, if I had an expert on
10 the stand to say that, indeed, your average everyday Muslim
11 prays five times a day, I think that it would have thwarted
12 the impact of that visual image. I also just want to close
13 with this --

14 THE COURT: Ms. Amsterdam, it has been testified
15 to as recently as yesterday, and that was not the first time
16 we heard it, that Muslims pray five times a day.

17 MS. AMSTERDAM: But, you know, your Honor,
18 Mr. Ali Shinawy came on the stand and said he was a follower
19 of Sheik Rahman. Now, the jury could infer from that that
20 only Sheik Rahman followers pray five times a day.

21 THE COURT: Ms. Amsterdam --

22 MS. AMSTERDAM: The jury doesn't necessarily have
23 to infer from that that is normal conduct.

24 THE COURT: Ms. Amsterdam, it is a mistake to
25 argue that jurors are not intelligent enough to figure out

1 that that's not what he testified to. I mean, that's just
2 fanciful. It really is. Hypothetical theories about what
3 ridiculous conclusions jury might jump to and what they
4 might be prevented from jumping to for the introduction of
5 expert testimony doesn't get it in. Let's talk about
6 reality, please.

7 MS. AMSTERDAM: I have one question for your
8 Honor.

9 THE COURT: Yes.

10 MS. AMSTERDAM: When I raised this example, the
11 Shari'a consultation, your Honor's response was that it
12 would --

13 THE COURT: I said I would keep an open mind.

14 MS. AMSTERDAM: It would turn on whether or not
15 my client testified. I posit this situation, your Honor:
16 Presume for a moment that this was a bombing of an abortion
17 clinic --

18 THE COURT: That doesn't apply only to your
19 client. It applies to a number of other people, too.

20 MS. AMSTERDAM: I understand.

21 THE COURT: And if something becomes an issue
22 that can be resolved by expert testimony or some small
23 segment of expert testimony, that's fine.

24 MS. AMSTERDAM: I understand that. I appreciate
25 that, your Honor. I don't necessarily, however, agree with

1 your Honor that the issue is not joined until an individual
2 defendant takes the stand, and I would just posit this
3 example to your Honor: Presume for a moment that this was a
4 bombing of an abortion clinic and my argument was that this
5 young woman had gone to her local parish church and thought
6 they were making placards and at the last moment realized
7 that they were really building bombs. In the context of
8 conversations with her, they said, "Don't worry, Ms.
9 Amsterdam, we've spoken to the priest about it. Everything
10 we're doing here is copesthetic."

11 I don't think she has to take the stand for me to
12 argue to the jury that they in fact could believe that she
13 was without the requisite knowledge of what was going on. I
14 don't know why the issue is only joined after my client
15 takes the stand. I think that I have a right to make the
16 argument that when they said to Mr. Khallafalla, "We've had
17 a Shari'a consultation on this, lay your doubts to rest.
18 This is all legitimate." I can make the argument to the
19 jury without him testifying.

20 THE COURT: No, Ms. Amsterdam, the question is
21 what the antecedent is of "this" in that conversation, and
22 expert testimony doesn't help that at all. Because if the
23 antecedent of "this" is, "We had a consultation about this,"
24 if the antecedent to "this" is building bombs, then whether
25 you have a consulted an expert or not it doesn't matter.

1 MS. AMSTERDAM: You are a hundred percent
2 correct. A hundred percent I agree. What I am saying is I
3 put an expert on; I say, "Explain to us what a Shari'a
4 consultation is." I ask nothing else. I don't say, "Does
5 that include bombing?" I don't say, "Does that include
6 training?" I just ask what the meanings are.

7 Then I go to the jury, I hold up a transcript,
8 and I say, "Read this transcript in its entirety. I submit
9 to you that there is no discussion of targets here. I
10 submit to you that on the way out the tape is destroyed, and
11 I submit to you that they said to him that he had a Shari'a
12 consultation, and it is reasonable for you as jurors to
13 believe that he was in the dark."

14 So that ultimately, when he leaves and they say,
15 "Fares is not a Fares," I can argue that at the time, in the
16 beginning, he was in the dark. And I don't think I have to
17 put him on to make that argument. Not that I am not going
18 to put him on, but I don't think that it really comes down
19 to the point that an individual has to take the stand before
20 we can bring out the meaning of those terms.

21 THE COURT: It is just as reasonable to argue
22 that without an expert as it is with, and it doesn't
23 illuminate your client's intent one whit to have an expert
24 testify to what it means.

25 MS. AMSTERDAM: Except how can I argue to the

1 what I a Shari'a consultation is if they have no clue as to
2 what that is? I stand up there, and I say, "Ladies and
3 gentlemen of the jury, you have heard Siddig Ali tell my
4 client that he had a Shari'a consultation. Therefore, you
5 should presume that my client was kept in the dark." They
6 look at me like, "What in the heck is a Shari'a
7 consultation?" I mean, it could be anything.

8 MR. JACOBS: Your Honor, just briefly could I
9 just state --

10 THE COURT: Yes.

11 MR. JACOBS: The Second Circuit started to permit
12 expert testimony as to organization and structure in the
13 Mafia cases when the government started, in RICO
14 prosecutions, naming the enterprise. It was on the basis of
15 the enterprise the Court of Appeals would start to permit
16 expert testimony. The proposed testimony of Khaled Abou El
17 Fadl on page 3 of Ms. Stewart's letter --

18 THE COURT: Which of the letters?

19 MR. JACOBS: I'm sorry, the June 16 letter.

20 THE COURT: I have a lot of correspondence.

21 MR. JACOBS: Especially that particular witness,
22 it would seem to me, having tried a lot of these cases, to
23 pretty much track the almost word for word testimony that
24 the Court of Appeals has approved in the Mafia prosecutions.

25 I mean, this jury wouldn't understand the term

1 consiglieri, just as they may not understand what the term
2 imam means or what the role of a sheik is. I mean, that's
3 what we are talking about.

4 The Second Circuit has approved an expert witness
5 testifying and defining consiglieri. They get up, they
6 explain, they put a chart of the structure in. This is what
7 this witness is proposing to do.

8 THE COURT: A consiglieri occupies a role that is
9 inherently criminal. The issue here is not what the role of
10 an imam is or isn't. The question is whether this
11 particular imam was counseling people on building bombs or
12 not.

13 MR. JACOBS: Your Honor, I couldn't agree with
14 you more. But when we try our Mafia cases --

15 (Continued on next page)

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1 THE COURT: That is an advantage over what you
2 usually say, which is that I couldn't disagree with you
3 more.

4 MR. JACOBS: The point is that, to the extent
5 that we want to show that we didn't specifically permit the
6 crime, and we didn't specifically do A, B and C acts, the
7 government here, I think, and I argued before, they put the
8 enterprise in the case, and when they do that, I think they
9 open themselves up for, within reason, some interpretations
10 under Second Circuit law -- United States against Persico,
11 United States against Salerno -- where the Second Circuit
12 over defense objections allowed FBI experts to testify to
13 structure. That is all Miss Stewart wants to do. This
14 witness here on page 3 wants to testify to structure. Am I
15 right, Miss Stewart?

16 THE COURT: I don't know which letter you have,
17 but on page 3 of the letter that I have, the witness is to
18 testify to the five basic pillars or precepts of Islam, of
19 faith, prayer, alms, pilgrimage and fasting, none of which
20 has anything to do with this case, and it goes on and on and
21 on.

22 MR. JACOBS: That is like saying -- I mean, we
23 get FBI experts who testify that the Mafia is a criminal
24 organization that deals with 15 different crimes, though one
25 of the crimes you might be trying might be concrete mixers.

1 He will testify to the meaning of Islam, Muslims. These are
2 terms that I think are no different than an FBI expert
3 testifying to what a soldier is, a capo is and a
4 consiglieri.

5 I just want to be clear, and I don't do this for
6 the Court of Appeals, but I don't see the distinction
7 between the Second Circuit cases on an expert in the Mafia
8 and what we think within reason we can do here, and I am not
9 saying that we can start having an expert testify that the
10 sheik wanted to commit a crime or didn't want to commit a
11 crime, but as to terminologies and general structure, I
12 think your Honor is making a big mistake in not permitting
13 the structure to be testified.

14 THE COURT: All I can do is deal with proffers,
15 and the proffer is --

16 MR. JACOBS: All I am saying is that I think if
17 your Honor were to put the witness on the stand --

18 THE COURT: I were to put the witness on the
19 stand?

20 MR. JACOBS: I am sorry, if the government were
21 to put the witness on the stand. And if your Honor in
22 response to a question were --

23 THE COURT: I am not going to have a carnival
24 here where we have 15 objections sustained. We have done
25 that a little bit and I am not going to have it.

1 MS. AMSTERDAM: Then perhaps we can work out a
2 proposal as to the scope of the examination, but I think we
3 can define some issues as to which an expert might testify
4 even if it is not as broad as the defense team might want.

5 THE COURT: If you want to work out an agreement
6 with the government, that is fine. I am sorry, I thought
7 that was what you were suggesting.

8 MS. AMSTERDAM: No. I am saying why don't we,
9 all of us including the court, revisit whether or not we
10 can limit the scope of an expert to something that the court
11 is happy with and satisfied with, without taking the all or
12 nothing position that you can't call an expert.

13 MS. STEWART: I am afraid I can't accept Miss
14 Amsterdam's proffer. She may have a very limited scope.
15 This is my client's entire defense, and I would call to your
16 Honor's attention the fact that Rule 702 says assist the
17 trier of fact to understand the evidence. That is one prong
18 of it. When they talk about the four pillars or five
19 pillars of Islam, every single one has been part of this
20 case. Haggag went on hajj. Nosair is going to protect the
21 holy places. We weren't allowed to cross-examine, Mr. Ricco
22 reminded me. Assist the trier of fact. I refer your Honor
23 to United States versus Locasio, which stands for the
24 proposition that Mr. Jacobs stated, that you may call an
25 expert on organized crime, that an FBI agent is allowed to

1 testify because jurors are not well versed in the structure
2 and method of organized crime families. If it is
3 permissible on the government's case, it should be even more
4 permissible in the defense posture to outline exactly what
5 is at stake here for a jury that has not a clue, and, I
6 would add, in a sedition case. Your Honor has to charge my
7 client in 15 overt acts in a sedition case and those acts
8 are subject to different interpretations than they have
9 called upon.

10 We are not seeking to confuse, we are seeking to
11 clarify. If they feel we have not clarified and they have
12 an opposing view, they can call Bernard Louis, in order to
13 explain to the court and the defense the parameters of this
14 particular organization. The Phase One memo is replete with
15 footnotes and explanations. This jury doesn't have that.
16 They have Islamic terms laid out in front of them.

17 THE COURT: I doubt that you want this jury to
18 have the Phase One memo.

19 MS. STEWART: No, because I think Bernard Louis
20 is a fraud and a fake.

21 THE COURT: That's not the reason you don't want
22 to have it before them.

23 MS. STEWART: I am saying, if they wanted to
24 explain early on in in this case so they would have a grasp
25 what the case is all about, I think we have an absolute

1 right to lay that out in front of the jury. I think it is
2 the entire defense case. Far from jumping to conclusions,
3 which is what the government, I suggest, wants them to do,
4 they would then have the basis to look at this evidence
5 through a different framework, the framework that the
6 defense suggests is the proper framework, which the
7 government has a full and fair opportunity to contest.

8 The last example which you gave, your Honor, was
9 that my client -- the question before the jury is whether my
10 client counseled people on building bombs, and I think
11 without understanding the role of a sheik -- in our Rule 29
12 argument you said the parish priest would say what are you
13 talking about, are you crazy, go home. We would have a
14 right to show exactly how consultations take place, that any
15 issue that is raised within the Islamic framework a scholar
16 is bound to answer, no matter how outlandish, no matter how
17 outrageous.

18 THE COURT: No matter how outrageous?

19 MS. STEWART: No matter how outrageous. There is
20 a taped videotape where they say how about the use of drugs,
21 is that permitted under the Koran?

22 THE COURT: If there is an agreement that people
23 will act only on the advice of the person they are
24 consulting and he knows it and they know it -- and the
25 government has to proffer all of those. But if that is the

1 agreement, then to say that the religion requires them to
2 give that advice is not a defense.

3 MS. STEWART: But the fact is that they haven't
4 proven that.

5 THE COURT: They may not have.

6 MS. STEWART: They have one conversation where
7 Emad Salem asks for a religious opinion, a fatwa -- not a
8 command, a religious opinion. And we have the right to show
9 that that is all that is.

10 THE COURT: Nobody is denying you the right to
11 show that or to argue that.

12 MS. STEWART: You are, Judge, by not allowing us
13 to put on an expert to say that over a thousand years imams
14 and sheiks are consulted -- not particularly imams because
15 they can be lay people, but certainly persons with advanced
16 degrees, Islamic scholars are consulted about all manners of
17 things, and they are constrained under law to give opinions.

18 MR. MCCARTHY: What there is is, plain and
19 simple, an effort to get in front of the jury the notion, in
20 as compelling a way as possible, that there is another body
21 of law by which the conduct of these defendants has to be
22 evaluated as compared to everybody else, and that is wrong,
23 it is confusing, and it is not a defense to the charges in
24 the case.

25 MS. AMSTERDAM: Nobody is going to acquit if they

1 believe this is OK by Islamic law and not American law.
2 They are going to say not guilty for bombing bridges and
3 tunnels because you have approval under Islamic law? That
4 is just absurd.

5 THE COURT: That is not the standard.

6 MR. McCARTHY: If I may, the other thing is, what
7 Mr. Jacobs posits as the cross-examination of the experts is
8 precisely the danger that this kind of evidence poses for
9 the case, because in order to play the game on his turf, as
10 it were, the inevitable suggestion to the jury is that the
11 explanation or the guilt in this case is found in the Koran
12 or found in some other body of Islamic law.

13 THE COURT: As it has been proffered to me, I
14 don't see at this point how the testimony is going to
15 clarify the jury's understanding of the issues in this case.
16 I have told Ms. Amsterdam and I will say again that if this
17 issue emerges later, I will reconsider it later. It hasn't
18 emerged yet.

19 Let's talk about Mr. Cannistraro. There are two
20 parts to this, Cannistraro's testimony. One is some sort of
21 expert testimony about whether this is or isn't a terrorist
22 organization. That, I don't see. That is the jury's
23 decision, as to what they were doing or not. What they were
24 doing there is one item, however, that you raised in the
25 outline of Cannistrano's proposed testimony that I have some

1 questions about, and that is the suggestion that he has some
2 knowledge about a discussion between American officials and
3 Egyptian officials about Salem consulting with not only
4 military intelligence but general intelligence. What is
5 that about? What is the basis for his knowledge? Was he at
6 the meeting?

7 I don't know who I am addressing this to. I am
8 looking at both of you.

9 MS. STEWART: I am still in shock, Judge.

10 MR. MCCARTHY: Can we find out what the source of
11 the information is, before we decide --

12 MS. STEWART: I can't understand what he is
13 saying.

14 THE COURT: He is asking the source of the
15 information. I assume it is Mr. Cannistraro.

16 MS. STEWART: Yes.

17 MR. MCCARTHY: Mr. Cannistraro, as we point out
18 in our papers, has a fairly considerable history in United
19 States intelligence agencies and access to classified
20 information. I think it is appropriate for the court to
21 find out --

22 THE COURT: Let me go beyond the simple issue of
23 Cannistraro. Forget the Classified Information Procedures
24 Act for a moment. You have a Giglio obligation, and if what
25 has been suggested here is that the government, which

1 includes the CIA -- that may be news to them but in my view
2 it does include the CIA -- has information that contradicts
3 Salem's testimony about whether he was or wasn't consulting
4 with general intelligence, that had better be disclosed.

5 MR. McCARTHY: I agree with you.

6 THE COURT: The Classified Information Procedures
7 Act to the contrary, I don't care about procedures under
8 that act. Giglio gives rise to an independent source of
9 that obligation and nobody has to jump through the hoops in
10 a statute in order to make you disclose that.

11 MR. McCARTHY: And I will tell your Honor that I
12 needed neither Miss Stewart's nor Mr. Jabara's letter nor
13 the court's admonition to know that. That is not late
14 breaking news, we have known it for two years and we have
15 acted the way we should have acted.

16 THE COURT: All I am saying is that what is
17 contained in the proffer with respect to Mr. Cannistraro
18 should focus people with a bright blue flame on that
19 question, and if there is anything there I want to know
20 about it.

21 I don't know which of you is dealing with
22 Mr. Cannistraro.

23 MS. STEWART: I wrote the letter, Judge, so I
24 will deal with it.

25 THE COURT: Because Mr. Jabara looked like he was

1 about to rise.

2 MS. STEWART: He had the letter in front of him
3 at that point.

4 THE COURT: Does Cannistraro have firsthand
5 information about this?

6 MS. STEWART: That is my understanding, Judge.

7 THE COURT: He was there?

8 MS. STEWART: That is my understanding.

9 THE COURT: Why can't he testify?

10 MS. STEWART: Judge, when I say that is my
11 understanding, I must say, I did not say, were you there and
12 did you hear it. This is something that he related to us.

13 THE COURT: People say things -- look, I
14 understand you have a conversation with a proposed witness
15 and he says this happened or that happened or the other
16 happened, and you don't necessarily start with evidentiary
17 questions at that point. However, particularly with regard
18 to this witness, I think it is important for you to find out
19 exactly -- there is something suggested in the letter -- it
20 is a very sketchy kind of suggestion. I think you ought to
21 find out what it is that he actually says he knows, and from
22 what source, and I would like, obviously, to know about that
23 sooner rather than later.

24 Christopher George. He is the human rights
25 expert that you say wants to testify to all the human rights

1 abuses in Egypt. I don't understand the relevance of that.

2 MS. STEWART: Judge, it is proffered for the same
3 reason that the Islamic expert was proffered, that these
4 things have been mentioned repeatedly in an offhand sort of
5 way by people having conversations, particularly in the FISA
6 case, and in, also, the Nosair case, where there are
7 references to what is happening in Egypt, and it is to give
8 some understanding to the jury as to what exactly was going
9 on in Egypt between the years 1989 and 1993, so that they
10 would have some understanding. I am not suggesting that the
11 jury is less than expert in Egypt's affairs, but I think
12 that it is a sketchy reference that they have and that
13 Mr. George would be able to enlighten them as to what his
14 organization has made findings as to occurring in Egypt.

15 MR. STAVIS: Your Honor, Count 1 of the
16 indictment also alleges international ramifications for the
17 conduct of the participants of the alleged conspiracy. One
18 of the things that the government has brought out
19 affirmatively in its direct case is the events in Egypt.
20 They brought it out mostly through FISA tapes of people
21 reporting to Sheik Rahman concerning events in Egypt, what
22 is happening in Egypt, violent actions in Egypt, and the
23 jury has no context for that, your Honor, and I think what
24 Miss Stewart is trying to do through her expert is to place
25 that in context.

1 THE COURT: How does it change their view of what
2 the defendants were doing or not doing to hear not only what
3 everybody was saying on the tapes, that there were human
4 rights violations in Egypt, but that in fact there were?
5 So?

6 MR. STAVIS: For some reason the government --

7 THE COURT: I don't see the government disputing
8 that.

9 MR. STAVIS: For some reason the government has
10 put into play political events in Egypt, and I think what
11 Miss Stewart's expert is trying to do is to give the context
12 to what the government was saying was happening in Egypt. I
13 don't think that the government should have been permitted
14 to bring Egypt into play and Al Gamaa La Islamiya into this
15 seditious conspiracy in the United States but they did, so
16 Miss Stewart's expert is trying to explain that and place it
17 in context. What is Islamiya Gamiya? We still don't have
18 the answers to that. What are the social functions of Al
19 Gamaa Islamiya --

20 THE COURT: Do you want to put on a witness to
21 say that they run bake sales? Please, that's not the point.
22 The point is not whether they do in fact run bake sales, it
23 is whether they do other things, too, and that is the issue
24 in this case.

25 MS. STEWART: Judge, when we raised our 404(b)

1 objection to the other acts coming in and we raised
2 continual objections during the playing of the FISA tapes,
3 that this was not relevant to the case, all the
4 international material, conversations in Milan about tourist
5 buses, Pakistan conversations, we were overruled and that
6 evidence came in based upon Mr. Fitzgerald's proffer to the
7 court as to the relevance to the indictment. We are now on
8 the defense case. We merely seek to offer our
9 interpretation of what those tapes are talking about when
10 they talk about the Al Gamaa, and also about the events that
11 took place in Egypt.

12 MR. McCARTHY: First of all, a lot of that
13 evidence, indeed probably most of it and certainly most of
14 the most, we would say, compelling of it, was kept out by
15 your Honor, including the bombing of the Cairo cafe. That
16 is one thing.

17 THE COURT: I think you had a good deal with it
18 and I don't recall there being as much of it as you suggest.
19 But go ahead.

20 MR. McCARTHY: The other point is, that evidence,
21 to the extent that it was relevant, first of all Miss
22 Stewart has called it from the very beginning the 404(b)
23 evidence. We have never agreed with her characterization of
24 it. The fact that it may have been admissible for that
25 reason doesn't mean it was admissible for other reasons.

1 Leaving that aside, it directly spoke to her defense in this
2 case, which is that her client is a cleric who is not
3 operational. That is the purpose for which that was brought
4 in, and to use that, which was very focused rebuttal, on a
5 point that she attempted to make again and again and again,
6 to allow in a wholesale defense, which basically is to tell
7 the jury that these people may have been doing these things
8 but they had a real good reason for it --

9 THE COURT: That is not her argument, as I
10 understand it.

11 MR. MCCARTHY: It is not her argument but that is
12 the argument that will be made to the jury at the end, you
13 can be as sure as you are sitting here, is that they had
14 very good reasons for what they were doing. Again and again
15 in this case they have brought out what they allege to be
16 the abuses of the --

17 THE COURT: The short of it is, I don't see it as
18 the occasion for expert testimony.

19 Let's turn to what Mr. Hampton-El has proffered,
20 which is two witnesses. One, Ms. Milroy -- am I pronouncing
21 that right?

22 MR. WASSERMAN: Yes, Judge. Your Honor, at this
23 time I would withdraw her as an expert witness. If I bring
24 her on I will bring her on for facts that she is personally
25 knowledgeable about and I will decide that later.

1 THE COURT: Facts that she is personally
2 knowledgeable.

3 MR. WASSERMAN: For instance, in June of '92
4 Salameh calls back 43 times, same phone number. If I am
5 going to put Ms. Milroy on, she would testify as to who the
6 subscriber was for the phone number that Salameh called at
7 that time.

8 THE COURT: Wait a second. She is in essence a
9 political scientist, right? She is a writer. I have read
10 at least one of her columns, I know that. It was in the
11 Wall Street Journal. And you are going to put her on to
12 testify to the identity of a subscriber where, in Baghdad?

13 MR. WASSERMAN: Judge, I'm trying as gracefully
14 as I can to say I am not putting her on as an expert. I am
15 putting her on, if I do, as to facts that she can personally
16 testify to. That would be the type of information that she
17 would testify to were I to put her on the stand.

18 THE COURT: If you are withdrawing her as an
19 expert, we are not going to argue in the abstract. However,
20 and this is something that occurred under Anticev, I don't
21 want her flying in under the radar to do something that she
22 shouldn't be doing. So if she testifies as to facts, let's
23 understand what facts and what basis before she testifies.

24 MR. WASSERMAN: I understand.

25 THE COURT: Keirnan, you have offered him to

1 testify that this group doesn't fit the profile, in essence.

2 MR. WASSERMAN: Your Honor, you have already
3 ruled on that.

4 THE COURT: I have. The ballistics expert, do
5 you have that person?

6 MR. WASSERMAN: I proffered that Mr. Keirnan
7 would be --

8 THE COURT: Ballistics expert?

9 MR. WASSERMAN: Yes.

10 THE COURT: Why can't he testify to what he
11 suggested a ballistics expert would testify to, namely, the
12 uses of the particular hardware that Mr. Wasserman proposes
13 to question him on? You don't oppose that?

14 MR. MCCARTHY: I don't.

15 THE COURT: Good. So he testifies to that.

16 MR. WASSERMAN: What I take it to understand,
17 except for the last paragraph of my letter of June 16, the
18 proffer to the government is acceptable.

19 THE COURT: I don't know that I have that. I am
20 sure I have it. The problem is that I have a lot else.

21 Here it is. You have two letters dated June 16.
22 That's not fair.

23 He can testify, I guess he can testify to the
24 three paragraphs that describe what the expert will testify
25 to, namely, how you detonate, what a booster is and how a

1 booster operates and so forth, how hand grenades work, the
2 difficulty of extracting a detonator from a hand grenade,
3 and the uses of cannon fuse, electric matches, and so forth.

4 MR. WASSERMAN: Yes, your Honor.

5 THE COURT: Moving along, Wahid Saleh.

6 MR. NOOTER: Yes, Judge. I had given notice to
7 the government of three possible experts. I gave a CV for
8 Mr. Kheir, the translator.

9 THE COURT: I don't think there is any dispute
10 about Mr. Kheir.

11 MR. NOOTER: I assume there isn't. I do have
12 CV's in front of me about two experts that I have been in
13 contact with. I had decided to withdraw those experts and
14 then in recent days I am not sure. The reason I am not sure
15 is that this all goes to the proposed coercion charge that I
16 have submitted to the court, which I also submitted more or
17 less to keep my options open. This all depends on whether
18 or not my client testifies.

19 THE COURT: It depends very strongly on that.
20 Mr. Bernstein made a severance motion that I think depends
21 on what your client would testify to were he to testify and
22 were that to make out a coercion defense, and I should
23 tell -- maybe we can turn to that issue in a minute. I
24 hadn't planned to do it that way, but since you raised it,
25 fine.

1 MR. NOOTER: Let me tell you the status, as I
2 feel it to be, about these experts. I noticed the
3 ballistics expert on the issue of noises that can be heard
4 on the videotape but you cannot actually see the gun. If
5 you remember, I cross-examined Salem about it, I played
6 pieces of the tape where you could see the gun and where you
7 couldn't, he opined that it was a chair moving and not the
8 gun. In our opinion it is a gun --

9 THE COURT: That is a jury issue that you could
10 make by clicking the gun back and forth in an appropriate or
11 inappropriate manner, depending on what you plan to do.

12 MR. NOOTER: If I could do that, I would.

13 THE COURT: Absolutely. With that sound? He did
14 it in a very soft, gentle way that made it sound like the
15 clicking of a ball point pen. Then, as I recall it, as we
16 were leaving Mr. Russo did it in a way that sounded like the
17 closing of the door to Hades.

18 MR. NOOTER: With that understanding, I think I
19 can dispose of that.

20 THE COURT: Good. The body language expert.

21 MR. NOOTER: The body language expert, your
22 Honor, is something which I have been vacillating on.

23 MR. FITZGERALD: You notice he is rubbing his
24 hands together as he says that.

25 MR. NOOTER: I have his name. I don't have an

1 opinion yet from him. The idea would be to analyze my
2 client's posture and motions on the videotape to see whether
3 it is consistent with his being in fear, which would be
4 consistent with the coercion defense.

5 THE COURT: Can I make a suggestion? Read
6 Daubert very carefully before you do it. I understand that
7 life imitates art but it doesn't yet imitate daytime
8 television, which is what this is.

9 MR. NOOTER: It is possible that the jury can be
10 assisted by an expert who can say that persons under certain
11 conditions hold themselves in a certain way, move in a
12 certain way, react in a certain way, fail to react in a
13 certain way. That would be what I would be looking to to
14 put in, if I put it in. But at this point, because we
15 haven't even decided exactly how much the experts should be
16 told or not told about what is going on in this videotape, I
17 don't know what his opinion would be yet. I do know who I
18 think I would use, and I have a CV which I can give to the
19 government.

20 THE COURT: It isn't the same one who analyzed
21 the Michael Jackson, Lisa Marie press conference, is it?

22 MR. NOOTER: I hope not. This is a person who
23 has testified before in various cases.

24 THE COURT: Really?

25 MR. NOOTER: I am not saying he is going to

1 testify to exactly what I am asking him to testify to. He
2 is a forensic psychiatrist.

3 THE COURT: But he hasn't testified to this sort
4 of thing in prior cases, has he?

5 MR. NOOTER: Frankly, I am not sure.

6 THE COURT: Serious, I would appreciate knowing
7 that.

8 MR. NOOTER: Some of them have to do with things
9 like will cases, things having to do with --

10 THE COURT: -- whether the testator is gaga or
11 not.

12 MR. NOOTER: Your Honor, that covers experts.
13 There is something which is not in any writing so far, but
14 with respect to agents, that perhaps I should bring up right
15 now. I had given notice to the government of our possible
16 desire to call Agent Allison and I think because the
17 government didn't oppose it that they understood the reason
18 for it and didn't oppose that. In the last couple of days
19 Mr. Russo has discovered something that I failed to notice
20 and feels that we should also notice another agent. I
21 realize it is late but it is a very brief subject --

22 THE COURT: Have you talked to them about it?

23 MR. NOOTER: I haven't brought it up with them
24 yet. Perhaps I should. Fine.

25 THE COURT: All right, who is it and what is the

1 issue?

2 MR. NOOTER: Let me bring it up with them. If
3 there is an issue, it can be probably be resolved in two
4 minutes. It is very simple.

5 THE COURT: Miss Stewart.

6 MS. STEWART: I also have two open issues, I
7 believe, as to agents. When I originally proffered Attorney
8 General Janet Reno under the CFR, I also proffered as to
9 Special Agent Holliman, who was the person who gave the last
10 polygraph to Emad Salem, and I proffered as to --

11 THE COURT: I am sorry, I missed that. I didn't
12 see that. I am not questioning that you did. All I am
13 saying is that in the flurry, I missed that.

14 MS. STEWART: He is the last person to have given
15 the polygraph --

16 THE COURT: They acknowledge that you did.

17 MS. STEWART: Right, and it is our contention
18 that admissions were made by Mr. Salem at the time of that
19 polygraph that are admissible at this trial, particularly
20 that he admitted that he had lied to the FBI with regard to
21 details concerning his past with intelligence. He had not
22 been truthful when providing information about his home
23 country. He refused to provide details about his specific
24 contacts in his home country.

25 THE COURT: Was there examination of him on that

1 subject?

2 MS. STEWART: I think that I asked Mr. Salem
3 about it.

4 THE COURT: You confronted him with that?

5 MS. STEWART: Yes.

6 MR. McCARTHY: I don't think Miss Stewart
7 confronted him with all of the three things that she just
8 mentioned precisely, but to the extent this is extrinsic
9 evidence it is extrinsic evidence of a consistent statement,
10 which is even more out of the ballpark than on an
11 inconsistent statement. The matter of whether Salem had
12 intelligence contacts, first of all, is a collateral issue
13 that goes not to the focal parts of this trial. Extrinsic
14 evidence on a collateral issue is inadmissible under 608(b).
15 To the extent that she -- and I will have to take a look at
16 Miss Stewart's cross-examination. But to the extent that
17 this involves confrontation --

18 THE COURT: I don't know that it is collateral.

19 MR. McCARTHY: Whether he is with Egyptian
20 intelligence?

21 THE COURT: Sure. It goes to motive, doesn't it?

22 MR. McCARTHY: It is still collateral. It does
23 not bear on the issues of this case, except to the extent
24 that it bears on his credibility.

25 Judge, if he had come in and said, you know,

1 Dr. Abdel Rahman told me to do X, and there was evidence
2 that in fact Dr. Abdel Rahman told him to do Y, I wouldn't
3 be standing here making this argument, but if it has to do
4 with something that doesn't go to the charges in this case,
5 that is, misbehavior, allegedly, on his part that doesn't
6 bear on the issues of guilt in this case --

7 THE COURT: I think you are confusing, you are
8 talking about more than one thing. I was focusing simply on
9 the question of what he was or wasn't doing with Egyptian
10 intelligence, which I raised before. The question about
11 whether he was confronted with that or not goes simply to
12 this. If he was confronted with it and if he said yes, he
13 said that, then I don't see what is to be improved by
14 calling a witness who says yes, he said that.

15 MS. STEWART: When you say confronted, within the
16 context of the polygraph examiner? In other words, the
17 question had to be framed in that manner?

18 THE COURT: No. As I recall the dispute about
19 the polygraph, and it was a while ago, I did not permit,
20 notwithstanding that a number of people tried to drag it in,
21 I did not permit testimony about the results of the
22 polygraph examination. I did, however, permit him to be
23 asked questions about the questions that he was asked during
24 the polygraph examination, and wasn't it a fact that he said
25 this or that or whatever he said, and people, I remember,

1 did that.

2 MR. RICCO: It was confronted.

3 THE COURT: It was, and presumably he said that
4 he said it, because it is in the report, right?

5 MS. STEWART: It is in the report.

6 THE COURT: So I don't understand what is to be
7 gained by putting on somebody to say that indeed, as was
8 established, he said that he said it, if you have already
9 got evidence that he said it.

10 MS. STEWART: Judge, I think it would be helpful
11 to dredge out that exact portion and see exactly what was
12 asked, and see what Mr. Salem acknowledged and didn't
13 acknowledge. I must say, I don't have a complete
14 recollection.

15 THE COURT: The problem is that putting it in as
16 something that happened during a polygraph examination in my
17 mind raises an issue that wasn't supposed to raise and that
18 people have tried to raise repeatedly.

19 MS. STEWART: It is not as to the specific
20 questions that are being asked on the polygraph, it is his
21 conversation -- this is a polygraph examiner's rendition of
22 what happened during a polygraph.

23 THE COURT: I don't recall specifically, but I
24 don't think that I limited people to the questions. I think
25 that in essence anything of substance that was disclosed by

1 that report could have been inquired into and either was or
2 wasn't, and let's take a look at the transcript.

3 MR. McCARTHY: But that is correct. Your ruling
4 was that they couldn't get into the results but they could
5 ask whatever in the way of statements were made during the
6 examination.

7 THE COURT: And also, if he was not confronted
8 with it, then you have a problem with proving a statement
9 that he made that he wasn't confronted with. In any event,
10 I would like to know what the record shows before we rule on
11 it.

12 MS. STEWART: The other thing is that a lay
13 notice was put on, Detective Napoli with regard to one
14 bootleg tape.

15 THE COURT: He is coming anyhow, as I understand
16 it, right?

17 MS. STEWART: Right.

18 MR. JACOBS: On me.

19 MR. McCARTHY: I haven't had a chance to talk to
20 Miss Stewart but I think our sense that we would not agree
21 is probably right.

22 THE COURT: What is the dispute?

23 MR. McCARTHY: There is a conversation which, if
24 it becomes a marked as an exhibit, will be Government's
25 Exhibit 617-12 for identification, where Salem and Napoli

1 have a conversation. I haven't got the exact portion of it
2 in front of me, but the essence of it is that I think
3 Detective Napoli at some point in the conversation tells
4 Salem that he is trying to get Dr. Abdel Rahman in, meaning,
5 allegedly at least, in the investigation. Our position is
6 that this isn't much different from a lot of the other
7 evidence along that line.

8 THE COURT: I don't have the transcript in front
9 of me, but it is to the question of the admissibility of the
10 conversation, right?

11 MR. MCCARTHY: Yes.

12 MS. STEWART: I would suggest that it shows
13 Detective Napoli's bias, that if he is reaching out at a
14 very early date when his asset, Emad Salem, is telling him
15 that the doctor is pulling away from this and he says well
16 I'm going to put him in it, seems to me it goes directly to
17 his motive and bias.

18 THE COURT: His being Salem's or his being
19 Napoli's?

20 MS. STEWART: Both, actually.

21 THE COURT: Let me take a look at the
22 conversation.

23 MR. JACOBS: I would join in that. It is our
24 position that Detective Napoli participated, helped
25 orchestrate the frame-up and is now participating in the

1 coverup. So if you would add coverup to the other points as
2 well, I am going to attempt to explore that with Detective
3 Napoli as well.

4 THE COURT: I don't know that another epithet
5 necessarily clears things up.

6 That suggests something else that Mr. Wasserman
7 kept trying to raise, and that is the Napoli conversation,
8 where, we have to get the doctor involved. Is that the same
9 conversation?

10 MR. JACOBS: I have been reviewing that, your
11 Honor, and it is my position that this is one of the
12 examples of the attempt by the FBI to create and frame the
13 defendants in this case. This illustrates it in its
14 entirety. This ex parte thing, I will tell your Honor in
15 addition, concerning this matter and what was being done
16 that day -- I know that Mr. Wasserman is particularly
17 concerned with Dr. Rashid, but it is our position that the
18 FBI knew their problems that night, knew that they didn't
19 have the evidence and were just attempting to frame these
20 defendants, and --

21 THE COURT: Whether they had the evidence or not
22 is not a matter for an expert opinion by Mr. Napoli.

23 MR. JACOBS: Yes, it is, your Honor.

24 THE COURT: No, it isn't, and if that is what it
25 is being offered for, it is O-U-T out.

1 MR. WASSERMAN: Your Honor, having been intimate
2 with this tape for sometime and having worked on it in terms
3 of audibility -- strike intimate.

4 THE COURT: I wondered about your fascination
5 with it, now I understand.

6 (Laughter)

7 MR. WASSERMAN: Your Honor, it is not his
8 opinions, it is his instructions and his questions which
9 contain evidence which is clearly relevant. In fact, as I
10 mentioned last time, the enhancement of the tape shows that
11 the word "involved" is not there, and the proffer is not for
12 an opinion but rather his instructions to Emad, his telling
13 Emad that the officer is pissed, that he hasn't succeeded in
14 getting the doctor to buy something yet, and this bears
15 directly upon Emad's testimony in court here and his bias
16 and motive to lie.

17 THE COURT: What date did that conversation take?

18 MR. WASSERMAN: The conversation took place June
19 23.

20 THE COURT: The arrests were that night, right?

21 MR. WASSERMAN: Yes, and Emad has testified, your
22 Honor, to several things concerning why he was going to meet
23 with my client the next morning, that he was going to meet
24 to pick up detonators from him. He testified about what my
25 client's project was. There was also a question and answer.

1 I think perhaps the most important thing to reiterate to the
2 court is that the conversation has several aspects to it.
3 It is not just Napoli's instructions and Napoli's
4 communication. The question he asks is what about the
5 doctor joining us and it is Emad's response which leaves
6 dangling for the jury the response without the question.
7 You can't understand the response fully without having the
8 question before the jury.

9 So it is not just the conversation that the
10 government has objected to because of his opinion but rather
11 specific instructions, specific questions and specific
12 representations by Napoli that bear upon my --

13 MS. AMSTERDAM: I would say it more bluntly than
14 that. I am going to argue that from that conversation
15 Napoli was soliciting perjury on behalf of Emad Salem and I
16 find it no different from the conversation with Agent
17 Anticev where Agent Anticev said that talk does not make a
18 conspiracy, you've got to get them to go out and do things.
19 It is not his opinion as to what makes a conspiracy, it is
20 the fact that I am going to argue that the agent
21 specifically told Emad Salem to perjure himself, to
22 manufacture evidence and to render defendants. I say it
23 much more bluntly than Mr. Wasserman, with all due respect,
24 but that is how I am going to argue that tape.

25 THE COURT: If it comes in.

1 Do you want to be heard?

2 MR. McCARTHY: It is the same argument as it was
3 before. Whether Salem thought these defendants were in or
4 out, whether Napoli thought they were in or out is
5 completely irrelevant. The question is whether there is
6 sufficient evidence to make out the charges in the case.
7 The opinion of the FBI or an agent, if there was one, about
8 what constitutes evidence of charges that hadn't been even
9 filed at the time the conversations took place is just an
10 effort to get in front of the jury another fact finder's --

11 THE COURT: I suppose I will go back over the
12 tape because I haven't been intimate with it. I suppose I
13 will get intimate with it. The exhibit is what?

14 MR. WASSERMAN: Your Honor, it is CM 62. What I
15 can do --

16 THE COURT: Please don't tell me that because you
17 are not telling me anything that allows me to find it. What
18 is the exhibit number?

19 MR. WASSERMAN: Your Honor, I don't have it.

20 MR. McCARTHY: We have it, if you give me a
21 second.

22 THE COURT: I am sure I have it, if you tell me
23 the number.

24 MR. McCARTHY: I will find it, Judge.

25 MR. LAVINE: Judge, whatever the number, we know

1 it as CM 62, and that is a conversation that goes on for two
2 or three pages, and there is a portion that relates to my
3 client which I would like to see not entered in evidence. I
4 don't think it is at all relevant and it is hearsay and it
5 doesn't meet any exceptions to the hearsay rule as far as I
6 am aware. When I discussed this with the government and
7 with Mr. Wasserman, it has always been my understanding that
8 Mr. Wasserman only wanted to introduce references to his
9 client and no other client, and I wanted to bring this to
10 your attention, your Honor, before you rule -- you indicated
11 that it is in and I don't know what you mean by "it is in."

12 THE COURT: I think the last thing I said was
13 that it was out.

14 MR. LAVINE: Then I have to have my hearing
15 adjusted.

16 THE COURT: I even spelled it. I said "It is
17 O-U-T out."

18 MR. MCCARTHY: The exhibit is 368T. I have to
19 get your Honor a full version because the only part that is
20 in is the part that has been received thus far.

21 MR. WASSERMAN: Your Honor, I can hand up to the
22 court a draft --

23 THE COURT: The latest improved draft?

24 MR. WASSERMAN: -- that contains in regular case
25 the defense version and in upper bold case the government's

1 version.

2 THE COURT: Fine.

3 MR. WASSERMAN: I just want to point out to the
4 court that Napoli also testified specifically about my
5 client and he testified specifically negatively about my
6 client, and I just don't understand how his statements to
7 Emad Salem don't bear not only on Emad Salem's credibility
8 in matters that he has testified to here but as to matters
9 that Napoli has testified to here. And as far as Mr.
10 McCarthy's suggestion that we now clean the record so there
11 isn't that, quote unquote, handle to go back into on that
12 tape, I think it absurd. Why don't we go back to everything
13 else in this trial so there is never an opening.

14 MR. MCCARTHY: What I was offering by that
15 suggestion was to clean up the fact and you didn't do it.
16 The suggestion was that if there was a nonresponsive answer
17 to the question by Napoli, that the court could cure
18 whatever prejudice there was by simply striking the portion
19 which was not responsive, which on a 14,000 page record is a
20 more than adequate cure.

21 MR. WASSERMAN: First of all, one of the first
22 references to my client, that he was a dangerous man and
23 Emad Salem was scared to speak to him.

24 THE COURT: That was not the testimony.

25 MR. WASSERMAN: The testimony was that Emad Salem

1 was scared about going to visit my client, that they advised
2 him not to be wired.

3 THE COURT: The testimony was that he was
4 frightened and concerned about this particular visit because
5 it had been called on a hurry-up basis, as I remember it.

6 MR. McCARTHY: And it was elicited by the defense
7 on cross-examination.

8 THE COURT: It was elicited by another defense
9 lawyer.

10 MR. WASSERMAN: I don't have the testimony before
11 me but you did not permit inquiry into -- at that time you
12 overruled, in essence that I could not put in this
13 conversation to impeach Napoli, and I don't understand --
14 there is case law in this circuit that says I can impeach
15 him with his prior statements. I may not be --

16 THE COURT: Impeach him as to what?

17 MR. WASSERMAN: He was saying that -- when I
18 asked him to look at a draft transcript it didn't refresh
19 his recollection as to whether he instructed Emad to call
20 the troops out and whether he told Emad to get the doctor
21 involved, and I am at this point estopped from the fact that
22 he not only made the statements but he lied on the witness
23 stand about it.

24 THE COURT: Where is that? Do you have a
25 reference?

1 MR. WASSERMAN: To the page number?

2 THE COURT: Yes, where you elicited something, he
3 made a certain statement, and I didn't allow you to pursue
4 it.

5 MR. WASSERMAN: Your Honor, I don't have the page
6 but I can supply it to the court easily. I don't have it
7 here. I wasn't today raising the issue of Napoli. It had
8 been deferred from last time and it wasn't something that I
9 was raising today, partly because the transcript wasn't
10 finalized. But in point of fact when I questioned him, he
11 testified in a manner that I could not impeach at the time.

12 THE COURT: We will have to resolve it sometime
13 and I would like to resolve it sooner than later, so we know
14 whether we are on foot or on horse.

15 MR. WASSERMAN: I will try to get it to you
16 today. If I may, the leading cases, that I can't put in the
17 statements for the truth of what they say in an opinion
18 binding the government, say that of course you can impeach
19 the agent with them, and that is the case that Mr. McCarthy
20 referred me to in reference to -- that I couldn't use it as
21 an admission. I believe it is U.S. against Santos. I don't
22 have the file here.

23 THE COURT: I would like you both to get material
24 to me, preferably as little as possible, but preferably
25 including the cases that you are relying on, so that I can

1 resolve it quickly.

2 MR. WASSERMAN: Yes, your Honor.

3 MR. MCCARTHY: When do you want that by?

4 THE COURT: How about Friday morning, with the
5 understanding that we will get together late Friday morning
6 and we can talk about it then. Can we do that?

7 MR. WASSERMAN: I have a lot of witnesses running
8 around, if I could have until Wednesday afternoon.

9 MR. JACOBS: Just so it is clear, I reserve the
10 right to call Emad back on all the CM's other than CM 32,
11 which the government put in at that time. It is my position
12 that as part of the frame argument I am going to attempt to
13 question him on his plan with the FBI to frame the
14 defendants in this case. As your Honor knows, I made a
15 specific reservation because the CM's were not finalized,
16 were not finished, were not put into evidence by the
17 government, and I reserve the right to call him. I have
18 notified the government to that extent. Especially in light
19 now of Anticev's testimony of his intentionally knowing
20 about the tapes and concealing it, I feel that my good
21 faith --

22 THE COURT: I don't recall the "intentionally"
23 part. I am sure you did.

24 MR. JACOBS: In any event, I reserve to call
25 Salem back.

1 THE COURT: Nobody is disputing that you can call
2 Salem back.

3 MR. MCCARTHY: I don't agree with what he says he
4 reserved but he did reserve the right to call him back with
5 respect to specific areas. He was fully, however,
6 cross-examined with respect to taping.

7 MR. JACOBS: Your Honor, just so we are clear,
8 the minute I tried to go back --

9 THE COURT: The point is not to redo cross. The
10 understanding with regard to Salem and everybody else was
11 that he would be cross-examined fully and even sometimes as
12 to matters that went beyond exhibits that the government put
13 in when exhibits were permitted to be shown to the jury even
14 though they were not introduced into evidence, provided that
15 it was cross-examination, with the understanding that when
16 it came time to put in the defense case, that it would be on
17 the defense case but not to redo cross-examination.

18 MR. JACOBS: Your Honor, let's be clear.

19 THE COURT: That's what I was just trying to do.

20 MR. JACOBS: I did my cross of the taping, I am
21 not going to repeat it. But matters like this, this was not
22 before the jury. It is now. It's a CM, I reserved on it.

23 THE COURT: I don't really know what you are
24 holding up.

25 MR. JACOBS: In any event, the record is clear

1 that I reserved the question on the CM's, and that is what I
2 expect to do.

3 By the way, I should alert your Honor, just so we
4 are clear, CM 63, that ends, and at the conclusion after it
5 ends, there apparently are several FBI agents looking
6 through Salem's trunk, trying to inventory Salem's trunk,
7 and on the tape the agents state we found \$100,000 and it's
8 money stolen from the Bureau, he is going south with it, and
9 they talk about such matters. I have alerted the government
10 and Mr. Fitzgerald is trying to verify it. I reserve the
11 right to call those agents and explore that matter during
12 the defense case. We don't know who the agents are and Mr.
13 Fitzgerald is going to be trying to let us know what that
14 is. We heard quite clearly "\$100,000 in his trunk," and we
15 would like to obviously follow that up with a reason and
16 reserve the right in our case to follow that up.

17 MR. FITZGERALD: Your Honor, we are looking into
18 that snippet of a conversation that was intercepted. I
19 think it is a little different than Mr. Jacobs describes it.
20 Apparently some agents open the trunk and one agent sees a
21 hundred thousand dollars, "oh, \$100,000, I will go to South
22 America." We can argue the relevance of it later.

23 MR. JACOBS: I guess the joke will be --
24 whatever. We will find out. I just want to alert your
25 Honor that we have come up with something and I gave it to

1 Mr. Fitzgerald.

2 THE COURT: Can we talk about scheduling and when
3 things are likely to happen and so forth?

4 MR. MCCARTHY: I just wanted to let you know
5 there is one other issue out there, not one that needs to be
6 argued. Ms. Amsterdam raised an 806. I told her yesterday
7 or the day before that I intend to file a short response to
8 that today.

9 MS. AMSTERDAM: Just to alert the court, this is
10 why, as a practical matter just to let everybody know, this
11 is what I am looking for there. Siddig Ali made many, many,
12 millions of coconspirator statements. I put in a letter and
13 I asked the government to review any notes of proffer
14 sessions and to disclose whether or not at any time he made
15 the statement that contradicted the coconspirator
16 statements, because I would argue that that falls squarely
17 under 806. They have been pretty cooperative about that.
18 That is how we had the stipulation about the Francis Dane
19 assassination. I tried to narrow what I am looking for but
20 I really would like an up or down as to whether or not there
21 are any contradictory statements.

22 THE COURT: He says you are going to get
23 something in writing today.

24 MS. AMSTERDAM: The second part, so we are all on
25 board about this, is the aspect of Siddig Ali's possible

1 psychiatric lack of wellbeing, for want of a better word. I
2 am aware that Mr. Ali was examined by a psychiatrist or a
3 psychologist. I had a conversation with that person,
4 Dr. Steven Teisch, who indicated that he would be willing to
5 consult with me. He did not view there being existing
6 patient-doctor privilege because there was no treatment. He
7 did raise questions, however, about it turning on privilege,
8 and I believe indeed that the government really holds the
9 keys to this. I mean, Mr. Siddig Ali, everybody knows, is a
10 cooperating witness. If I ask his lawyer whether or not I
11 can speak to Dr. Steven Teisch to ascertain whether or not
12 there is even anything there, he is clearly -- with all due
13 respect to Mr. McCarthy, I presume if I were Mr. Siddig's
14 lawyer I would check with the government as to whether or
15 not they wanted me to do that, and if they said thumbs down
16 I would say no, and if the government said thumbs up I would
17 go ahead and talk to him. His statements are really the
18 backbone of the safe house case.

19 If it turns out, and I am not suggesting he is,
20 but if it turns out that the psychiatrist says this man is
21 completely schizophrenic, delusional, insane and incapable
22 of telling the truth, I think that is a fact that the jury
23 deserves to know. I think that is the spirit and the letter
24 of 806.

25 MR. MCCARTHY: Just to save myself a couple of

1 pages, we don't have possession of any psychological reports
2 and we don't have anything to produce. As far as the last
3 part of Miss Amsterdam's argument, we are not willing to do
4 anything more than what we always do when defense counsel
5 ask us to intercede, which to tell people what their rights
6 are and leave it up to them. We basically told Miss Stewart
7 to deal with Mr. Siddig Ali's lawyer.

8 THE COURT: It is not Miss Stewart, it is Ms.
9 Amsterdam.

10 MR. MCCARTHY: I am sorry.

11 THE COURT: You're doing it too.

12 MR. MCCARTHY: I do not think that we are
13 obligated to do anything more. We are not being
14 obstructionist, we are not greasing the wheels. Mr. Leader,
15 who I believe is representing Mr. Siddig Ali now --

16 THE COURT: He is now.

17 MR. MCCARTHY: -- will advise his client, I
18 suppose --

19 MS. AMSTERDAM: Let me just say this. I had a
20 case before Judge Sprizzo, which there is no reported
21 decision because that's Judge Sprizzo. But a similar
22 situation where the government called a cooperating witness,
23 where I knew there had been a history, a psychiatric
24 examination. Judge Sprizzo said you're calling him, she has
25 a right to examine him.

1 The government didn't call Siddig Ali, but the
2 government squarely stands behind him on veracity and the
3 reasonableness of those statements, and I have to say that
4 if it turns out that the man is a schizophrenic whacko, I do
5 indeed think that the jury deserves to hear that, and while
6 it is true that, well, the government doesn't necessarily
7 counsel Mr. Leader to do one or the other, I have been here
8 20 years. I know as a lawyer I am not going to do anything
9 to jeopardize my client's cooperation agreement if the
10 government doesn't want his psychiatrist to speak to me.

11 THE COURT: I seriously doubt that it is going to
12 jeopardize or not jeopardize Mr. Siddig Ali's cooperation
13 agreement whether the government says they want this
14 disclosed or not, but he already said he is taking no
15 position. It is up to Mr. Leader. What more do you want?

16 MS. AMSTERDAM: I don't know how to say this more
17 bluntly. I think it is a sham, I really do. You say you
18 take no position, and you know, Mr. McCarthy, I like you, I
19 think it is a sham. To say you are taking no position, you
20 know that Mr. Leader is not going to let me talk to
21 Dr. Teisch, and if you are prepared to let Siddig Ali's
22 statements go to the jury whether in fact he may have been
23 whacko, I really think that is a tenuous position to take.
24 Teisch made no report. Teisch said I'll speak to you. I'll
25 speak to you, I will share whatever results. I will have

1 Mr. McCarthy in the room and Dr. Teisch can talk to the two
2 of us. If there is nothing there, that's fine. But if
3 Dr. Teisch made a clinical diagnosis that the man was
4 incapable of telling the truth from a lie, that goes to what
5 ought to go in front of the jury, and you can't really stand
6 there and say, you know, I'd really like to help you out,
7 Miss Amsterdam, but it's not my call.

8 MR. McCARTHY: Without responding to the
9 character assassination, I think that -- how do I not say
10 what I want to say? Let me just put it this way. I don't
11 know that this is even ripe before she has spoken to
12 Mr. Leader, and I am going to bite my lip as much as I can
13 about the other part, except to say this much: These are
14 not people who don't know Siddig Ali. These are folks who
15 were in a joint defense agreement with Siddig Ali for over a
16 year before he began to flirt with the idea of cooperation.
17 These are people who know Siddig Ali and know precisely what
18 they are dealing with. He is a witness and he is available.
19 If she thinks he is nuts, she should put him in the chair
20 and prove it.

21 MR. JACOBS: Unless I missed something, I assume
22 this doctor is there pursuant to the CJA act --

23 THE COURT: I have no recollection.

24 MS. AMSTERDAM: He did.

25 MR. JACOBS: In any event, going back to the

1 Ginsberg appointment and your Honor's direction, I do think
2 to the accident that Dr. Teisch can be directed to prepare a
3 report for both sides --

4 MR. MCCARTHY: Like Mr. Ginsberg.

5 MR. JACOBS: Since it is a CJA appointment, I
6 assume there was some application made to your Honor with
7 respect to that.

8 THE COURT: Look, I like watching you fight but
9 frankly I think I am watching you fight over an empty bag,
10 because I assume if Teisch found what Ms. Amsterdam would
11 like to think that he had found, that difference would have
12 been presented.

13 MR. BERNSTEIN: Judge, that defense wasn't
14 presented because Mr. Ali withdrew himself from the trial
15 fray at the beginning of trial, based upon my view of what
16 happened and the defense that was being proffered, which was
17 entrapment, that there were potentially going to be
18 psychological underpinnings presented by his fairly late
19 counsel, meaning Messrs. Tritz and Felber, who came in very
20 late and probably left themselves to open doors of
21 proffering psychiatric testimony --

22 THE COURT: My suggestion is that you talk to
23 Mr. Leader and see what he says, and we can revisit it.

24 MS. AMSTERDAM: I would accept a compromise if
25 Dr. Teisch were to prepare a report for your Honor to review

1 in camera. I would take that as a compromise. I don't know
2 what is there. I just want to make sure.

3 MR. BERNSTEIN: Let me raise one concern that I
4 have on this issue that has come down the line, is that it
5 would be a problem potentially of 2255 situations down the
6 line if psychological issues are proffered by Mr. Siddig Ali
7 by his sentencing counsel later on as mitigation of his
8 conduct and we weren't afforded that access, so that he
9 attempts to use it himself and we were prevented from using
10 it in terms of the credibility stuff. I don't know that
11 Mr. Leader is planning on offering anything in terms of
12 psychiatric underpinnings in mitigation of sentence but I am
13 fearful that it comes up after trial and raises questions
14 about what happened --

15 THE COURT: Whatever he might raise in mitigation
16 would have nothing whatsoever to do with what Ms. Amsterdam
17 is raising. To put it in a different way, what is generally
18 raised in mitigation by psychological examinations would in
19 no way be admissible to show what she is suggesting.

20 MR. BERNSTEIN: Beauty is in the eyes of boulder.
21 You may not find it mitigation and that is a determination
22 that you will make. But I can see a lawyer coming forward
23 and saying, Judge, it is clear from my client's
24 psychological profile that he was off the wall, making
25 statements about his conduct and background about what never

1 happened, and that would mitigate some of what the
2 government would allege were his bad acts and yet that would
3 certainly go to whether or not he was off the charts in
4 making statements that were not real.

5 Francis Dane example, two different versions of a
6 homicide, neither of which happened -- Dane is apparently
7 alive and well.

8 MS. AMSTERDAM: Particularly in detail. I am on
9 a motorcycle --

10 THE COURT: Ms. Stewart -- I am sorry, Ms.
11 Amsterdam. He is not the first defendant involved in
12 criminal activity to make things up about himself, nor is he
13 the last.

14 MS. AMSTERDAM: I will speak with Mr. Leader. I
15 do propose as an alternative that your Honor inspect a
16 report in camera.

17 THE COURT: Talk to Mr. Leader first.

18 Mr. Jacobs.

19 MR. JACOBS: Your Honor, on a positive note, I
20 would state that we have examined the Yousef material and we
21 are satisfied that we have seen what we wanted to see. To
22 that extent that matter is closed. I have given Mr.
23 Fitzgerald some items that we would like to offer in
24 evidence and the government is going to talk about it. We
25 have seen the Yousef material, we thank the government and

1 the court. We are trying to resolve what we want to do with
2 it but we have at least crossed that bridge.

3 THE COURT: Let's talk about scheduling, which is
4 what I was trying to talk about before.

5 MS. AMSTERDAM: Does this include the vacation
6 scheduling?

7 THE COURT: Mr. Stavis, you have another, what,
8 day?

9 MR. STAVIS: I have two additional witnesses, the
10 government is aware from my list of last weekend. One, I
11 anticipate, will be quite lengthy and will involve me
12 playing certain snippets of certain videotapes, things of
13 that nature. I may be able to finish that witness tomorrow.
14 If not, I will spill over into Monday. There is one witness
15 that was on our list that we haven't called. We were going
16 to call him out of order. He is an out-of-state witness. I
17 have alerted the government about that. But I expect to
18 finish the bulk of the Nosair defense case either late
19 tomorrow afternoon or going into Monday morning.

20 THE COURT: Who is next up? Mr. Ricco.

21 MR. RICCO: Your Honor, I have four witnesses
22 scheduled. They are brief witnesses and it probably will
23 not take more than half a day to complete the direct and
24 cross-examination of all four witnesses.

25 THE COURT: So you should be done Monday.

1 MR. RICCO: Yes. One of those witnesses may have
2 to be taken out of turn tomorrow. I will have to speak with
3 Mr. Stavis.

4 THE COURT: What goes next? Miss Stewart.

5 MS. STEWART: Much as I would love to aid the
6 court in your planning, I am unable to tell you anything at
7 this point, Judge. I have a lot of witnesses. A lot of
8 witnesses were dependent upon the total testimony of the
9 case. I also need to consult with my client as to whether
10 or not he will now testify. I am unable to tell your Honor
11 how long, or indeed if we are going to put any case on.

12 THE COURT: Who is next? Mr. Wasserman?

13 MR. WASSERMAN: Yes, your Honor. I roughly
14 expect to take about four days.

15 THE COURT: With what?

16 MR. WASSERMAN: There are CM's that the
17 government did not put into evidence, there are FISA's that
18 the government did not put into evidence, and there are
19 witnesses that I will be calling, the extent of which I
20 haven't finalized yet. Some witnesses are advising me that
21 they are going to go for the Fifth Amendment.

22 THE COURT: I got a copy of one of those letters.

23 MR. WASSERMAN: Correct. I have been advised by
24 Ubaidah's lawyer that based upon his plea agreement with the
25 government he is going to take the Fifth Amendment.

1 THE COURT: Excuse me. I don't think you meant
2 that the way it sounded.

3 MR. WASSERMAN: It really is intended,
4 unfortunately, to mean what it sounded like. He has a plea
5 agreement with an 18-to-24-month plea and he doesn't want to
6 run into any --

7 THE COURT: You are not suggesting that he has an
8 agreement with the government to take the Fifth in response
9 to a plea agreement.

10 MR. WASSERMAN: I am suggesting that things are
11 understood and not going down.

12 MR. RICCO: Judge, that is not a correct
13 interpretation of what Mr. Wilford has discussed with
14 Mr. Ubaidah, and perhaps Mr. Wilford should get in touch
15 with the court so that the record is clear on that issue.

16 By the way, your Honor, Mr. Wilford is right
17 outside.

18 THE COURT: I don't want to complicate this any
19 further than I have to. If there is some claim that there
20 is a bad faith invocation of the Fifth Amendment, Mr.
21 Wasserman won't hesitate to raise that at the appropriate
22 time. So far I have heard that you have CM's and FISA's and
23 a number of witnesses who are taking the Fifth and won't
24 testify. What else do you have?

25 MR. WASSERMAN: There are witnesses who will

1 testify.

2 THE COURT: Who is it?

3 MR. WASSERMAN: At this point I don't have it
4 definite and I don't want to proffer it. I would be glad to
5 do so ex parte but I don't want to start binding myself to a
6 list that I am not going to keep to, not with the
7 government.

8 THE COURT: Then I don't understand why -- in
9 other words, you are willing to tell me things you are not
10 going to do but you don't want to tell somebody else?

11 MR. WASSERMAN: The problem I have is both
12 finalizing what I want to do, which I haven't, and witnesses
13 deciding what they want to do, which they haven't. I am
14 happy to bring your Honor in on that stage of the thinking
15 because it impacts on the court's scheduling, but I am not
16 happy to bring the government in on it because I don't think
17 they are entitled to my thinking.

18 THE COURT: I am not interested in your strategic
19 thinking.

20 MR. WASSERMAN: I don't want to give them names
21 of people who may not show up or who I decide I don't want
22 to call, not today.

23 THE COURT: Understand this. We are looking at a
24 schedule in which you may be called on to present a case
25 next week.

1 MR. WASSERMAN: Yes.

2 THE COURT: I have said this before and I will
3 say it again: Nobody here is going to get any advantage out
4 of another person not being able to cross-examine. I have
5 delayed the case at various lawyers' requests when that
6 happened, whether through fault or lack of fault of other
7 parties. I don't know how to make it any clearer than that.

8 MR. WASSERMAN: Your Honor, you don't need to.
9 When I know that I have definite witnesses coming on, I will
10 begin to let the government know. At this point I do not.

11 THE COURT: I will take it a step further. If I
12 think that there has been some tactical failure to disclose
13 and we have to delay things on account of that, I am going
14 to tell the jury what is going on. I have said that before,
15 yes.

16 MR. WASSERMAN: Yes, I am aware. I will tell the
17 court now and I will tell the government that there may be a
18 witness taken out of turn tomorrow that would in part relate
19 to my client, and we will discuss that with the government
20 after this appearance. That is something that I will tell
21 you on the record came up last night rather late in terms of
22 that particular witness' scheduling and has caused my own
23 discombobulation in terms of any preparation that I want to
24 do.

25 MR. MCCARTHY: Your Honor, I am not going to make

1 an argument until I know what the problem is because there
2 may be no problem. My suggestion to your Honor is, I
3 understand Mr. Wasserman doesn't at this point want to
4 identify his witnesses, but I have a strong, educated
5 suspicion that there are going to be admissibility issues
6 about the FISA's and the CM's that he wants to put in. My
7 request to the court would be a deadline by which he gives
8 us notice of what he intends to put in so that we can --

9 THE COURT: I would be delighted to give
10 deadlines if they ever got complied with. It hurts my
11 self-esteem to issue orders that I know are a nullity three
12 and a half minutes after they come out of my mouth.

13 MR. MCCARTHY: Your Honor, having been on the
14 guilty end of that equation enough times, I am not going to
15 stamp my feet about it. I am assuming the good faith of
16 everybody in complying with it. My request is that your
17 Honor make at least a suggestion that we tee this up before
18 we get to a point --

19 THE COURT: As to the exhibits, it is not that
20 the exhibits are going to refuse to appear, are they? You
21 know which exhibits you want to introduce?

22 MR. WASSERMAN: On the CM's --

23 THE COURT: And the FISA's.

24 MR. WASSERMAN: There would be subtraction rather
25 than addition. That I can get to the government by the end

1 of this week.

2 THE COURT: No. The end of this week is Friday
3 after the close of business, and then we run into a
4 situation where I have to do it on court time, and I don't
5 want to do that. I would like to deal with an admissibility
6 problem, if that is what we have, by Friday so that it is
7 out of the way when you start your case.

8 MR. WASSERMAN: OK. I will get to the government
9 at the close of business tomorrow as much as I can. I will
10 do the best I can. I don't want to be limited -- what I am
11 saying, the CM's I can be pretty confident about. The
12 FISA's I am not so confident about.

13 Also, there is a strong possibility that my
14 client will testify and part of the time is allocated to
15 that, and I would imagine that cross-examination would take
16 a substantial amount of time.

17 THE COURT: Day, day and a half, maybe. Maybe
18 less.

19 MR. WASSERMAN: The CM's, I can't conceive of the
20 admissibility problems since they relate to the subject
21 matter of that which has already been introduced.

22 THE COURT: In that case it will be a short
23 conversation.

24 MR. WASSERMAN: I expect so, and as far as the
25 FISA's, the same thing holds.

1 THE COURT: Now that you have assured me how
2 simple it is, you still haven't told me that you are going
3 to get a list to me. You are going to try by tomorrow?

4 MR. WASSERMAN: This afternoon I will get the
5 list of the CM's over to the government. If I can't get it
6 this afternoon I will do it tomorrow morning. I will do the
7 FISA's next.

8 THE COURT: Who is next?

9 MR. BERNSTEIN: I am next.

10 MS. STEWART: Judge, before Mr. Bernstein
11 proceeds, I also had intended to use certain tapes and
12 FISA's in connection with my case. At this point I am not
13 sure what I am going to be doing but I think I will also be
14 bound by the Wasserman rule and attempt to get to the
15 government a list of all that I would seek to introduce on
16 my case.

17 MR. WASSERMAN: Just for the record, in response
18 to what Mr. Ricco said, I am not in any sense casting
19 aspersions on Mr. Wilford or the government but deals --

20 THE COURT: You did cast an aspersion. I saw the
21 aspersion lobbed from your table to the front table.

22 MR. WASSERMAN: I have been precluded by the
23 court from introducing any evidence that a tape is missing
24 or destroyed about a conversation that Ubaidah had. I can't
25 put Ubaidah on the stand to testify about that conversation.

1 THE COURT: That is a house of cards.

2 MR. WASSERMAN: What?

3 THE COURT: I am sorry. I am not going to go
4 back over the ruling.

5 MR. WASSERMAN: Bakhtiar clearly has dictum that
6 you can argue before the jury the suspicious nature of the
7 destruction of a tape. The fact that there was a tape made
8 which has been testified to before your Honor about a
9 conversation between Ubaidah and one of the members of the
10 task force and a DOI inspector who was posing as a building
11 inspector -- Detective Cordaro -- that tape is gone. Your
12 Honor is precluding me from making that fact known to the
13 jury. I can't call Ubaidah because he won't testify and I
14 am still precluded from showing to the jury the state of
15 affairs before that tape was made, and yet I can't argue to
16 the jury as Mr. Jacobs can in his case that there is
17 suspicious activity by law enforcement designed to help
18 their case.

19 THE COURT: I decided at the time of the
20 suppression motion.

21 MR. WASSERMAN: Judge, with all due respect to
22 the court, it is not suppression. I am precluded from
23 arguing that Ubaidah wrote a note about the gym. I want to
24 put in evidence to mitigate that note. You are stopping me
25 on the basis --

1 THE COURT: It has nothing to do with the note.

2 MR. WASSERMAN: It does. If I may just state my
3 case, if Ubaidah lets law enforcement in six weeks before
4 the search and there is a tape made of his conversation and
5 I am able to document to the jury what the state of the
6 physical layout was, I can show that Ubaidah is showing them
7 a gym that has the weapons on the wall that are seized six
8 weeks later. That should say something to the jury about
9 what the note means. Right now I am left with a note that
10 is incriminating. I can't undercut that note.

11 THE COURT: If Ubaidah lets a building inspector
12 in to see some if not all of what was seized, what it says
13 about Ubaidah and what that may say about your client is too
14 tangential. It really is.

15 MR. WASSERMAN: Judge, with all respect to your
16 Honor, tertiary to the court is not tertiary to the defense.
17 If I have an incriminating note, I should be able to place
18 it in context. I should be able to place in evidence a tape
19 that has been fixed. Why can't I put that before the jury?
20 Doesn't that say that something is going on here that
21 shouldn't happen, that evidence that could help my client
22 has been destroyed, quote unquote law? Even Bakhtiar says I
23 should be able to put that in front of the jury.

24 THE COURT: I don't think Bakhtiar says that.

25 MR. MCCARTHY: Having read the government's brief

1 in Bakhtiar, I would be interested to see the specific
2 authorities that Mr. Wasserman relies on for that
3 proposition. Bakhtiar doesn't talk about that at all.

4 MR. WASSERMAN: I would refer Mr. McCarthy to
5 page 976 where they say Bakhtiar would have been better off
6 raising these arguments to the jury on the basis of the
7 summaries of the tapes and the suggestion that the loss of
8 the tapes was suspicious. I don't see any more that you can
9 have -- certainly it is dicta but certainly it suggests that
10 there is no basis for not being able to argue to the jury,
11 particularly when Mr. Jacobs' argument has been accepted
12 that there is a frame going on and he can put in evidence
13 for his client. I should be able to do the same thing.

14 Mr. McCarthy, if I may, there is no issue that
15 the tape has been ditched, there is no issue that there was
16 a conversation. What's the point?

17 MR. MCCARTHY: We are talking about apples and
18 oranges, and I guess I don't know how to respond to that.
19 Maybe I'm having a sham day and I'm just not thinking right.
20 But the character of the evidence that they were talking
21 about in Bakhtiar doesn't even come close to what he is
22 talking about.

23 THE COURT: It is not what we are involved with
24 here.

25 Mr. Wasserman, please, I don't want to continue

1 this.

2 MR. WASSERMAN: I just think that -- I am sorry.

3 THE COURT: Thank you. Mr. Bernstein.

4 MR. BERNSTEIN: I have some FISA conversations
5 that I want to put in that -- it is conversations with
6 Mr. Hampton-El with my client reaching out. It is very
7 brief and frankly they may go in in Mr. Hampton-El's case.
8 There are a number of FISA conversations.

9 THE COURT: There is something else that you have
10 raised, since you were going to go before Mr. Wahid Saleh.
11 We ought to talk about it. You saw the severance motion?

12 MR. McCARTHY: Your Honor, I must confess I
13 haven't read it. I have seen it. I think I understand the
14 theory behind it.

15 THE COURT: The theory is that if Wahid Saleh
16 puts in a successful or at least arguable coercion case,
17 then his client is entitled to a severance, and my question
18 to you is, what's the matter with that?

19 MR. McCARTHY: I don't think, and I would like to
20 take another look at Zafiro, which as I recall it is the
21 Supreme Court's last pronouncement or instruction on what
22 are called, I guess, irreconcilable defenses -- I probably
23 have the term wrong, but I would like at least to look at
24 that. My hunch is that the government's position is that he
25 is not entitled to a severance on that set of facts, that

1 the issues such as they are just go to the jury.

2 THE COURT: But if the jury in order to find -- I
3 am not talking about if the facts aren't there to prove the
4 defense. If they are not there, they are not there, then he
5 doesn't get a severance regardless what Saleh testifies to.
6 But if Saleh testifies to facts sufficient to make out a
7 defense, then --

8 MR. McCARTHY: I don't think a defendant is any
9 longer entitled to a severance under the Second Circuit's
10 old law, which I think --

11 THE COURT: He moved pretrial, I believe.

12 MR. McCARTHY: I am not making a waiver, your
13 Honor. What I am saying is that I don't think he is
14 entitled as a matter of law to a severance on the basis that
15 in order to believe one defense you have to disbelieve the
16 other one, and my articulation --

17 THE COURT: It goes further than that. In order
18 to acquit one defendant, they would have to convict another.

19 MR. McCARTHY: And I am just not sure after
20 Zafiro that that means that somebody is entitled to a
21 severance. I would like the chance to take a look at that.

22 THE COURT: OK.

23 MR. BERNSTEIN: Let me just add a factor, which
24 is that the evidence is not evidence as Zafiro talks about a
25 lot, which is whether the evidence would be admissible in a

1 case, and the reality is that this is not evidence that the
2 government has that the government could offer a joint
3 trial. What is about to happen, theoretically, is that
4 Mr. Saleh will come in and testify about that which comes
5 from his mouth, his state of mind, and not something that
6 the government could offer or choose not to offer --

7 THE COURT: It has been a long time since I
8 looked at Zafiro and I don't recall whether you cited it.
9 Did you?

10 MR. BERNSTEIN: I think it is in the motion
11 papers. It is clearly the Supreme Court's decision at this
12 point.

13 THE COURT: If they said that whether the
14 government puts it in or not controls, I don't see how you
15 can make the motion. But it has been a long time since I
16 looked at Zafiro.

17 MR. BERNSTEIN: I think at the time evidence that
18 could be offered, and the answer is, it doesn't exist.
19 Clearly Zafiro still leaves it to the court's discretion.
20 That is what I think its real holding is, which is that
21 certain things are no longer mandated as a severance by
22 virtue of Zafiro. What Zafiro ultimately does is leave the
23 court with the discretion that the court always had.

24 But I think the hardest factor that comes into
25 play here now is that evidence that could not be offered

1 against Saleh, so to speak, which would impact upon me --
2 that's where it traditionally comes in. The defense says
3 the government has this evidence offered against defendant
4 X, it hurts me, and there has to be some curative
5 instruction about it or Brutonize it out is not the issue
6 here. Here, it doesn't exist except in the mouth of Saleh,
7 and that is where we come to the real problem.

8 But moving ahead, my case would basically be a
9 few FISA conversations.

10 THE COURT: Have you talked about which ones?

11 MR. BERNSTEIN: I haven't yet. I will do it with
12 Mr. McCarthy later this afternoon, as the other portion,
13 which is my client's INS records, which I had subpoenaed,
14 which wound up in the government's hands, which they
15 provided me a copy of. That's the way things are when you
16 subpoena from government agencies. In any event, I have
17 them and I can discuss with Mr. McCarthy the totality is in
18 an hour or so.

19 THE COURT: Who is next?

20 MS. AMSTERDAM: I am. First on my agenda is to
21 state that I meant no personal disrespect to Mr. McCarthy at
22 all in my remarks and I would like to place that on the
23 record.

24 In the context of my case, I obviously have the
25 Siddig Ali 608 issues, including transcripts or portions of

1 the transcripts of CM's which the government elected not to
2 play, which I believe are admissible under 806. Most of
3 these Mr. McCarthy is aware of because we went through -- we
4 met fairly regularly during the CM process and we agreed to
5 disagree and to wait until my case to see whether or not
6 certain portions of the --

7 THE COURT: Agreed to disagree about?

8 MS. AMSTERDAM: That there would have to be a
9 ruling by your Honor.

10 MR. MCCARTHY: Your Honor, the context of our
11 discussions was what should come in under Rule 106 so we
12 could try to obviate that.

13 THE COURT: I see.

14 MS. AMSTERDAM: But that I will have as a
15 package. I will submit a copy to Mr. McCarthy and I will
16 submit a copy to the court. These are either in the context
17 of 106 or in the context of 806 in terms of them being
18 published to the jury. But I think that most of the things
19 I am interested in Mr. McCarthy is aware of.

20 THE COURT: Length -- I am sorry.

21 MS. AMSTERDAM: I am sorry, sir.

22 THE COURT: No, go ahead.

23 MS. AMSTERDAM: Also, given the court's ruling
24 regarding the expert, I had given no thought to calling an
25 expert on Islamic things. I do have to reconsider calling

1 an expert on limited things, defining shar'ia consultation,
2 for example. I think that there is a 50/50 chance that my
3 client will testify, and there is one agent that I am going
4 to call -- most of the agents will be called on Mr. Jacobs'
5 case but there is one agent, Ronald Mahaffey, which the
6 government is aware of, which specifically relates to the
7 timer in the safe house, my client having been alleged to
8 have purchased the timer. I would call him in my case as
9 opposed to the bulk of the agents in Mr. Jacobs' case.

10 That about sums it up.

11 THE COURT: Two days?

12 MS. AMSTERDAM: I hope so? I hope if I put my
13 client on the stand that he is definitely on and off within
14 a day. It obviously depends on cross-examination and
15 aspects like that. If he were to be on the stand a day or
16 thereabouts, I would certainly assume that one agent would
17 be very brief and the issues regarding Siddig Ali would be
18 done mostly by stipulation and that there would be some
19 publishing of transcripts either under 106 or 806.

20 So I am telling your Honor all I know, probably
21 more than I know.

22 THE COURT: Two days? Three days.

23 MS. AMSTERDAM: Sounds good to me.

24 THE COURT: I am just asking whether you have any
25 idea how long it might take.

1 MS. AMSTERDAM: I don't know because the wild
2 card is my client. The case is a day without my client. If
3 my client is on the stand --

4 THE COURT: Another day, fine. Obviously when I
5 ask defense counsel, if the government knows something about
6 any of what you hear that suggests that the time estimates
7 are off, you understand that this is directed at you, too.

8 MR. MCCARTHY: Your Honor, the only thing that
9 occurred to me while Miss Amsterdam was speaking, and I
10 don't think it is a major point, is that the pages that we
11 went over, much of what she asked for got put in on the
12 government's case, so we are only talking about pages here.

13 MS. AMSTERDAM: I agree.

14 THE COURT: Who is next?

15 MS. LONDON: I am, your Honor. I would say at
16 the outside my case would take one day or less than a day.
17 I have made no decision as to whether my client will testify
18 or not. Mr. McCarthy is aware of the agent that I want to
19 call on the case and has agreed to that.

20 MR. MCCARTHY: That is Mr. Cantamessa. I don't
21 think that is a a very long examination.

22 MS. LONDON: Then there would be a small segment
23 or small portion of CM that I may wish to reach, which I
24 will discuss with Mr. McCarthy, and probably some parts of
25 videotapes from the safe house which have not been played,

1 which I will discuss with Mr. McCarthy.

2 Other witnesses that may be called, if the
3 decision is made to call them, will be relatively short.
4 There is also the question of an explosive expert or bomb
5 expert, which I am not sure will be called on my case or Mr.
6 Serra's case. We had given notice to Mr. McCarthy of the
7 defense explosives expert. The decision whether we will
8 call that expert or whether we call the expert that the
9 government has proffered has not been made.

10 THE COURT: Who is next?

11 MR. LAVINE: Judge, if my client testifies, I
12 would expect my case no more than a day or a day and a half,
13 and in essence would be composed of my client and one or two
14 witnesses who would with support or corroborate his version
15 of the events of the last 24 hours before his arrest. I may
16 also have a question or two or Fouad Kheir with respect to
17 the translation of, I believe, two words. Beyond that,
18 there is an agent that I may want to call to testify but I
19 am speaking with Mr. Fitzgerald about that. I am not sure
20 that I want to do that or not.

21 THE COURT: In essence one to two days?

22 MR. LAVINE: I would be very surprised if it went
23 beyond a day and a half and really shocked if it was beyond
24 two days.

25 THE COURT: Mr. Jacobs.

1 MR. JACOBS: I guess, who everybody knows about.
2 I have six substantive witnesses on some of the issues on
3 this case. The Yousef stuff I think we can work out.

4 THE COURT: Are these the agents?

5 MR. JACOBS: No, six separate citizens relative
6 to matters raised by the government. I have some 3500
7 material which I will get to. One agent we can probably
8 work out by stip. The translators, a couple of minutes.
9 The bootleg agents -- we have a number of agents. I am not
10 sure whether they are going to wind up -- obviously if Floyd
11 and Napoli are called, I will do it in the earlier part of
12 the case rather than in my case. If they are not called, I
13 will do it in my case.

14 THE COURT: I understood -- maybe I misunderstood
15 in view of Miss Stewart's case, but I understood Miss
16 Stewart was going to call Floyd.

17 MR. JACOBS: Whoever -- and then Salem. There is
18 a list that the government has.

19 THE COURT: And days?

20 MR. JACOBS: Well, I mean, I don't think the
21 substantive witnesses are all that long. They are on the
22 money issues, the Abu Bakr issues, the gas station. So
23 there is a number of people from the station on finances,
24 money man. Salem could be on sometime, I suppose. I am a
25 couple of days, Judge.

1 MS. AMSTERDAM: If Agent Floyd comes in Miss
2 Stewart's case and Agent Napoli comes in Mr. Wasserman's
3 case, it will certainly limit the bottom part of our cases.

4 THE COURT: In the sense that you won't be
5 recalling them, you will do that examination when they come
6 in. I understand that. I am just looking for totals.

7 MR. JACOBS: I may have meant to put an alibi
8 witness or two.

9 MR. FITZGERALD: Where was Mr. Jacobs?

10 (Laughter)

11 THE COURT: I think we are down to you -- I am
12 sorry, Mr. Serra.

13 MR. SERRA: Your Honor, CM 49, the part of it
14 which is not in the government's mega June 19 exhibit, which
15 I discussed with Mr. McCarthy, albeit a couple of months
16 ago. There will likely not be issues here. It is not a big
17 secret that I am going to the state of mind defense and all
18 I seek to introduce are exhibits in which my client is
19 present and in which he participates. Either Ms. London and
20 I will almost surely do something with an explosives expert
21 and the government has notice of our expert and the agent we
22 might call. It is also no secret that I might call an
23 expert as to various aspects of Mr. Alvarez's intelligence
24 and personality, which the government has notice of.

25 THE COURT: That is the psychologist?

1 MR. SERRA: Yes, sir, that is the psychologist.

2 Your Honor, I realize that you can't get much closer to
3 playing it on the fence than 50-50 but I can't get closer
4 than 50-50 as to whether or not Mr. Alvarez will testify.

5 THE COURT: When you say a state of mind
6 defense --

7 MR. SERRA: His lack of intent to elements of
8 both the charges and the intent charge. It is no secret
9 what the intent requirement is, whether it is to wage war
10 against the United States or commit acts of bombing in the
11 United States or to transport interstate weapons in relation
12 to the conspiracy to commit acts of bombing in the United
13 States.

14 THE COURT: How long in days?

15 MR. SERRA: Without Mr. Alvarez himself
16 testifying, and assuming that I instead of Ms. London do the
17 explosives, a day and a half. CM 49 is probably about two
18 hours. I haven't timed it recently.

19 THE COURT: With him another day? Or half day?

20 MR. SERRA: Your Honor, the direct will probably
21 be a half day. I would guess that Mr. Alvarez would be a
22 day on the witness stand.

23 THE COURT: Mr. Nooter.

24 MR. NOOTER: Your Honor, first of all I would
25 like to say that I have a brief area with Mr. Salem which I

1 will do at the time he is called by Mr. Jacobs. That was
2 sort of cut off from what I was going to do when he was on
3 cross but it was an area that I thought was making him more
4 my witness than cross. That would not be very long.

5 MR. SERRA: I would add to that I also would --
6 that relates to exhibits from the safe house that were not
7 in evidence at the time Mr. Salem testified. I would
8 anticipate my examination would be 15 minutes to half an
9 hour.

10 MR. NOOTER: We are actually talking about the
11 same subject matter, so we can cover that together.

12 Leaving aside the issue of my client, I have a
13 few witnesses who are mainly technical witnesses to
14 authenticate exhibits that I use, in terms of measurements,
15 in terms of how documents were prepared and translations
16 were prepared, including Mr. Kheir as a translator, and the
17 subtitled videotape, things like that just to lay the
18 foundation which we sort of skipped over when I used them on
19 cross.

20 THE COURT: Is any of this stuff potentially
21 material that can be stipulated to? If it is, I want it
22 stipulated to.

23 MR. NOOTER: I will make every effort and if for
24 some reason it can't be, it will be very brief.

25 THE COURT: That is really more for the

1 government.

2 MR. McCARTHY: Your Honor, authenticity is not
3 the place where we are fighting the case.

4 THE COURT: Fine.

5 MR. NOOTER: Then that will cut that down.

6 I have a number of FISA conversations which I
7 think if my client testifies it will become clear that they
8 will come in through him. If he doesn't, I would like to
9 have them come in anyway. It is something like a dozen but
10 they are all very brief. They are all conversations between
11 my client and Siddig Ali on the FISA's. I can give the
12 government an exact list very shortly but I think they are
13 mostly aware of what they are. We have been exchanging
14 transcripts.

15 MS. AMSTERDAM: I am actually impacted by that
16 because there are a series of FISA's that relate to my
17 client where I have had a conversation with Mr. Fitzgerald
18 that they will probably be admitted under 806 and at least
19 in theory the government didn't object to that. So I just
20 rise to suggest that.

21 MR. McCARTHY: And I just rise because what Miss
22 Amsterdam said reminds me of another problem. I just ask
23 that when counsel give us their list they circulate it among
24 each other so that we don't have the problem that we
25 sometimes have with the CM's.

1 THE COURT: There is one matter that came up
2 earlier which related to the transcript that I believe Ms.
3 Amsterdam wanted to introduce and wanted me to look at.

4 MS. AMSTERDAM: Correct.

5 THE COURT: And I think the only -- I think it is
6 admissible, and I think that --

7 MS. AMSTERDAM: I am sorry, sir. I didn't hear
8 you.

9 THE COURT: I think that it is admissible.

10 MS. AMSTERDAM: It is admissible?

11 THE COURT: I believe so. I would like for you
12 to resolve on a voluntary basis, if you can, those portions
13 that will be excluded, because, as I understand it,
14 Dr. Abdel Rahman has an objection to it and Mr. Nosair has
15 an objection to it. Whether those objections are well taken
16 or not and whether it is necessary for context and
17 completeness is something I am going to have to deal with if
18 you can't resolve it. I am not talking only about defense
19 counsel, obviously the government as well.

20 MS. AMSTERDAM: I clearly think defense counsel
21 is going to be able to work it out. I will talk to Mr.
22 McCarthy and let you know.

23 MR. MCCARTHY: When you rule against, it is very
24 easy to work it out.

25 MS. AMSTERDAM: They had to give us one day, Mr.

1 McCarthy.

2 THE COURT: There may be about to be another.

3 I said I was going to think further about the
4 Rule 29 motion that Nosair made with respect to the
5 attempted murder portion of both the RICO count with respect
6 to the postal worker and the attempted murder of the postal
7 worker -- which is separately charged, correct?

8 MR. MCCARTHY: Yes, your Honor.

9 THE COURT: Let me make sure I have the counts
10 straight.

11 MR. STAVIS: It is 9 and 10.

12 THE COURT: It is a portion of Count 9 and all of
13 Count 10.

14 Based on the testimony of the postal worker and
15 based on all the arguments that you made to me at the time
16 of the Rule 29 motion, I can't see any basis for continuing
17 those counts in the indictment. You need specific intent to
18 kill as opposed to simply shooting somebody on the street,
19 and the evidence taken from the most optimistic standpoint
20 for the government, it seems to me, is that he was running
21 out of the hotel, seeking to escape, he confronted a man
22 with a gun, and shot at that part of the body that anybody
23 who uses a gun shoots at in order to have the best chance of
24 hitting something, namely the body, and it all happened in
25 the space of seconds, if that.

1 MR. McCARTHY: Is your Honor's ruling on the
2 basis of the interpretation of Kwong that your Honor spoke
3 about when we had the conference?

4 THE COURT: Yes.

5 MR. McCARTHY: Can we please have an opportunity
6 to address what your Honor articulated with respect to Kwong
7 before you make a ruling?

8 THE COURT: Kwong is simply saying that you have
9 to show more than simply shooting somebody with a deadly
10 weapon in order to --

11 MR. STAVIS: I didn't mean to cut you off,
12 although I did have something to say.

13 MR. McCARTHY: I cannot for the life of me
14 understand how it is that you could say that it is
15 irrational for a fact finder to find that someone who shoots
16 somebody at point blank range, intending to fire the weapon,
17 does not have an adequate basis to form the intent to kill.
18 There is a defendant with respect to whom the jury has heard
19 evidence that he trained in firearms, was actually a
20 superior in this -- I don't want to drag the word
21 organization in but I am just using it for the context of
22 this argument.

23 THE COURT: It has to be intent to kill as
24 opposed to simply shoot for the purpose of escaping.
25 Doesn't it? Does it or not?

1 MR. McCARTHY: It has to be intent to kill, but
2 what you are doing, respectfully, is becoming a mind reader
3 instead of somebody who is evaluating a question of fact.
4 Kwong says this is a question of fact for a jury, whether he
5 formed the intent to kill or not.

6 THE COURT: I have to determine whether a
7 rational jury could decide that in the second or seconds in
8 which this situation developed, he formed an intent to kill
9 under the circumstances present in this case. right?

10 MR. McCARTHY: If what you are saying is that a
11 person cannot form a specific intent to kill within a matter
12 of seconds under the circumstances, then that is a very
13 dangerous precedent.

14 THE COURT: I am not saying that a person can't,
15 but we are talking about this case, we are not talking about
16 an abstraction. I have, it seems to me, a responsibility
17 under that rule and I don't feel inclined to advocate it.

18 MR. McCARTHY: Your Honor, I don't think you are
19 abdicated a responsibility. What you are doing is taking a
20 responsibility that you don't have have, away from the jury.

21 MR. STAVIS: Has your Honor ruled? My only
22 application was to oppose Mr. McCarthy's application to
23 submit further authority.

24 THE COURT: What is the basis for that?

25 MR. STAVIS: The basis for that, I believe, is

1 that a Rule 29 has to be decided before the defense goes
2 forward and we do have a specific witness in mind with
3 regard to that count.

4 MR. McCARTHY: There is already a ruling in place
5 but I will have it for you tomorrow morning.

6 THE COURT: I will read it tomorrow morning.

7 MR. NOOTER: Your Honor, I don't know if we had
8 quite finished with me.

9 THE COURT: I am sorry, I thought I had. Or
10 hadn't I gotten a time estimate?

11 MR. NOOTER: I would probably have several
12 civilian witnesses, fewer depending whether my client
13 testifies or not. So if he were not to testify I would say
14 two days altogether for all this. If he does testify, I
15 expect quite a few days. He has a lot to say and I expect a
16 lot of cross.

17 THE COURT: He may have a lot to say but this
18 isn't a talk show.

19 MR. NOOTER: It is not a talk show but we would
20 legitimately want to go through a lot of detail from the
21 tapes and so forth, and as I say, there is a lot of material
22 for cross-examination.

23 THE COURT: Meaning what?

24 MR. NOOTER: I am not going to try to read Mr.
25 McCarthy's mind, but my client has a checkered past, to say

1 the least, and there is material in there that I am sure the
2 government will want to use, some of which I may move to
3 preclude, such as his drug conviction, but other stuff I
4 assume there would be a lot of.

5 THE COURT: As I recall, that is already before
6 the jury, isn't it?

7 MR. NOOTER: What is before the jury is that
8 Mr. Salem said that he was told by Siddig Ali that my client
9 was a drug dealer. That's the status of the record.

10 THE COURT: Did you open on that or not?

11 MR. NOOTER: I opened very carefully, not
12 mentioning anything about the drugs. He said it in a way
13 that was sort of unresponsive. I felt that I couldn't run
14 away from it, so I pinned it down that he heard it from
15 Siddig Ali.

16 THE COURT: Assuming half a day or less of cross
17 by the government, how long do you think?

18 MR. NOOTER: His direct might take a day. We
19 have to go through a lot of individual aspects of the
20 conversations.

21 THE COURT: So three days if he doesn't
22 testify --

23 MR. NOOTER: Maybe two if he doesn't, four, I
24 would say, if he does.

25 THE COURT: OK. Anything else I can do for you

1 or to you?

2 MR. STAVIS: You could take the suspense out of
3 the grand total, your Honor.

4 THE COURT: There is no grand total, but what I
5 have got is -- Mr. Wasserman, I don't know that I got a
6 total from you.

7 MR. WASSERMAN: Your Honor, I had four but that
8 would be with my client testifying.

9 THE COURT: Four, 6, 9, 9 and a half, 10 and a
10 half, 12 and a half, 16, 19 -- 23 days.

11 MR. BERNSTEIN: Is that plus or minus Miss
12 Stewart?

13 THE COURT: That is the high side, with nothing
14 from Miss Stewart.

15 MR. JACOBS: Trial days.

16 THE COURT: Yes. Sounds extravagant to me. But
17 that's the high side.

18 Thank you very much.

19 (Proceedings adjourned until 9:30 a.m., Thursday,
20 July 13, 1995)

21

22

23

24

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

July 13, 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 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: I understand that there is a witness
4 or witnesses who have some time constraints, so we ought to
5 get started as fast as we can. Is there anything that I
6 have to do before we get started, that can't wait?

7 MR. STAVIS: No, your Honor.

8 THE COURT: Then let's get started.

9 MR. RICCO: The first witness will be taken out
10 of turn. He will be a witness for Mr. El-Gabrownny.

11 THE COURT: Do you want me to explain that to the
12 jurors?

13 MR. RICCO: Please.

14 (Jury present)

15 THE COURT: Good morning, ladies and gentlemen.

16 JURORS: Good morning.

17 THE COURT: As has happened before, we are going
18 to take a witness out of order. Witnesses were being called
19 principally by counsel for Mr. Nosair, but there is a
20 witness who has a scheduling problem, so we are going to go
21 a little bit out of order and take a witness called by
22 counsel for Mr. El-Gabrownny.

23 Mr. Ricco.

24 MR. RICCO: Your Honor, Mr. El-Gabrownny calls
25 Siraj Wahhaj.

1 SIRAJ WAHHAJ,
2 called as a witness by the defense,
3 having duly affirmed, testified as follows:

4 THE COURT: Go ahead, Mr. Ricco.

5 MR. RICCO: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. RICCO:

8 Q Are you familiar with the Al-Taqwah Mosque?

9 A Yes, very much so.

10 Q How is that?

11 A I am the imam, or the leader of that particular
12 community.

13 Q How long have you been the imam at the Al-Taqwah
14 Mosque?

15 A The masjid began, was incorporated in 1981, and I
16 have been the imam since then, from the beginning.

17 Q Can you explain to the jury the neighborhood
18 surrounding the Al-Taqwah Mosque?

19 A Basically, it is in the middle of Bedford
20 Stuyvesant. It is on Fulton Street and Bedford Avenue, and
21 predominantly African Americans in the area, I would say.
22 It's changed a little bit over the years. It used to be
23 infested with a lot of drugs but there is less of that kind
24 of traffic now because of our presence there, I would say.

25 Q Can you tell the jury, who makes up the

1 congregation that attends the Al-Taqwah Mosque?

2 A Probably 45 percent to 50 percent would be
3 African Americans. We have a sizable African community. We
4 have brothers from Senegal, Nigeria, Sudan. We have Muslims
5 from Pakistan, India, Bangladesh. We have white European
6 Americans in our congregation, we have Hispanics, Puerto
7 Ricans.

8 Q In the time that you have been the imam, have you
9 had contact with community or political leaders?

10 A Of course, including the mayor, whether it was
11 Mayor Giuliani, Mayor Dinkins, Borough President Howard
12 Goldin from Brooklyn, Borough President Schuler from Queens.
13 Name them. The chief of police of many administrations.
14 Many political leaders, congressmen, Congressman Ed Townes,
15 State Senator Markowitz, Marty Markowitz -- I mean, the list
16 goes on. A number of occasions. Civic leaders, churches,
17 meeting with rabbis, ministers. Name them, we probably met
18 one of them.

19 Q Do you lecture at all?

20 A Yes, all the time.

21 Q Do you lecture at different mosques?

22 A I have lectured at almost every major university
23 and college in America, including Harvard University. Name
24 them, I have given lectures in this country and around the
25 world. In fact, I am trying to catch a flight now to go to

1 Germany. Universities, and also Muslim mosques throughout
2 the world. So yes, I have given quite a number of lectures.

3 Q What has been the subject of your lectures?

4 A Infinite number of subjects. We have talked
5 about Allah, God, all the great prophets, Jesus, Abraham,
6 Moses. We have talked about family relationships, we have
7 talked about community involvement, responsibility. We have
8 spoken about our commitment to clean up our neighborhoods.
9 We have spoken about the father's responsibility to take
10 care of his family. Just about every kind of topic you can
11 imagine.

12 Q Have you ever addressed the Congress of the
13 United States?

14 A Yes, of course. I was the first Muslim in the
15 history of the United States of America to actually do an
16 invocation to the Congress of the United States in 19, I
17 think '92, June. That began a precedent of Muslims actually
18 opening up a session of Congress, and again we were the
19 first. It is in the historical record.

20 Q Do you know the man Ibrahim El-Gabrowny?

21 A Yes. Can I say As-Salamu Alkaikum to him?

22 THE COURT: It is not a social occasion.

23 THE WITNESS: It is not social but this is a
24 greeting that we have to do -- OK, sorry.

25 MR. RICCO: Mr. El-Gabrowny, can you stand up.

1 Q Is that --

2 A Yes, it is.

3 Q Can you explain to the jury the circumstances
4 under which you met Mr. El-Gabrowny brown?

5 A I met him a few years ago concerning the Nosair
6 case, and he came to what is called the majshura,
7 M-A-J-S-H-U-R-A -- Arabic words, means the council of
8 leaders. There are about 40 mosques or Muslim communities
9 that work together, and he came seeking support for brother
10 Nosair in his case, asking us to, you know, get involved, to
11 help us to raise money for his defense, to come to the court
12 and things like that. That's when I first became aware of
13 him.

14 Q On that occasion, did you have an opportunity to
15 discuss his reputation in the community?

16 A To discuss his reputation in the community?

17 Q Yes.

18 A Yes. If anyone came to the majshura, the council
19 of leaders, you know, we would have to check the person out,
20 to make sure that person was reputable. So to that degree
21 he was known and respected among us. We had nothing -- we
22 didn't know anything negative about him at all.

23 Q Did the council discuss participating with the
24 Nosair trial?

25 A We did discuss it, yes.

1 Q Did there come a time when you attended the
2 trial?

3 A Yes, there was.

4 Q How many times did you attend the trial?

5 A Probably three, but I am not sure. I would think
6 two, three or four. Probably three, I think.

7 Q Did you have an occasion to meet a man by the
8 name of Emad Salem?

9 A Yes, I did.

10 Q Do you recall the circumstances under which you
11 met Emad Salem?

12 A I first met him, didn't realize who he was -- the
13 first time I came to the court, I guess because I am an imam
14 or leader, it was Emad who actually -- "oh, imam, come this
15 way," and I didn't know who he was, you know, and he kind of
16 took me along and got me into the courtroom and had me
17 seated. That's the first time that I met him.

18 Q Did you have an occasion to meet Emad Salem again
19 at the Abu Bakr Mosque?

20 A Yes, I did.

21 Q Can you explain to the jury what you said to him
22 and what he said to you at that meeting?

23 A He was talking not necessarily to me directly at
24 first. He was just talking about, he was going on and on
25 about his, he was, he fought in some war and he got wounded,

1 he was shot all over the place, you know, and he went on to
2 say what a great person he was. I mean, I remember me
3 getting the impression that this guy is trying to convince
4 me that he is a great person. That I remember very clear.
5 He said Imam Siraj, then he looked at me and he said yes,
6 I'm an expert in security, I could wire your masjid for you,
7 I could protect your masjid for you. I looked at him, like,
8 what are you talking about, and kind of dismissed him.

9 Q Did you ever have him come wire your masjid
10 mosque?

11 A No.

12 Q Did you ever ask Emad Salem to conduct firearm
13 training at the mosque?

14 A Absolutely not.

15 Q Did you ever request him to give any type of
16 martial arts or any other type of training at all at the
17 Al-Taqwah Mosque?

18 A Absolutely not.

19 Q Did you have was there an occasion when you were
20 at the El Salaam Mosque in New Jersey and there was a
21 dispute?

22 A Yes.

23 Q Who were you there with?

24 A Who was I there with?

25 Q Yes.

1 A We were coming from a meeting in the Islamic
2 center in New Jersey, I think, Park Place or Park Avenue,
3 something like that, and there was about four of us. I
4 remember myself, Ali Abdul Karim, and the two other people
5 escaped me, but maybe two, three other people. We just
6 happened to be coming past that masjid, Masjid Salaam, and
7 we noticed a lot of people out there, the police out there
8 and a lot of Muslims. We said what's going on, so naturally
9 we going to stop the van, and we went in and there the
10 brothers know me, and they said Imam Siraj, Imam Siraj, and
11 they told me there was some kind of dispute going on there,
12 and they asked us if we could help them.

13 Q Do you recall if Dr. Omar Abdel Rahman was
14 present at the El Salaam Mosque on the occasion that you
15 just testified to?

16 A Yes, he was.

17 Q Do you know if the man by the name of Ibrahim
18 Siddig Ibrahim was present on that occasion?

19 A Yes, he was present, I remember 6789.

20 Q Did you go to that mosque for the purposes of
21 settling a dispute?

22 A No, actually I want to be very clear about it.
23 We just happened to be passing that way and we wanted to
24 find out what was going on. As a result of going inside to
25 find out what's going on, then the brothers, I think I met

1 somebody from the board of directors, a short gentleman, his
2 name escapes me, and he said Imam Siraj, you know, we have
3 some kind of dispute here. So then we got involved like
4 that. We didn't go there with the intention -- we didn't
5 know about any dispute, anything like that at that time.

6 Q Do you know if members who attend the Al-Taqwah
7 Mosque provided security at the Nosair trial?

8 A The thing that I do remember is that toward the
9 end, maybe the sentencing, you know, we were concerned that
10 there would be a lot of emotions, perhaps on both sides, on
11 the part of some of the Muslims --

12 THE COURT: The question was simply whether they
13 did provide security. Did they?

14 THE WITNESS: I am sorry.

15 THE COURT: Go ahead.

16 A Just on the sentence, as far as I know, that's
17 the only time they had some kind of presence. I guess you
18 would say security, yes.

19 Q Was that done in conjunction with the police
20 department?

21 A Yes, it was.

22 Q Imam, are you aware that there was a committee
23 set up and a fund to raise money for Nosair's attorneys and
24 to care for his family during his incarceration?

25 A Yes.

1 Q You are aware of that?

2 A Yes. It was solicited to the majshura, the
3 Muslim leaders. They asked us to raise money for the case
4 and for the family.

5 Q Do members of your mosque participate in any
6 security or martial arts training, to your knowledge?

7 A Yes, some do. Some do as private businesses,
8 some brothers in our community that own security companies,
9 and also they have some kind of training, security training,
10 martial arts. Yes, they do.

11 Q Imam, in the time that you have been the imam at
12 the Al-Taqwah Mosque in Brooklyn, are you aware of any riots
13 that took place between the African American Muslim
14 community and the Jewish community in Brooklyn?

15 A African American community?

16 Q The African American Muslim community.

17 A Absolutely not, no.

18 Q Your mosque, Imam, is on the corner of Fulton and
19 Bedford, isn't that correct?

20 A Yes.

21 Q What does the concept of jihad mean to an imam at
22 the mosque on the corner of Bedford and Fulton in Brooklyn?

23 A Well, the jihad is a very comprehensive term, as
24 you know. One could say in our struggle, in our community
25 of drugs, that's a jihad. It's a struggle. That's what the

1 word jihad means, it means struggle. It could take on
2 another meaning, for instance in Afghanistan, Muslims
3 fighting for their liberation against the Russians. That's
4 a jihad also. But for us, in the context of our
5 environment, jihad is, A, cleaning up our community of
6 drugs, B, getting our family, our men strong, getting them
7 jobs, taking care of their family. That's a kind of jihad
8 or struggle.

9 Q Did you have an occasion to address your
10 congregation about the Kahane murder?

11 A I don't -- yes, I did, I just remembered, two
12 things. I remember addressing my community and telling them
13 that these kinds -- I said I don't know the innocence or the
14 guilt of the person involved, but I said this kind of thing
15 is wrong. I said, today I am someone, some crazy person
16 would kill Kahane because they don't accept his views, I
17 said tomorrow they kill me because they don't accept my
18 views. This is wrong. It was unacceptable. I told our
19 community about that, I was very clear about that. So yes,
20 I did address my community about that.

21 Q Just a couple more questions, Imam.

22 A Sure.

23 Q Do you know the man Ramzi Yousef?

24 A No, except for what I read in the newspaper, no.

25 Q Do you know the man Mohammad Salameh?

1 A Except what I read in the newspaper.

2 Q The man Ahmad Ajaj.

3 A Newspaper.

4 Q Nidal Ayyad?

5 A Newspaper.

6 Q What about the man Mahmoud Abouhalima?

7 A Yes, I have met him before.

8 Q What were the circumstances under which you met
9 Mahmoud Abouhalima?

10 A I think he was part of the -- they had an office
11 in the Masjid Farook, underneath the mosque, and it was like
12 an Afghani office, and I think them and some other people
13 were trying to raise money for the Muslims in Afghanistan,
14 and I met him on a number of occasions in those contexts.

15 Q Finally, you know Dr. Omar Abdel Rahman, isn't
16 that correct?

17 A Know him? Yes, we have met. I respect him. To
18 know him, I don't know to what degree you mean.

19 Q You are familiar with the defendant who is known
20 here by the name of Clement Hampton-El?

21 A Yes. We call him Rashid, yes.

22 Q Other than those three men, do you have any
23 knowledge of any other of the men in the room?

24 A Any other --

25 Q Any of the other men seated in the room?

1 A Seated where?

2 Q Seated at the table.

3 A At this table here? This table right here?

4 Q No, of the defendants, along this row and here
5 and in the back.

6 A Oh, there, too. I think I have seen -- I am
7 sorry. I think I have seen -- it's so hard, you know, I see
8 so many people, I think maybe I have seen some of them
9 before, yes, I think so.

10 Q Where would you have seen them?

11 A Either in our mosque or other masjids. I go to
12 so many masjids, I see so many Muslims. So I could have
13 seen, you know, and I am sorry, sometimes they blur. You
14 see somebody in the newspaper, and, you know, did I see them
15 in the newspaper or did I see them in the mosque, I don't
16 know.

17 Q Did you have occasion to meet the defendant El
18 Sayyid Nosair?

19 A I don't think I ever met him. I think the first
20 time I became aware of him, at the trial.

21 Q Outside of the context of the state trial, before
22 that time did you ever have an occasion to meet with Mr.
23 El-Gabrownny?

24 A I don't think so. I don't think so.

25 MR. RICCO: I have no further questions. Thank

1 you very much.

2 THE COURT: Ms. Amsterdam.

3 CROSS-EXAMINATION

4 BY MS. AMSTERDAM:

5 Q Good morning, sir.

6 A Good morning.

7 THE COURT: Wait a minute. Which one of you is
8 examining?

9 MS. AMSTERDAM: I am sorry. I looked to make
10 sure anyone else was getting up.

11 THE COURT: Mr. Jabara, representing Dr. Abdel
12 Rahman.

13 CROSS-EXAMINATION

14 BY MR. JABARA:

15 Q As-Salamu Alaikum, Imam.

16 A As-Salamu Alaikum.

17 Q Peace be on you. Imam Wahhaj, you have met me
18 before, have you not?

19 A Yes, I have.

20 Q Do you recall when that was?

21 A At our mosque, our masjid.

22 Q Do you recall whether that was?

23 A Probably a few weeks ago, four or five weeks ago,
24 something like that.

25 Q And you say that you have met Sheik Omar Abdel

1 Rahman, my client, before, have you not?

2 A Yes.

3 Q Has he ever lectured or given sermons at masjid
4 Al-Taqwah?

5 A Yes, I think one night he gave a lecture at our
6 mosque, yes, our masjid.

7 Q Do you recall when that was?

8 A Probably you are talking about late '91, early
9 '92, I think, something like that.

10 Q Do you recall what he spoke of when he spoke?

11 A I should say yes but I don't. You know, it was a
12 general kind of talk. Sheik Abdel Rahman was very popular
13 from reciting verses from the Koran and giving explanation,
14 but that night I can't remember the context of the talk.

15 Q What were the circumstances, if you recall, Imam
16 Wahhaj, that Sheik Omar came to lecture?

17 A We had heard that this great sheik was in America
18 and he was like touring the country and he was in New York
19 City and some of his entourage, the people who were with
20 him, said how would you like for him to come to your mosque
21 and give a talk, and we said yes, definitely, and I think
22 the brother who invited him was a brother named Jamal, an
23 Egyptian.

24 Q That lecture was translated that night?

25 A Yes, it was. Yes, in fact it was translated by,

1 I think, Jamal himself.

2 Q Do you recall how many people were present?

3 A Probably 150, I would say.

4 Q A hundred fifty?

5 A Yes.

6 Q Can you tell me whether or not there was a
7 question and answer period afterwards?

8 A Yes, there was.

9 Q Did you ever hear Sheik Omar call for robbing
10 banks?

11 A (Laughs) Well, to be honest, I do remember
12 something, I don't think he was calling for robbing the
13 banks but I think that maybe he raised the issue of the
14 legitimacy of robbing banks.

15 Q Can you tell me, Imam Wahhaj, whether or not
16 Sheik Omar, you ever heard him lecture in any other
17 locations?

18 A I don't think so. I have seen him on other
19 occasions where he had lectured. Maybe I just came there
20 and he had spoken before, but I don't think so, as I recall.
21 I can't recall him giving another lecture, not in person,
22 no.

23 Q Did you ever meet him on any other occasion?

24 A Yes, we had a gathering in Prospect Park, Eid
25 celebration, and he was there and he attended it. He didn't

1 give the sermon but he was there that day.

2 Q Pardon?

3 A He did not give the sermon but he was there, he
4 attended the services.

5 Q Where did you see him, at what mosque?

6 A I saw him at Masjid Salaam, the masjid we spoke
7 about, recently in Jersey City, he was there that night. I
8 saw him in Masjid Farook. At that time he was the imam
9 there, and I visited. At our mosque, and also at the Eid
10 celebration, I saw him on that occasion. Those are the
11 times that I remember for sure.

12 Q Have you ever had occasion to meet with him
13 personally?

14 A Other than coming to our masjid that day and to
15 shake his hand and to say As-Salamu Alaikum, not really.

16 Q And when you say As-Salamu Alaikum, that means
17 peace be upon you, is that correct?

18 A Yes.

19 Q When you say he is a great sheik, what do you
20 mean by that?

21 A He is a well known scholar, he is a respected
22 scholar. You know, people in the community, they talk about
23 well known scholars and he is among the ones who is
24 mentioned. He is called the hafiz of the Koran. He is
25 called the hafiz, H-A-F-I-Z of the Koran. He memorized the

1 entire Koran, 114 chapters. That is why I respect him. He
2 has memorized the many statements of Prophet Mohammed, peace
3 and blessings be upon him. And he is bold, as a strong
4 preacher of Islam. So he is respected that way.

5 MR. JABARA: I have nothing further of this
6 witness.

7 THE COURT: Mr. Wasserman, representing
8 Mr. Hampton-El. Go ahead.

9 CROSS-EXAMINATION

10 BY MR. WASSERMAN:

11 Q Good morning Imam Siraj. How are you?

12 A Good morning.

13 Q We have met before?

14 A Yes.

15 Q How long have you known Rashid?

16 A Probably at least 10 years.

17 Q Under what circumstances did you come to know
18 him?

19 A In our mosque, you know, it's expected that we --
20 any Muslim is expected to pray five times a day. The best
21 place to make the prayer for us is inside the masjid, the
22 mosque. I have seen him so many times. 4:30 in the morning
23 or 10:00 at night, Dr. Rashid he would be there in the
24 mosque praying. So that's where I think I probably first
25 met him, in those circumstances around the mosque.

1 Q Over the years, have you had conversations with
2 him?

3 A Yes, yes.

4 Q And have you had conversations with other people
5 about him?

6 A Yes, of course, yes.

7 Q Are you aware that he was in Afghanistan?

8 A Yes.

9 Q What is his reputation, based upon your
10 conversations with other people?

11 A He is one of the most respected brothers. You
12 know, when you talk about Dr. Rashid, you are talking about,
13 like elder in the community. You know, you always see him
14 sitting around talking to someone, some youth, giving
15 advice, even some imam, head of the Muslim communities,
16 giving advice. He is well respected in the community, very
17 well respected.

18 Q Is that your own opinion as well?

19 A Definitely, yes.

20 Q Have you ever heard or seen him advocate violence
21 against anybody who is an innocent person?

22 A No, never.

23 Q Did you know of his strong feelings about Bosnia?

24 A Yes -- well, I don't know if I have talked to him
25 about Bosnia, I have spoken to him about Afghanistan for

1 sure. But like any other Muslim he would have to have a
2 strong feeling about Bosnia. I don't remember specifically
3 speaking to him about Bosnia.

4 Q When you say as any Muslim would, would that be
5 yourself, sir?

6 A Yes, of course. You don't like anybody to suffer
7 and when it's your own family member, and as Muslims we are
8 brothers and sisters, it hurts a little bit more, and we are
9 very much concerned, yes.

10 MR. WASSERMAN: Thank you very much, imam.

11 THE COURT: Ms. Amsterdam, representing
12 Mr. Khallafalla. Go ahead.

13 CROSS-EXAMINATION

14 BY MS. AMSTERDAM:

15 Q Good morning again.

16 A Good morning.

17 Q Excuse my ignorance. An imam, is that like the
18 equivalent of minister in a church?

19 A It would be equivalent in a sense to the rabbi of
20 a synagogue or minister of a church. Imam would be the head
21 of a congregation. I am that imam.

22 Q Are you elected in that position?

23 A Yes.

24 Q In your mosque, a board of directors?

25 A Not a board of directors as such. We have what

1 is called the majlis, again, M-A-J-L-I-S, majlis, is like a
2 board of advisers. He have that but not as you call board
3 of directors, I guess.

4 Q The board of advisers, are they elected?

5 A No, they are appointed.

6 Q They are appointed?

7 A Yes.

8 Q In your mosque, are the services in English or in
9 Arabic?

10 A Mostly they are in English, but the relevant
11 verses from the Koran are in Arabic and then translated.
12 The statements of the Prophet Mohammed, peace and blessing
13 upon him, is in Arabic and then translated. So basically if
14 I am giving the lecture it's in English. If we have a guest
15 lecturer, if he is from Pakistan, it's in Urdu, translated
16 to English. If they are from the Arabic countries, given in
17 Arabic, translated into English.

18 Q You indicated that predominantly in your
19 congregation there were Afro American members.

20 A Yes.

21 Q There were, however, members who attended who
22 were from Africa?

23 A Africa, Asia, all over.

24 Q Did that include the Sudan?

25 A Yes, yes, of course.

1 Q Does jihad mean only a physical struggle?

2 A No. It could mean a physical struggle, it could
3 also mean a spiritual struggle. When a person comes into
4 the community, having been on drugs, he goes to a personal
5 jihad. It's called jihad nafs, N-A-F-S. Jihad nafs means a
6 struggle against yourself to try to overcome the weaknesses
7 of soul. So the prophet talked that, the jihad of nafs, the
8 jihad of self. That's a great struggle. It's more than a
9 struggle against the armies. That's the big struggle.

10 Q The physical struggle is a minor struggle, the
11 personal struggle to become a better person is the great
12 struggle, correct?

13 A Yes, you got it.

14 Q And they are both called jihad?

15 A Yes, of course.

16 Q Was Siddig Ibrahim Siddig Ali ever invited by you
17 to lecture at the mosque record regarding Bosnia?

18 A I don't think so. I know I have met him before
19 on a number of occasions, but I don't think I ever invited
20 him to give a talk in our masjid, I don't think so.

21 Q Do you know what a shar'ia consultation is?

22 A Shar'ia, yes.

23 Q I apologize for my pronunciation.

24 A No, I apologize. When you talking about shar'ia,
25 you are talking about Islamic law, and basically the shar'ia

1 is the Koran, the book of gods, and Prophet Mohammed's
2 hadith, H-A-D-I-T-H, or the prophet's sayings. So when you
3 are talking about the prophet's law, it's based on two
4 things, based on God himself, his words and revelation, and
5 it's based on the statements of our Prophet Mohammed, peace
6 and blessings be upon him.

7 Q So the shoura is really a term for Islamic law?

8 A Yes. Shar'ia, because difference between shoura
9 and shar'ia, yes, as you say.

10 Q I am sorry. I apologize. Can you explain to me
11 again the difference between shoura and shar'ia?

12 A Yes. Shoura is consultation. If you are going
13 to be a leader of the Muslim community, you can't dictate.
14 You have to take shoura, consultation with the people.
15 That's shoura. Shar'ia is Islamic law, and that Islamic law
16 is based on the words of God himself and the words of his
17 messenger, Prophet Mohammed.

18 Q If I have a problem or an issue and I come to you
19 in your position of imam, will you give me consultation?

20 A Of course, yes.

21 Q And what would you call that consultation?

22 A Consultation.

23 (Laughter)

24 A There is no Islamic term for it. That's
25 consultation. That's different from -- see, when I have to

1 make a major decision, we want to move the masjid to another
2 location, I can't say I'm going to move the masjid, it
3 doesn't belong to me, it belongs to the people. So I have
4 to take consultation. We discuss that. I say maybe it's my
5 opinion as the imam that we should move the masjid to
6 another location and I take consultation with the people and
7 they say imam, I don't think we should. This is something
8 that is binding upon us in the Koran, we have to take
9 consultation. If you come to me as an individual, you have
10 marital problems, then I consult with you and give you
11 guidance and recommendations based upon my knowledge of our
12 religion. That's something different.

13 Q If I came to you as a congregant and asked you
14 whether or not it was permissible to go and fight, for
15 example, in Bosnia, to participate in an armed struggle in
16 Bosnia, and you gave advice about that, would that be in
17 accordance with religious laws?

18 A Yes. I am sorry for the reporter, I am going to
19 have to give you another term, the fatwa. If someone comes
20 to the imam asking for legal verdict, imam, is it
21 permissible for me, for instance, to go to Bosnia to fight,
22 he is seeking a fatwa, a religious verdict. Now, I don't
23 put myself on such a high level as to think that I can give
24 fatwas of various topics.

25 I am not as learned as our respected Sheik Omar

1 Abdel Rahman, so therefore, if they come to seek certain
2 advice, the first thing that I do, if it's in the Koran
3 clearly, if the prophet said clearly, then it's no problem,
4 I just say what Allah said and what his messenger said. If
5 it's an area mutabashabihat, which it's a gray area, then
6 that kind of thing, a person like myself I would say, you
7 know, I don't have that kind of knowledge but I will seek
8 someone who would know to give you that kind of information.

9 THE COURT: Could you spell the term that you
10 used, for the reporter.

11 THE WITNESS: M-U-T-A-B-A-S-H-A-B-I-H-A-T.

12 MS. AMSTERDAM: Thank you, sir. I appreciate.
13 Thank you very much.

14 THE COURT: Ms. London, representing
15 Mr. Elhassan. Go ahead.

16 CROSS-EXAMINATION

17 BY MS. LONDON:

18 Q Good morning, Imam Wahhaj.

19 A Good morning.

20 Q Sir, we have met before, haven't we?

21 A Yes, I think so. I think so, yes.

22 Q In fact, we met last week, if you recall.

23 A Help me.

24 Q At Masjid Al-Taqwah. It's OK.

25 A Yes, we did. Now I remember, yes, we did.

1 Q Imam Wahhaj, about how many masjids would you say
2 there are in the New York area?

3 A At least 100.

4 Q And about how many practicing Muslims would you
5 say there are in the New York area?

6 A According to reports that I have read from the
7 government, there are 850,000 Muslims in New York State, and
8 a tremendous percentage of them, I don't know, are New York
9 City.

10 Q When you ask the question how many of them are
11 practicing, that's another question altogether. It's very
12 difficult to say, because to be a practicing Muslim means to
13 do some of the basic principles, like make prayer five times
14 a day, fast on the month of Ramadan. You just don't know.
15 It's very difficult to say.

16 Q And a Muslim can worship at any masjid?

17 A Yes, of course. In fact, every masjid is called
18 the house of Allah, so myself even as the imam, I have
19 prayed at many masjids, and many of them in New York City.
20 I have prayed at most of them. Any Muslim anywhere,
21 whenever it is time for prayer, the closest masjid you are,
22 you go to that masjid and pray even you have never been
23 there before. It is not unusual for someone to come, we
24 never saw him before, he is a Muslim, we say As-Salamu
25 Alaikum, and he makes prayer. It doesn't belong to us, it

1 belongs to God himself, the house of Allah.

2 Q In your understanding, many Muslims go to various
3 mosques in the area so that they can share the views of
4 other Muslims worshipping --

5 THE COURT: Ms. London, this is direct. Go
6 ahead.

7 A Yes. They don't necessarily go to another mosque
8 to share their views. It could be, but most people go to
9 different masjids simply to pray. It's time for prayer and
10 they happen to be in the Bronx and they go to the nearest
11 masjid and they pray.

12 Q Imam Wahhaj, in directing your attention to 1992
13 and early 1993, during that period of time did you have
14 guest speakers at your mosque at Al-Taqwah, talking about
15 the situation in Bosnia?

16 A Probably so. You know, I just can't remember
17 directly dates, anything like that, but I suspect, because
18 around that time when the news broke out about Bosnia,
19 everybody was concerned and I would imagine, if I would
20 think and go back to my calendar, I probably could give more
21 details.

22 Q As an imam, do you encourage brotherhood among
23 your worshipers?

24 A Of course, yes.

25 Q In fact, Islam encourages Muslims to trust one

1 another, is that right?

2 A Absolutely. Again, everything comes from the
3 Koran, and I won't say the Arabic, I will just say the
4 English, but basically the verse in the Koran, verily
5 believes the brothers -- Inna Al-Muslimeen ikhwa -- verily
6 the Muslims are brothers. Whether that Muslim is a white
7 Muslim in Bosnia or a black Muslim in Nigeria, they are
8 brothers. Where we met them before they are brothers and
9 sisters, where we never met them, they are brothers. And
10 yes, I encourage it all the time.

11 Q In your understanding of Islam, if your brothers
12 meet a new brother for the first time in a masjid, Islam
13 encourages them to trust one another unless and until that
14 trust is proven misplaced?

15 A Of course, yes.

16 MS. LONDON: I have no further questions.

17 THE COURT: Mr. Bernstein, representing Amir
18 Abdelgani. Go ahead.

19 CROSS-EXAMINATION

20 BY MR. BERNSTEIN:

21 Q Imam, just a few questions.

22 A Yes.

23 Q Regarding prayer, how many times a day is it
24 recommended?

25 A You have to do at least five a day.

1 Q Are there set times, so to speak, for the day?

2 A Yes.

3 Q What are those times?

4 A The first prayer is sunrise, before sunrise, dawn
5 prayer. The second one is right after the sun has passed
6 the meridian. The third one is afternoon prayer. The
7 fourth one is sunset prayer. And the fifth one is the night
8 prayer. This is about an hour and a half after sunset.

9 Q Does the prayer also depend on how the sun shifts
10 throughout the year?

11 A Yes.

12 Q The times of the prayer?

13 A Yes.

14 Q One other thing. If you are not in a mosque, is
15 it correct or right to pray in your home or wherever you
16 might be?

17 A Yes, of course. The recommended place to pray is
18 the masjid, and you get more rewards, 27 times more reward
19 if you pray in a masjid. But certainly wherever you are.
20 In fact, I have prayed in the park, for instance, you know,
21 different places. Whenever the time comes, you try to pray
22 in the most convenient place.

23 MR. BERNSTEIN: Thank you. I have no further
24 questions.

25 THE COURT: Mr. Jacobs, representing Mr. Saleh.

1 CROSS-EXAMINATION

2 BY MR. JACOBS:

3 Q Good morning.

4 A Good morning.

5 Q Do members of your congregation join the United
6 States military?

7 A Of course, yes.

8 Q The only prohibition is about Muslims fighting
9 for the United States Army?

10 A No, the only prohibition would be if we
11 commanded -- I imagine it would be a very difficult thing
12 for a Muslim, for instance, in the United States Army, and
13 they are commanded to do something that is unjust. We can't
14 do that. If a Muslim leader even told us to do something
15 that goes against God and his messenger, we can't do that.
16 We are taught clearly in that. Obey Allah in the Koran,
17 obey the messenger, and those charged with authority among
18 you. If you differ with anything, refer back to Allah and
19 the messenger, if you believe in Allah and the last day. So
20 if the commander of the army told us to do something that is
21 unjust, we couldn't do it.

22 Q Do you know if there are thousands of Muslims
23 serving in the United States military today?

24 A Definitely, there are. In fact, I just give you
25 some information. In the war in the Persian Gulf, 7,000

1 American soldiers became Muslims.

2 Q Do you know if recently President Clinton
3 appointed an imam to serve as one of the leading chaplains
4 for the services?

5 A I don't think I know that, no.

6 Q That's all right.

7 A I wish I did.

8 MR. JACOBS: That's all right. No further
9 questions.

10 THE COURT: Mr. Lavine representing Fadil
11 Abdelgani. Go ahead.

12 MR. LAVINE: Thank you.

13 CROSS-EXAMINATION

14 BY MR. LAVINE:

15 Q Good morning, Imam.

16 A Good morning.

17 Q You had mentioned that when a Muslim meets
18 another Muslim, is introduced to another Muslim in a mosque
19 or a masjid, that those two people will trust each other
20 until the trust is betrayed.

21 A Yes.

22 Q Is the same true if a Muslim meets or is
23 introduced to another Muslim outside the masjid?

24 A Yes, of course.

25 Q Thank you very much.

1 A In fact, I was going to make that clear. It's
2 not just the masjid. If you meet any Muslim anywhere -- in
3 fact our prophet encourages us to greet Muslims both that
4 you know and you don't know. So if you see a stranger, you
5 know, and they look like a Muslim, and they say As-Salamu
6 Alaikum, you start talking as if you had known them for
7 years. So it doesn't have to be in a mosque or anywhere.
8 If you meet a Muslim, you begin to trust them, of course. I
9 mean, you can't be foolish, but, you know, you trust them.

10 MR. LAVINE: Thank you very much, sir. I have
11 nothing further.

12 THE COURT: Anyone else? Cross. Mr. Fitzgerald.

13 CROSS-EXAMINATION

14 BY MR. FITZGERALD:

15 Q Good morning, sir. My name is Pat Fitzgerald. I
16 am one of the government attorneys and I just have a few
17 questions for you.

18 A Sure.

19 Q You mentioned that you know defendant Clement
20 Hampton-El, Dr. Rashid, for about 10 years.

21 A Yes.

22 Q Would you say that he is a very open, up front
23 person?

24 A Yes, definitely.

25 Q If you went to him and told him, if you asked him

1 to do something wrong, he would tell you you are wrong?

2 A Definitely. I can give you an example of that.
3 It just happened recently. When I gave the invocation to
4 Congress, he wasn't so happy with it, you know. He said I
5 don't think it was a good move, but I respect you anyway.
6 And this is what we respect in Islam. We are not yes
7 people, we don't always agree, we have differences of
8 opinion. And one thing I can say about this Muslim, he is
9 open and honest and he tells you as he sees it.

10 Q If he disagrees, he will tell you he disagrees?

11 A Absolutely.

12 Q And if he agrees, he will tell you that too?

13 A Yes.

14 Q And if he tells you that he is going to help you,
15 you can bank on that, that he is really going to try?

16 A Yes.

17 MR. FITZGERALD: Thank you, nothing further.

18 THE COURT: Thank you very much. You are
19 excused.

20 (Witness excused)

21 MR. PATEL: Your Honor, at this time I would ask
22 to publish two exhibits that were admitted the other day.
23 It is GGG and III. And I would also at this time, your
24 Honor, offer an exhibit that was discussed, which is HHH,
25 and I would also offer, I believe with stipulation, HHH-T.

1 We will publish that at a later time, your Honor.

2 THE COURT: Is there any objection to HHH and
3 HHH-T?

4 MR. FITZGERALD: No objection.

5 THE COURT: HHH and HHH-T are received without
6 objection, and you can publish GGG and II.

7 (Defendant Nosair Exhibits HHH and HHH-T received
8 in evidence)

9 THE COURT: Is that a certificate of
10 incorporation?

11 MR. PATEL: And a photograph, your Honor.

12 THE COURT: Let's wait -- the certificate -- if
13 you want to publish the photograph, go ahead. The
14 certificate of incorporation, I think, can wait.

15 MR. PATEL: We can wait -- actually, your Honor,
16 why don't we wait and we can do it when we publish the
17 translation at a later time, if that is convenient.

18 THE COURT: Fine. Go ahead.

19 MR. PATEL: I think we are just getting our next
20 witness, your Honor. Just one moment.

21 THE COURT: Excuse me. When someone is being
22 sworn, don't talk.

23 Excuse me, Mr. Wasserman.

24 (Continued on next page)

25

1 NORVELL BONDS DeATKINE,
2 called as a witness by the defendant Nosair,
3 having been duly sworn, testified as follows:

4 THE COURT: Go ahead.

5 DIRECT EXAMINATION

6 BY MR. STAVIS:

7 Q Are you here pursuant to a subpoena that was
8 signed by Judge Mukasey?

9 A Yes, I am.

10 Q Could you tell the ladies and gentlemen of the
11 jury where you were born and raised?

12 A I was born in Galveston, Texas, and raised mostly
13 in the southern parts of the United States, because my Dad
14 was in the Army.

15 Q Will you tell the ladies and gentlemen of the
16 jury something about your educational background?

17 A I went to high school in Hampton, Virginia. I
18 went to the U.S. Military Academy at West Point, and I got a
19 master's degree in Arab studies from the American University
20 of Beirut.

21 Q You are wearing your West Point ring on your left
22 hand over there?

23 A Yes, that's correct.

24 Q Could you tell the ladies and gentlemen of the
25 jury about your military service?

1 A I graduated from West Point in 1959. I was an
2 artillery officer. I served in Vietnam, I served in Korea,
3 I served in a number of stateside posts -- Fort Lewis, Fort
4 Sill, a number of others. I was stationed in Beirut,
5 Lebanon. I was stationed in Cairo, Egypt. I was stationed
6 in Aman, Jordan. I was a deputy commander of 3 Corps
7 Artillery at Fort Sill, inspector general, and I retired in
8 1985.

9 Q Let's back up a little bit. You said you were
10 stationed in Cairo, Egypt?

11 A That's correct.

12 Q Where in Cairo, Egypt, and what was your role and
13 your rank?

14 A I was a colonel. I was the Chief of the Office
15 of Military Cooperation Land Forces, which is involved
16 primarily in military equipment for the Egyptian Army.

17 Q You also said that you were stationed in Beirut.
18 What was your post when you were in Beirut?

19 A I was simply a student at the time, at the
20 American University of Beirut.

21 Q And you stated that you were stationed in Aman,
22 Jordan. What was your position? And what were the years
23 that you were there?

24 A I was there in '70 to '72, through '72. I was
25 the assistant military attache at the American Embassy.

1 Q When I believe you said you retired from the
2 military in 1985, is that correct?

3 A That's correct.

4 Q At the time that you retired from the military,
5 what was your rank?

6 A I was a colonel O6, full colonel.

7 Q Excuse me, I didn't hear that.

8 A A colonel O6, which is full colonel.

9 Q Full colonel.

10 A Correct.

11 Q Did there come a time, after your retirement,
12 Colonel DeAtkine, that you took on a civilian position with
13 the Armed Forces?

14 A Yes. In November of 1988 I became an instructor
15 at the Special Warfare School and Center.

16 Q What is the Special Warfare School and where is
17 it located?

18 A The Special Warfare School and Center is located
19 at Fort Bragg, North Carolina. It is an institution which
20 trains special operations personnel.

21 Q What is Fort Bragg, North Carolina, and what is
22 located there?

23 A Fort Bragg, North Carolina, is one of the largest
24 military posts in the United States. We have the 18th
25 Airborne Corps, 82nd Airborne Division, the Army Special

1 Operations Command, the Special Forces Command, and some
2 other what they call tenant units.

3 Q You mentioned the Special Operations Command.
4 What does that mean?

5 A Special operations basically entails what we call
6 civil affairs, psychological operations, and special forces.

7 Q Let's take them one at a time. What is
8 psychological operations?

9 MR. MCCARTHY: Objection. Rule 16(b)(1)(C).

10 MR. STAVIS: I have to go to the book for that
11 one, your Honor.

12 THE COURT: Let me see you at the sidebar.

13 (At the sidebar)

14 THE COURT: Where is this going?

15 MR. STAVIS: His background and where he works.

16 THE COURT: This is one of the units within Fort
17 Bragg, North Carolina. We don't need a full description of
18 the psychological operations.

19 MR. STAVIS: All right.

20 THE COURT: I don't see the relevance.

21 MR. STAVIS: It was a foundational question. I
22 will move on. Mr. Patel wants to interject something.

23 MR. PATEL: Do you want to ask him about the
24 special forces?

25 MR. STAVIS: Yes.

1 THE COURT: Special forces is something else.

2 MR. McCARTHY: What is his basis for testifying
3 to that?

4 MR. STAVIS: His basis for testifying as to
5 special forces is that he works with those people in North
6 Carolina where they they are located.

7 THE COURT: From his background it sounds like he
8 works with special forces.

9 MR. STAVIS: Yes.

10 MR. McCARTHY: Can we find out if he is
11 competent? This witness is being proffered so that they
12 don't have to put Ali Mohamed on the stand to ask him about
13 it himself. He shouldn't be allowed to testify to Ali
14 Mohamed's background and training. This witness, as I
15 understand it, was proffered as a fact witness about Ali
16 Mohamed, not as an expert witness on special forces. He
17 certainly hasn't been proffered on it.

18 THE COURT: That is not expert testimony. That
19 is fact testimony if he knows. If he doesn't know, you can
20 cross. Cross-examination is the greatest legal engine for
21 discovering the truth.

22 (In open court)

23 BY MR. STAVIS:

24 Q You mentioned, Colonel DeAtkine, Special Forces
25 are located at Fort Bragg, North Carolina. What are the

1 Special Forces?

2 A My definition, and I have never served in Special
3 Forces so I --

4 MR. McCARTHY: Objection.

5 THE COURT: He never served in Special Forces.

6 Can you testify, based on your personal
7 knowledge, as to what their mission is? I am talking about
8 what you heard based on your own firsthand knowledge. Do
9 you know what they do?

10 THE WITNESS: My knowledge of the Special Forces
11 is that they are American soldiers who are trained primarily
12 to train friendly allied national soldiers.

13 THE COURT: Is that based on your own knowledge
14 or based on what you heard?

15 THE WITNESS: This is from my own knowledge of
16 being with these people but not being part of their
17 organization.

18 THE COURT: Go ahead.

19 Q What is the JFK Center?

20 A It's the John F. Kennedy Special Warfare School
21 and Center, and is primarily a learning teaching institution
22 for Special Operations soldiers and officers.

23 Q What if anything is your connection to the John
24 F. Kennedy Center?

25 A I'm an instructor in the Middle East studies of

1 the regional studies course.

2 Q What do you do in that position?

3 A In this particular position I teach Army officers
4 from civil affairs and psychological operations about the
5 Middle East during a 16-week course.

6 Q Do you have a managerial position with regard to
7 this school at the John F. Kennedy Center?

8 A Only from the standpoint of being responsible for
9 Middle East studies. I don't have anyone under my
10 jurisdiction or control.

11 Q Do you direct the middle East studies program
12 there?

13 A I direct the seminar, that's correct.

14 Q Do you have an opportunity to organize lectures
15 from people outside of the Fort Bragg Army installation?

16 A I have the opportunity to bring in guest speakers
17 from outside, from universities and other government
18 agencies, to talk to my students, yes.

19 Q Do you ever publish any articles concerning the
20 Middle East?

21 A Yes, I have.

22 Q Did there come a time when you were working at
23 the John F. Kennedy Special Warfare Center that you met a
24 man by the name of Ali Mohamed?

25 A Yes, I did.

1 Q When did you meet him?

2 A This was sometime, I think, in early 1989, when
3 First Sergeant Daniels brought sergeant Ali Mohamed in and
4 said, "This is Sergeant Ali Mohamed. He is going to be
5 working with you."

6 MR. STAVIS: Your Honor, may I approach the
7 witness --

8 THE COURT: Yes.

9 MR. STAVIS: -- with what has been previously
10 marked as Nosair Defense Exhibit JJJ-1.

11 THE COURT: All right.

12 Q I am showing you what has been marked as defense
13 JJJ-1 for purposes of identification and ask you if you
14 recognize it.

15 A Yes, I do.

16 Q What do you recognize it to be?

17 A The tape that I made with Sergeant Ali Mohamed.

18 Q Have you viewed that tape recently?

19 A Yes, I have.

20 Q I am now showing you what has been marked as
21 Defense KKK-1 and -2 for purposes of identification. I ask
22 you to take a look at them. Do you recognize them?

23 A Yes, I do.

24 Q What do you recognize them to be?

25 A One gentleman is Sergeant Ali Mohamed and the

1 other one is me.

2 Q Drawing your attention to Nosair Defense Exhibit
3 KKK-1, who is depicted in that photograph?

4 A That is Sergeant Ali Mohamed.

5 MR. STAVIS: Your Honor, at this time I would
6 offer defense Exhibit JJJ-1, the videotape, into evidence.
7 This is a videotape that was recovered from Mr. Nosair's
8 home.

9 THE COURT: Is that stipulated?

10 MR. McCARTHY: That fact is stipulated.

11 THE COURT: That fact, yes.

12 MR. McCARTHY: I would like a brief voir dire on
13 the tape.

14 THE COURT: All right. Are you offering it in
15 evidence?

16 MR. STAVIS: Yes, your Honor. I am also
17 offering Nosair Defense Exhibit KKK-1 and -2.

18 MR. McCARTHY: No objection to that.

19 THE COURT: KKK-1 and -2 are received. You can
20 have voir dire on the tape.

21 MR. McCARTHY: Yes, briefly.

22 (Nosair Defense Exhibit KKK-1 and KKK-2 were
23 received in evidence.)

24 VOIR DIRE EXAMINATION

25 BY MR. McCARTHY:

1 Q Good morning, Mr. DeAtkine.

2 A Good morning.

3 Q Sir, the tape that you just looked at, Nosair's
4 Exhibit KKK --

5 THE COURT: JJJ.

6 Q -- JJJ-1 for identification (handing to the
7 witness), are you able to tell, Mr. DeAtkine, looking at
8 that, whether that is the original tape that you and Mr.
9 Mohamed made or a copy?

10 A I have no way of knowing that, sir.

11 Q Do you have any idea, as you sit here today, how
12 widely circulated those tapes may have been?

13 A I did not distribute them myself, but I have no
14 way of knowing how widely it was distributed by any other
15 means.

16 Q So you don't know if it is a copy or a copy of a
17 copy?

18 A No, I do not know.

19 MR. McCARTHY: Your Honor, I have no objection to
20 the exhibit.

21 THE COURT: JJJ-1 is received.

22 (Nosair Defense Exhibit JJJ-1 was received in
23 evidence.)

24 MR. STAVIS: I just wish to hold up these two
25 photographs before the jury.

1 THE COURT: Go ahead.

2 (Mr. Stavis showed photographs to the jury.)

3 DIRECT EXAMINATION CONTINUED

4 BY MR. STAVIS:

5 Q Colonel DeAtkine, for what purpose was that
6 videotape made that is Nosair JJJ-1 in front of you?

7 A The tape was originally made with the intention
8 of being able to show it to our future students. We have
9 normally two classes a year. And since Sergeant Ali Mohamed
10 was going to leave the Army soon, we decided that we wanted
11 to capture his particular philosophy on tape.

12 Q After the videotape was made, did you have an
13 opportunity to review it?

14 A Yes, I did.

15 Q What if anything did you do when you reviewed the
16 tape?

17 A After I looked at some of the tapes, I considered
18 them too boring to use for my students and I put them in a
19 box and I left them there.

20 Q Did you know if copies were made of this tape?

21 A I have no knowledge of that.

22 Q Do you know if the tape was distributed?

23 A I did not distribute any tapes, and I have no
24 knowledge of it being distributed.

25 Q Were you the person who was responsible for the

1 making of these videotapes?

2 A I was co-responsible. I was working with another
3 major and we decided together to do this, and so we shared
4 responsibility for making this.

5 Q What organization is the owner of that videotape?

6 A The United States Army.

7 Q Is it the property of the United States Army?

8 MR. McCARTHY: Objection in form.

9 THE COURT: Sustained.

10 Q Colonel DeAtkine, that videotape, Nosair JJJ-1,
11 is that the kind of tape you could find at Blockbuster or
12 another video store?

13 A Not to my knowledge.

14 MR. STAVIS: Your Honor, at this time I would ask
15 to play a small portion of what has been introduced into
16 evidence as Nosair Defense JJJ-1.

17 THE COURT: All right.

18 MR. McCARTHY: Your Honor, I have no objection --

19 THE COURT: Do you want to be heard at the
20 sidebar?

21 MR. McCARTHY: If you don't mind.

22 (At the sidebar)

23 MR. McCARTHY: Your Honor, the only thing I would
24 ask is an instruction to the jury that this is being offered
25 for the limited purpose of the fact that Mr. Nosair had it.

1 The contents of it are not admissible for their truth. It
2 is basically Mr. Mohamed, and the other meanderings about
3 Afghanistan and --

4 THE COURT: I don't know what part he is going to
5 show.

6 MR. STAVIS: I am showing it from the beginning,
7 ten minutes into it. I am not skipping around on it.

8 THE COURT: I understand that. But the point is
9 to show the nature of what it is that Mr. Nosair had, rather
10 than the truth of what it is these folks are saying.

11 MR. STAVIS: Yes, your Honor.

12 (In open court)

13 THE COURT: Mr. Stavis is going to show part of
14 this tape. The purpose of showing the tape to you is simply
15 to show you the nature of what it is that was on the tape
16 that Mr. Nosair had. It is not being offered for the truth
17 of what the people on the tape are saying. It is simply to
18 show you the nature of what it is. Go ahead.

19 MR. STAVIS: Your Honor, I am told that the
20 jurors may need their headphones to hear the sound.

21 THE COURT: All right.

22 MR. MCCARTHY: Your Honor, at least some of the
23 jurors can't hear.

24 THE COURT: May I suggest we take our break now,
25 check the connection, and then proceed.

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

5 (Recess)

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7 (continued on next page)

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1 (In open court; jury not present)

2 THE COURT: Are we set?

3 (Videotape played)

4 MR. McCARTHY: Your Honor, may we approach?

5 THE COURT: Yes.

6 (At the side bar)

7 MR. McCARTHY: I didn't object to this on
8 Mr. Stavis' representation to me that it was going to be a
9 10-minute sampling and it has now been --

10 THE COURT: Twenty.

11 MR. McCARTHY: -- close to 20.

12 MR. STAVIS: I will stop now but the counter
13 number is 64 and there has been a miscalculation.

14 THE COURT: Whatever the counter number, it has
15 been 20 minutes.

16 MR. STAVIS: I will stop here.

17 (In open court)

18 MR. STAVIS: Your Honor, may I approach the
19 witness with what has been previously marked into evidence
20 as Government's Exhibit 118?

21 THE COURT: Go ahead.

22 MR. STAVIS: Your Honor, Government's Exhibit 118
23 is a document that was recovered from Mr. Nosair's home
24 during the search of his home.

25 THE COURT: Go ahead.

1 BY MR. STAVIS:

2 Q Colonel De Atkine, I would ask you to take a look
3 at what is in evidence as Government's Exhibit 118. Have
4 you ever seen anything like that?

5 A I have seen things of this type, yes.

6 Q What is that, sir?

7 MR. McCARTHY: Objection.

8 A This is what we call --

9 THE COURT: When he makes an objection, I have to
10 rule on it.

11 When did you see it? Did you see it in the
12 course of your duties? Have you dealt with documents of
13 this kind?

14 THE WITNESS: I am sorry, sir. I didn't hear
15 you.

16 THE COURT: Have you seen it in the course of
17 your duties? Have you dealt with documents of this kind?

18 MR. McCARTHY: Your Honor, I have no objection if
19 it is clear that it is documents of this kind rather than
20 that document. I have no objection --

21 THE COURT: Right. Have you seen documents of
22 this kind?

23 THE WITNESS: Yes, sir, I have seen documents of
24 this type many times.

25 THE COURT: Go ahead.

1 Q What is it?

2 A There is what we call an enemy weapons guide,
3 which enables our troops to know the bad guys from the good
4 guys.

5 Q When you say the bad guys from the good guys,
6 what are you referring to?

7 A This is primarily -- this is Soviet equipment.
8 This is a guide of Soviet equipment.

9 Q Turning your attention to the first page of that
10 exhibit, what is written on the first page?

11 A It says United States Army, John F. Kennedy
12 Special Warfare Center.

13 Q Turning your attention to a page Bates stamped
14 number 3075 -- that is also part of Government's Exhibit
15 118 -- I ask you to take a look at that.

16 A Yes, sir.

17 Q Have you seen anything like that?

18 A This is basically an excerpt from a manual on
19 maintaining an M16 rifle.

20 Q What is an M16 rifle?

21 A It is the basic small arm United States Army.

22 Q Turning your attention to the Bates stamped page
23 number 3089 of Government's Exhibit 118, have you ever seen
24 insignificant like that?

25 A Yes, I have seen similar documents.

1 Q What is that?

2 A This is just an excerpt of a manual on preparing
3 light antitank weapon for firing, the LAW.

4 Q When you say the LAW, what are you referring to?

5 A Just the light antitank weapon. It used to be a
6 basic antiarmor weapon at the lowest infantry level.

7 Q The word LAW, is that an abbreviation for --

8 A Acronym, yes.

9 MR. STAVIS: Your Honor, I am now approaching the
10 witness with what has been previously marked into evidence
11 as Government's Exhibit 117. This document was also
12 recovered during the search of Mr. Nosair's home on November
13 6, 1990.

14 THE COURT: Go ahead.

15 Q Colonel De Atkine, turning your attention to the
16 front page of this document, it says "JCS warning order."
17 Do you see where it says that?

18 A Yes, I do.

19 Q And it says "From JCS Washington, D.C.." Do you
20 see that?

21 A Yes, I do.

22 Q What is the JCS in Washington, D.C.?

23 A Joint chiefs of staff.

24 Q And it says "To," and then there are some
25 initials, USCINCENT MacDill AFBFL.

1 THE COURT: You are going to have to spell all
2 that or show the reporter what you are reading from,
3 otherwise it comes out as gibberish.

4 (Pause)

5 Q What do those initials stand for?

6 A It stands for United States Commander in Chief,
7 Central Command, MacDill Air Force Base, Florida.

8 Q Turning your attention to a page which has a
9 number 6 at the bottom of it, at the top it refers to daily
10 sortie rates. What does that refer to?

11 A It it is an air force term referring to number of
12 air force flying single missions.

13 Q Are there types of aircraft in the corner?

14 A Yes, there are.

15 MR. STAVIS: I have no further questions, your
16 Honor.

17 THE COURT: Any other defense counsel? Cross?

18 MR. MCCARTHY: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. MCCARTHY:

21 Q Good morning again, sir.

22 A Good morning.

23 Q Mr. De Atkine, when you took the post at the JFK
24 Special Warfare Center in 1988, that was a civilian post?

25 A Yes, as a civilian.

1 Q And that was after you retired from active duty?

2 A That is correct.

3 Q Thank you, and the post was that you were an
4 instructor at the school?

5 A I am sorry.

6 Q The post that you took was that you were an
7 instructor at the school?

8 A That is correct.

9 Q And you had some responsibility for lecturing and
10 teaching at the school, is that correct?

11 A That is correct.

12 Q You told us that you met Mr. Mohammed in 1989,
13 correct?

14 A To the best of my recollection, yes, sir.

15 Q That was around February or so?

16 A It must have been early in 1989.

17 Q When you met him, he was an E5 sergeant?

18 A That is correct.

19 Q Mr. Mohammed, the man that we saw in the tape
20 recording, was wearing civilian clothes, right?

21 A Yes, sir.

22 Q At the time he was making the tape, even though
23 he was in civilian clothes, he was actually an active duty
24 E5 sergeant in the army?

25 A That is correct.

1 Q And part of the reason that he wore civilian
2 clothes frequently at the JFK Special Warfare Center is that
3 he was frequently in the position of giving lectures to
4 superior officers, correct?

5 A That I have no knowledge, sir, about giving
6 lectures to superior officers. We had him in civilian
7 clothes to lend some credibility. As a sergeant E5, he
8 wouldn't have the same credibility in the videotape.

9 Q He himself was not an officer, correct?

10 A Not in the United States Army, no.

11 Q And as far as you knew, he had no security
12 clearance?

13 A Insofar as I know, no.

14 Q When he was brought to you in 1989, he was
15 brought to you by Sergeant Daniels, correct?

16 A That is correct.

17 Q And Sergeant Daniels told you to find something
18 for him to do?

19 A That is correct.

20 Q Can you tell the ladies and gentlemen of the jury
21 what it is that you found for him to do?

22 A Actually between myself and Captain Brush, who
23 was on the videotape, we had him do cross-cultural lectures
24 for soldiers who were deploying to the Middle East, on
25 basically how to work with Arabs. We had him straighten up

1 the files. In general, he did just a lot of gopher duties
2 around the office.

3 Q It was your idea -- what was the rank of Officer
4 Brush?

5 A She was a captain at the time.

6 Q It was your idea to have him lecture, is that
7 correct?

8 A I can't really remember if it was my idea. I
9 think we both thought it was a good idea.

10 Q And the reason you thought it was a good idea was
11 because it was your understanding that he was an Egyptian
12 and a native of the area?

13 A That is correct.

14 Q And you thought that a native's perspective would
15 be a good thing to share with your students?

16 A Absolutely.

17 Q The views that he expressed on the tape recording
18 were his own views, is that correct?

19 A Yes.

20 Q Not anything that you schooled him in in order to
21 communicate to your students, correct?

22 A Absolutely not.

23 Q In fact, after the tapes were made, you never
24 decided to share them with your students, correct?

25 A Yes, sir. I didn't use them for my students but

1 it wasn't because of what he said. It was simply that the
2 tapes themselves were not of sufficient quality to hold the
3 interest of my students.

4 Q I think you told us before that you had no idea
5 how many copies of the tape were made.

6 A I don't know the exact number. My recollection
7 is somewhere in the 12 or more tapes.

8 Q I am not asking you, sir -- and I apologize for
9 not being clear in the question. I wasn't asking you how
10 many tapes were made in the series of lectures. What I was
11 asking you, sir, was, you don't know how many copies of
12 those tapes were made, correct?

13 A No, sir, I do not.

14 Q You don't have any idea how widely they were
15 distributed?

16 A No, sir, I do not.

17 Q You don't have any idea whether Mr. Mohammed took
18 some and distributed them?

19 A No, I do not.

20 Q Let me show you copies of Government's Exhibits
21 117 and 118 in evidence that Mr. Stavis showed you a few
22 moments ago. Mr. De Atkine, is it not correct that those
23 documents aren't classified documents, are they?

24 A No?

25 A No, sir, they are not classified.

1 Q Do you have any idea how widely circulated those
2 documents may be?

3 A Those on maintenance and identification guides
4 are very widely distributed. The op plan would be
5 restricted to probably those who are playing in the roles of
6 various people during the planning session.

7 Q And it is a fact, is it not, that with respect to
8 the op plan, the amount of that information that would be
9 distributed at the time of the op plan -- withdrawn -- the
10 number of copies of that op plan that would be distributed
11 at the time of the exercise would vary depending on how
12 large the exercise was, correct?

13 A Yes, sir.

14 Q And those operational plans would be held,
15 treated as if they were classified while the operation was
16 going on, correct?

17 A That is correct, sir.

18 Q But once the operation was over, they are no
19 longer treated that way?

20 A They are no longer treated as classified, they
21 are treated as something we should put back together and
22 keep out of the public, yes.

23 Q But there is no strict regulation on how many
24 copies are made and what is done with them?

25 A Only during the training exercise itself.

1 Q The annotations that are on some of those pages
2 that are handwritten in Arabic, I take it when the
3 operational plan and the other exhibit are actually made and
4 distributed at Fort Bragg or within the army proper, those
5 Arabic annotations do not appear on those forms, correct?

6 A All I can say, sir, is I have never seen an op
7 plan with that sort of thing on there.

8 MR. McCARTHY: Thank you, Mr. De Atkine.

9 THE COURT: Mr. Stavis, any redirect?

10 REDIRECT EXAMINATION

11 BY MR. STAVIS:

12 Q Colonel De Atkine, Mr. McCarthy asked you some
13 questions about Mr. Mohammed being an Egyptian and having
14 some knowledge of the area. Do you recall those questions?

15 A Yes, sir.

16 Q Was Mr. Mohammed an officer in the Egyptian army?

17 A He told me he was.

18 Q Mr. McCarthy asked you some questions concerning
19 the tape and the distribution of that tape. Could you tell
20 the ladies and gentlemen which people had access to that
21 tape after it was created?

22 A The audio visual unit that actually made the
23 tape, which unit belongs to JFK Center, and then they were
24 transferred --

25 Q How many people are in that unit?

1 MR. McCARTHY: Objection.

2 A I don't really know, sir.

3 THE COURT: Overruled.

4 A I am not sure. It may be 10, 12 people.

5 Q Who else had access to those tapes after they
6 were created?

7 A I can't say for sure, sir. All I know is the
8 tapes by some means were transferred back to our unit and
9 were in my classroom.

10 Q Once the tapes were transferred to your unit or
11 your classroom, who at the JFK Center had access to those
12 videotapes?

13 A Certainly myself and Captain Brush and Sergeant
14 Ali Mohammed, and others I may not know about, I have no
15 personal knowledge.

16 Q Do you have any reason to believe that other
17 people aside from you, Captain Brush and Ali Mohammed had
18 access to those videotapes?

19 A I have no reason to believe they did not. They
20 were not under lock and key and they were in an open
21 classroom. Students could have had access to them. I don't
22 know.

23 Q Mr. McCarthy asked you about Government's Exhibit
24 118. That is the one that describes the Soviet armament.
25 Do you know who published that?

1 A No, sir, I do not.

2 Q Is that a U.S. Army publication?

3 A That particular one, I don't know, but there are
4 similar types that are published by the U.S. government.

5 Q Colonel De Atkine, the students that you teach at
6 the JFK Special Warfare Center, are all of those students
7 army officers?

8 A In my particular seminar, yes. I teach other
9 classes in which I have enlisted men.

10 Q But those are enlisted men in the United States
11 Army, is that correct?

12 A That is correct.

13 Q You don't teach any civilians at the U.S. Army
14 John F. Kennedy Special Warfare Center?

15 A No, but there are a number of civilians taught
16 there, as there are some allied officers, but in my classes,
17 no.

18 MR. STAVIS: I have no further questions, your
19 Honor.

20 THE COURT: Anything else?

21 MR. McCARTHY: No, thank you, your Honor.

22 THE COURT: You are excused. Thank you.

23 (Witness excused)

24 MR. STAVIS: Could we be heard at the side bar,
25 your Honor?

1 THE COURT: Yes.

2 (At the side bar)

3 MR. STAVIS: Mr. McCarthy has raised some
4 question concerning the admissibility of Mr. Mohammed Ali's
5 service records, not with regard to their authenticity. It
6 is my intention to introduce his service records at this
7 point to show the years that he was in the military.

8 THE COURT: If it's a fast one I will field it
9 here. If it's not a fast one -- what is the issue?

10 MR. MCCARTHY: Your Honor, the issue is that the
11 only thing that is relevant is that the guy was in the army
12 and he was in the army for three years and his dates of
13 service. He wants to put in pages of stuff, detailed
14 minutia about the guy's career in the army which is not
15 relevant to the case.

16 MR. STAVIS: It shows that making videotapes was
17 one of his duties. It shows that Mr. De Atkine was his
18 superior in the JFK warfare center.

19 THE COURT: You are not going to have this now
20 if --

21 MR. STAVIS: No, I am not. May I publish other
22 exhibits or is your Honor's scheduling preference to put
23 another witness on?

24 THE COURT: Which documents?

25 MR. PATEL: The photographs --

1 THE COURT: The photographs, fine. I have a
2 problem with people reading certificates of incorporation
3 unless you have some reason to do it.

4 MR. PATEL: We can make copies of it, your Honor.

5 THE COURT: The photograph I have no problem.
6 Having people read a certificate of incorporation with no
7 apparent focus strikes me as a colossal waste of time.

8 MR. STAVIS: I will introduce these, I have Mr.
9 Nosair's citizenship certificate, which there is no
10 objection to, and we can publish that or wait for another
11 time to publish that, and then we will put another witness
12 on.

13 THE COURT: Fine.

14 (In open court)

15 MR. STAVIS: Your Honor, at this time I offer
16 into evidence Nosair Defense Exhibit LLL, which constitutes
17 the military service records of Sergeant Ali Mohammed.

18 THE COURT: That is received.

19 (Defendant Nosair Exhibit LLL received in
20 evidence)

21 MR. STAVIS: Your Honor, at this time I introduce
22 into evidence Nosair Defense Exhibit MMM, which is Mr.
23 Nosair's certificate of United States citizenship, dated the
24 27th day of September 1989.

25 THE COURT: That is received.

1 (Defendant Nosair Exhibit MMM received in
2 evidence)

3 THE COURT: I assume by stipulation.

4 MR. MCCARTHY: Yes, your Honor.

5 MR. STAVIS: At this time the defense calls
6 Khaled Ibrahim to the witness stand.

7 KHALED IBRAHIM,
8 called as a witness by the defense,
9 having duly affirmed, testified as follows:

10 THE COURT: Go ahead, Mr. Stavis.

11 MR. STAVIS: Yes.

12 (Continued on next page)

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1 DIRECT EXAMINATION

2 BY MR. STAVIS:

3 Q Mr. Ibrahim, would you tell the ladies and
4 gentlemen of the jury where you were born and raised.

5 A I was born in Cairo, Egypt, and raised in Egypt
6 until the age of 19.

7 Q Could you tell the ladies and gentlemen of the
8 jury something about your educational background.

9 THE COURT: Mr. Ibrahim, you are going to have to
10 move closer to the microphone if you can and talk right into
11 it, otherwise the translators can't hear you.

12 A I went to engineering college in Cairo
13 University, and when I came here to United States, I
14 continued my education at New Jersey Institute of Technology
15 in Newark, New Jersey, and I got a bachelor's degree in
16 electrical engineering in 1976.

17 Q When did you first come to the United States?

18 A July 1973.

19 Q Why was it that you came to the United States?

20 A My father had immigrated to the United States in
21 1971. He came here by himself at first, and then after
22 that, when he got settled, he got a job and so on, we came,
23 meaning myself, my mother and my two brothers.

24 Q Did there come a time that you became a United
25 States citizen?

1 A Yes, in 1985, to the best of my recollection, I
2 became a United States citizen.

3 Q Where did that occur?

4 A In Evansville, Indiana.

5 Q Did you have to go to court at that time?

6 A Yes.

7 Q What did you have to do before you went to court?

8 A You have to go to a meeting with an immigration
9 official, and they ask you some questions about your
10 knowledge of the system of government of the United States
11 and so on, and general knowledge of the government, and then
12 if you pass that test, then they schedule an appearance in
13 court, where you take the oath of being a citizen in the
14 United States.

15 Q Did you do that?

16 A Yes.

17 Q Mr. Ibrahim, are you married?

18 A Am I married?

19 Q Yes.

20 A Yes.

21 Q How long have you been married?

22 A I was married in 1983, so that's about 12 years.

23 Q What is your wife's name?

24 A Fatima.

25 Q Do you have any children, sir?

1 A Four children.

2 Q What are their names and their ages?

3 A Yousef is 10 years old, my oldest son. Then
4 Sarah is 9. Then Ali is 8. And then I have a daughter
5 Mariam. She is only 2 years old.

6 Q What kind of work do you do?

7 A I am an electrical engineer. I work at E.I.
8 Associates in East Orange, New Jersey.

9 Q How long have you worked there?

10 A A little over one year.

11 Q What about your previous employment?

12 A I had worked for John Brown Engineers,
13 engineering and construction, for a total of about 10 years,
14 but over three different periods of time. The last, my last
15 employment with them was for about three and a half years,
16 starting around May 1989.

17 Q How long have you been working at your present
18 job?

19 A I am sorry.

20 Q How long have you been working at your present
21 job?

22 A About a little over one year.

23 Q Where do you live?

24 A I live at 244 North 11th Street in Kenilworth,
25 New Jersey.

1 Q How long have you lived there?

2 A About eight months, maybe.

3 Q Where did you live before that?

4 A 24 Romaine Avenue, in Jersey City.

5 Q When did you first move to Jersey City,
6 Mr. Ibrahim?

7 A In the summer of 1987.

8 Q After moving to Jersey City in the summer of
9 1987, did you begin to attend a particular mosque?

10 A Yes, El Salaam Mosque in Jersey City, on Kennedy
11 boulevard.

12 Q Mr. Ibrahim, do you know this gentleman sitting
13 over here?

14 A Yes.

15 Q What is his name?

16 A Sayyid Nosair.

17 Q When did you first meet Sayyid Nosair?

18 A Probably within the first year after I moved to
19 Jersey City, which would have been during the year 1988.

20 Q Where was it that you met him?

21 A At El Salaam Mosque in Jersey City.

22 Q Describe, if you would, for the ladies and
23 gentlemen of the jury your relationship with Sayyid Nosair.

24 A I met him at El Salaam Mosque and after awhile we
25 got to know each other a little bit, he would bring his

1 children to the mosque and I would take some of my children
2 to the mosque, too, at least the older two children, and the
3 children would play with each other and we would talk, and
4 then our friendship developed into social visits at home and
5 things like that, and my wife came to know his wife through
6 that relationship, and we would visit them, they would visit
7 us. While the children played, we would talk.

8 Q Do you consider Sayyid Nosair to be a friend of
9 yours?

10 A Yes.

11 Q Mr. Ibrahim, do you know Sheik Omar Abdel Rahman?

12 A Yes, I do.

13 Q When did you first meet Sheik Omar Abdel Rahman?

14 A I don't remember the exact time when I met him,
15 but he had come to the United States from Egypt, I think,
16 and within maybe six months after that, I met him.

17 Q Where was it that you met Sheik Omar Abdel
18 Rahman?

19 A At El Salaam Mosque.

20 Q What position, if any, did Sheik Omar Abdel
21 Rahman have at the El Salaam Mosque?

22 A He didn't have any position. He would give
23 sermons and lectures at the mosque as an invited speaker,
24 but I don't remember that he had any position as such.

25 Q How often did those lectures occur?

1 A There was a time when he would give weekly
2 lectures, and on Friday sermons I don't think he gave every
3 Friday but maybe once every three or four weeks he would
4 give one like that.

5 Q How would you describe your relationship with
6 Sheik Omar Abdel Rahman?

7 A I like to listen to his lectures, especially
8 having to do with tafzeer of the Koran.

9 Q You used a word --

10 A Tafzeer means explanation of the Koran, because
11 he is a scholar and his specialty, as far as I know, means
12 tafzeer, which means explanation of the meaning of the
13 Koran, and I like to listen to his tafzeer very much.

14 Q Did you ever see Sheik Omar Abdel Rahman and
15 Sayyid Nosair together at the El Salaam Mosque?

16 A I don't recall seeing them together at Salaam.

17 Q Do you recall seeing Sayyid Nosair and Sheik Omar
18 Abdel Rahman together at a location other than the El Salaam
19 Mosque?

20 A No, I don't.

21 Q When you first met Sayyid Nosair in 1988, how
22 often did you see him at the El Salaam Mosque?

23 A I used to go to El Salaam Mosque almost every
24 day, or as often as I could, at least for the night prayers,
25 at night, and he was regular, as far as I could tell. He

1 probably went there just about as often as I did, which was
2 almost every night.

3 Q Did there come a time when you began to see less
4 of Sayyid Nosair at the El Salaam Mosque?

5 A Yes.

6 Q When was that?

7 A That was around -- I would think it's 1990, maybe
8 in the summer. I remember at that time there was some
9 disagreement between him and the Sheik Omar, and he would
10 come to El Salaam Mosque less frequently. And then it came
11 to the point that he moved out of the Jersey City totally,
12 and he moved to Cliffside Park. To the best of my
13 recollection, that was in the summer of 1990.

14 Q Do you know a man by the name of Abdo Mohammed
15 Haggag?

16 A Yes, I do.

17 Q Where do you know him from?

18 A From El Salaam Masjid also.

19 Q How well did you come to know Abdo Mohammed
20 Haggag?

21 A I came to know him fairly well.

22 Q Did you ever see Abdo Mohammed Haggag with Sheik
23 Omar Abdel Rahman at the El Salaam Mosque?

24 A Yes, I remember seeing him.

25 Q How often did you see those two men together at

1 the El Salaam Mosque?

2 A I would say that towards the period before I left
3 the United States, they were getting closer together.

4 Q Did you ever have occasion to see Abdo Mohammed
5 Haggag and Sheik Omar Abdel Rahman in places other than the
6 El Salaam Mosque?

7 A There was one time when I had to visit the
8 sheik's apartment, at one time, for some reason, and Abdo
9 Haggag was there.

10 Q Do you know a man by the name of Mohammed
11 Salameh?

12 A Yes.

13 Q When did you first meet Mohammed Salameh?

14 A I don't remember the exact time but it had to be
15 around 1989 or 1988. I think it is 1989, during that year.

16 Q Where was it that you met him for the first time?

17 A At El Salaam Mosque.

18 Q Describe, if you would, your relationship with
19 Mohammed Salameh.

20 A Again, I would meet him at El Salaam Mosque for
21 prayers, and we would talk and stuff like that, and then I
22 got to know him a little bit more after that, but he is not
23 a real close friend, you know. I just know him. He is an
24 acquaintance.

25 Q Did you ever have occasion to speak to Mohammed

1 Salameh on the telephone?

2 A Yes, I remember that he called me maybe two or
3 three different times over a period of a couple of years.

4 Q Did Mohammed Salameh ever come to your home?

5 A Yes, I think he came to my home, maybe once or
6 twice.

7 Q Do you consider Mohammed Salameh to be a friend
8 of yours?

9 A Yes.

10 Q Do you know a man by the name of Siddig Ibrahim
11 Siddig Ali?

12 A Yes, I do.

13 Q Where did you meet him?

14 A I never really met him. I saw him at Islam
15 mosque, and I saw him at the trial, Sayyid's trial.

16 Q Did you ever have a conversation with Siddig
17 Ibrahim Siddig Ali?

18 A No, I don't remember having a conversation with
19 him.

20 Q When was it that you met him at the El Salaam
21 Mosque?

22 MR. FITZGERALD: Objection to form.

23 MR. STAVIS: I will withdraw it.

24 Q When was it that you saw him at the El Salaam
25 Mosque?

1 A I think it was around a time when Sayyid was on
2 trial.

3 Q Have you ever spoken to Mr. Siddig Ali?

4 A I don't remember speaking to him directly. I
5 know that I have seen him there. I saw him talking to other
6 people.

7 Q Mr. Ibrahim, do you know this gentleman over
8 here, Victor Alvarez?

9 A Yes, I know him.

10 Q Where do you know Victor Alvarez from?

11 A The first time I met him was at Al Farook Masjid
12 in Brooklyn, on Atlantic Avenue, and then --

13 Q When was that?

14 A I think it was around 1989.

15 Q Describe, if you would, your relationship with
16 Victor Alvarez.

17 A At first I really didn't know him very well, and
18 I remember one time we went on Islamic conference in Kansas
19 City -- that was over the Christmas holiday -- and during
20 that trip I got to know him a little better.

21 Q You told us that you met Victor Alvarez at the Al
22 Farook Mosque in Brooklyn.

23 A Yes.

24 Q Explain to the ladies and gentlemen of the jury
25 what you were doing at the Al Farook Mosque in Brooklyn.

1 A At Al Farook Mosque, there was an office that was
2 called the Jihad Office, and we would go there sometimes to
3 get maybe the latest news about the jihad in Afghanistan,
4 and to maybe help out with some of the chores that they were
5 doing. So that's why I went.

6 Q Did you ever pray at the Al Farook Mosque?

7 A Yes, I did.

8 Q Did there come a time that you met a man by the
9 name of Mahmoud Abouhalima?

10 A Yes, I did.

11 Q Where did you meet him?

12 A I also met him at Al Farook Masjid in Brooklyn.

13 Q When did you meet him?

14 A I don't remember the exact time. It had to have
15 been around that time, maybe 1989 or 1988.

16 Q What happened when you met Mahmoud Abouhalima?

17 A Again, we would go there to help out with the
18 Jihad Office in Brooklyn, in Al Farook, and I got introduced
19 to him once. After that, I liked him and I would talk to
20 him from time to time.

21 Q What was the nature of your relationship with
22 Mahmoud Abouhalima?

23 A At first it was just casual acquaintance, and
24 then after that he moved to New Jersey -- I think he lived
25 in Newark -- and I got to know him a little better after he

1 moved to New Jersey.

2 Q Do you know the gentleman at the front table by
3 the name of Ibrahim El-Gabrownny?

4 A Yes, I do.

5 Q When did you first meet Ibrahim El-Gabrownny?

6 A I remember that it was maybe 1988 or early 1989.
7 I can't pinpoint -- no, it was '88, I remember now. It was
8 1988, yes.

9 Q Describe for the ladies and gentlemen of the jury
10 your relationship with Ibrahim El-Gabrownny.

11 A I was building a house in an area which is just
12 outside of Atlantic City, as an investment type of thing,
13 and he is a carpenter by trade, and I asked him to help me
14 with building the house. So during that period of time I
15 got to know him very well, because he helped me to build
16 that house.

17 MR. STAVIS: Your Honor, I am about to move into
18 a new area.

19 THE COURT: This is a convenient break point.
20 Ladies and gentlemen, we are going to break for lunch.
21 Please leave your notes and other materials behind. Please
22 don't discuss the case, and we will resume this afternoon.

23 (Luncheon recess)

24

25

1 AFTERNOON SESSION

2 2:10 p.m.

3 (Jury not present)

4 MR. STAVIS: Mr. Patel will be here in one
5 moment. He just went to get the witness.

6 THE COURT: Bring in the jurors.

7

8 KHALED IBRAHIM, resumed.

9 (Jury present)

10 THE COURT: Good afternoon, ladies and gentlemen.

11 JURORS: Good afternoon.

12 THE COURT: Mr. Stavis?

13 MR. STAVIS: Thank you, your Honor.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. STAVIS:

16 Q Mr. Ibrahim, do you know of an Islamic leader by
17 the name of Sheik Abdallah Azzam?

18 A Yes, I do.

19 Q Who was Abdallah Azzam?

20 A Sheik Abdallah Azzam was a scholar of Islam. He
21 was a teacher or a professor at an Islamic University in
22 Saudi Arabia. He got interested in the jihad that was going
23 on in Afghanistan, and he left his posts and he dedicated
24 the rest of his life to supporting the jihad in Afghanistan.

25 MR. STAVIS: Your Honor, at this time I would

1 offer into evidence Nosair Defense Exhibit J-1, a
2 photographic enlargement of Nosair Defense Exhibit J, which
3 was introduced on February 23 of this year.

4 MR. MCCARTHY: No objection.

5 THE COURT: J-1 is received in evidence.

6 (Nosair Defense Exhibit J-1 was received in
7 evidence.)

8 MR. STAVIS: Defense Exhibit J was recovered from
9 Mr. Nosair's work locker on November 6 of 1990.

10 Q Mr. Ibrahim, could you please come off the
11 witness stand.

12 THE COURT: I would ask Mr. Stavis, if he is
13 going to testify down there about that exhibit, that he be
14 given a microphone so that the translators can hear him.
15 Thank you.

16 Q Speak into the mike.

17 Mr. Ibrahim, take a look, if you would, at Nosair
18 Defense Exhibit J-1. Who is that a photograph of? Whose
19 photograph is on that exhibit?

20 A This is a photo of Abdul Azzam.

21 Q Do you know what this is a photographic
22 enlargement of?

23 A This is the cover of Al Jihad magazine, which was
24 issued monthly to talk about the news of the jihad in
25 Afghanistan.

1 Q Were you a regular reader of Al Jihad magazine?

2 A Yes, I read every word of every issue.

3 Q Do you recall the issue that is depicted here in
4 Nosair Defense Exhibit J-1?

5 A Yes. This is the issue that was right after
6 Sheik Abdallah Azzam was killed in the shower in Pakistan.

7 Q Please resume your seat.

8 Was Sheik Abdallah Azzam part of any
9 organization?

10 A Yes. He established an office in Peshawar to
11 facilitate the jihad, performing the act of jihad, for
12 people who wanted to go to Afghanistan and help the Afghans
13 in their jihad against the Communists. And that was called
14 the Mujahideen Services Office. There were other offices
15 established here in the United States for the same purpose,
16 to disseminate information about the jihad in Afghanistan
17 throughout the Muslim community in the United States and to
18 facilitate traveling to Afghanistan for those Muslims who
19 wanted to go and participate in the jihad in Afghanistan.

20 Q What is the Alkifah? What does that mean?

21 A Alkifah Refugee Center -- are you asking me about
22 the meaning of the word Alkifah?

23 Q No, what is the Alkifah Refugee Center?

24 A The Alkifah Refugee Center is one of those
25 offices that was established by Sheik Abdallah Azzam in the

1 United States.

2 Q Is there any other name that the Alkifah Refugee
3 Center is known by?

4 A Well, we always refer to it as Al Jihad office.

5 Q You used the word "jihad." What does that word
6 mean?

7 A Jihad means armed struggle to protect Muslims,
8 Muslim countries, against outside aggression, and to restore
9 Islamic rule to countries, Muslim countries which do not
10 have Islamic rule; which have un-Islamic rule imposed on
11 them by outside forces.

12 Q What, if anything, did Sheik Abdallah Azzam do to
13 publicize the cause of the Mujahideen in Afghanistan?

14 A He toured different parts of the world, the
15 Middle East and the United States, to give lectures about
16 the jihad in Afghanistan, the fact that the Afghans were
17 launching a legitimate jihad, and to give the latest news
18 and developments about the jihad in Afghanistan to the
19 Muslims of the world, and to encourage people to participate
20 in jihad and to convey the message that jihad, supporting
21 the Afghans in the jihad is a duty that is incumbent on
22 every Muslim if he is able to participate.

23 Q You mentioned that there was a legitimate jihad
24 in Afghanistan. What do you mean by that?

25 A Well, the Afghans were fighting against the

1 Soviet occupation of Afghanistan, and the reason that the
2 Soviets occupied Afghanistan is because they wanted to
3 impose Communism on Afghanistan. And the Afghan people, who
4 are mostly Muslim, did not accept that. They fought back.
5 And therefore it was a legitimate jihad.

6 Q What if anything did the Soviets in Afghanistan
7 do with regard to the Muslims in Afghanistan?

8 A They --

9 MR. FITZGERALD: Objection.

10 THE COURT: Sustained.

11 Q What name were these Muslims who fought the
12 Soviet Union known by?

13 A The Mujahideen. They were called the Mujahideen,
14 and we referred to them always as the Mujahideen. The
15 Mujahideen became a very commonplace word, to the extent I
16 remember during that time that President Reagan referred to
17 them --

18 THE COURT: He just asked you what word was used.
19 You gave the word. Go ahead.

20 MR. STAVIS: May I approach the witness, your
21 Honor.

22 Q Mr. Ibrahim, I am showing you what has been
23 marked as Nosair Defense Exhibit JJJ-24, and I ask you to
24 take a look at it.

25 A OK.

1 Q Have you seen that before?

2 A Yes.

3 Q What is it?

4 A It is a tape which shows some of the battles that
5 took place in Afghanistan.

6 Q Have you viewed that tape recently?

7 A Yes.

8 Q How do you know that?

9 A I see my initials on it and a date when I saw it.

10 MR. STAVIS: Your Honor, at this time I would
11 introduce into evidence Nosair JJJ-24, and an accompanying
12 transcript, Nosair Defense JJJ-24T, and ask to play a small
13 excerpt from Nosair JJJ-24.

14 MR. FITZGERALD: May I just have one moment with
15 Mr. Stavis.

16 THE COURT: Yes.

17 MR. FITZGERALD: A very brief sidebar, your
18 Honor.

19 (At the sidebar)

20 MR. FITZGERALD: I have no objection as long as
21 it is not offered for the truth but for what was in Mr.
22 Nosair's house.

23 THE COURT: I am sorry, where did this come from?

24 MR. STAVIS: It came from his house. I am going
25 to clear that up.

1 THE COURT: All right.

2 MR. FITZGERALD: If it is offered just to show
3 that this is the type of material he had in his house, I
4 have no objection, but if he is offered for the truth, it is
5 hearsay.

6 THE COURT: It is not being offered for the
7 truth?

8 MR. STAVIS: No, your Honor.

9 THE COURT: Say where it came from.

10 (In open court)

11 MR. STAVIS: Your Honor, Nosair JJJ is a
12 videotape recovered --

13 THE COURT: JJJ-24.

14 MR. STAVIS: Excuse me?

15 THE COURT: JJJ-24.

16 MR. STAVIS: Yes, your Honor. Nosair JJJ-24 a
17 videotape recovered from Mr. Nosair's home on November 6 of
18 1990.

19 Q Mr. Ibrahim, is there a person who is narrating
20 the scenes depicted in Nosair Defense Exhibit JJJ-24?

21 A Yes.

22 Q And who is that?

23 A Sheik Abdallah Azzam.

24 MR. FITZGERALD: So stipulated. I will stipulate
25 that all the JJJ videotapes came from Mr. Nosair's home, to

1 save time.

2 THE COURT: Good. And the transcript, I gather,
3 is stipulated to be the transcript of what the statements
4 are on the tape?

5 MR. STAVIS: Yes, your Honor.

6 MR. FITZGERALD: No objection.

7 THE COURT: They are both received.

8 (Nosair Defense Exhibits JJJ-24 and JJJ-24T were
9 received in evidence.)

10 Q Mr. Ibrahim, I will ask you put your headphones
11 on and listen to this Arabic tape while the jury is watching
12 it.

13 (continued on next page)

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1 (Videotape played)

2 BY MR. STAVIS:

3 Q Mr. Ibrahim, on the screen there are two men with
4 rifles and they are standing next to a rock, and something
5 is written on the rock in Arabic, and what is that?

6 A The bottom line says Allahu Akbar. The top line,
7 I think it is in a language other than Arabic and I don't
8 think I can read it.

9 Q What does Allahu Akbar mean?

10 A God is great.

11 (Videotape continued)

12 Q Who was the man who was narrating that film in
13 Arabic?

14 A That was sheik Abdallah Azzam.

15 Q Was one of Sheik Abdallah Azzam's functions as
16 the head of the Alkifah movement to make tapes of movies and
17 books and things like that?

18 A Yes.

19 Q Mr. Ibrahim, did there come a time that you
20 personally met Sheik Abdallah Azzam?

21 A Yes.

22 Q When was that?

23 A That was in the latter part of 1987, to the best
24 of my recollection, probably around December, over the
25 holiday time.

1 Q Where was it that you met Sheik Abdallah Azzam?

2 A In Jersey City, he came to give the lecture about
3 jihad in Afghanistan, first at the Islamic Center in Jersey
4 City, and then the second part of the day he gave the
5 lecture at El Salaam.

6 Q What if anything do you remember about the
7 lecture that you saw in 1987 of Sheik Azzam?

8 A He talked about the latest developments of the
9 jihad in Afghanistan at that time, and he emphasized the
10 importance of Muslims knowing that it is incumbent upon them
11 to support that jihad in any way possible, and those of us
12 who could actually go over there to participate in the
13 jihad, then we should do that.

14 Q And you said that the following day Sheik Azzam
15 went to a different mosque?

16 A Yes.

17 Q And that other mosque was Al Farook Mosque?

18 A Yes.

19 Q And you attended his lecture there?

20 A Yes. I attend the attended the lecture at Al
21 Farook Mosque also, because I was very impressed and
22 interested in the subject, and so I also followed him to Al
23 Farook to listen to more of his talk about Afghanistan.

24 Q What if anything did you do after attending these
25 two lectures by Sheik Abdallah Azzam?

1 A After the first lecture I went home and I talked
2 to my wife. I told her that I am convinced that it's the
3 duty upon me to participate in the jihad, if possible, and
4 that I would like to go.

5 Q Drawing your attention to the summer of 1980, did
6 you have a conversation with Sayyid Nosair concerning the
7 subject of jihad in Afghanistan?

8 A What was the date that you mentioned?

9 MR. STAVIS: Summer of 1990.

10 THE COURT: '80?

11 MR. STAVIS: No, '90.

12 A 1990, yes.

13 Q What did you say?

14 A We talked about going to Peshawar together.

15 Q What is Peshawar?

16 A Peshawar is a city in Pakistan which is about 50
17 kilometers away from the border with Afghanistan.

18 Q I am going to interrupt you for a second and ask
19 you if you could come off the witness stand for just one
20 moment.

21 MR. STAVIS: Your Honor, at this time I would
22 introduce into evidence Nosair Defense Exhibit NNN.

23 MR. FITZGERALD: No objection.

24 THE COURT: NNN is received without objection.

25 It is a map?

1 MR. STAVIS: Yes, your Honor.

2 (Defendant Nosair Exhibit NNN received in
3 evidence)

4 Q You just mentioned Peshawar, which is in
5 Pakistan, Mr. Ibrahim.

6 A Yes.

7 Q Could you show the ladies and gentlemen of the
8 jury where Peshawar, Pakistan, is.

9 A Yes.

10 Q You have to come out of the way of the jurors so
11 they can see the map. Where is Peshawar in relation to the
12 border of Afghanistan?

13 A It is about 50 kilometers away, which is about
14 30-something miles.

15 Q I would ask you to write the word Peshawar on the
16 map so that we will be able to see it, with that red marker.
17 Just write a P for Peshawar.

18 A P for Peshawar.

19 Q Can you please resume your seat.

20 Mr. Ibrahim, this conversation that you had with
21 Sayyid Nosair, where did it occur?

22 A In Jersey City. It happened probably during the
23 times when he was visiting me at my house or I was visiting
24 him, I don't remember which.

25 Q What if anything did you tell Sayyid Nosair about

1 Peshawar, Pakistan?

2 A He is the one who actually suggested that we
3 would take our families and go to Peshawar, and maybe, you
4 know, share a house, a large house or something like that in
5 Peshawar, and go into Afghanistan together, or alternately,
6 something like that.

7 Q At the time that you had that conversation, did
8 you know anything about houses which were available for rent
9 in Peshawar, Pakistan?

10 A We knew that there was an area in Peshawar in
11 which a lot of the Arabic-speaking brothers lived.

12 Q Let me interrupt you. You said brothers. What
13 do you mean by that?

14 A Muslim brothers, Muslims, other Muslims. And
15 they lived in an area where there were houses that in many
16 cases those houses were large enough that two families would
17 share a house. I knew that.

18 Q Did you know anybody from the El Salaam Mosque
19 who had gone to do jihad in Afghanistan?

20 A Yes. I know, there is a brother by the name of
21 Mustafa Saif who had been to Afghanistan, and Mohsen Attia,
22 and also there was one brother who went there about the same
23 time that I was there, and that was, his name was Ibrahim
24 Abdo, who actually got killed in the battles over there.

25 Q Were these people that you are mentioning members

1 of the mosque that you attended in Jersey City?

2 A Yes.

3 Q You mentioned the Jihad Office. Was there a
4 Jihad Office located in Brooklyn?

5 A Yes, there was.

6 Q Where was that Jihad Office located?

7 A On Atlantic Avenue, on the first floor of the Al
8 Farook Masjid.

9 Q What name did you call that?

10 A We called it Al Jihad office.

11 Q Had you ever been to the Al Jihad office in
12 Brooklyn?

13 A Yes, I have been there a few times.

14 Q On any of the occasions that you went to the Al
15 Jihad office in Brooklyn, did you see Sayyid Nosair?

16 A Yes. As a matter of fact, we went together a few
17 times.

18 Q Was there another Jihad Office in the New York
19 area?

20 A Yes, there was one in Jersey City, in the same
21 building which had El Salaam Mosque in it.

22 Q Did you go to that Jihad Office in Jersey City?

23 A Yes, I did.

24 Q At any of the times that you went to that Jihad
25 Office, did you see Sayyid Nosair?

1 A Yes.

2 Q What was the role of Sayyid Nosair with regard to
3 the Jihad Office in Jersey City?

4 A I think he founded it. He was the main person in
5 the office, and the people that were working in the office
6 were basically helping him.

7 Q What kind of work did Sayyid Nosair do in the
8 Jersey City Jihad Office?

9 A They had a library, or a book store, you could
10 say, where people could go in and read books or could
11 purchase books, Islamic books. They had a computer and they
12 were trying to publish a publication about jihad, something
13 like just a local newsletter, you might say, about jihad.

14 Q What role, if any, did Sayyid Nosair have with
15 regard to that newsletter that they were trying to publish
16 at the Jihad Office in Jersey City?

17 A He would ask people to write articles in that
18 newsletter, and he would bring some of the material himself,
19 and then he had someone put it together and type it and have
20 it printed and so on.

21 Q Do you know if he did any interviews for the
22 newsletter at the Jihad Office?

23 A Yes. I remember he did an interview, I think it
24 was over the telephone, with somebody who had called in, who
25 had read the newsletter and wanted to talk about his

1 personal experience, and that interview was, to the best of
2 my recollection was printed in that newsletter.

3 Q When you say that man's personal experience, what
4 are you referring to?

5 A I remember that there was an Egyptian guy that
6 called and Sayyid took his interview over the telephone, and
7 that guy used to be in the security forces in Egypt, and --

8 MR. FITZGERALD: Objection, 401.

9 MR. STAVIS: I will move on, your Honor.

10 THE COURT: All right.

11 Q Can you come down off the witness stand again,
12 please. I am going to show you Nosair Defense Exhibit C in
13 evidence and I am going to ask you to describe what it is
14 for the ladies and gentlemen of the jury. And let's get a
15 microphone for you.

16 A It's a T-shirt, and it has a symbol on it of the
17 mujahideen services office in Afghanistan, for the
18 mujahideen in Afghanistan, and it has the address of the
19 office, which is 552 Atlantic Avenue, Brooklyn. It's got
20 the telephone number.

21 Q Is the back of the T-shirt written in English?

22 A Yes.

23 Q Can you please hold that up for the ladies and
24 gentlemen of the jury and go sort of towards the middle of
25 the jury box.

1 Thank you. Please resume your seat.

2 Q During your time at the Jihad Office in Brooklyn
3 and the Jihad Office in Jersey City, did you ever have
4 occasion to see T-shirts like this one, Nosair Defense
5 Exhibit C?

6 A Yes.

7 Q Before, whether we were looking at this large
8 enlargement of Jihad Magazine for January of 1990, you said
9 that you had read Jihad Magazine.

10 A Yes.

11 Q Where did you get the copies of Jihad Magazine
12 that you read?

13 A Sometimes I get it at Al Jihad office in
14 Brooklyn, or at the El Salaam Mosque. A lot of copies used
15 to be available for people to pick up for a dollar or
16 something like that.

17 Q What kind of subjects were covered in Jihad
18 Magazine?

19 A It talked almost exclusively about the jihad in
20 Afghanistan.

21 Q How often did you read Jihad Magazine?

22 A I think it came out monthly, so I would read
23 every issue. I never missed one.

24 MR. STAVIS: At this time I would ask that the
25 jurors open up their notebooks to Nosair defendant Exhibits

1 J and K.

2 May I approach the witness with Nosair defense J
3 and K, your Honor?

4 THE COURT: Yes.

5 Q Drawing your attention to Nosair Exhibit K, which
6 issue of Jihad Magazine is that, Mr. Ibrahim?

7 A February 1990.

8 Q What does that say in Arabic on the front cover?

9 A It is asking a question, how far has the
10 investigation gone in the accident of, assassination of
11 Dr. Abdallah Azzam.

12 Q Please turn to the back page, the back cover, I
13 should say. Who is depicted in the back cover?

14 A Sheik Abdallah Azzam.

15 Q What if anything did Sheik Abdallah Azzam have
16 slung over his right shoulder?

17 A Kalishnikov rifle.

18 Q What is a Kalishnikov rifle?

19 A It's a Russian-made assault rifle that can be
20 operated in automatic or semiautomatic modes.

21 Q Thank you.

22 At the Jihad Offices in Brooklyn and New Jersey,
23 were there videotapes about the subject of the jihad in
24 Afghanistan?

25 A Yes.

1 Q I am now going to show you a series of
2 videotapes. They are all marked Nosair Defense Exhibit JJJ,
3 and it is stipulated that these videotapes were recovered
4 from Sayyid Nosair's home in New Jersey on November 6 of
5 1990.

6 MR. FITZGERALD: So stipulated.

7 Q There are a lot of tapes, and I would ask you, if
8 you have any notes, if you would like to refer to them.
9 Take your pick.

10 THE COURT: Mr. Stavis, can we focus it just a
11 little bit more than that?

12 MR. STAVIS: OK.

13 THE COURT: Thank you.

14 Q Nosair Defense Exhibit JJJ-7, is that a videotape
15 that you have viewed?

16 A Yes, I see my initials on it and the date.

17 Q What is depicted in videotape number 7? JJJ-7?

18 A I have to refer to my notes, because there are so
19 many of them.

20 Q That is quite all right.

21 MR. FITZGERALD: No objection, if we could just
22 mark them at some point.

23 MR. STAVIS: The notes?

24 MR. FITZGERALD: Yes, 3500.

25 MR. STAVIS: The notes are Ibrahim 3500 pages 1

1 through 3.

2 MR. FITZGERALD: Thanks.

3 A Number 7 I have written here says --

4 Q Just use the notes, please, to refresh your
5 memory.

6 THE COURT: He is not refreshing his
7 recollection. Did you make the notes at the time you were
8 looking at the tapes?

9 THE WITNESS: The dates.

10 THE COURT: At the time you were looking at the
11 tapes you were making the notes?

12 THE WITNESS: Yes.

13 THE COURT: And you wrote down what you were
14 looking at?

15 THE WITNESS: Yes.

16 MR. FITZGERALD: We won't be objecting.

17 THE COURT: You can use the notes. Go ahead.

18 A Number 7 is an interview with Sheik Tamim Adnani.
19 I am not sure if it is an interview or lecture. This
20 particular one doesn't have any sound on it, but it is the
21 same as number 29.

22 Q Who is Sheik Tamim Adnani?

23 A He was also a scholar of Islam who got interested
24 in jihad in Afghanistan, and he joined the jihad in
25 Afghanistan and was acting as an assistant and deputy to

1 Sheik Abdallah Azzam, in the office which he set up in
2 Peshawar.

3 Q Drawing your attention to JJJ-6, is that a
4 videotape that you have seen?

5 A Number 6? No, 6 is not one of the ones that I
6 have seen. I don't have a note of it here.

7 Q Videotape JJJ-2, is that a videotape that you
8 have viewed?

9 A Yes.

10 Q What is depicted on that videotape?

11 A An interview with Sheik Abdallah Azzam, except
12 this particular one has no sound on it. There is another
13 one like it which has the sound on it, which is 14.

14 Q Videotape JJJ-10, is that a video that you have
15 seen?

16 A Yes.

17 Q When did you see it and what is depicted on it?

18 A I saw it on the 4th of June, 1995.

19 Q What is depicted in that videotape JJJ-10?

20 A It is a lecture by Sheik Abdallah Azzam at Al
21 Farook Masjid in Brooklyn.

22 MR. STAVIS: Your Honor, I would ask to play a
23 small section of Defendant's Exhibit JJJ-10.

24 MR. FITZGERALD: Could I have a brief voir dire?

25 THE COURT: Go ahead.

1 VOIR-DIRE EXAMINATION

2 BY MR. FITZGERALD:

3 Q Good afternoon. Nosair Exhibit JJJ-10, this
4 videotape, do you know when it was recorded, the year, if
5 you know?

6 A No, I don't.

7 Q The video we saw earlier, the Sheik Azzam Mirror
8 of Afghan Jihad, did you notice the date on the corner said
9 1984?

10 A I think I remember that.

11 Q Do you know if that is more recent than that or
12 not?

13 A I believe it is, yes.

14 Q Do you know if this was recorded before or after
15 the Russians left Afghanistan?

16 A This one?

17 Q Yes. If you know.

18 A I don't know.

19 MR. FITZGERALD: No objection, Judge.

20 THE COURT: JJJ-10 is received.

21 (Defendant Nosair Exhibit JJJ-10 received in
22 evidence)

23 BY MR. STAVIS:

24 Q Mr. Ibrahim, I would ask you to put your
25 headphones on, and we will just play a short snippet, and

1 you can tell the ladies and gentlemen of the jury basically
2 what is going on at the Al Farook Mosque.

3 MR. STAVIS: I would ask that the jury put their
4 headphones on, if possible, even though it is in Arabic.

5 I would ask if you can fast forward to the Sheik
6 Azzam part.

7 (Videotape played)

8 Q Showing you Nosair JJJ-8, is that a video that
9 you have seen?

10 A Yes, it is the same as number 1, except without
11 sound.

12 Q And what was number 1?

13 A Scenes from Afghanistan. It had in the
14 background some songs and things about jihad, and some
15 scenes from Afghanistan, that's all.

16 Q JJJ-13, what is that?

17 A It's a lecture in Oklahoma City by Sheik Abdallah
18 Azzam.

19 Q Have you viewed that videotape recently?

20 A Yes.

21 Q What is the subject of Sheik Azzam's lecture?

22 A He is talking about jihad in Afghanistan, and he
23 is explaining that, why is it that the Afghan mujahideen
24 were able to overcome a major power like the Soviet Union,
25 and he is saying that the reason is because of their faith

1 in Allah and their determination to rid their country of the
2 foreign occupation, and he went on to explain that they
3 started the jihad with very few weapons and that most of the
4 weapons that they had in their hands were actually captured
5 from the Soviets. And he narrated some stories of things
6 that happened over there.

7 Q JJJ-14, Mr. Ibrahim, is that a video that you
8 have seen?

9 A Yes.

10 Q What is depicted in JJJ-14?

11 A It's an interview with Sheik Abdallah Azzam in
12 what seemed to me like a private setting, maybe somebody's
13 apartment.

14 Q What was the subject of that interview with Sheik
15 Abdallah Azzam?

16 A Again, it was mostly about Afghanistan --
17 actually, 100 percent about Afghanistan, and it talks about
18 the latest developments, latest news about the Afghan jihad,
19 and it talks about the future expectations of when the jihad
20 might conclude, and so on.

21 Q Videotape JJJ-5, is that a videotape that you
22 have seen?

23 A Yes.

24 Q What is depicted in videotape JJJ-5?

25 A It's a lecture that was delivered by Sheik

1 Abdallah Azzam in Peshawar to a mostly Afghan audience,
2 except that they knew the Arabic language. It seemed from
3 the tape that they understood what he was saying.

4 Q JJJ-11, is that a videotape that you have seen?

5 A Yes.

6 Q What is depicted in JJJ-11?

7 A It is a sermon by Sheik Abdallah Azzam in
8 Peshawar, in Arabic, delivered to a mostly Arabic-speaking
9 audience.

10 Q What is the subject matter of that sermon?

11 A He talked about the need for the Arabic-speaking
12 community over there to unit and forget their differences,
13 and try to overlook what they saw as the shortcomings of the
14 Afghans.

15 Q What did they see as the shortcomings of the
16 Afghans?

17 MR. FITZGERALD: Objection, 401.

18 THE COURT: Sustained.

19 Q I ask you to take a look at JJJ-17.

20 A OK.

21 Q And I would also ask you to take a look at the
22 same time at JJJ-23. Are those videotapes that you viewed?

23 A Yes.

24 Q What is depicted in Nosair defense JJJ-23?

25 A A lecture by Sheik Abdallah Azzam at Al Farook

1 Masjid in Brooklyn.

2 Q What is the subject matter of Sheik Azzam's
3 lecture at the Al Farook Mosque in Brooklyn?

4 A He stalked about jihad in Afghanistan, and he
5 emphasized that it is the duty of every Muslim, if he is
6 able, to participate in the jihad in Afghanistan.

7 Q What about Nosair defense JJJ-17? What is
8 depicted there?

9 A Same as 23, except there is no sound.

10 Q Showing you Nosair JJJ-15, I ask you, have you
11 seen that video?

12 A Yes.

13 Q What is depicted in there?

14 A Number 5?

15 Q 15.

16 A 15. Yes, that is the same as number 10, which we
17 saw a piece of a few minutes ago.

18 Q What was that?

19 A It was a lecture in Al Farook Masjid by Sheik
20 Abdallah Azzam, in Arabic, about Afghanistan.

21 Q That is the Al Farook Masjid, you mean mosque?

22 A Mosque.

23 Q And that is in Brooklyn?

24 A Yes.

25 Q Showing you Nosair Defense JJJ29.

1 A Yes.

2 Q Is that a videotape that you have seen?

3 A Yes.

4 Q What is depicted in that videotape?

5 A This is Sheik Tamim Adnani, talking about
6 Afghanistan.

7 Q What is the subject matter of his talk about
8 Afghanistan?

9 A OK. He said that the reason that the Afghans are
10 beating the Russians is because of their faith, and despite
11 the fact that they were lightly armed and their odds of
12 beating the Russians would have been small, but what helped
13 them is their faith in Allah.

14 And he also -- he mentioned the fact that the
15 fight against communism by the Afghans really started before
16 the Soviet invasion of Afghanistan, because the government
17 of Afghanistan was trying to impose communism on the Afghan
18 people even before the Soviet invasion.

19 Q Showing you JJJ-101, which is also videotape
20 number 1, I think you referred to that earlier.

21 A Yes.

22 Q What was in that video?

23 A Scenes from Afghanistan with background singing
24 and there was some narration. I could not recognize the
25 name of the narrator -- I mean, the voice of the narrator.

1 MR. STAVIS: Your Honor, at this time I would
2 move JJJ-1, 14, 7, 2, 8, 13, 5, 11, 17, 23, 15, 29, and 101
3 into evidence.

4 MR. FITZGERALD: A brief voir dire.

5 THE COURT: You might want to renumber 1, since
6 that is the same number that you put on the exhibit from --

7 MR. STAVIS: That is why I called it 101.

8 THE COURT: So there is no 1, there is only 101?

9 MR. STAVIS: I believe 1 might have --

10 THE COURT: That is my point. There is no 1 in
11 this group, it is 101?

12 MR. STAVIS: 101.

13 THE COURT: Thank you.

14 VOIR-DIRE EXAMINATION

15 BY MR. FITZGERALD:

16 Q I will start generally and maybe it will go
17 quick. Is it fair to say that as to each of these tapes,
18 you don't know when they were recorded?

19 A Not the exact dates but on some of the lectures I
20 recall.

21 Q What would the year be of the lectures that you
22 recall?

23 A Probably during the years 1988 or 1989.

24 Q Do you know whether those lectures were given
25 before or after the Soviets left Afghanistan?

1 A I don't know for sure.

2 MR. FITZGERALD: Your Honor, I have no objection
3 if it is offered for the same purpose as we discussed at the
4 side bar.

5 MR. STAVIS: It is, your Honor.

6 THE COURT: Simply, these are not being offered
7 for the truth of what is on the tape but simply to show the
8 nature of the material that Mr. Nosair had in his home, or
9 at least the nature of this material. Go ahead.

10 (Defendant Nosair Exhibits JJJ-1, JJJ-14, JJJ-7,
11 JJJ-2, JJJ-8, JJJ-13, JJJ-5, JJJ-11, JJJ-17, JJJ-23, JJJ-15,
12 JJJ-29, and JJJ-101 received in evidence)

13 BY MR. STAVIS:

14 Q You mentioned in describing the videotapes sheik
15 Tamim Adnani?

16 A Yes.

17 Q And he was the second person to Sheik Azzam, I
18 believe you mentioned?

19 A Yes.

20 Q Have you ever met Sheik Tamim Adnani?

21 A Yes, I did.

22 Q When did you meet Sheik Tamim Adnani?

23 A He also used to come here to the United States to
24 give lectures about Afghanistan, and on one or two of those
25 visits, I met him.

1 Q What if anything did you discuss with Sheik Tamim
2 Adnani on those two occasions that you met him?

3 A Actually, I don't remember having any one-on-one
4 conversation with him but I did listen to his lectures, and
5 I went on a trip to Queens, I think it was, to see him tape,
6 record a videotape at one of the mosques in Queens, New
7 York, spent some time at the mosque over there with him.

8 (Continued on next page)

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1 Q Mr. Ibrahim, I am going to show you Nosair

2 Defense JJJ-34. What was the name of the mosque in Queens

3 where you saw the lecture by Sheik Tamim Adnani?

4 A I don't remember the name. That is the only time

5 I have been to it. But I don't want to guess, so.

6 Q Do you remember around what time, what year that

7 was?

8 A Yes. That was his last visit to the United

9 States, and during that visit he later went to the West

10 Coast, I believe, California, and then after that he died.

11 So that was his last visit.

12 Q Do you remember what the subject of that lecture

13 was at the mosque in Queens?

14 A Yes. It was about Afghanistan, and he was

15 talking about the bravery of the Afghan mujahideen and some

16 of the successes that they have had.

17 Q I am now going to show you Nosair Defense JJJ-34

18 and ask you if that is a videotape that you viewed.

19 A Yes, I have seen it.

20 Q When did you see that video?

21 A The 4th of June, 1995.

22 Q What is depicted in that video?

23 A Let me refer to my notes. It is an interview by

24 Sheik Tamim Adnani with Lawrence Video. They are located in

25 Lawrence, Kansas.

1 MR. STAVIS: Your Honor, at this time I would
2 move Nosair Defense JJJ-34 into evidence and ask to play a
3 small segment of that tape.

4 MR. FITZGERALD: To the same offer, no objection.

5 THE COURT: All right.

6 Q Is that in English?

7 A Yes, it is.

8 THE COURT: Triple JJJ-34 is received without
9 objection.

10 (Nosair Defense Exhibit JJJ-34 was received in
11 evidence.)

12 MR. STAVIS: I would ask the jurors to put their
13 headphones on. It is an English tape.

14 (Videotape played)

15 MR. STAVIS: Your Honor, for the record, Nosair
16 JJJ-34 was another one of the videotapes recovered from
17 Sayyid Nosair's home on November 6, 1990. That is the one
18 that we just viewed.

19 THE COURT: All right. We will take a short
20 break. Please leave your notes behind. Please don't
21 discuss the case.

22 (continued on next page)

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25

1 (Pages 14235 - 14236 sealed)

2 (In open court; jury not present)

3 MR. STAVIS: Your Honor, I am finished playing
4 videotapes. I have one more to introduce with a transcript,
5 but it is not going to be played.

6 THE COURT: OK.

7 (Witness resumed)

8 (Jury present)

9 THE COURT: Mr. Stavis.

10 MR. STAVIS: Your Honor, at this time I offer
11 into evidence Nosair Defense JJJ27, which is a videotape
12 recovered from Sayyid Nosair's home on November 6, 1990, and
13 it depicts Sheik Abdallah Azzam speaking at a United States
14 convention. I also offer at this time Nosair Defense
15 JJJ-27T, an English transcript of that Sheik Azzam speech at
16 the U.S. convention.

17 MR. FITZGERALD: We stipulate to the procedure
18 and no objection to the offer of the items in evidence with
19 the two conditions that part of page 17 has an agreed-upon
20 redaction, and offered under the same conditions, not for
21 the truth.

22 THE COURT: Videotape JJJ-27. Again, it is being
23 offered not for the truth of what is portrayed there but to
24 show the nature of some of the material that was taken from
25 Mr. Nosair's home on November 6.

1 (Defendant Nosair Exhibits JJJ-27 and JJ-27T
2 received in evidence)

3 BY MR. STAVIS:

4 Q Mr. Ibrahim, did there come a time that you began
5 to train to go and perform jihad in Afghanistan?

6 A Yes.

7 Q What happened and when did it happen?

8 A What happened is that there was an announcement
9 made at El Salaam Mosque that there will be training
10 sessions held for shooting practice, and for those who
11 wanted to participate, they could go for a day to a location
12 like a shooting range, and it would be held on Saturdays or
13 Sundays.

14 Q You mentioned announcements at the mosque. Were
15 there ever any posters put up about this training?

16 A Yes.

17 Q Where were those posters located?

18 A On the wall.

19 Q Who organized the rifle training?

20 A Sayyid Nosair.

21 Q How often did this training occur?

22 A It would take place on the weekends, so it would
23 be like maybe once a week or once every two weeks, like
24 that.

25 Q What kind of weapons were used for this shooting

1 that occurred on the weekends?

2 A The AK47 assault rifle, which is also known as
3 the Kalishnikov assault rifle, and there was also some kind
4 of hunting rifle. But mostly it was the AK47.

5 Q Did you participate in this rifle training?

6 A Yes, I did.

7 Q Can you tell us about it, your own personal
8 experience?

9 A Yes. On the occasions that I went, we would
10 gather at the place usually in front of El Salaam Mosque,
11 and then we would go together, groups of maybe six or eight
12 or ten people, in maybe two cars.

13 Q Was Sayyid Nosair present in those groups of six
14 to eight or ten people?

15 A Yes.

16 Q Then what if anything would happen after you got
17 into the car?

18 A We would drive to a location in Connecticut, a
19 shooting range, and then we would take up a place to
20 practice shooting, and then there would be an instructor and
21 we would take turns, like each person -- first there would
22 be like a small lecture about how to operate the rifle, and
23 safety precautions and stuff like that, and then after that
24 we would take turns shooting at the targets. Each person
25 would fire roughly about 10 shots, and then the next person

1 would move up and start shooting.

2 Q Why did you go for this rifle training?

3 A It was part of the preparation for Afghanistan,
4 because at that time we were pretty much preoccupied with
5 the jihad that was going on in Afghanistan, and we wanted to
6 get that, you know, at least know how to use a rifle,
7 because many of us were thinking of going to Afghanistan to
8 participate in the jihad.

9 Q You mentioned the term AK47 or Kalishnikov.

10 A Yes.

11 Q You said it is full automatic or semiautomatic.
12 What do you mean by those terms?

13 A Full automatic means when you pull the trigger,
14 it fires off, you know, shots in rapid succession.
15 Semiautomatic means you have to pull the trigger for every
16 shot to come out.

17 MR. STAVIS: Your Honor, may I approach the
18 witness with Nosair KKK-1.

19 Q Mr. Ibrahim, I am showing you Nosair KKK-1, and I
20 ask you to take a look at that. Can you turn it around so
21 that the jury can see. Do you know the man who is depicted
22 in Nosair KKK-1?

23 A Yes. His name is Abu, A-B-U, Omar, O-M-A-R.

24 Q Did there come a time that Abu Omar came to
25 Jersey City?

1 A Yes.

2 Q When was that?

3 A It was during the year of 1989, during the spring
4 or early summer of that year. That's the first time I saw
5 him.

6 Q At the time that Abu Omar came to Jersey City,
7 did he give classes in military training?

8 MR. FITZGERALD: Objection to leading.

9 THE COURT: Sustained.

10 Q At the time that Abu Omar came to Jersey City,
11 did he hold any classes?

12 A Yes.

13 Q What kind of classes did he hold?

14 A Military classes.

15 Q What were the specific topics of these military
16 classes held by Abu Omar?

17 A It was about navigating in areas like if you are
18 lost in a desert area or a jungle or you are part of a group
19 and you want to find your way, how to use a compass, how to
20 find your way by looking at the stars, and survival things,
21 and how to recognize some of the weapons if you see them,
22 like tanks, stuff like that.

23 Q Where were these classes held?

24 A In an apartment.

25 Q Do you know whose apartment?

1 A Yes, it was the apartment of a brother by the
2 name of Abdel Aziz, Abdel Aziz Hassan.

3 Q Where was that located?

4 A On Harrison Avenue, in Jersey City.

5 Q Did Sayyid Nosair attend any classes by Abu Omar?

6 A Yes. He invited me to attends the class, and he
7 attended himself.

8 Q What role did Sayyid Nosair take in introducing
9 people to Abu Omar?

10 MR. FITZGERALD: Objection to form.

11 THE COURT: Sustained.

12 Q What if anything did Sayyid Nosair do with regard
13 to Abu Omar when he came to Jersey City?

14 A Sayyid is the one who introduced Abu Omar to the
15 rest of us, and he was his host in Jersey City, as far as I
16 could see.

17 Q Did you see Abu Omar in the Jihad Office in
18 Jersey City?

19 A Yes.

20 Q What is the first time you saw Abu Omar in the
21 Jihad Office in Jersey City? What year was that and what
22 time of year?

23 A It was 1989. I don't remember the exact month,
24 but it had to be in the spring or early summer of 1989, to
25 the best of my recollection.

1 Q You say it had to be. Why do you say that?

2 A I remember that it was a time when I had started
3 my new job at John Brown in Stamford, Connecticut, about
4 Memorial Day of that year, and I remember it was around that
5 time. I don't remember if it was before or after, but it
6 had to be around that time.

7 Q After Abu Omar left on that first visit, did you
8 notice anything different at the Jersey City Alkifah office?

9 A Yes, I saw the manuals.

10 MR. STAVIS: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 Q I am showing you what has been marked as
14 Government Exhibit 118 in evidence -- I believe it is
15 stipulated with the government that this was a manual, a
16 document that was recovered from the home of Sayyid Nosair
17 on November 6, 1990.

18 MR. FITZGERALD: That is correct.

19 THE COURT: Which exhibit is this?

20 MR. STAVIS: Government's Exhibit 118.

21 THE COURT: Go ahead.

22 Q I ask you to take a look at Government's Exhibit
23 118.

24 A OK.

25 Q Have you seen that before?

1 A Yes.

2 Q Where have you seen it?

3 A At Al Jihad office in Jersey City.

4 Q What is Government's Exhibit 118?

5 A It's a military manual, about how to recognize
6 certain tanks and weapons, whether they are enemy tanks or
7 friendly tanks.

8 Q What does it say on the front cover of
9 Government's Exhibit 118?

10 A "United States Army, John F. Kennedy Special
11 Warfare Center."

12 Q Did you have occasion to see manuals like that
13 prior to Abu Omar's visit to the Alkifah Center in Jersey
14 City?

15 A I don't remember seeing any of these before the
16 visit of Abu Omar to Jersey City.

17 Q I am showing you what is entered into evidence as
18 Government's Exhibit 77, also a document recovered from the
19 home of Sayyid Nosair on November 6, 1990.

20 MR. FITZGERALD: So stipulated.

21 Q I ask you to take a look at that.

22 A On the front cover, what does it say on the front
23 cover of Government's Exhibit 77?

24 A "Afghan Refugees Service Inc., 2824 Kennedy
25 Boulevard, suite number 4, Jersey City, New Jersey."

1 Q Is that what you have been referring to as the
2 Jersey City Jihad Office?

3 A Yes.

4 Q What is that document?

5 A It's a document that tells you how to make
6 explosives, and some kind of improvised weapons and
7 explosives.

8 Q Had you seen that document in the Jersey City
9 Jihad Office?

10 A Yes.

11 Q Did you have occasion to see that document,
12 Government's Exhibit 77, in the Jihad Office in Jersey City
13 prior to Abu Omar's first visit to the Jihad Office?

14 A No.

15 Q I am now showing you what has been entered into
16 evidence as Government's Exhibit 78. Is that something that
17 you have seen before at the Jersey City Jihad Office?

18 A Yes.

19 Q What is depicted in Government's Exhibit -- what
20 is Government's Exhibit 78?

21 A It's called explosive traps, and it shows you how
22 to make, you know, boobytraps which have explosives.

23 Q Did you have occasion to see a booklet like this
24 in the Jersey City Jihad Office prior to the visit of Abu
25 Omar to the Jersey City Jihad Office?

1 A No.

2 Q The last one is Government Exhibit 79. What is
3 Government's Exhibit 79?

4 A It talks about grenades.

5 Q Is Government's Exhibit 79 something that you
6 have seen previously in the Jersey City Jihad Office?

7 A Yes.

8 Q Did you have occasion to see a booklet like
9 Government's Exhibit 79 in evidence at the Jihad Office
10 prior to the visit of Abu Omar to that office?

11 A No.

12 Q Drawing your attention to this page -- it's an
13 Arabic 48 -- I will show the government.

14 MR. FITZGERALD: That's fine.

15 Q What is depicted on that page?

16 A It shows you how to throw a hand grenade while
17 sitting on one knee.

18 Q I draw your attention to the clothing that is
19 being worn by the person who is throwing that grenade. What
20 kind of clothing that is that?

21 A Pakistani clothing, which is the shirt that goes
22 down to the knee.

23 Q Is that the kind of clothing that people would
24 wear in Peshawar, Pakistan?

25 A Yes.

1 Q Or Afghanistan?

2 A Yes.

3 Q After Abu Omar's first visit to the Jersey City
4 Jihad Office in spring or early summer of 1989, did there
5 come a time that he returned to the Jihad Office?

6 A Yes.

7 Q Approximately when was that?

8 A Same year, later in the year, maybe around the
9 fall.

10 Q Did you see him at that time?

11 A Yes.

12 Q Where did you see him?

13 A At Al Jihad office in Jersey City.

14 Q At the time that you saw Abu Omar that second
15 time at the Jersey City Jihad Office, who else was present?

16 A Sayyid Nosair was present, as well as some other
17 brothers.

18 Q Did you see who brought Abu Omar to the Jersey
19 City Jihad Office that day?

20 A Yes, Sayyid brought him.

21 Q When you say Sayyid, you are referring to Sayyid
22 Nosair.

23 Did you have occasion on that second visit to
24 with Abu Omar, did you have occasion to speak with Abu Omar
25 at the Jersey City office?

1 A Yes.

2 Q What if anything did you speak about with him?

3 A Mostly Afghanistan.

4 Q Do you remember anything specifically, what was
5 said?

6 MR. FITZGERALD: Objection -- one moment.

7 (Pause)

8 Q Generally you spoke to Abu Omar about
9 Afghanistan?

10 A Yes.

11 Q And the mujahideen in Afghanistan?

12 A Yes.

13 MR. STAVIS: May I approach the witness, your
14 Honor?

15 THE COURT: Yes, you may.

16 Q I am approaching you with Nosair Defense JJJ-1 in
17 evidence. I ask you if you have viewed that video?

18 A Yes, I have seen it.

19 Q When did you review that video most recently?

20 A The 4th of June 1995.

21 Q What is depicted in that video?

22 A I want to refer to my notes.

23 A It's a panel discussion with Ali Mohammed at the
24 JFK army center.

25 Q You say Ali Mohammed. Do you know him by another

1 name?

2 A Abu Omar.

3 Q Did there come a time that you saw that video,
4 Nosair Defense JJJ-1, at the Jersey City Jihad Office?

5 A Yes, I did.

6 Q Please tell us about that.

7 A Sayyid brought the tape and he played it for us.

8 Q When you say Sayyid, you --

9 A Sayyid Nosair. He played it for us at the Jihad
10 Office in Jersey City and we watched it, I watched it.

11 Q Approximately when did you watch it and who else
12 was there?

13 A I don't know the exact date, but I think it was
14 during that year 1989, and Sayyid was there, and some other
15 brothers were there. I don't remember who they were.

16 Q Turning your attention to November 6 of 1990, did
17 anything unusual occur on that day?

18 A Yes.

19 Q What happened?

20 A On my way to work I heard a news report on the
21 radio that Rabbi Meir Kahane had been assassinated and that
22 there was a suspect caught, and I heard that the name of the
23 suspect was Sayyid Nosair, but I was so shocked to hear
24 that, I really didn't believe --

25 MR. FITZGERALD: Objection, your Honor.

1 THE COURT: Sustained.

2 Q What did you do after hearing that radio
3 announcement?

4 A After I got to work, about a half hour or so
5 after I got to work my wife called me from home, and she
6 asked me if I had heard the news. I said yes. So she said,
7 I think it's Sayyid who has been arrested, they mentioned
8 his name. So when she said that, I was sure it was him. At
9 first I was doubting whether maybe I heard it wrong or
10 something.

11 Q Shortly after that time, was there a meeting in a
12 mosque concerning Sayyid Nosair's arrest?

13 A The first meeting took place at Ibrahim's house.

14 Q Tell us about that meeting, when it was and who
15 else was there.

16 A I went to Ibrahim's apartment, and some other
17 brothers came to his apartment. Some of them had brought
18 with them donations to help Sayyid's family and so on, and
19 there was discussion about how the family should be
20 supported, and what would be done regarding his defense, and
21 we came to the conclusion that there should be a committee.

22 Q You say this took place at Ibrahim's apartment,
23 is that correct?

24 A Yes.

25 Q When you say Ibrahim, are you referring to

1 Ibrahim El-Gabrownny?

2 A Yes.

3 Q Do you remember where his apartment was?

4 A It's on Prospect Park in Brooklyn.

5 Q What if anything did you do after that meeting at
6 Ibrahim El-Gabrownny's apartment?

7 A I suggested that the family should come to my
8 house, to my apartment, Sayyid's family, and they agreed.
9 They came to my apartment.

10 Q Who was it from Sayyid's family who came to your
11 apartment?

12 A His wife and his children.

13 Q Where did they stay in your apartment?

14 A They occupied the bedrooms and, you know, I slept
15 outside in the living room.

16 Q At the time that you took in Sayyid Nosair's
17 family to stay in your house, were you aware of any death
18 threats or retaliation threats against Sayyid Nosair and his
19 family?

20 A Yes, I was very concerned. There had been
21 threats of retaliation, and I was very concerned, to the
22 degree that I, I remember the first night they slept over,
23 or the first few nights, I slept on the sofa with a crowbar
24 under the sofa. I thought somebody was going to jump
25 through the window and try to kill them.

1 Q How long did Sayyid Nosair's wife and children
2 stay in your home?

3 A For about two to three weeks.

4 Q During that two-to-three-week period, who if
5 anyone was supporting Sayyid Nosair's wife and children?

6 A We were getting donations from a lot of people,
7 and as far as their daily needs, we tried to, you know,
8 fulfill whatever they needed, my wife and myself.

9 Q Did you attend any community meetings concerning
10 supporting Sayyid Nosair during the period while he was
11 awaiting trial?

12 A Yes. There was a meeting at El Salaam Mosque to
13 discuss what should be done regarding supporting his family
14 and his defense.

15 Q Who else attended that meeting?

16 A Members of the board of the El Salaam Mosque and
17 other people who were interested, Muslims.

18 Q Do you remember the names of anybody who was at
19 that meeting?

20 A Yes. There was Abdel Rahman Haggag and Sheik
21 Abdul Khalek, and Hamdi Moussa, and many others.

22 Q Was Ibrahim El-Gabrownny at that meeting?

23 A Ibrahim would come sometimes to El Salaam Mosque
24 to discuss the arrangements and so on, yes.

25 Q Did you ever attend Sayyid Nosair's trial in

1 state court?

2 A Yes.

3 Q Why did you attend Sayyid Nosair's trial in state
4 court?

5 MR. FITZGERALD: Objection, 401.

6 THE COURT: Sustained.

7 Q When did you attend Sayyid Nosair's trial in
8 state court?

9 A At the very beginning of the trial I attended
10 maybe twice or once, I don't remember. Then I would go just
11 once in a while. After that I couldn't go every day because
12 I had a job. Then at the day that the verdict was rendered,
13 I was there. Also on the day of the sentencing.

14 Q Describe, if you would, how the courtroom was set
15 up when you attended the Sayyid Nosair state trial.

16 MR. FITZGERALD: Objection, 401, 403.

17 THE COURT: Sustained.

18 Q You stated just a moment ago -- withdrawn.
19 Do you know who Emad Salem is?

20 A I heard of him.

21 Q Did you know who Emad Salem was in 1991 and early
22 1992?

23 MR. FITZGERALD: Objection, competence.

24 THE COURT: May I hear the question again.

25 (Record read)

1 THE COURT: Sustain the objection as to form.

2 How did you know him in 1991 and 1992, if you knew him?

3 MR. STAVIS: We haven't established that he did
4 know him, your Honor. He knows him now. He has been in the
5 paper.

6 THE COURT: Was it the same guy?

7 Q Did you know who Emad Salem was in 1991 and 1992?

8 A No, I didn't.

9 Q Had you met Emad Salem in 1991 and 1992?

10 A No.

11 Q You stated that you were in court for the verdict
12 in Sayyid Nosair's state trial. What happened after the
13 verdict at the courthouse?

14 A Someone from our side yelled Allahu Akbar and --

15 Q When you say "our side," what are you referring
16 to?

17 A The Muslims, the Muslims who were there to
18 support Sayyid.

19 Q And what happened?

20 A Someone from the other side cried something like
21 death to Nosair, or something like that.

22 Q Did you witness any fights on that occasion,
23 after the verdict?

24 A No. There was excitement but, you know, people
25 yelling Allahu Akbar and the other side was yelling things

1 against Sayyid, but there was a lot of security. There
2 could not have been a fight.

3 Q What are the kinds of things you heard were said
4 about Sayyid Nosair?

5 MR. FITZGERALD: Objection, 401, 403.

6 THE COURT: Overruled.

7 A In the courtroom you mean, during that day?

8 Q Yes, and immediately thereafter.

9 A As I said, they said death to Nosair, and, you
10 know, murderer, stuff like that.

11 Q Before the trial and in the days immediately
12 following Sayyid Nosair's arrest, did you speak to agents of
13 the Federal Bureau of Investigation?

14 A Yes.

15 Q Where did you see them?

16 A First time I spoke to them was at Ibrahim
17 El-Gabrownny's apartment. I happened to be there to discuss
18 things related to supporting Sayyid's family, and while I
19 was there one of the agents just came in. I mean, he
20 knocked on the door and came into the apartment, and he
21 talked to Ibrahim, and while I was there he decided he
22 wanted to talk to me, so I talked to him.

23 Q What time period did this happen in?

24 A That was within a few days or a week after Sayyid
25 was arrested.

1 Q During the time of Sayyid Nosair's trial, did you
2 have occasion to attend any demonstrations about the case
3 other than at the courthouse?

4 A Yes. There was a demonstration on the east side
5 of Manhattan, across the street from the judge's house, and
6 I attended that demonstration.

7 Q What went on at that demonstration?

8 A We were there to, to protest something regarding
9 the trial, although I really don't recall exactly what it
10 was, but I think it was maybe regarding the sentence, or
11 something like that. It was before the sentence, but, I
12 mean, to try to convey to the judge that Sayyid deserved
13 lenient sentence. And the followers of Rabbi Meir Kahane,
14 the JDL people, you know, they came also, and they were on
15 the opposite -- not across the street but on the next block
16 from us.

17 Q Where was this located, this demonstration?

18 A On the east side of Manhattan. I don't remember
19 the name of the street, but it was one of the avenues. They
20 were there, and there was some barricades between us. They
21 did some things to try to intimidate us at first. Some of
22 them would come in front of us and take pictures. And then
23 at some point they got some of the people excited, and there
24 was some potential of, you know, clash, of physical clash
25 between them. But I don't think any physical contact

1 actually happened. But people were excited, they got us
2 excited at some point.

3 Q Did you hear any threats at that demonstration
4 outside the judge's house?

5 A No.

6 Q Did you hear any name calling at that
7 demonstration outside the judge's house?

8 A Yes. The JDL people yelled things to get us
9 angry, and some of them were remarks about our faith, our
10 religion and our prophet, derogatory things, and they were
11 designed to get us excited and aggravated.

12 Q Did you attend any other demonstrations during
13 the time period of Sayyid Nosair's state trial?

14 A Yes. There was a demonstration, on the day of
15 the sentencing outside the courthouse.

16 Q I am talking about demonstrations other than
17 those at the courthouse.

18 A Yes. There was one demonstration that was held
19 at Al Farook Masjid, because the JDL were going to
20 demonstrate in front of Al Farook Masjid, and it was called
21 upon us to make sure that it was protected in case they
22 tried to do something. So we were there. And a lot of
23 people showed up that day from our side, the Muslims. I
24 would say maybe 2,000 or more. So it was a good day for us.

25 Q Prior to the Nosair state trial, did you ever

1 have occasion to visit Sayyid Nosair at Rikers Island?

2 A Yes, I visited him twice.

3 Q Can you please explain to the ladies and
4 gentlemen of the jury how your visits to Sayyid Nosair came
5 about.

6 A We had to talk to Ibrahim El-Gabrownny. He was
7 the coordinator, because the family, Sayyid's family had
8 priority to visit him first, so we couldn't go on a date
9 when the family was going to visit him. So we would call
10 Ibrahim and Ibrahim would tell us on such a day it's open,
11 you can go. So I called Ibrahim and he told me on the day
12 that I could go.

13 Q Do you remember approximately when you visited
14 Sayyid Nosair at Rikers Island?

15 A I remember the first time it was cold, it was
16 winter, and it must have been around February of 1992 -- I
17 am sorry -- February after Sayyid was arrested. That would
18 have been 1992, yes.

19 Q Could it have been in 1991?

20 A When was Sayyid arrested? Was it 1990?

21 THE COURT: He has to ask the questions and you
22 have to give the answers.

23 Q Hypothetically, if Sayyid was arrested on
24 November 5, 1990, when did you visit him?

25 A On the following February.

1 Q Who if anyone went with you for the visit?

2 A First time someone was with me -- I don't
3 remember.

4 Q Do you remember how you got there?

5 A Yes. I drove my car to a place which is outside
6 of the jail, and then from there I took a bus that cross
7 over the bridge into the jail.

8 Q What if anything did you have to do when you got
9 to the jail itself?

10 A You mean after I got inside?

11 Q Yes.

12 A You go through the security. They search you,
13 and they made sure that I had nothing with me, and then I go
14 in.

15 Q Were you required to produce any form of
16 identification?

17 A Yes. I think I showed them my driver's license.

18 Q Were you required to sign anything before you
19 entered?

20 A Yes. There was a book that you signed.

21 Q Approximately how long did your visits to Sayyid
22 Nosair last?

23 A About one hour.

24 Q What if anything did you discuss with him at that
25 time?

1 A The purpose of the visit was just to give him
2 some encouragement and to let him know that his family was
3 OK.

4 Q Do you remember any -- withdrawn.

5 When you went to visit Sayyid Nosair, did you
6 always go with someone else?

7 A I remember the second time, there was somebody
8 with me and one of his sons was with me. The first time, I
9 don't remember whether -- I think maybe I have been by
10 myself the first time.

11 Q At the time that you went there, did you know the
12 person that you were going to visit Sayyid Nosair with?

13 A You mean the second time?

14 Q The second time, right.

15 A Yes.

16 Q Do you know that person's name now?

17 A Yes, Hussien Saafan.

18 Q And how did Hussein Safan come to go with you on
19 that particular day -- withdrawn.

20 The second visit, do you remember approximately
21 when that was?

22 A It was in the summer of that same year. I
23 couldn't tell you which month, I don't remember.

24 Q How did Hussein Safan come to go with you on that
25 second visit that you paid to Rikers Island?

1 A I really don't recall, but I think we must have
2 talked over the telephone and made arrangements to meet over
3 there.

4 Q Do you know if you spoke to Ibrahim El-Gabrownny
5 prior to going on that second visit to Rikers Island to
6 visit Sayyid Nosair?

7 A I always did, because he was the coordinator. To
8 the best of my recollection, I always called him first
9 before I went.

10 Q Did you ever visit Sayyid Nosair in Attica
11 prison?

12 A No.

13 Q Did there come a time when you went to
14 Afghanistan?

15 A Yes.

16 Q Tell us how that came about.

17 A As I mentioned earlier, I had listened to the
18 lectures by Sheik Abdallah Azzam about Afghanistan, and I
19 was very inspired by these lectures. Also, I had been
20 reading Al Jihad magazine. So anyway, I had prepared my
21 wife that some day we should go, and in the summer of 1991,
22 I finally got around to actually go. So I went to Pakistan.
23 I took my family with me. I went to Peshawar, Pakistan, and
24 I rented a house and put up my children in schools over
25 there, and I stayed for about a month in Peshawar, and then

1 I came back here to the United States.

2 Q Why did you take your family with you to
3 Peshawar?

4 A I wanted to participate in the jihad, but I also
5 saw an opportunity to provide for my family a more Islamic
6 atmosphere, and I thought that Peshawar would be a better
7 atmosphere for my children and my family, and because of the
8 fact that there are many Muslim brothers over there who
9 shared my same belief, which is that you have to participate
10 in jihad and so on, therefore I thought that would be a
11 better environment for them to live in.

12 Q Describe what Peshawar, Pakistan was like when
13 you first got there.

14 A It's a town. It's not a small town, actually.
15 It's a town of about 2 or 3 million people, population, and
16 there was a section in Peshawar which was a more modern,
17 that had nice houses and so on, and this is where most of
18 the Arabic-speaking brothers stayed. We rented a house in
19 that section of town.

20 Q How did you find a house to rent?

21 A I called ahead by telephone. I had somebody rent
22 a house for me before I went.

23 (Continued on next page)

24

25

1 MR. STAVIS: Your Honor, may we approach at the
2 side bar?

3 THE COURT: Yes.

4 (At the side bar)

5 MR. STAVIS: Your Honor, would it be possible to
6 break six minutes early, because I am moving into a very
7 large area and I would rather not have to revisit it on
8 Monday.

9 THE COURT: Larger than Afghanistan?

10 MR. STAVIS: That's as large as it is.

11 THE COURT: No, no, we have had enough. All
12 right.

13 (In open court)

14 THE COURT: Ladies and gentlemen, we are going to
15 break six minutes early. Don't tell anybody. Please leave
16 your notes and other materials behind. Please don't discuss
17 the case. Have a pleasant weekend, and we will see you
18 again on Monday.

19 (Jury excused)

20 (Witness excused)

21 THE COURT: I got two letters from the government
22 this morning. One of them related to that report that you
23 are talking about. I haven't seen the report. Do you have
24 it?

25 MR. STAVIS: Mr. Khuzami has the original file, I

1 believe.

2 THE COURT: I will take a copy. I am not proud.

3 MR. KHUZAMI: I have it. You want just the one
4 document, your Honor?

5 THE COURT: The document that they propose to
6 offer.

7 MR. STAVIS: I think it was somewhat
8 mischaracterized by Mr. Khuzami. If your Honor reviews the
9 file, each side in the litigation had a physician. The
10 doctor who completed that form is not a doctor for either
11 side, but a doctor, and if you read the small print, of the
12 New York State Workers Compensation Board. That is why I
13 sought to introduce that under the 803(8) public records.
14 The doctor is paid by the State of New York and works for
15 the State of New York. He is not a doctor for either party.

16 MR. NOOTER: Excuse me, your Honor. I hate to
17 interrupt your chain of thought. My client is feeling very
18 ill --

19 THE COURT: He is excused.

20 MR. NOOTER: He needs to be taken out during the
21 colloquy.

22 THE COURT: He is excused.

23 MR. NOOTER: Thank you very much. I am sorry.

24 THE COURT: I am sorry, go ahead.

25 MR. STAVIS: That is all I had to say. I read

1 Mr. Khuzami's letter this morning which seemed to indicate
2 that the doctor was employed by one of the party litigants.

3 THE COURT: Let's assume this doctor is employed
4 by the Workers Compensation Board. There are two problems
5 with this report. The first is that as to the kind of
6 defect that he is talking about, there are tests for that.
7 The tests have names. There is no indication of what if any
8 tests he did. He simply in essence states a conclusion.

9 Secondly, there is no indication of what that
10 conclusion means.

11 So first of all, I find a problem of reliability
12 with the report, because there is no statement of what the
13 tests were that were performed. There are tests that are
14 performed to make sure that somebody is not malingering and
15 those have names. Nothing like that is in this report.
16 Even if it were, there is no explanation what it is that a
17 15 percent disability means. So under both, because there
18 is no indicia of reliability and because the report, even if
19 it were admitted, would not tell the jury anything about
20 what the man can or can't do, I am not inclined to admit it.

21 MR. STAVIS: I had understood that the
22 reliability element in subdivision (8) referred to the
23 motivation of the employee of the public agency, and this
24 employee --

25 THE COURT: If it refers to the motivation, then

1 fine. There is no motive if the employee works for the
2 Workers Compensation Board, that still doesn't get past
3 explaining what it means.

4 MR. STAVIS: Your Honor, I would argue to the
5 court that that goes to the weight the jury should give it
6 and not to its admissibility, because it fulfills the
7 requirements of subdivision (8) of Section 803.

8 THE COURT: I don't think it does, but even if it
9 does, as admitted it calls for speculation on the part of
10 the jury as to what it means in terms of what you are going
11 to argue in terms of his ability to pull a trigger. So it
12 is excluded.

13 Let's talk about the other letter. Did you want
14 to respond to the other letter at all?

15 MR. STAVIS: I am at somewhat of a loss to
16 respond to it, your Honor, because I really haven't read it.

17 MR. LAVINE: Excuse me, your Honor. I hate to
18 interrupt but I have an immediate problem here. My client
19 needs a break.

20 THE COURT: He may be excused. This all relates
21 to Mr. Nosair, so if he wishes to be excused --

22 MR. LAVINE: Thank you.

23 THE COURT: Does he?

24 MR. LAVINE: Yes, he does.

25 THE COURT: This relates to the Rule 29 motion.

1 MR. STAVIS: I understand, your Honor. I got it
2 seconds before I came in.

3 THE COURT: They in essence taxed me with having
4 misquoted the Kwong case. I admit I misquoted the Kwong
5 case. However, although I didn't quote the Kwong case
6 correctly, I think I was right about what it said. It is
7 possible to be incorrect and right at the same time.

8 The discussion in Kwong about what was or wasn't
9 an attempted murder had nothing to do with the facts of
10 Kwong. It had to do with the quotation that appeared in
11 that opinion immediately before the words that I tried
12 unsuccessfully to quote, and that case dealt specifically
13 with shooting a weapon.

14 More to the point, Rule 29 motions are really
15 fact-specific. If we were dealing with a situation like
16 Kwong where somebody on a premeditated basis had set a gun
17 trap of the sort involved in Kwong, then yes, you can infer
18 an attempt to kill. This is a situation that developed
19 fleeing from a murder -- on your view of the facts,
20 developed rapidly, in fact instantly. I can't see any basis
21 for a jury to do anything other than speculate on motive,
22 and the business about his having been trained, as far as I
23 am concerned, proves nothing at all. If anything, it cuts
24 two ways.

25 MR. MCCARTHY: Your Honor, first of all, two

1 things. I don't know how that conclusion can be justified
2 in light of what the Supreme Court held in Yates with
3 respect to the intent to murder with respect to Mrs. Wood,
4 who was the murder victim in Yates. In Yates, Mrs. Wood,
5 after the accomplice and the first victim were involved in a
6 scrap, intervened in the scrap, they rolled around on the
7 floor, and she ended up stabbed. There was less opportunity
8 for observation than Nosair had with respect to Acosta. The
9 Supreme Court felt that that was an issue to be resolved by
10 a jury. The facts of that case, for the Supreme Court to
11 say that on those facts that ought to go to a jury, I just
12 cannot understand how it is that your Honor can find that a
13 person who has an opportunity to fire pointblank -- and the
14 reason the training is relevant is because it is a rational
15 inference that when he shot at the man's head and at the
16 man's chest he intend to shoot at the man's head and the
17 man's chest.

18 MR. STAVIS: I don't think there is any evidence
19 that he shot at the man's head.

20 MR. MCCARTHY: There is testimony in the record,
21 which we cited in the letter, which has to be taken on a
22 Rule 29 motion to be credible in the light most favorable to
23 the government that the first shot whizzed past Mr. Acosta's
24 head, the second shot hit him in the chest, was deflected by
25 the bullet and lodged in his shoulder. The fact of the

1 training is relevant to show that when Nosair chose to shoot
2 at places where anybody would know hitting with a bullet
3 would kill the person, he intended to do that. That is a
4 rational inference that this jury can draw.

5 MR. STAVIS: No one who is trained in weaponry
6 would shoot at somebody's head, your Honor.

7 THE COURT: Not in that situation, they wouldn't.

8 MR. STAVIS: But that is not a fact in the
9 record.

10 THE COURT: Also, you left out one thing, which
11 is that Mrs. Wood died. Yes, she was stabbed in the chest,
12 which is a direct -- the hand accomplishes, presumably, what
13 the brain intends. She was stabbed in the chest and she
14 died.

15 MR. MCCARTHY: First of all, that is exactly what
16 they say you can't do, which was presume that the person
17 intended the consequences of his action. But the fact that
18 the woman died as opposed to an attempted murder count is
19 irrelevant. The issue that the Supreme Court was dealing
20 with was specific intent to murder, which is the same exact
21 issue in this case, precisely the same issue.

22 THE COURT: Same issue, different result,
23 different facts.

24 MR. STAVIS: Has your Honor ruled?

25 THE COURT: I have. Understand, it applies only

1 to that part of Count 9 that charges attempted murder.

2 MR. STAVIS: And it applies to Count 10, your
3 Honor.

4 THE COURT: It applies to all of Count 10. The
5 jury would have nothing other than speculation to determine
6 that kind of intent in this case.

7 MR. STAVIS: Thank you, your Honor.

8 THE COURT: Anything else? Good night.

9 (Adjourned until 9:30 a.m., January 17, 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.

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,"

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Defendants.

21 -----x

July 17, 1995
9:40 a.m.

22 Before:

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HON. MICHAEL B. MUKASEY,

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District Judge

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1 (Trial resumed)

2 (In the robing room)

3 THE COURT: As some of you may already be aware,
4 my deputy clerk Franci Schwartz's father died last night.
5 The service is going to be tomorrow. As a result, I am not
6 going to sit tomorrow, and I would ask your permission to
7 tell the jurors both that we are not going to be sitting and
8 why, because I think they hold her in some esteem and
9 affection as we all do. I will do that before we start,
10 unless you think there is a more appropriate time.

11 Off the record?

12 (Discussion off the record)

13 THE COURT: Ms. Amsterdam pointed out that it is
14 likely that some jurors may ask whether they can go.
15 Regrettably, the answer to that has to be no, they can't,
16 and I will suggest to them that they send a card or bring a
17 card or express themselves in other ways, and that everybody
18 will understand. Thank you very much. I will go in and
19 tell them and then come out.

20 (Recess)

21 (Is in the jury room)

22 THE COURT: As I think you are already aware,
23 Franci Schwartz's father passed away last night. The
24 service will be tomorrow. That is something that I can't
25 not go to, so I will go.

1 We won't sit in this case tomorrow. I understand
2 that a number of people have asked whether you could go. I
3 talked to the lawyers about it. The answer to that has to
4 be no, simply because some of the lawyers may be there and
5 even to say hello would raise problems about whether there
6 was some social contact. Everybody appreciates your concern
7 and I appreciate it and I know she does. But if you just
8 send a card or bring a card when she comes back and tell her
9 you love her when she shows back up, as I am sure she knows,
10 that will be the best thing.

11 A JUROR: Would you tell her that we are there in
12 spirit.

13 THE COURT: Of course.

14 A JUROR: Do we have to go to work tomorrow?

15 THE COURT: No. This is a day of service.

16 A JUROR: Could somebody find out for us whether
17 we can send flowers.

18 THE COURT: I have an address.

19 A JUROR: Wonderful.

20 (In open court; jury not present)

21 THE COURT: Two things. I got a letter from the
22 government and a memo from the government this morning. Do
23 you want to deal with either one of those?

24 MR. STAVIS: The memo, your Honor, I haven't had
25 an opportunity to read.

1 THE COURT: And the letter?

2 MR. STAVIS: The letter I have had an opportunity
3 to read, because it is only a little more than a page long.
4 Your Honor, perhaps it was a year ago that we were
5 litigating over what I would refer to as the Afghanistan
6 defense, and we actually started out by filing a notice for
7 a claim of governmental authority, and when your Honor
8 reviewed our specific defense under that, if your Honor
9 recalls, it does not fit within the claim of governmental
10 authority because we did not concede the commission of a
11 crime but only sought to explain actions.

12 THE COURT: That is not the only reason it didn't
13 fit, but in any event, go ahead.

14 MR. STAVIS: Subsequently, the CIPA litigation in
15 the case has resulted in a stipulation between the
16 government and defense for Mr. Nosair.

17 THE COURT: The narrow question and the only
18 question I understand to be raised by the letter is what if
19 anything is the relevance of any testimony about whether
20 Mr. Mohammed was or wasn't working for the government after
21 November of 1990.

22 MR. STAVIS: Yes, it is highly relevant because
23 the conspiracy alleged in this case and Mr. Nosair's actions
24 in this case go past the period of November 6, 1990. The
25 government in its letter has assumed that Mr. Mohammed only

1 bears relevance to the intent of Mr. Nosair, and he also
2 bears relevance to the conduct of Mr. Nosair, your Honor.
3 That is why I was referring to the CIPA stipulation, which
4 refers to United States conduct in Afghanistan, and the
5 government has stipulated to the relevance of that.

6 Mr. Mohammed, to complete the circle of
7 relevance, starts in Fort Bragg, North Carolina. Then he
8 trains people for Afghanistan -- that's our position -- in
9 Jersey City, New Jersey, and Brooklyn, New York, and then
10 finally he is in Afghanistan, completing the circle and
11 explaining the conduct of Mr. Nosair during the period of
12 this indictment.

13 THE COURT: I don't understand how if Mr. Nosair
14 had no contact with him after, certainly after November 6 of
15 1990, his exploits, whatever they may be, after that date
16 can have any relevance to Mr. Nosair's conduct.

17 MR. STAVIS: Mr. Nosair was training for
18 Afghanistan with Mr. Mohammed, who was training him for
19 Afghanistan. The fact that Mr. Mohammed then goes to
20 Afghanistan --

21 THE COURT: What you are saying is,
22 Mr. Mohammed's conduct after November 6 reads back on his
23 conduct before?

24 MR. STAVIS: Yes, your Honor.

25 MR. FITZGERALD: We disagree, your Honor. I

1 think it is a straw man to try to get before the jury --

2 THE COURT: Why can't you argue that?

3 MR. FITZGERALD: We can, but what I think Rule
4 403 seeks to avoid is confusing the jury with an argument
5 that somehow what Mr. Mohammed did in Afghanistan was
6 somehow blessed by the government, which is not relevant to
7 why Mr. Nosair was firing weapons in 1990.

8 THE COURT: I don't know what if anything
9 Mr. Mohammed was doing before November 6 or after November
10 6, but it strikes me as not completely unreasonable that
11 somebody's conduct after a particular date may illuminate
12 his conduct before that date, and indicate what he was doing
13 before that date. I don't know whether it does or not.
14 That is for you to argue. In any event, it is not going to
15 take a whole lot of time, is it? Is it?

16 MR. STAVIS: No, your Honor. As a matter of
17 fact, that portion of the examination is approximately five
18 minutes.

19 THE COURT: I am going to let him prove it. I
20 would like you to take a look at the government's memo,
21 though, and we will talk about that later.

22 MR. STAVIS: I will do so.

23 I will be a moment getting my witness.

24 THE COURT: Good.

25 KHALED IBRAHIM, resumed.

1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 JURORS: Good morning, your Honor.

4 THE COURT: Mr. Ibrahim, you are still under
5 oath.

6 Go ahead, Mr. Stavis.

7 DIRECT EXAMINATION continued

8 BY MR. STAVIS:

9 Q Good morning, Mr. Ibrahim.

10 A Good morning.

11 Q Before we broke on Thursday, you were explaining
12 that you had moved your family to Peshawar, Pakistan.

13 A Yes.

14 Q Approximately how long did you remain in
15 Peshawar, Pakistan, at that time?

16 A About one month.

17 Q What is the time period that we are speaking of?

18 A Summer of 1991, around August.

19 Q Why did you leave Peshawar, Pakistan, in August
20 of 1991?

21 A I still had a job here in the United States. All
22 I did was take about a month vacation time, and I wanted to
23 move my family over there, get them settled in Peshawar,
24 came back here to resume my job and take care of some
25 personal things. And then after that I would go back to

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1 Peshawar and stay for a longer period of time.

2 Q During the time that you were back in the United
3 States, did there come a time that any of your family
4 members also returned from Peshawar, Pakistan, to the United
5 States?

6 A Yes. My daughter Sarah had to come back to see a
7 doctor, because she had had an accident here in the United
8 States.

9 THE COURT: Just "see a doctor" is sufficient.
10 Let's move on, please.

11 Q Please describe what happened when your daughter
12 returned to the United States.

13 A When she came back to the United States, I went
14 to Kennedy Airport to pick her up, and at the airport, the
15 person that she was coming with was there, and with him I
16 saw Abu Omar, who I mentioned last Thursday.

17 Q What happened between you -- withdrawn. Is Abu
18 Omar the person depicted in Nosair KKK-1?

19 A Yes, that is him.

20 Q What happened between you and Abu Omar when you
21 saw him at Kennedy Airport?

22 A I recognized him and he recognized me. We
23 greeted each other, we hugged, and he explained to me that
24 just coincidentally he had been on the same plane from
25 Pakistan to New York, and he was sitting next to my daughter

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1 the whole trip, without knowing that she was my daughter.

2 Q What was the name of the third person that was
3 sitting with Abu Omar and your daughter on that flight from
4 Pakistan?

5 A Dr. Ibrahim Buker.

6 Q When did this occur that you saw Abu Omar at
7 Kennedy Airport?

8 A It had to be around early 1992 or late 1991. I
9 don't remember exactly.

10 Q After you met Abu Omar at the airport, what if
11 anything else did you do with him?

12 A He explained to me that he wanted to catch a
13 flight to the west coast, apparently. He didn't say exactly
14 where, but he wanted to go to Newark, New Jersey, to catch a
15 flight from Newark Airport. So I offered to give him a ride
16 to Newark airport, because I was going to New Jersey anyway,
17 and he agreed. So on the way to Newark Airport, we talked a
18 bit and stuff.

19 Q What did you talk about?

20 MR. FITZGERALD: Objection.

21 THE COURT: Sustained.

22 Q Please continue about the ride but not what you
23 spoke to Abu Omar about.

24 A All right. We got to Newark Airport, and he was
25 not able to catch that flight. I don't remember the

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1 reasons, either that he missed it or it was overbooked,
2 something like that. So I offered to take him home and let
3 him sleep the night over, and then give him a ride to the
4 airport in the morning, the next morning. So he came home
5 with me, we sat down at my home, and he made a phone call, I
6 think it was to his wife, and then after that we sat down,
7 we had the night prayer, we had some dinner, and then we
8 talked a bit. In the morning we got up, we had the morning
9 prayer, I took him to the Newark Airport, and he took off.

10 Q Did there come a time that you returned to
11 Peshawar, Pakistan, and your family?

12 A Yes. In about March 1992, I went back to
13 Peshawar.

14 Q What if anything occurred after you returned to
15 your family in Peshawar, Pakistan?

16 A I stayed with my family for awhile and then the
17 situation in Afghanistan was such that the final battle for
18 Gala Abad and Kabul, which were under communist control --

19 Q Can you please spell those.

20 A Yes. Galal Abad is G-A-L-A-L capital A-B-A-D.
21 K-A-B-U-L.

22 The final battle for Galal Abad and Kabul, which
23 were under communist control, seemed to be very near, so I
24 decided to go in with a couple of people who were going into
25 Galal Abad to participate in that battle.

1 Q I would ask you, Mr. Ibrahim, with the court's
2 permission, if you could come off the witness stand and show
3 us on the map where those places are that you just referred
4 to.

5 Mr. Ibrahim, on this map you previously indicated
6 a P where the city of Peshawar is. Do you see that?

7 A Yes.

8 Q If you could take the pen that you have there and
9 put a G where Galal Abad is.

10 You mentioned Kabul. Can you put a K where Kabul
11 is.

12 Please resume your seat.

13 Explain to the ladies and gentlemen when you went
14 to Galal Abad.

15 A It was late March or early April obvious 1992.

16 Q And tell the ladies and gentlemen of the jury how
17 you got from Peshawar, Pakistan, to Galal Abad in
18 Afghanistan.

19 A There were two brothers who were going there.
20 They had been there before so they knew how to get there. I
21 went with them. We took a bus from Peshawar to a place on
22 the outskirts of Peshawar -- I am trying to remember the
23 name.

24 THE COURT: Mr. Stavis, could you move this
25 along, please.

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1 MR. STAVIS: Yes, sir.

2 THE COURT: Thank you.

3 Q Did there come a time that you got near Galal
4 Abad?

5 A Yes, we went to the outskirts of Galal Abad.

6 Q What happened to you when you were on the
7 outskirts of Galal Abad?

8 A We went to a front, which was less than a mile
9 away from where the communists were, and we stayed over
10 there for awhile, and there was exchange of gunfire between
11 us and them.

12 Q When you say "them," who are you referring to?

13 A The communists. We stayed over there for a
14 couple of days, and then we moved to another location where
15 the mujahideen had set up a rocket launcher, and they were
16 firing rockets on the enemy. We stayed over there for
17 awhile, too, few days. The enemy was responding with tank
18 artillery.

19 After that, the guy I was with, he was a doctor,
20 so we had to go back to a base which was back from the front
21 lines. It had like a clinic in it. He had to attend to
22 some people who were injured and so on. So I went back with
23 him. Over there we stayed for longer period of time, and
24 during that time there was preparation being made for
25 everybody going to the front to participate in the battle

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1 that was expected for Galal Abad.

2 Q At the time that you went to Galal Abad, did you
3 have any weapons training?

4 A No. The only training I had was the training I
5 had here in the United States with Sayyid Nosair.

6 Q Did there come a time that the communists
7 surrendered at Galal Abad?

8 A Yes. After I had been there about three weeks or
9 so, they surrendered, and there was a celebration and so on,
10 and we were very happy to hear that.

11 Q Following this celebration, did you return to
12 Peshawar?

13 A Yes, I did.

14 Q What happened?

15 A I stayed with my family after awhile, and I was
16 looking for some volunteer work to do and so on, to help
17 with the relief efforts that were going on for the Afghan
18 refugees -- we called them muhajireen. I did that for
19 awhile, maybe three or four months.

20 Q Did there come a time that you returned to
21 Afghanistan?

22 A Yes.

23 Q When was that?

24 A In June of 1992.

25 Q Why did you return to Afghanistan in June of

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1 1992?

2 A As I mentioned before, the only training I had
3 was the rifle training that we had here in the United States
4 with Sayyid Nosair, so I wanted to get more training, and
5 I -- there were camps, training camps still open at that
6 time, and I decided to go into one of these camps, because
7 it was rumored that camps might close down. So I went to
8 get some more rigorous training.

9 Q Why were you getting more training at that time,
10 in June of 1992?

11 A It was an opportunity for me to get more training
12 while the camps were still open, and I also thought that
13 even though the jihad in Afghanistan looked like it was
14 over, or almost over, as a Muslim I feel that you should
15 always be ready for any kind of situation that might develop
16 in any part. You always have to be ready for jihad at any
17 time. At that time, we were hearing the news about Bosnia
18 and that was on our minds, too. The Serbs were doing their
19 ethnic cleansing in Bosnia.

20 Q Was there any training that you participated in
21 for a jihad in America?

22 A No.

23 Q Were you aware of a jihad in America?

24 A No, there is no need for a jihad in America, in
25 my opinion, because I am a Muslim, I live here in the United

1 States, I have the freedom in worship. The reason there was
2 jihad in Afghanistan, for example, was that the communists
3 were depriving the Afghans from practicing their faith.

4 Q When you went back to Afghanistan in June of
5 1992, where did you go in Afghanistan?

6 A The training camp -- you said June, right?
7 That's the question?

8 Q Yes. Is that the right date?

9 A Yes. The training camp was on the outskirts of a
10 city of Khost in Afghanistan, KHOST.

11 Q Where is Khost in relation to Galal Abad?

12 A South of Galal Abad.

13 Q Can you come off and show the jury on the map
14 where that place is in Afghanistan.

15 Q Can you take a pen and put an H over there.

16 Thank you. Please resume your seat.

17 Tell the ladies and gentlemen of the jury what
18 kind of training you did in Khost in Afghanistan.

19 A First we got training on the use of light weapons
20 such as the Kalashnikov, the M16, the Uzi, and others, and
21 assembly, disassembly, cleaning, maintenance and so forth.
22 There was rigorous physical training, two hours every day in
23 the morning, running in the mountains and stuff like that.
24 There were exercises on battlefield skills such as crawling
25 on your stomach and stuff like that, crossing obstacles.

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1 There was training on heavier weapons, like the machine guns
2 that has the two stands in the front, and RPG's.

3 Q What is an RPG?

4 A Rocket propelled grenade, which is, you put it
5 over your shoulder and you fire. It works against tanks.
6 And different kinds of weapons.

7 Q After receiving that training, did you return to
8 Peshawar, Pakistan?

9 A Yes.

10 Q What did you do when you returned there?

11 A Nothing in particular. I just spent some time
12 with my family.

13 Q When you returned to Peshawar, was there an
14 Afghan reconstruction --

15 A I am sorry, I can't hear you.

16 Q When you returned to Peshawar, was there an
17 Afghan reconstruction group?

18 A Yes, there was an office, an engineering office
19 set up by Saudi Arabia that was in charge of reconstructing
20 Afghanistan, and they had engineering projects to go and do
21 inside Afghanistan. I did apply for work because I am an
22 engineer, and I wanted to participate in rebuilding
23 Afghanistan. But at first I did have an interview and they
24 liked me, but after that they said there was a freeze, and
25 they couldn't hire me at that time.

1 Q While you were in Peshawar, Pakistan, after
2 returning from Khost, in Afghanistan, did there come a time
3 that you did any translation work?

4 A Yes. Some brothers asked me to do translation
5 work for them from English to Arabic, and I agreed.

6 Q Where were those brothers located?

7 A They were located at about the same place where
8 that camp was.

9 Q Which camp are you referring to?

10 A The training camp around Khost. And in order to
11 do the translation, they wanted to go back to that area.
12 They didn't want me to do it in Peshawar. I had to go to
13 one of the camps around Khost. So I did.

14 Q What if anything were you translating?

15 A I am sorry.

16 Q What were you translating?

17 A It was a book written by a Pakistani general
18 about the war in Afghanistan. That Pakistan general was --

19 MR. FITZGERALD: Objection, 401.

20 THE COURT: Sustained.

21 Q Did the work that you were doing, did there come
22 a time that the work that you were doing caused you to go
23 back to Afghanistan?

24 A Yes.

25 Q When was that?

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1 A It was later, in the fall of 1992. I remember --
2 it might have been around September.

3 Q Where did you go when you returned again to
4 Afghanistan?

5 A It was not too far from where the camp was,
6 again, in the mountains around Khost.

7 Q When you returned to Afghanistan in the fall of
8 1992, did you see anyone that you knew?

9 A Yes.

10 Q Who was that?

11 A Abu Omar.

12 Q Please explain the circumstances under which you
13 saw Abu Omar.

14 A I was working on the translation of that book,
15 and then one day he showed up. It looked like he had come
16 from someplace else, I mean like overseas maybe, and he was
17 there to train some of their people, some of their
18 commanders.

19 Q How do you know that?

20 A Because he trained them. I saw the place where
21 they were training.

22 Q What if anything did Abu Omar tell you about
23 training when you were in Afghanistan in the fall of 1992?

24 MR. FITZGERALD: Objection.

25 THE COURT: Sustained.

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1 Q Describe the training area where you saw Abu Omar
2 in the fall of 1992.

3 A It was a camp, and it was in a mountainous area,
4 and -- that's all. I don't know how to describe it.

5 Q At the time that you returned to Afghanistan in
6 the fall of 1992, did you see any United States military
7 equipment?

8 A Yes.

9 Q What kind of United States military equipment did
10 you see?

11 A I saw a Stinger missile.

12 Q What is a Stinger missile?

13 A It is an antiaircraft missile that you fire from
14 the shoulder. You put it on your shoulder and you fire at
15 an enemy aircraft.

16 Q Were there other types of antiaircraft missiles
17 that were used in Afghanistan when you were inside
18 Afghanistan?

19 A Yes.

20 Q What were they?

21 A There was the SAM 7.

22 Q You say SAM?

23 A Yes.

24 Q What does that mean?

25 A It stands for surface-to-air missile, but when

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1 you say SAM it refers to the Soviet type.

2 Q How can you tell the difference between a SAM 7
3 missile and a Stinger missile?

4 A It looks a little different. You can recognize
5 it by looking at it.

6 Q What are the differences?

7 THE COURT: Mr. Stavis.

8 A The appearance is a little different and the way
9 it works is a little different, too. The Stinger is much
10 more sophisticated.

11 Q When you saw Abu Omar in the fall of 1992 in
12 Afghanistan, was he calling himself by any particular name?

13 A Yes. He called himself Abu Osama.

14 Q How long did you spend with Abu Omar or Abu Osama
15 in Afghanistan in the fall of 1992?

16 A About three to four weeks.

17 Q During that three-to-four week period that you
18 spent with Abu Omar or Abu Osama, did you have occasions to
19 speak to him?

20 A Yes.

21 Q How long were you in Afghanistan in the fall of
22 1992 before you returned to Peshawar, Pakistan?

23 A About three or four months, but not continuously.
24 I would go back to Peshawar to spend some time with my
25 family, and then come back.

1 Q Did there come a time that you and your family
2 returned to the United States?

3 A Yes.

4 Q When was that?

5 A It was around February 1993.

6 Q Why did you return to the United States?

7 A The Pakistani government had moved to arrest a
8 lot of the Arab-speaking brothers that were there and many
9 of them were being kept in jail until they agreed to leave
10 the country. So the environment was not good for family
11 life over there any more, and we just decided to come back
12 home.

13 MR. STAVIS: I have no further questions, your
14 Honor.

15 THE COURT: Cross? I am sorry. Miss Stewart.

16 CROSS-EXAMINATION

17 BY MS. STEWART:

18 Q Good morning, Mr. Ibrahim.

19 A Good morning.

20 Q During the years 1990, '91 and '92 and '93, you
21 spent some of the time in the New Jersey and New York area,
22 is that right?

23 A Yes.

24 Q Did you ever in those years have occasion to hear
25 Sheik Omar speak?

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1 A Yes, many times.

2 Q Were those lectures or sermons or both?

3 A Both.

4 Q Could you explain the difference between a
5 lecture and a sermon?

6 A Yes. A sermon is actually an act of worship. It
7 has to be done at a particular time, which is on Friday just
8 before the prayer, the congregational prayer on Friday, at
9 about noontime. In the sermon, the sheik speaks and the
10 worshipers listen to him, and when he is done, the prayer is
11 held, and that's it. There is no questions, answers,
12 anything like that.

13 Lecture is different. Lecture is informal
14 setting and people can ask questions, like that. Lecture.

15 Q How many times would you say that you attended
16 either lectures or sermons?

17 A More than I can remember. I don't know how many
18 times I attended.

19 Q Did you ever on any occasion hear the sheik speak
20 on jihad?

21 A Yes.

22 Q Did he speak more than once about jihad?

23 A Yes, he spoke many times about jihad.

24 Q Would you say that all of his sermons or nearly
25 all of his sermons and lectures dealt with that to some

1 degree?

2 A All of the sermons or most of them were about
3 jihad, while the lectures were not.

4 Q What did you understand him to say about jihad,
5 publicly?

6 MR. FITZGERALD: Objection, 401 and competence.

7 THE COURT: Sustained.

8 Q You have given your definition for the jury of
9 what jihad means as an Islamic concept, is that correct?

10 A Yes.

11 Q Does that agree with what you understand Sheik
12 Omar to have said?

13 MR. FITZGERALD: Same objection.

14 THE COURT: Same ruling.

15 Q Did you ever hear Sheik Omar indicate in any
16 sermon or any lecture that jihad should be performed in
17 America?

18 A No.

19 Q Did you ever hear him call upon people in the
20 congregation or in a group to steal from banks or bomb
21 military bases?

22 A No.

23 Q You indicated that you were in Afghanistan, is
24 that right?

25 A Yes.

1 Q Did you ever have occasion to meet any relatives
2 of Sheik Omar, Dr. Abdel Rahman, in Afghanistan?

3 A Yes, I met his two sons.

4 Q I am sorry.

5 A I met two of his sons.

6 Q Do you remember when that was, approximately?

7 A Yes. When I first went into the Gala Abad area,
8 which was in the spring of 1992, I looked for them, and I
9 wanted to meet them.

10 Q Do you remember their names by any chance?

11 A Yes, Assad and Saif.

12 MS. STEWART: No further questions, Judge.

13 THE COURT: Any other defense counsel? Mr.
14 Ricco, representing Mr. El-Gabrownny. Go ahead.

15 CROSS-EXAMINATION

16 BY MR. RICCO:

17 Q Good morning, sir.

18 On or around the time that Mr. Nosair was
19 arrested, were you on the board at the El Salaam Mosque in
20 New Jersey?

21 A At the time that Sayyid Nosair was arrested, I
22 was not on the board. I came to the board of masjid Islam
23 the following year.

24 Q Do you know Abdul Haggag?

25 A Yes.

14298

1 Q Was he on the board at El Salaam Mosque?

2 A He was on the board the same year that I served.

3 Q Did there come a time that Ibrahim El-Gabrowny
4 presented himself for the board of directors at the El
5 Salaam Mosque?

6 A I am sorry. Can you repeat the question.

7 Q Did there come a time when Ibrahim El-Gabrowny
8 friend himself at the El Salaam Mosque?

9 A Yes. During the period of time after Sayyid was
10 arrested, he used to come to El Salaam. Before that, really
11 I hadn't seen him at El Salaam, maybe once or something.
12 But at that time he was coming more often.

13 Q Can you tell the jury what he was coming to El
14 Salaam for?

15 A He was requesting help for the case of Sayyid
16 regarding supporting his family and supporting his defense
17 funds.

18 Q There was a great discussion at El Salaam Mosque
19 about the management of the fund, isn't that correct?

20 A Yes.

21 Q Abdel Haggag had strong opinions about Mr.
22 El-Gabrowny's handling of the accounts, isn't that correct?

23 A Yes.

24 Q Can you explain to the jury what that was?

25 A Most of us were of the opinion that the money

14299

1 should be handled by a committee rather than by some
2 individual, and I think the dispute was that Ibrahim thought
3 of it as more like a family thing, because he is related to
4 Sayyid, and he basically wanted to have between himself and
5 Sayyid's wife to have more control over the money than we
6 wanted to give them.

7 Q There were a lot of people at the El Salaam
8 Mosque that were against Mr. El-Gabrowny conducting himself
9 in that manner, isn't that correct?

10 A Yes.

11 Q Abdul Haggag was one of those people, isn't that
12 correct?

13 A Yes.

14 Q And you were one of those people, isn't that
15 correct?

16 A Yes.

17 Q Eventually, Mr. El-Gabrowny maintained --

18 THE COURT: It's direct.

19 MR. RICCO: OK, I am sorry.

20 Q Did Mr. El-Gabrowny maintain the account on his
21 terms?

22 A Yes.

23 Q Did you contribute to the fund anyway?

24 A I did.

25 Q And were there other members at El Salaam who

14300

1 decided not to contribute because of the way in which Mr.
2 El-Gabrowny managed the accounts?

3 A All right. On the official level, I mean, the
4 board of directors of El Salaam decided not to take an
5 active role in supporting Sayyid financially because of
6 disagreement. But on individual levels, there were many
7 people who were still donating money to the fund.

8 Q And you were one of those people?

9 A Yes.

10 Q To your knowledge, does Abdel Haggag know Mr.
11 El-Gabrowny?

12 A Yes.

13 MR. RICCO: No further questions. Thank you,
14 your Honor.

15 THE COURT: Anyone else? Ms. Amsterdam
16 representing Mr. Khallafalla.

17 CROSS-EXAMINATION

18 BY MS. AMSTERDAM:

19 Q Good morning, sir.

20 A Good morning.

21 Q Are you familiar with an Arabic expression -- can
22 you hear me?

23 A Yes.

24 Q -- which translates, and I apologize if I am
25 botching it up, but translates in part to teach your

14301

1 children archery, swimming and horseback riding, it will
2 serve you well in both peace and war?

3 A Yes, I am familiar with that.

4 Q Is that from the Koran, that expression?

5 A No.

6 Q But it is a common expression, Arabic expression?

7 A It is from hadeeth. Hadeeth means something that
8 our prophet, peace be upon him, said in his own words, as
9 opposed to the Koran, which is direct revelation.

10 Q So this is a direction -- pardon my ignorance,
11 but this is a direction from the prophet's own words,
12 correct?

13 A Yes.

14 Q Would that be consistent with your concept of
15 jihad?

16 A Yes.

17 Q You stated, sir, did you not, that after '92, you
18 continued your straining, or in '92 you continued your
19 training.

20 A Yes.

21 Q And that was done even though the war in
22 Afghanistan was winding down and it appeared as if the
23 communists had lost, correct?

24 A Yes.

25 Q You stated that part of why you did that was a

14302

1 concern for issues in Bosnia. Do you recall that?

2 A Yes. Bosnia was one of the places where jihad
3 might be called for. I used it as an example to show that
4 jihad is not only in Afghanistan.

5 Q Was there talk within the mosques and within the
6 Muslim community about the situation, the political
7 situation in Bosnia?

8 MR. FITZGERALD: Objection, 401.

9 THE COURT: Sustained.

10 Q You stated, sir, that there was no -- in your
11 opinion as a Muslim there was no need for jihad in America,
12 would that be correct?

13 A Yes.

14 Q But that you regarded as a Muslim there to be a
15 need for jihad in Afghanistan, correct?

16 A Yes.

17 Q As a Muslim, do you have an opinion as to whether
18 or not there was a need for jihad in Bosnia?

19 MR. FITZGERALD: Objection.

20 THE COURT: Sustained.

21 Q Were there lectures and sermons in the mosque
22 about the situation in Bosnia?

23 MR. FITZGERALD: Objection, same objection.

24 THE COURT: I will allow it. Go ahead.

25 A Actually, during the time that Bosnia started, I

14303

1 was not in the United States, but I know that --

2 THE COURT: Sustained.

3 Q Were the sermons and lectures about Afghanistan
4 and jihad open or were they done secretively?

5 A No, they were very open.

6 Q And was the magazine that you referred to, the
7 Jihad Magazine, was that hidden within the mosque or was
8 that openly displayed?

9 A No, it was openly displayed.

10 Q And were the requests for money or clothing made
11 to the congregation as a whole or was that done in a
12 secretive way?

13 A No, it was made to the congregation.

14 Q And were the lectures regarding an individual
15 Muslim's responsibility to defend his brothers and sisters
16 under attack, was that done secretively or openly in the
17 mosque?

18 A That was done openly.

19 Q One last question, sir -- two last questions.
20 When you served on the board of directors, was that an
21 elected position?

22 A Yes.

23 Q There were elections within the mosque?

24 A Yes.

25 Q Who could vote in those elections? Only members

14304

1 of the mosque?

2 A Yes, people who attended regularly and who paid
3 their dues.

4 MS. AMSTERDAM: Thank you, sir.

5 THE COURT: Mr. Serra representing Mr. Alvarez.
6 Go ahead.

7 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MR. SERRA:

3 Q Good morning, Mr. Ibrahim.

4 A Good morning.

5 Q Mr. Ibrahim, in answer to questions of
6 Mr. Stavis, you said that you knew my client, the gentleman
7 seated there with the headphones on?

8 A Yes.

9 Q What name did you know him by?

10 A Mohammad.

11 Q You met him in 1989, is that right?

12 A Yes, about that time.

13 Q At Farook Mosque?

14 A Yes.

15 Q You told Mr. Stavis that you went to a conference
16 with him. Can you please tell the jury when that was, when
17 the conference was?

18 A It was over the Christmas holiday, 1989.

19 Q So that would have been only a few months after
20 you met Mohammad, is that correct?

21 A Yes.

22 Q Did you see Mohammad asking questions of people
23 at the conference?

24 A Yes.

25 Q What subject would he ask questions about?

1 A Well, he always asked about the Koran, because of
2 course he doesn't know the Arab language, and he wanted to
3 ask about the meaning of certain persons of Koran.

4 Q How many people would you see him asking
5 questions of, sir?

6 A Several people.

7 MR. SERRA: Your Honor, may I approach the
8 witness with Government Exhibit 520?

9 THE COURT: Yes.

10 Q Mr. Ibrahim, you and I are going to have to share
11 a microphone.

12 A All right.

13 MR. SERRA: Your Honor, for the record,
14 Government Exhibit 520 is entitled "Chart of Victor Alvarez
15 Telephone Numbers."

16 Q I direct your attention, Mr. Ibrahim, to an
17 entry -- I will spell for the record -- E-b-r-a-h-i-m. Do
18 you see that, sir?

19 A Yes.

20 Q And I direct your attention to the phone number.
21 Do you recognize that phone number?

22 A Yes.

23 Q What is it, sir?

24 A It was my telephone number.

25 Q The final question, Mr. Ibrahim. You described

14307

1 something you called the jihad office at the Farook Mosque
2 for Mr. Stavis is that right?

3 A Yes.

4 Q In Farook Mosque, where was the jihad office
5 located?

6 A On the first floor of the mosque.

7 Q How far from the entrance as you go in from the
8 street?

9 A As soon as you go into the entrance, there is a
10 corridor. At the end of that corridor, you turn to the
11 right, and it's right there.

12 MR. SERRA: Thank you, sir. I have nothing
13 further.

14 THE COURT: Cross?

15 MR. FITZGERALD: Yes, Judge.

16 CROSS-EXAMINATION

17 BY MR. FITZGERALD:

18 Q Good morning, sir.

19 A Good morning.

20 Q Now, you mentioned that you spent some time in
21 Afghanistan and Pakistan, is that correct?

22 A Yes.

23 Q You mentioned that you spent some time in New
24 York and New Jersey at the jihad offices, one at the Farook
25 Mosque and one at the Salam Mosque.

14308

1 A Yes.

2 Q And you also mentioned that you read every word
3 of every issue of a magazine called Al Jihad?

4 A Yes.

5 Q Is it fair to say that the organization that
6 Abdallah Azzam, Sheik Abdallah Azzam ran was involved with
7 this magazine Al Jihad?

8 A Was involved?

9 Q With the magazine Al Jihad.

10 A Yes.

11 Q His group published the magazine?

12 A Sorry?

13 Q Did his group publish the magazine?

14 A Yes, I think the magazine actually came out of
15 Peshawar.

16 Q Was the magazine office located where the jihad
17 office was located in Peshawar?

18 A I don't know for sure but I think so.

19 Q Were there other magazines published in Peshawar
20 at the time relating to the topic of jihad?

21 A Yes.

22 Q Are you familiar with the magazine Al Murabiton,
23 M-u-r-a-b-i-t-o-n?

24 A Yes.

25 Q Was that published on a regular basis?

14309

1 A While I was there it was.

2 Q Was that published by Al Gama Islamiya?

3 A Yes.

4 Q And was the office for Gamaat, Al Gama Islamiya,
5 Peshawar, the same office where the Al Murabiton magazine
6 was distributed?

7 A I don't think so.

8 Q Where was the Al Murabiton magazine distributed?
9 Was it from Peshawar?

10 A Yes.

11 Q Now, were there different camps located in
12 Pakistan training people for Afghanistan?

13 A I am sorry, were there different camps?

14 Q Different training camps.

15 A Yes.

16 Q What was the name of the camp you went to?

17 A It was called Al Farook.

18 Q Al Farook.

19 A Yes.

20 Q Were you familiar with a camp called Camp
21 Khaldan, K-h-a-l-d-a-n?

22 A No.

23 Q Have you ever heard of it?

24 A How do you spell it?

25 Q K-h-a-l-d-a-n.

14310

1 A I may have heard the name before but I am not
2 sure.

3 Q So far as you know, you never heard of a Camp
4 Khaldan?

5 A No.

6 Q When you were in Afghanistan and Pakistan, were
7 you familiar with a man by the name of Mohammad Shawqi,
8 S-h-a-w-q-i?

9 A I heard of him.

10 Q Did you ever meet him?

11 A No.

12 Q The organization or the Al Jihad magazine that
13 ran the jihad offices had a symbol on the T-shirts, is that
14 correct?

15 A Yes.

16 Q And the other day you were shown Nosair Exhibit
17 C, which was a T-shirt showing a picture of -- is that
18 Afghanistan?

19 A Yes.

20 Q And then there is a symbol around it and then a
21 band, a cross through Afghanistan, is that correct?

22 A Yes.

23 Q And there is writing on Arabic on this side of
24 the T-shirt?

25 A Yes.

14311

1 Q And on the back of the T-shirt is basically the
2 same symbol but it is written in English.

3 A Yes.

4 Q Was this the symbol of the jihad organization,
5 the one that had offices in New Jersey, in Brooklyn, and
6 over at Peshawar?

7 A Yes.

8 Q When you were in Peshawar, you were familiar with
9 the people who worked for that organization, is that
10 correct?

11 A I knew some of them.

12 Q When you were in Peshawar, did you ever meet a
13 man by the name of Ahmad Ajaj, A-j-a-j?

14 A No.

15 Q Did people sometimes go by nicknames or code
16 names in Peshawar?

17 A Yes.

18 Q What was your code name?

19 A Abu Yousef.

20 Q Abu Yousef. Let me approach you with Government
21 Exhibit 609. I ask you to look at that picture and tell us
22 whether or not you recognize the person in that photograph.

23 A No, I don't recognize him.

24 Q Did you ever know him to have any affiliation
25 with the jihad organization depicted on this T-shirt?

14312

1 MR. STAVIS: Your Honor, the witness just said he
2 didn't know the person.

3 THE COURT: Sustained.

4 Q Let me ask you this: Did the organization
5 sometimes issue letters of introduction, whereas if you
6 traveled from one place to another place, someone would give
7 you a letter that would vouch for who you were?

8 A I don't know that firsthand.

9 Q Did you ever get a letter from the jihad office
10 locating you for a job such as the job you applied for when
11 you were over at Afghanistan?

12 A No.

13 Q Did you ever see the stationery of the jihad
14 office?

15 A Yes.

16 Q Let me approach you with what has been premarked
17 as Government Exhibits W2803-D1 and W2803-6.

18 MR. STAVIS: May I see those?

19 MR. FITZGERALD: Yes.

20 Q Looking first at Government Exhibit 2803-D1, are
21 you familiar with that stationery?

22 A Yes.

23 Q Can you tell us what that stationery is?

24 A It is the jihad office of Dr. Abdallah Azzam.

25 Q How does the letterhead compare with the symbol

14313

1 on Nosair Exhibit C?

2 A It has the same symbol.

3 Q Are there phone numbers listed on the bottom of
4 that letter?

5 A Yes.

6 Q I am going to ask you to compare the phone
7 numbers listed at the bottom of Government Exhibit W2803-D1
8 with some phone numbers in Government Exhibit 119T.

9 MR. STAVIS: May I see Government Exhibit 119T.

10 MR. FITZGERALD: Yes.

11 Q When you knew Mr. Nosair, did you ever see the
12 inside of his phone book?

13 A No.

14 Q Let me show you Government Exhibit 119T,
15 translation of Government Exhibit 119, and show you the
16 entry for page B1. Do you see those numbers listed next to
17 the yellow Post-It?

18 A Yes.

19 Q And does the No. 41218, which appears in Nosair
20 Exhibit -- I am sorry -- Government Exhibit 119T also appear
21 in the bottom of Government Exhibit W2803-D1?

22 A Yes.

23 Q And does the phone number 43708 appear in
24 Government Exhibit 119T and also appear at the bottom of
25 Government Exhibit W2803-D1?

14314

1 A Yes.

2 Q I show you Government Exhibit W2803-6, and if you
3 could look at the symbol at the top of that document.

4 Do you recognize that symbol?

5 A Yes.

6 Q Once again, is that the symbol that appears on
7 the jihad T-shirt and on the other document?

8 A Yes.

9 Q If you could look at the text of W2803-6, just
10 read it to yourself.

11 Have you ever seen a letter such as that before?

12 A No.

13 Q And you don't know where Camp Khaldan is?

14 A I didn't up to now.

15 Q And you never heard the name used in the jihad
16 office?

17 A No.

18 Q During the time you were in Afghanistan, did you
19 ever see a person by the name of Bilal Alkaisi?

20 A Bilal who?

21 Q Alkaisi, A-l-k-a-i-s-i?

22 A No.

23 Q Did you ever see him in New York or New Jersey?

24 A No.

25 Q Did you ever see a person by the name of Ramzi

14315

1 Yousef?

2 A No.

3 Q Do you know a person by the name of Abdul Basit,
4 B-a-s-i-t?

5 A No, I do not.

6 Q Let me approach you with a series of photographs:
7 Showing you first Government Exhibit 5F, have you ever seen
8 this person before?

9 A No.

10 Q Showing you Government Exhibit W610.

11 A No.

12 Q Showing you Government Exhibit 384C, the person
13 with a 2 above his head.

14 A No.

15 Q And finally, Government Exhibit W630. Have you
16 seen this person before?

17 A No.

18 Q And Government Exhibit W631?

19 A No.

20 Q Are you familiar with the person by the name of
21 Osam Ben Laden, O-s-a-m B-e-n L-a-d-e-n?

22 A Yes.

23 Q Have you ever met him?

24 A No.

25 Q You are sure?

14316

1 A Sure.

2 Q Have you ever passed messages from Osam Ben Laden
3 to anyone else?

4 A No.

5 Q The jihad office, the jihad magazine.

6 MR. STAVIS: May I have a sidebar, your Honor,
7 with regard to the last series of questions?

8 THE COURT: No.

9 Q Al Jihad magazine had an office in England, is
10 that correct?

11 A In England?

12 Q Yes.

13 A I think so. I am not sure.

14 Q Did you ever go to that office?

15 A No.

16 Q Have you ever been to England?

17 A I have never been to England.

18 Q Is it fair to say that while you were in this
19 country you lived in Pennsylvania and worked in Pennsylvania
20 from 1981 to about 1983 -- I am sorry, in 1981.

21 A 1981.

22 Q Did you live in Alabama from 1981 to 1983?

23 A Yes.

24 Q And you lived in Saudi Arabia briefly in 1983?

25 A Yes.

14317

1 Q And you lived again in Pennsylvania in 1983, is
2 that correct?

3 A Yes.

4 Q And from '83 to 1987 you lived in Indiana?

5 A Yes.

6 Q So you returned to Jersey City or went to Jersey
7 City in the summer of 1987?

8 A Yes.

9 Q And you had been away for the period 1981 through
10 1987, is that correct?

11 A Yes.

12 Q When you got to New Jersey, that is when you
13 began to attend the Al Salam Mosque, is that correct?

14 A Yes.

15 Q You mentioned that you attended rifle training
16 for Afghanistan with Sayyid Nosair?

17 A Yes.

18 Q Do you recall who else attended this rifle
19 training?

20 A I don't really don't remember who else attended
21 the rifle training.

22 Q This was important to you, was it not?

23 A I am sorry?

24 Q This was important to you, was it not?

25 A Yes.

14318

1 Q You wanted to train to go to Afghanistan,
2 correct?

3 A Yes.

4 Q And the people that went with you to the training
5 were training for Afghanistan, is that correct?

6 A Yes.

7 Q And you were training with them to go possibly to
8 lose your life in Afghanistan, is that correct?

9 A To go where?

10 Q To go and risk the loss of your life fighting in
11 Afghanistan?

12 A Yes.

13 Q Can you remember anyone else who went to the
14 training with you besides Sayyid Nosair?

15 A I don't don't remember anyone in particular, no.

16 Q Is there anything about the training that makes
17 you feel uncomfortable remembering who was there?

18 A No.

19 Q You mentioned a Moustafa Saif. Was he at the
20 training?

21 A Yes, I think he was there once.

22 Q Once?

23 A I remember him being there with me at one time,
24 yes, now that you mention his name.

25 Q Mahmoud Abouhalima, was he at the training?

14319

1 A Yes. He was there once.

2 Q Nidal Ayyad, was he at the training?

3 A I don't remember seeing him there.

4 Q Do you know who he is?

5 A Yes.

6 Q And you met him personally?

7 A Yes.

8 Q When did you meet him?

9 A He came to Al Salam a couple of times.

10 Q And did you get to know him?

11 A I met him.

12 Q Did you exchange telephone numbers?

13 A I don't think we did, but it's possible.

14 Q Approximately how many times did you see any
15 Nidal Ayyad?

16 A Maybe three or four times.

17 Q Would you recognize him if you saw him again?

18 A Yes, I would.

19 Q Do you recall a few moments ago I placed before
20 you 384C. I ask you to take a look again at the person with
21 the number 2 above his head to see whether or not you
22 recognize that person.

23 A No, I still don't recognize him.

24 Q As far as you are concerned, that is not Nidal
25 Ayyad?

14320

1 MR. STAVIS: Your Honor, I object to that
2 question.

3 THE COURT: Overruled.

4 Is it?

5 THE WITNESS: It's not a clear picture. I
6 couldn't tell you if it's him or not.

7 Q You are not sure. Mohammad Salameh, you met him
8 some time in 1989, is that correct?

9 A Yes.

10 Q You had come to New Jersey and began to frequent
11 the Al Salam Mosque, is that correct?

12 A Yes.

13 Q And Mohammad Salameh had newly come to this
14 country and was also going to the Salam Mosque, is that
15 correct?

16 A Yes.

17 Q And you became friendly with him while he wasn't
18 a real close friend, is that correct?

19 A Yes.

20 Q Did he attend the training for Afghanistan with
21 yourself and Sayyid Nosair?

22 A I don't remember whether he did or not.

23 Q Do you know are a person by the name of Clement
24 Hampton-El?

25 A No. I don't recognize the name.

14321

1 Q How about the name of Dr. Rashid?

2 A I heard the name Dr. Rashid, but I don't know who
3 he is.

4 Q You mentioned a Hussein Saafan.

5 A Yes.

6 Q Did he attend the training in 1989, 1990?

7 A No.

8 Q You are sure?

9 A The times that I was there he wasn't there.

10 Q Let me approach you with a different series of
11 photographs. I show you first 35146A, and ask you if you
12 recognize the person depicted.

13 MR. STAVIS: May I see the picture your Honor?

14 THE COURT: Yes.

15 (Handed to Mr. Stavis)

16 Q Do you recognize the person in 35146A?

17 A No.

18 Q When you attended training with Sayyid Nosair,
19 where was the location?

20 A In Connecticut.

21 Q And do you know whose location it was?

22 A Whose location? I don't understand the question.

23 Q Was it a firing range?

24 A Yes.

25 Q Was there a person who belonged to the firing

14322

1 range that joined you in the training?

2 A I don't know.

3 Q Are you familiar with a person by the name of Ray
4 Murteza?

5 A Yes.

6 THE COURT: Will you spell that?

7 Q

8 MR. FITZGERALD: M-u-r-t-e-z-a.

9 Q Was Mr. Murteza an Albanian fellow of the Muslim
10 faith in Connecticut?

11 A Yes.

12 Q Did he attend training in Connecticut?

13 A Yes.

14 Q Showing you 35146A, is that Ray Murteza?

15 A I couldn't tell you for sure. I remember him
16 looking different than this.

17 Q But the person Ray Murteza attended the training
18 in Connecticut with you?

19 A Yes.

20 Q Let me show you 35146B, and ask you if you
21 recognize that person.

22 A Yes.

23 Q Who is it?

24 A Mustafa Saif.

25 Q And is that the Mustafa Saif who attended the

14323

1 training with you?

2 A Yes.

3 Q I show you 35146C, and ask you if you recognize
4 that person.

5 A No.

6 Q Are you familiar with a person by the name of
7 Quazi, Q-u-a-z-i, Haque, H-a-q-u-e?

8 A No.

9 Q Showing you 35146D, are you familiar with that
10 person?

11 A Yes.

12 Q What is his name?

13 A I think his name is Saifudeen, S-a-i-f-u-d-e-e-n.

14 A Yes.

15 Q This person Saifudeen in 35146D, was he at the
16 training course?

17 A I think so.

18 Q Was he a fellow who used to be Jewish and then
19 converted to the Muslim faith?

20 A As far as I know, he is.

21 MS. AMSTERDAM: Objection.

22 THE COURT: Sustained.

23 Q Let me ask you this: Did he speak with a Jewish
24 accent?

25 A I don't know.

14324

1 Q Do you know where he lived?

2 A Somewhere in New York, I think.

3 Q Let me show you six more photographs. 35146E.

4 Do you recognize that person?

5 A Yes. Hussein Saafan.

6 Q 35146F?

7 A Yes, I recognize him.

8 Q And what is that person's name?

9 A I don't know his name but I used to see him at Al
10 Salam.

11 Q Was he ever your roommate?

12 A No.

13 Q Did you have a roommate ever by the name of
14 Khalid Younis, K-h-a-l-i-d Y-o-u-n-i-s?

15 A No.

16 Q Do you know the name Khalid Younis, K-h-a-l-i-d
17 Y-o-u-n-i-s?

18 A I don't recognize the name as someone I know.

19 Q Let me show you what I will mark as 35146T.

20 Directing your attention to early November 1990, did you
21 live at 24 Romaine Avenue at that time?

22 A Early November?

23 Q 1990.

24 A Which year?

25 Q 1990.

14325

1 A Yes. No, I lived at 26 Romaine.

2 Q And 26 Romaine, will you describe for the jury
3 the type of building that it is?

4 A It's a frame house which has two apartments on
5 top of each other and then another two next to it, so it is
6 like a 4-family, 4-apartment building.

7 Q And the building would be 24 Romaine and 26
8 Romaine?

9 A Yes.

10 Q During that time did a Khalid Younis move into 24
11 Romaine?

12 A I don't know.

13 Q Let me show you what will be marked as 35146T and
14 ask you to read it to yourself and see if that refreshes
15 your recollection.

16 MR. STAVIS: May I see the exhibit.

17 MR. FITZGERALD: Yes.

18 Q Let me ask you to read this but read this to
19 yourself, the text of 35146T. When you are done reading it,
20 you can put it down, and I will ask you a question.

21 (Pause)

22 MS. AMSTERDAM: Your Honor, may we have a
23 sidebar?

24 THE COURT: No.

25 A All right.

1 Q Having looked at 35146T, do you have any better
2 memory of whether or not Khalid Younis lived at 24 Romaine
3 Avenue?

4 A Well, here he says that he lived at --

5 THE COURT: Don't tell us what the document says.
6 He asked you whether, after you read that document, you have
7 any recollection.

8 THE WITNESS: No, I still don't remember.

9 Q You mentioned during your testimony last week
10 that following the arrest of Sayyid Nosair in November of
11 1990, the Nosair family moved into the place where you
12 lived. Is that correct?

13 A Yes.

14 Q And you were living at the time at 26 Romaine?

15 A Yes.

16 Q How soon after Mr. Nosair's arrest did the Nosair
17 family move into your apartment?

18 A Within two or three days.

19 Q And they stayed there for approximately three
20 weeks?

21 A Yes, maybe two, three weeks, I don't remember.

22 Q So they would have been at 26 Romaine during the
23 month of November 1990?

24 A Yes.

25 Q Let me show you just four more photographs.

14327

1 35146G.

2 A No, I don't know that person.

3 Q Did he ever live at 24 Romaine Avenue?

4 MR. STAVIS: Objection, your Honor, based on the
5 previous answer.

6 THE COURT: I will allow it.

7 A No, all I knew is that there was some single
8 people living in that apartment. I never really knew who
9 they were, never really saw them.

10 Q Did you ever see the person in 35146G pray at the
11 Al Salam Mosque?

12 A I don't recognize him.

13 Q Showing you 35146H, I and J. Look at those three
14 photographs and tell me if you recognize any of those
15 people.

16 A No.

17 Q Let me ask you some questions about the training
18 you attended back in 1989 and 1990. How many times did you
19 attend the training?

20 A About two or three times.

21 Q Did you always attend in Connecticut?

22 A Yes.

23 Q Did you ever go to a location in upstate New
24 York?

25 A No.

14328

1 Q While you were there, you said that you were
2 firing rifles, is that correct?

3 A Yes.

4 Q Did you ever fire anything other than a rifle?

5 A I really don't remember. I remember there was a
6 rifle.

7 Q Did you ever fire handguns?

8 A It's possible. I'm trying to remember whether
9 there was a handgun. It could be.

10 Q Do you remember there being target balloons at
11 this training where people would shoot at the balloons to
12 try to hit them?

13 A Yes, I think so.

14 Q Do you recall the balloons being at different
15 distances?

16 A Yes.

17 Q Do you recall anyone bringing their own target, a
18 metal target on a swing, to shoot at, so the piece of metal
19 would swing back and forth as it was hit?

20 A Yes.

21 Q Was that Sayyid Nosair?

22 A Yes.

23 Q Was that something he made at his work and then
24 brought to the training camp in Connecticut?

25 A I don't know where he made it, but he brought it

14329

1 with him.

2 Q Why don't you describe for this jury what the
3 metal target looked like?

4 A Actually, I just don't remember what it looked
5 like. I know it was a metal target. It had some kind of
6 pivot or something that it would move, I think. It was so
7 long ago I don't remember what it looked like.

8 Q Did he move it at different distances and shoot
9 at it?

10 A Yes.

11 Q You mentioned last week that you saw some bomb
12 manuals, Government Exhibit 77, I believe, during the period
13 of 1989 to 1990 at the jihad office in Jersey, is that
14 correct?

15 A Yes.

16 Q And a number of copies were made of those bomb
17 manuals, is that correct?

18 A Yes, I saw copies of them.

19 Q Did you yourself make copies?

20 A No.

21 Q Was there a reason why you didn't make copies?

22 A I was not asked to make copies.

23 Q Did you think there was anything wrong with
24 making copies?

25 A No.

14330

1 Q The bomb manuals, were they not, were actually
2 brought out to the training facility in Connecticut, is that
3 correct?

4 A I don't remember that.

5 Q Do you recall people discussing the bomb
6 mechanics and the bomb formulas at the facility in
7 Connecticut?

8 A No.

9 Q You mentioned that you believed that Mahmoud
10 abouhalima came to the training on at least one occasion, is
11 that correct?

12 A Yes.

13 Q And you stated that Moustafa Saif came to the
14 training on at least one occasion, correct?

15 A Yes.

16 Q And you yourself went to the training with Sayyid
17 Nosair, correct?

18 A Yes.

19 Q On the occasions when you went, did there come a
20 time when Mahmoud Abouhalima, Moustafa Saif, and Sayyid
21 Nosair conducted some explosions on this range in
22 Connecticut?

23 A No.

24 Q You are absolutely sure that no bombs were
25 detonated in Connecticut while you were present?

14331

1 A I am positive.

2 Q Did you see people discuss bomb formulas while
3 you were present in Connecticut?

4 A No.

5 Q Did you see people discuss bomb formulas in your
6 presence in New York or New Jersey?

7 A No.

8 Q Did you see them sketch any diagrams for bombs?

9 A No.

10 Q Let me approach you with what has been received
11 in evidence as Government Exhibit 67, 80, 111, 114, and
12 120 -- I misspoke. That is 76, not 67.

13 Let me show you what has been received in
14 evidence as Government Exhibit 76, a small blue notebook,
15 and I will direct your attention to the page that I placed a
16 yellow sticker on. I ask you to look at this item and tell
17 me first whether you have ever seen the blue notebook
18 itself.

19 A No, I have never seen it before.

20

21 (continued on next page)

22

23

24

25

14332

1 Q Have you seen the diagram?

2 A Have I seen it?

3 Q Yes.

4 A No.

5 Q As far as you know, this had nothing to do with
6 whatever training you were doing for Afghanistan --

7 MR. STAVIS: Objection, your Honor.

8 THE COURT: Overruled.

9 Q As far as you know, whatever this diagram is, it
10 had nothing to do with your training for Afghanistan in
11 Connecticut, correct?

12 MR. BERNSTEIN: Objection.

13 MR. STAVIS: I object to that question, your
14 Honor, based on the witness' prior answer.

15 THE COURT: Overruled.

16 Q You may answer.

17 A Correct.

18 Q Let me show you Government's Exhibit 111 in
19 evidence and ask you if you have seen this document
20 previously?

21 A No, I haven't.

22 Q Do you recognize the references to nitric acid,
23 lead azide and other chemicals?

24 A Yes.

25 Q As far as you know, this had nothing to do with

14333

1 your training in Connecticut for Afghanistan?

2 MR. BERNSTEIN: Objection. Could we have a side
3 bar?

4 THE COURT: No.

5 A No.

6 Q I show you Government's Exhibit 80 in evidence
7 and 80T, and ask you if you recognize that slip of paper?

8 A No, I don't.

9 Q Do you recognize the references in English to
10 nitro methane, aniline and lead azide?

11 A Yes.

12 Q As far as you know, this had nothing to do with
13 the training you were present for for Afghanistan in
14 Connecticut?

15 MR. STAVIS: Objection, your Honor.

16 THE COURT: Overruled.

17 A No, it does not.

18 Q Finally, I will show you Government's Exhibit
19 120T and ask you if you have seen this item before?

20 A No, I haven't seen it before.

21 Q Again, whatever this item is, concerning nitric
22 acid, it had nothing to do with your training in Connecticut
23 for Afghanistan?

24 A Right.

25 Q When Mr. Nosair was shooting at this metal target

14334

1 in Connecticut in the period 1989 to 1990, did you see him
2 use a handgun?

3 A I think so, yes.

4 Q The fellow Moustafa Saif, did you ever see him
5 work on detonators at the Connecticut facility in 1990?

6 A You said Moustafa Saif?

7 Q Yes.

8 A No, I haven't.

9 Q Did you ever see him working on a beeper device?

10 A A what?

11 Q Like a beeper, pager, such as this, back in 1989
12 or 1990?

13 A No.

14 Q Did you have occasion to go to Mr. Sayyid
15 Nosair's home?

16 A Yes.

17 Q Did you ever discharge firearms within Mr. Sayyid
18 Nosair's home?

19 A No.

20 Q Let me approach you with Government's Exhibit
21 75C -- I apologize, 75L. When you were in Mr. Nosair's
22 home, did you ever have occasion to go to his attic?

23 A No.

24 Q Showing you Government's Exhibit 75L, do you
25 recognize the piece of wood or cardboard with the target on

14335

1 it? Have you ever seen that before?

2 A No.

3 Q At the training in Connecticut, did you ever
4 examine manuals on police tactics?

5 A Manuals with what?

6 Q On police tactics.

7 A No.

8 Q Let me approach you with Government's Exhibit 89.
9 Have you ever seen this book called the "The Tactical Edge,
10 Surviving High Risk Patrol"?

11 A No.

12 Q Is it fair to say this was not part of your
13 training for Afghanistan in Connecticut?

14 A Yes.

15 Q Do you know a fellow by the name of Sami El
16 Souleh, S-A-M-I, separate word E-L, separate word
17 S-O-U-L-E-H?

18 A No, I don't recognize that name.

19 Q How about the name Sami the Lebanese? Do you
20 recognize that name?

21 A No.

22 Q Is it fair to say that you were fairly close to
23 Sayyid Nosair in the period 1990 prior to his arrest?

24 A I visited him couple of times.

25 Q Did you talk to him often?

14336

1 A Yes.

2 Q Fair to say that there would be a dozen or more
3 calls per month from your home to his home, or vice versa?

4 A I didn't speak to him that often but I think my
5 wife was talking to his wife quite often.

6 Q So your families were in touch?

7 A Yes.

8 Q And you went to his home and he went to yours?

9 A Yes.

10 Q During the time that you were at the training
11 camp in Connecticut, did the topic of a person by the name
12 of Rabbi Meir Kahane ever come up?

13 A No.

14 Q Do you know who Rabbi Meir Kahane is?

15 A Yes.

16 Q Have you ever attended one of his lectures?

17 A No.

18 Q Prior to Mr. Nosair's arrest, did you ever
19 discuss Rabbi Meir Kahane with Sayyid Nosair?

20 A Are you saying before his arrest?

21 Q Before his arrest.

22 A No.

23 Q When you were at Mr. Sayyid Nosair's home, did
24 you ever see a copy of the Jewish Press in his home?

25 A No.

14337

1 Q As far as you were aware, was Mr. Sayyid Nosair a
2 regular reader of the Jewish Press?

3 MR. STAVIS: Objection, your Honor, to
4 competence.

5 THE COURT: Again, so far as he is aware.
6 Overruled.

7 A No.

8 Q Did he ever show you any articles indicating that
9 Rabbi Kahane was to lecture in New York prior to his arrest?

10 A No.

11 Q Let me approach you with Government's Exhibits 25
12 and 106. Showing you what has been received in evidence as
13 Government's Exhibits 25A, 25B and 106, did Mr. Nosair ever
14 show those to you prior to his arrest?

15 A No.

16 Q Did he ever indicate to you that he would be
17 attending a lecture of Rabbi Meir Kahane?

18 A No.

19 Q Is it fair to say that attending a lecture of
20 Rabbi Kahane would have nothing to do with the training in
21 Connecticut you had for Afghanistan?

22 A Yes.

23 Q You mentioned on last Thursday that there was a
24 hand grenade manual that depicted someone from the kneeling
25 position throwing a hand grenade, is that correct?

14338

1 A Yes.

2 Q And you indicated that the person depicted in
3 that picture was wearing a Pakistani shirt, a shirt that
4 went down to the knees. Is that correct?

5 A Yes.

6 Q Did you see people at the training in Connecticut
7 wearing a Pakistani shirt?

8 A I don't remember. Actually, there were some
9 people wearing some kind of Arabic dress at one point, like
10 a long robe that goes down almost to the ground.

11 Q During the time that you were training in
12 Connecticut, did you ever see anyone wearing a yarmulke as
13 part of the training?

14 A No.

15 Q Let me approach you with what has been received
16 in evidence as Government's Exhibit 87. Showing you
17 Government Exhibit 87, the yarmulke placed before you, the
18 white yarmulke, did Mr. Nosair ever show that to you prior
19 to November 5, 1990?

20 A No.

21 Q As far as you know, it had no use for training in
22 Afghanistan?

23 A Right.

24 Q Sir, you indicated that for you there was no
25 jihad in America, is that correct?

14339

1 A Yes.

2 Q For you, America provided religious freedom, is
3 that correct?

4 A Yes.

5 Q In fact, you came to this country and became a
6 citizen in 1984, is that correct?

7 A Yes.

8 Q And you became a citizen and you told us that you
9 took an oath as a citizen, is that correct?

10 A Yes.

11 Q Once you came to America and took that oath of
12 citizenship, did you love America?

13 A Yes.

14 Q Did you agree that you would abide by the laws of
15 America?

16 A Yes.

17 Q Did that carry through even to this very day?

18 A Yes.

19 Q Did you ever break the law of America?

20 A No.

21 Q Did there come a time when you agreed with
22 Mohammad Salameh, the person who was not a close friend,
23 that the two of you would break the laws of the United
24 States?

25 MR. STAVIS: Objection as to form, your Honor.

14340

1 THE COURT: Overruled.

2 A No.

3 Q You are absolutely certain?

4 A Yes.

5 Q As you sit here today, you and Mohammad Salameh
6 never agreed to break the laws of the country?

7 A Right.

8 Q You came to Jersey City in 1987, correct?

9 A Yes.

10 Q You then started to frequent the Islam mosque, is
11 that correct?

12 A Yes.

13 Q Then in 1989, you met Mohammad Salameh, who had
14 just come to this country, correct?

15 A Yes.

16 Q And he began to frequent the Islam mosque,
17 correct?

18 A Yes.

19 Q Did there come a time when Mohammad Salameh
20 decided that he needed citizenship to stay in this country?

21 A Yes.

22 Q Did you agree to submit a false affidavit to the
23 United States to help Mohammad Salameh become a citizen of
24 the United States? Yes or no.

25 A I agreed to sign a paper for him.

14341

1 Q You agreed to sign a paper. Let me approach you
2 with what we will mark as 35146-U. Showing you Government's
3 Exhibits 35146-U, do you recognize what that item is?

4 A Yes.

5 Q Is that the paper you signed for Mohammad
6 Salameh?

7 A Yes.

8 Q Is that paper sworn to under oath before a
9 notary? Yes or no.

10 A Yes.

11 Q You went before a notary and took an oath like
12 the oath you took the day of citizenship --

13 MS. AMSTERDAM: Objection to form.

14 THE COURT: Sustained as to form.

15 Q You took an oath before a notary, is that
16 correct?

17 A No, I didn't take an oath.

18 Q Did you affirm before the notary?

19 A No, I just signed it in front of the notary.

20 Q Did you realize that the notary was there?

21 A Yes.

22 Q And you realized that the notary's job is to
23 indicate that this is a sworn statement so that the
24 government can rely upon it, is that correct?

25 A Yes.

14342

1 Q And when you signed that statement, you falsely
2 indicated that you knew Mohammad Salameh since 1981, isn't
3 that a fact?

4 A I indicated that I knew him since 1981.

5 Q In 1981, from 1981 to 1987, you lived outside of
6 New Jersey, correct?

7 A Yes.

8 Q Mr. Salameh showed up in this country sometime in
9 1988 or 1989, isn't that correct?

10 A I think so. I don't know exactly when he came.

11 Q You first met him in 1989?

12 A Yes.

13 Q You swore to the country you said you loved that
14 you met Mohammad Salameh in 1981.

15 MS. AMSTERDAM: Objection to form.

16 THE COURT: Overruled.

17 Q Isn't that correct?

18 A I signed the paper.

19 Q Did you read it before you signed it?

20 A Yes, I read it.

21 Q And you knew what you were signing was a lie,
22 isn't that correct?

23 A Yes.

24 Q And you knew that Mohammad Salameh -- you did not
25 know him from 1981, correct?

14343

1 A Yes.

2 Q And you also added something to the affidavit,
3 correct -- withdrawn.

4 A I am sorry.

5 Q You indicated not only that you knew Mohammad
6 Salameh since 1981, but you knew him from the two of you
7 praying in the Islam mosque from 1981 to 1989, isn't that
8 correct?

9 A Yes.

10 Q You lied and involved the mosque, is that
11 correct?

12 A I didn't involve the mosque, I don't think so.

13 Q But you used the mosque as a cover to pretend why
14 you knew Mohammad Salameh, correct?

15 A This says the Islamic Center. It's not the El
16 Salaam Mosque.

17 Q Sir, you knew when you signed that document that
18 Mohammad Salameh was to take that document and take further
19 steps in the future to try to become a United States
20 citizen, isn't that correct?

21 A Yes.

22 Q And do you know in fact he did that, he used your
23 document to go ahead and try to become a United States
24 citizen?

25 A I don't know whether he did or not.

14344

1 Q Who was present when you signed this document?

2 A The notary.

3 Q That is the notary next door from the El Salaam
4 mosque?

5 A Yes.

6 Q Were other people present?

7 A I don't remember. I don't think so.

8 Q Were you aware of whether or not other people who
9 knew Mohammad Salameh were also submitting false affidavits
10 to help Salameh get citizenship?

11 A I don't know.

12 Q You are sure?

13 A I don't know. I don't remember.

14 Q Who asked you to do this?

15 A To do this?

16 Q Yes.

17 A Mohammad Salameh.

18 Q And he was someone you described as not a close
19 friend, just an acquaintance, correct?

20 A At that time I knew him fairly well.

21 Q But he wasn't a close friend. Wasn't that your
22 testimony last Thursday?

23 A Yes.

24 Q So you were willing to lie under oath to help
25 someone who was not a close friend get citizenship to this

14345

1 country, correct?

2 A I didn't realize this is like an oath, so I don't
3 know.

4 Q You didn't realize it was an oath?

5 A Correct.

6 Q You took an oath when you became a citizen,
7 correct?

8 A Yes.

9 Q And you said that the judge asked you questions
10 to make sure you understood how the government worked and
11 how the laws worked, is that correct?

12 A Yes.

13 Q And you realized the a notary, you told us
14 earlier, you realized the notary was there to indicate to
15 the government that this was sworn to under oath, correct?

16 A I am sorry. Can you repeat the question.

17 Q You felt it was OK to lie?

18 A I wanted to have help Mohammad Salameh get his
19 citizenship.

20 Q And if it meant lying to the United States, you
21 would do that to help Mohammad Salameh?

22 A Yes.

23 Q Did you sign one or more than one of those
24 documents?

25 A No, I think this is the only one.

14346

1 Q Let me approach you with Government's Exhibit 90.

2 Did you ever have occasion to see Mohammad Salameh's

3 briefcase before he was arrested?

4 A No.

5 Q Do you know whether or not additional copies were

6 in his briefcase, of that false statement?

7 A I didn't see the briefcase.

8 Q Let me show you a series of documents which we

9 will mark collectively Government's Exhibit 90D. Do you

10 recognize the signature on that page?

11 A Yes.

12 Q Whose signature is that?

13 A It is mine.

14 Q Is that another false affidavit for Mohammad

15 Salameh?

16 A No, I think it's a copy.

17 Q Were you aware at the time that you were

18 executing this false statement that other people were

19 executing similar false statements?

20 A No, I didn't know.

21 Q Do you know a fellow by the name of Musab Yasin?

22 A No.

23 Q Do you recognize this document?

24 A No.

25 Q After you signed that false document, sir, did

14347

1 you just forget about it?

2 A Yes. I signed it for him and he was going to use
3 it, I presumed.

4 Q You knew he would take steps in the future to try
5 to become a citizen, based upon your lie on a piece of
6 paper, correct?

7 A Yes.

8 Q And you knew what you were doing at the time was
9 against the law, correct?

10 A I think so.

11 Q You think so?

12 A Yes.

13 Q I asked you earlier today whether or not you had
14 ever agreed to break the law with Mohammad Salameh.

15 A I am sorry.

16 MS. AMSTERDAM: Objection. Asked and answered.

17 THE COURT: Overruled.

18 Q I asked you earlier today whether or not you ever
19 agreed to break the law with Mohammad Salameh. Do you
20 remember that question?

21 A Yes.

22 Q At the time, did you remember this affidavit?

23 A No.

24 Q When you heard about the World Trade Center
25 blowing up and you heard about Mohammad Salameh being

14348

1 arrested for it, did you ever remember, gee, that's the one
2 guy I gave a false statement for, to help him get
3 citizenship?

4 MR. STAVIS: Objection as to form, your Honor.

5 THE COURT: Sustained.

6 Q After the World Trade Center blew up, did you
7 ever have occasion to recall the false statement you wrote
8 for Mohammad Salameh?

9 A No.

10 Q It didn't mean much to you?

11 A I had forgotten about it.

12 (Continued on next page)

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14349

1 MR. FITZGERALD: Nothing further.

2 THE COURT: Redirect, Mr. Stavis?

3 MR. STAVIS: Yes. Your Honor, I would only ask
4 for an instruction that the asking of a question is not
5 evidence of itself.

6 THE COURT: I am sure the jury is aware of it. I
7 will remind them that the asking of a question is not
8 evidence.

9 Anything else?

10 MR. STAVIS: No, your Honor.

11 THE COURT: Anyone else?

12 MR. STAVIS: No, your Honor.

13 THE COURT: Thank you very much. You are
14 excused.

15 (Witness excused)

16 MR. STAVIS: Your Honor, as soon as Mr.
17 Fitzgerald is ready, I have some exhibits to publish to the
18 jury.

19 THE COURT: Since Mr. Fitzgerald is not on the
20 jury, why don't you tell us which exhibits they are and
21 publish them.

22 MR. STAVIS: I would ask the jurors to open their
23 notebooks to Nosair Defense Exhibit N. Nosair Defense
24 Exhibit N in evidence is Jihad Report Number 1, News and
25 Views. It reads as follows.

14350

1 (Mr. Stavis read to the jury from Nosair Defense
2 Exhibit N in evidence)

3 MR. STAVIS: Nosair Defense Exhibit N which I
4 have just read is a document recovered from Mr. Nosair's
5 home on November 6 of 1990.

6 Your Honor, at this time I would ask to publish
7 to the jury Nosair Defense Exhibit HHH-T, which was
8 introduced into evidence during the testimony of Mr. Ali El
9 Shinawy. This is not something that you have a copy of.

10 THE COURT: Go ahead.

11 (Mr. Stavis read to the jury from Nosair Defense
12 Exhibit HHH-T in evidence)

13 THE COURT: Excuse me, Mr. Stavis. We are going
14 to need to take a short break. You can resume or start up
15 again after the break.

16 MR. STAVIS: Surely, your Honor.

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

21 (Jury excused)

22 MR. STAVIS: Your Honor, the reason I asked for a
23 side bar during the cross-examination of Khaled Ibrahim and
24 the reason I asked for the instruction is because I believed
25 that Mr. Fitzgerald had no good-faith basis for asking many

14351

1 of the questions he asked of Mr. Ibrahim, including bombs
2 being detonated at the Connecticut training camp, did you
3 ever see Moustafa Saif with a beeper device or bombs,
4 whether Khaled Younis was a roommate of Khaled Ibrahim when
5 35146-T, which was shown to the witness, showed that
6 somebody by the name of, quote, Nazam lived with Younis.
7 That is why I asked for the instruction and why I asked for
8 the instruction. I do not believe that Mr. Fitzgerald had a
9 good-faith basis for asking the questions.

10 MR. WASSERMAN: Your Honor, I would ask that my
11 client be excused.

12 THE COURT: Your client is excused.

13 MR. WASSERMAN: Thank you.

14 MR. FITZGERALD: Your Honor, I had more than a
15 good-faith basis for the questions. I will not share with
16 counsel the source of the information but it is clear that
17 the activities I asked about in Connecticut took place, I am
18 quite confident of that, and there was more than a
19 good-faith basis. Whether the witness wants to confirm or
20 deny, I guess that is his personal choice.

21 THE COURT: I suppose. Do you want me to take
22 his representation ex parte? I will.

23 MR. STAVIS: Yes, your Honor, I would, and I
24 would just say that I would think that I would have seen
25 such evidence earlier in the trial had Mr. Fitzgerald had a

14352

1 good-faith basis for asking those questions.

2 THE COURT: What you think you might have seen or
3 not seen, seems to me, is not the issue. The issue is
4 whether he had a basis. I will see you shortly.

5 MR. STAVIS: Thank you, your Honor.

6 (Continued on next page)

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14357

1 (Pages 14353 - 14356 sealed)

2 (Recess)

3 (Open court; jury not present)

4 THE COURT: Off the record.

5 (Discussion off the record)

6 THE COURT: We are going to sit till 1 and we
7 will reconvene this afternoon at 2:15.

8 (Jury present)

9 THE COURT: Mr. Stavis, I think I interrupted you
10 in mid-exhibit.

11 MR. STAVIS: Yes, your Honor.

12 THE COURT: If you want to start from the
13 beginning again, you may.

14 MR. STAVIS: I was just about one sentence into
15 it. That is Nosair HHH-T. It is a transcript. You don't
16 have it in your books.

17 (Mr. Stavis read to the jury from Nosair Defense
18 Exhibit HHH-T in evidence)

19 MR. STAVIS: Your Honor, at this time I would
20 read into evidence a stipulation entered into between the
21 government and the defense for Mr. Nosair, and it is marked
22 Nosair 000.

23 THE COURT: Go ahead.

24 MR. STAVIS: 1. On December 27, 1979, the Soviet
25 Union invaded Afghanistan, a country with a predominantly

1 Muslim population.

2 2. In response to the Soviet invasion of
3 Afghanistan, groups of Muslims formed an armed force that
4 became known as the Afghan mujahideen. The Afghan
5 mujahideen fought the invading Soviet force and the Soviet
6 supported Afghan government.

7 3. In 1986, during its occupation of
8 Afghanistan, the Soviet Union installed Mohammed Najibullah
9 as president of Afghanistan.

10 4. On February 15, 1989, the last Soviet troops
11 departed Afghanistan.

12 5. From the time of the departure of Soviet
13 troops from Afghanistan in February 1989, through the
14 dissolution of the Soviet Union in 1991, the Soviet Union
15 provided economic and military support to the Najibullah
16 government in Afghanistan.

17 6. From shortly after the start of the Soviet
18 invasion in Afghanistan in 1979, through September 1991, the
19 United States, through one of its intelligence agencies,
20 provided economic and military support to the Afghan
21 mujahideen through a third country intermediary.

22 7. Beginning in 1987, the American military
23 support to the Afghan mujahideen included Stinger
24 antiaircraft missile.

25 I have no further witnesses at this time, your

14359

1 Honor.

2 THE COURT: We are going to break now for lunch,
3 ladies and gentlemen. Please leave your notes and other
4 materials behind. Please don't discuss the case, and we
5 will resume at or about 2:00. I would ask everyone to
6 remain seated till the jury leaves, please.

7 (Jury excused)

8 THE COURT: Mr. Ricco, are you next?

9 MR. RICCO: Yes, your Honor. We are set.

10 THE COURT: Are there any exhibits that need to
11 be distributed or that have been?

12 MR. RICCO: I just have -- no, your Honor.

13 THE COURT: Good. See you this afternoon.

14 (Luncheon recess)

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14360

1

AFTERNOON SESSION

2

2:25 p.m.

3

THE COURT: Are you ready to go?

4

MR. RICCO: Yes, your Honor.

5

(Jury present)

6

THE COURT: Good afternoon, ladies and gentlemen.

7

JURORS: Good afternoon, your Honor.

8

THE COURT: Mr. Ricco.

9

MR. RICCO: Your Honor, as the second witness,
10 defendant El-Gabrowny calls Jose Ivey.

11

12 JOSE JOAQUIM IVEY,

13

called as a witness by the defendant El-Gabrowny,

14

having been duly sworn, testified as follows:

15

THE COURT: Go ahead.

16

DIRECT EXAMINATION

17

BY MR. RICCO:

18

Q Jose Ivey, can you tell the jury where you live?

19

A I live in the Bronx at 4079 Murdock Avenue.

20

Q Who do you live there with?

21

A I live with my parents.

22

Q Where are you from?

23

A I was born in New York.

24

Q Born where?

25

A Born in Brooklyn, raised in the Bronx.

14361

1 Q Can you tell us a little bit about your
2 educational background? Did you go to high school here in
3 New York?

4 A Yes. I went to Mount Saint Michael in the Bronx
5 and then I went away to school, to college.

6 Q Where did you go to college?

7 A Johns Hopkins in Baltimore.

8 Q Did you get a degree there?

9 A I got a bachelor's degree in biology.

10 Q Do you have any other undergraduate degrees?

11 A No, but I have a graduate degree, I have a
12 master's in public health.

13 Q From where?

14 A From Columbia University. I just completed the
15 program.

16 Q And any other graduate work?

17 A Two years of medical school in UCLA.

18 Q Did you attend the Maryland Institute College of
19 Art?

20 A Yes, I studied photography there for just under
21 two years.

22 Q I am going to show you two exhibits.

23 MR. RICCO: Premarked, your Honor, Defendant's GG
24 and Defendant's GG-1.

25 THE COURT: Go ahead.

1 Q Showing you Exhibit GG, tell the jury what that
2 is.

3 A Exhibit GG is an 8-millimeter videocassette tape
4 that I made on the 15th of this month of an area around and
5 outside of 57 Prospect Park Southwest.

6 Q Can you explain to the jury what GG-1 is?

7 A GG-1 is a direct copy of this 8-millimeter
8 cassette. I was told that this VHS would be compatible with
9 the system they have in the courtroom so I made a copy.

10 Q Is GG-1 a fair and accurate copy of GG?

11 A Absolutely. There have been no alterations to it
12 whatsoever.

13 MR. RICCO: At this point, your Honor, I move
14 both GG and GG-1 into evidence.

15 MR. FITZGERALD: No objection.

16 THE COURT: GG and GG-1 are received without
17 objection.

18 (Defendant El-Gabrownny Exhibits GG and GG-1 were
19 received in evidence.)

20 MR. RICCO: With the Court's permission, I would
21 like to play GG-1 for the jury.

22 THE COURT: Go ahead.

23 Q While the televisions are being set up, can you
24 again tell the jury what they are about to see?

25 A The tape is a recording at eye level of about a

14363

1 natural perspective of the scene, of the street around --
2 well, the street of Prospect Park Southwest and the area
3 directly in front of 57 and down the block toward Eleventh
4 Avenue.

5 MR. RICCO: Your Honor, the tape is approximately
6 five minutes.

7 THE COURT: Go ahead.

8 (Tape played)

9 Q Can you explain to the jury what they see now?

10 A OK. This is a -- could you stop the tape,
11 please, just a moment? Well, it started. What is showing
12 now is the front of 57 Prospect Park Avenue Southwest. We
13 are looking now at the south facing wall of the entranceway,
14 and just inside there, there are two alcoves just a little
15 bit in near the doorway. They are about 6 by 6 and there is
16 one on each side.

17 You can go ahead and play now.

18 (Tape played)

19 A And the camera is panning south along Prospect
20 Park Southwest. We are looking down the side of the place
21 and the street. The idea was just to give you a sense of
22 what it would be like to be on the street, a sense of
23 distances involved, the size of buildings, and so forth.
24 Now we are just looking down. Stop right here. If you
25 notice in the lower left corner, there is a white car that

14364

1 is making a turn. That is Eleventh Avenue. That is the
2 end -- that is where Eleventh Avenue crosses Prospect Park
3 Southwest. That car is going to turn and come north along
4 Prospect Avenue Southwest. You can go ahead and play.

5 We are looking at the two buildings that are
6 adjacent, one I think is 60 something or other and the other
7 one near the corner is 275, two fairly large apartment
8 buildings. The camera is coming back now toward 57.

9 Now, the next shot here is from across the street
10 on the park side of Prospect Park Avenue Southwest. The
11 reason I move the camera back is so that you get a better
12 sense of the actual size of the buildings. The near side of
13 the street, the distance was compressed. You can get a real
14 good perspective of the size of the buildings and the
15 distance from each other. So now we are moving in the same
16 arc toward Eleventh Avenue. I apologize for the blockage of
17 cars. We tried to get out from them if we could. And you
18 can see, of course, the entranceway to the adjacent
19 buildings, the property line at 57, and now we have come
20 back and get a full view again of the entranceway across the
21 street.

22 And you can also see in that parking space, just
23 in front of the entrance is where the camera was placed the
24 first time. It is an eye level, as if you were standing in
25 the street at a natural perspective.

14365

1 This is the south wall of the entranceway, and
2 this is just a long shot down the sidewalk to get a sense of
3 what the sidewalk looks like actually on it. You can't
4 really tell distances as much as you can see what the shoot
5 is like, see if there are really no obstructions. And you
6 get a nice view of the intersection of Eleventh Avenues.
7 Again, the idea was really to give you some views of the
8 area, so that you would feel you have been there, that you
9 get a sense of what it was like to just walk around and take
10 a look at the building.

11 There are two more shots coming up from further
12 down.

13 We are back to the wall here.

14 And now -- stop it for just a moment -- this is
15 down Prospect Park Southwest, across Eleventh Avenue on the
16 park side of the street. So we are actually south and a bit
17 east of the building. The red building in the upper right
18 is 57. The next one are the two buildings you looked at in
19 the previous shot.

20 You can go ahead and play.

21 The purpose of this shot was to not only get a
22 long view of Prospect Park Avenue Southwest, but to show the
23 intersection of Eleventh Avenue. And then the camera is
24 going to pan further down to where there is a bend in
25 Prospect Park Southwest.

14366

1 The only change here has been the position of the
2 camera. The focal length of the lens has been fixed.

3 And that is Eleventh Avenue where the car just
4 passed by this intersection. It is a good distance from
5 Eleventh Avenue to 57 now, this part is just below left out.
6 I want to demonstrate to you the turn Prospect Park Avenue
7 southwest takes.

8 Now we are passing the last few houses on the
9 block.

10 Coming up right about now, Prospect Park Avenue
11 Southwest changes from a north-south street to an east-west
12 street. There is a bend right there, and you can see a car
13 coming up, it comes up and makes that turn. That is where
14 the street changes direction. He is changing and heading
15 east, and now heading north. We are going to pan back north
16 along the street.

17 Coming back up on the intersection of Eleventh
18 Avenue, and crossing back to the 57 side of the street. And
19 that is 75 Prospect Park Southwest, one more building, and
20 then 57, and we are back where we started from.

21 And now there is just one more shot. Could you
22 hold it there? This one shot is from the south corner, the
23 south opposite corner of Eleventh Avenue. It is looking
24 north along Prospect Park Avenue southwest. You can't
25 really see 57, but there are two reference points. One is a

14367

1 garbage can on the corner across the street. One is a
2 mailbox a little further up. You look just to the left of
3 the mailbox, it is hard to make out, but there is a
4 gentleman standing there with a striped shirt and he is
5 standing in front of 57. And that was to give you a sense
6 of how far it was from Eleventh Avenue to 57 Prospect Park
7 Avenue Southwest.

8 Q Mr. Ivey, can you tell the jury what the distance
9 is from the south wall line of 57 Prospect Park down to the
10 corner of Eleventh Avenue and Prospect Park Southwest?

11 A It is 360 feet from the entrance line of 57 to
12 the corner that is in our lower right-hand corner of the
13 screen.

14 Q And how many yards is 360 feet?

15 A It is 120 yards, about the size of a football
16 field plus the end-zones end to end.

17 Q How do you know that it is 360 feet?

18 A I got down on my hands and knees with a tape
19 measure and measured from the building to the corner.

20 MR. RICCO: I have no further questions of this
21 witness, your Honor.

22 THE COURT: Any other defense? Cross?

23 MR. FITZGERALD: Very brief.

24 CROSS-EXAMINATION

25 BY MR. FITZGERALD:

14368

1 Q Good afternoon, Mr. Ivey.

2 A Good afternoon.

3 Q When on Prospect Park Southwest, is it a curve
4 that goes basically from north-south to more east-west?

5 A Yes, it is.

6 Q When you make that curve, is there an entrance
7 then to Prospect Park itself?

8 A I didn't notice an entrance down there. There
9 may have been.

10 Q Did you go below the curve at all yourself?

11 A No, we did not.

12 Q You don't know whether or not there is an
13 entranceway where you can look back and still have a view of
14 the building?

15 A No, I don't.

16 Q One other question, if you remember: Where you
17 see the building 57 Prospect Park Southwest when it hits the
18 next building south, I think you said it is 60 something,
19 and there is a different brick, a white brick instead of the
20 red brick --

21 A Right.

22 Q -- is there an entranceway going down some steps?

23 A Yes, there is.

24 Q Like a service entrance, it's down steps?

25 A Yes, there is.

14369

1 MR. FITZGERALD: Thank you. Nothing further.

2 REDIRECT EXAMINATION

3 BY MR. RICCO:

4 Q One question. By the way, Mr. Ivey, what is the
5 distance from the south wall line to those steps that go
6 down?

7 A From the entranceway to the steps?

8 Q Yes.

9 A It is 50 feet.

10 Q How do you know that?

11 A Again, I was down on my hands and knees and
12 measured that distance.

13 MR. RICCO: No further questions. Thank you.

14 MR. FITZGERALD: Nothing further.

15 THE COURT: Thank you. You are excused.

16 THE WITNESS: Thank you.

17 (Witness excused)

18

19 (continued on next page)

20

21

22

23

24

25

14370

1 MR. RICCO: Your Honor, the next witness would be
2 BATF Agent Michael Burke.

3 THE COURT: Excuse me. Can I ask, please don't
4 talk or shuffle papers.

5 MICHAEL N. BURKE,
6 called as a witness by the defense,
7 having been duly sworn, testified as follows:

8 THE COURT: Go ahead, Mr. Ricco.

9 MR. RICCO: Thank you, your Honor.

10 DIRECT EXAMINATION

11 BY MR. RICCO:

12 Q Agent Burke, you are a special agent with the
13 Bureau of Alcohol, Tobacco and Firearms, is that correct?

14 A Yes, sir.

15 Q And you have been employed by the Bureau of
16 Alcohol, Tobacco and Firearms for approximately four and a
17 half years, is that right?

18 A Five years. July 1, 1990, is when I started.

19 Q On March 4, 1993, you were assigned to work with
20 the Terrorist Task Force in the execution of a federal
21 search warrant at 57 Prospect Park Southwest, Brooklyn,
22 isn't that correct?

23 A Yes, it is.

24 Q I would like to take you back to that day for a
25 moment. There was a light drizzle that day, isn't that

14371

1 correct?

2 A Yes, there was.

3 Q You arrived at that location about an hour, hour
4 and a half before the entry was actually made, isn't that
5 correct?

6 A Yes.

7 Q Before the execution of the search warrant, you
8 were positioned outside of the residence in a law
9 enforcement vehicle, along with Detective Corrigan and
10 Special Agent Thomas McNally, isn't that correct?

11 A Yes, it is.

12 Q Just prior to the execution of the warrant, you
13 were informed by surveillance units that Mr. El-Gabrowny was
14 outside of the building, on Prospect Park going towards 11th
15 Avenue, isn't that correct?

16 A Yes, it is.

17 Q When you first observed Mr. El-Gabrowny coming
18 toward 11th Avenue, he was on the building line, isn't that
19 correct?

20 A Yes. The park is on the opposite side of the
21 street. That is where we were parked.

22 Q When you first observed him, you were parked,
23 isn't that right?

24 A Yes, sir.

25 Q And then you moved up when you received the

14372

1 information, to try to get a better vantage point, isn't
2 that correct?

3 A We changed our location during the surveillance,
4 yes. We actually U-turned and headed south on Prospect Park
5 Southwest and made another U-turn heading facing back north
6 on Prospect Park Southwest.

7 Q So Mr. El-Gabrownny is coming down towards you on
8 Prospect Park, isn't that correct?

9 A Yes.

10 Q And you are parked further south, isn't that
11 correct?

12 A Depending on which point, yes, sir.

13 Q When you first see him.

14 A Yes.

15 Q What you do is, you make a U-turn at that point?

16 A Yes.

17 Q So that you can be even further south so that you
18 can get a better view, isn't that correct?

19 A Yes, that is correct.

20 Q So you turn, you go down Prospect Park. Do you
21 go around the bend or do you make a U-turn back before the
22 bend?

23 A I believe we make the U-turn just south of 11th
24 Avenue there, right in that area.

25 Q And then you again turn the car around and you

14373

1 are facing north and Mr. El-Gabrowny is still coming down
2 Prospect Park towards 11th Avenue, isn't that correct?

3 A Yes, sir.

4 Q Mr. El-Gabrowny was wearing a parka type of rain
5 slicker. It was hooded, isn't that right?

6 A Yes, it is.

7 Q When you saw Mr. El-Gabrowny, he crossed over
8 11th Avenue, he was walking with his hands in his pocket,
9 just kind of looking to his left and to his right on the
10 street, isn't that correct?

11 A Yes, he was approaching 11th Avenue, right in the
12 area of 11th Avenue.

13 Q My question was, did he cross over 11th Avenue?

14 A I don't believe he crossed all the way across
15 11th Avenue, no, sir.

16 Q I am sorry.

17 A I don't believe he crossed entirely across 11th
18 Avenue.

19 Q But he was pretty near to, he was in the street,
20 in 11th Avenue, correct?

21 A Yes.

22 Q And he either made it to the curb line or was
23 just about to get to the curb line?

24 A Yes, that is correct.

25 Q And then something happened, isn't that correct?

14374

1 A Yes.

2 Q There was a radio transmission to start executing
3 the warrant, isn't that correct?

4 A Yes.

5 Q And the warrant team moved in at that point?

6 A Yes, there were a number of vehicles that came
7 down 11th Avenue and turned up onto Prospect Park Southwest.

8 Q As the agents were going into the building, Mr.
9 El-Gabrowny turned around and started walking heading
10 towards, back towards the building, isn't that correct?

11 A Yes, it is.

12 Q I just want to back up for a second. The whole
13 time you are focused on Mr. El-Gabrowny, isn't that correct?

14 A Once we noticed him outside the residence, I
15 would say that is correct.

16 Q I am talking about your focus?

17 A Yes, my focus was on Mr. El-Gabrowny.

18 Q And you kept watching Mr. El-Gabrowny after you
19 received the transmission for the initiation of the search
20 warrant, correct?

21 A Yes, sir.

22 Q He turned around and he started going back
23 towards the building, correct?

24 A That is correct.

25 Q Pretty close to after Mr. El-Gabrowny started

14375

1 going back towards the building, you, Detective Corrigan and
2 Agent McNally got out of your vehicle, isn't that correct?

3 A Yes.

4 Q And as you got out of the vehicle, before you
5 made contact with Mr. El-Gabrowny, you were proceeding north
6 on Prospect Park Southwest, isn't that correct?

7 A Yes, sir, I was crossing the street, going across
8 the street while I was heading north back towards the
9 entrance of 57 Prospect Park.

10 Q And as you are walking towards the building, Mr.
11 El-Gabrowny is in front of you, isn't that correct?

12 A Yes.

13 Q And as you are walking toward the building and
14 Mr. El-Gabrowny is in front of you, you can see the agents
15 moving into the building, isn't that correct?

16 A Yes.

17 Q There were some agents who were assigned to cover
18 the front of the building, isn't that correct?

19 A There generally is. That specific day I believe
20 there was also, yes.

21 Q And those agents remained stationary. They were
22 covering the front of the building, isn't that correct?

23 A Yes.

24 Q And there was about four maybe six of them?

25 A I believe so, yes.

1 Q And there were other agents who were assigned to
2 do the actual search of the apartment, isn't that correct?

3 A Yes.

4 Q And there were various law enforcement vehicles
5 present, isn't that correct?

6 A Yes, that is correct.

7 Q Including a big truck that said "bomb squad" on
8 it, isn't that correct?

9 A Yes, that is correct.

10 Q In fact there were more than a dozen agents
11 entering the building as you were walking right behind Mr.
12 El-Gabrowny, isn't that correct?

13 A As an approximate number, I would say yes, that
14 is fair to say, there were about a dozen agents, yes.

15 Q As these agents were moving into the building,
16 some of those agents had their weapons drawn, isn't that
17 correct?

18 A I don't specifically recall if I saw people with
19 their weapons drawn as they were entering into the apartment
20 building itself.

21 Q But at the time when you were behind Mr.
22 El-Gabrowny your weapon was holstered, isn't that correct?

23 A Yes, that is correct.

24 Q There came a time when you finally approached Mr.
25 El-Gabrowny, when you made contact with him, isn't that

14377

1 correct?

2 A Yes, it is.

3 Q And I will call it an incident for lack of a
4 better word, OK?

5 A That is fine.

6 Q The first incident happens out on Prospect Park
7 avenue itself, isn't that correct?

8 A Are you referring to an incident as when we came
9 in contact with Mr. El-Gabrowny?

10 Q I will call it the first contact.

11 A A verbal contact, physical contact?

12 Q The first physical contact happened right next to
13 the stairs that goes down by the side of the building, isn't
14 that correct?

15 A Just prior to that, yes.

16 Q And you asked Mr. El-Gabrowny to get up against
17 the wall, you announced to him that you were an agent, isn't
18 that correct?

19 A I identified myself as police, I asked him to
20 remove his hands from his pockets.

21 Q And Mr. El-Gabrowny kept saying things like take
22 your hands off of me, who are you, don't touch me, things of
23 that sort?

24 A He had a number of different statements, yes.

25 Q That was in what we call the first area of

14378

1 contacts, right?

2 A Yes.

3 Q That was by a staircase that went down to like a
4 basement area, isn't that right?

5 A Yes, right where the two buildings become
6 adjacent to each other.

7 Q Right by the property line between 57 Prospect
8 Park South and the next building next to it, right?

9 A That is correct, yes.

10 Q At some point Mr. El-Gabrowny was moved because
11 it was a tight situation, it was the little stairwell, isn't
12 that right?

13 A Yes, there is a stairwell to the left and there
14 are some shrubs, evergreen bushes right to the right.

15 Q So you moved Mr. El-Gabrowny into the vestibule
16 area because there was more room and there were other
17 detectives there, isn't that correct?

18 A It was an open area. That first area, that first
19 incident there as you refer to, is a very tight area.

20 Q I want to go to the second area, or the second
21 time you had contacts with Mr. El-Gabrowny. You asked him
22 to put his hands up against the wall inside of like the
23 courtyard of 57 Prospect Park South, isn't that correct?

24 A It was the outer wall of 57 Prospect Park
25 Southwest.

1 Q And again, Mr. El-Gabrowny kept saying things
2 like get your hands off of me, things of that nature, isn't
3 that right?

4 A Yes. We had a conversation with him
5 throughout -- after we identified ourselves as police
6 officers, we explained to him that we had a search warrant,
7 things of that nature.

8 Q It was in the second area that Detective Corrigan
9 initiated a patdown of Mr. El-Gabrowny, isn't that correct?

10 A That is correct. I did a very brief initial
11 patdown at the first incident as you referred to, just the
12 general waistband area and his pockets. That was my
13 immediate focus.

14 Q But when you got inside by the wall of the
15 building in the courtyard, Detective Corrigan initiated a
16 patdown search of Mr. El-Gabrowny, right?

17 A Yes.

18 Q And then something happened, right?

19 A Yes.

20 Q Mr. El-Gabrowny swung his elbow and the first
21 elbow hit you, isn't that right?

22 A Yes. As Detective Corrigan was patting him down,
23 his elbow hit my right chest area. That is when I was
24 struck.

25 Q As the elbow struck you, you started falling

14380

1 down, right?

2 A Yes.

3 Q Before you fell down you looked over and you saw
4 Mr. El-Gabrowny hit Detective Corrigan in the face area with
5 the other elbow?

6 A Yes, Mr. El-Gabrowny was acting in a swinging
7 motion with his elbows.

8 Q Mr. El-Gabrowny hit you with one elbow, in the
9 chest area, went down, right?

10 A He hit me actually towards the chest shoulder
11 area. I didn't fall to the ground at that point. I was
12 knocked back. As I was going back was when I observed
13 Detective Corrigan getting hit with the opposite elbow in a
14 swinging motion.

15 Q Then you all kind of collided together and just
16 kind of went to the ground, isn't that right?

17 A When you say all, myself, Detective Corrigan, Mr.
18 El-Gabrowny, yes, shortly thereafter we all ended up on the
19 ground, yes.

20 Q But for sure, you were the first person struck
21 with the elbow?

22 A I believe I was the first person struck. I was
23 holding his arm on the wall and his elbow came down and hit
24 me in this area. As far as I know, I saw his elbow coming
25 and I didn't see anything prior to that.

14381

1 Q When Mr. El-Gabrowny is on the ground, another
2 agent comes over, isn't that right?

3 A Yes.

4 Q Agent Fromm, isn't that correct?

5 A I am not -- I know he was an FBI agent. I am not
6 personally --

7 Q That agent cuffed Mr. El-Gabrowny?

8 A Yes.

9 Q Conducted a full search and removed keys and
10 other personal items from Mr. El-Gabrowny's pockets, isn't
11 that correct?

12 A Yes, at that point Mr. El-Gabrowny was moved
13 actually inside of the building, in the lobby, into the
14 lobby, and that is where Agent Fromm, or Frome, conducted
15 his search.

16 Q And he removed keys and other personal items from
17 Mr. El-Gabrowny's pockets, isn't that right?

18 A Yes.

19 Q Just two more questions. When Mr. El-Gabrowny
20 turned and started walking back towards his building, did
21 Mr. El-Gabrowny turn and try to run down 11th Avenue?

22 A Did he try to run down 11th Avenue?

23 Q Yes.

24 A No, sir, he turned and ran up towards 57 Prospect
25 Park Southwest.

14382

1 Q He never tried to run across the street and into
2 the park, did he?

3 A No, sir, he turned and went up Prospect Park
4 Southwest.

5 Q In fact, as he proceeded back north towards the
6 building, he actually quickened his pace towards the agents
7 moving in, isn't that correct?

8 A Yes, I would say he quickened his pace, yes.

9 MR. RICCO: I have no further questions. Thank
10 you very much.

11 THE COURT: Anyone else? Cross.

12 MR. FITZGERALD: Briefly.

13 THE COURT: Go ahead.

14 CROSS-EXAMINATION

15 BY MR. FITZGERALD:

16 Q Good afternoon, Agent Burke.

17 A Good afternoon.

18 Q Just briefly tell us, why did you stop Mr.
19 El-Gabrowny when he started going back towards the building?

20 A My primary concern was, I knew he were executing
21 a search warrant. I knew he was the subject resident of the
22 apartment we were going to. I was concerned about the
23 number of agents in front of the place as well as his pace
24 quickening with his hands in his pocket. That was my
25 immediate concern, was his hands in his pocket, approaching

14383

1 the other agents and detectives.

2 Q Fair to say it was a safety concern?

3 A Absolutely, yes.

4 Q It turns out, did you check his pockets later?

5 A I did.

6 Q Did you find any weapons in them at the time?

7 A No, sir, I didn't.

8 Q When you stopped him, you didn't know if he had a
9 weapon in his pocket?

10 A No, sir, I did not know.

11 Q You mentioned that you were outside the building
12 in a law enforcement vehicle with Mr. McNally and Detective
13 Corrigan.

14 A Yes.

15 Q Was that a marked vehicle or an unmarked vehicle?

16 A No, sir, that was an unmarked vehicle.

17 Q How were you dressed that day?

18 A I was wearing a suit, suit pants, white shirt,
19 tie, and my ATF vest, with ATF markings on the back that
20 says police on the back and on the front gold letters says
21 ATF police on the front, on the right chest there is a
22 shield, gold and blue shield, ATF shield.

23 THE COURT: You will have to keep your voice up.

24 Q If you could lean forward into the microphone.

25 Why were you wearing a suit that day when you

14384

1 were going to execute a search warrant?

2 A I was going to do interviews that day. I did
3 some interviews in the morning.

4 Q And you put the ATF vest over the suit?

5 A Yes.

6 Q You also mentioned that you were at the spot of
7 building where the two buildings meet and there is a stairs,
8 that you moved Mr. El-Gabrowny to in front of the building
9 because it was a tight area where you were.

10 A Yes.

11 Q Whose decision, who suggested moving Mr.
12 El-Gabrowny at that point?

13 A I don't recall if there was specifically a
14 decision made. At that point it was tight. I knew I didn't
15 like it and I knew Detective Corrigan couldn't fit in next
16 to the stairwell, and at that point Mr. El-Gabrowny was
17 already somewhat resistant, wanting to know why we had our
18 hands on him, didn't want us to touch him, things of that
19 nature.

20 Q Did you have a discussion with Detective Corrigan
21 as to the reasons you were moving him?

22 A I don't recall a specific discussion, no.

23 Q In your mind, it was because it was a tight
24 space?

25 A Yes, that was it.

14385

1 MR. FITZGERALD: I have nothing further, Judge.

2 THE COURT: Anything else? Mr. Ricco? No?

3 Thank you. You are excused.

4 THE WITNESS: Thank you.

5 (Witness excused)

6 MR. RICCO: Next witness is known as Edward
7 Ferguson, your Honor.

8 (Pause)

9 MR. RICCO: Sorry, Judge.

10 EDWARD FERGUSON,

11 called as a witness by the defense,

12 having duly affirmed, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RICCO:

15 Q Mr. Ferguson, are you also known to many as
16 brother Abdul Rahman Ali?

17 A Yes.

18 Q Edward Ferguson is your lawful name?

19 A Yes.

20 Q For the purposes of these proceedings, I hope you
21 don't mind me referring referring to you as Mr. Ferguson.

22 A Go ahead.

23 Q Can you tell the jury how you are employed?

24 A Pardon me.

25 Q How you are employed, where you work?

14386

1 A Yes.

2 Q Tell the jury, please.

3 A I work for the New York City Transit. I am a
4 motor man.

5 Q How long have you been a motorman with the New
6 York City Transit Authority?

7 A Eight years.

8 Q Do you offer a course in firearms safety?

9 A Yes, I do.

10 Q How long have you offered this course?

11 A This course was going on for six years.

12 Q Did you have an occasion to meet a man who went
13 by the name of Emad Salem?

14 A Yes.

15 Q I notice that you have a medallion around your
16 neck.

17 A Yes.

18 Q Can you tell the jury where that medallion came
19 from.

20 A Emad made it for me as a gift. He made it for me
21 as a gift.

22 Q What was the purpose of the gift?

23 A The gift was that I would teach him firearms
24 safety and he would make this medallion for me.

25 Q And you still wear it to this date?

14387

1 A Yes. It says Allahu Akbar. God is great.

2 Q Did you ever have conversations with Emad Salem
3 about the taking of firearms to New Jersey?

4 A Yes.

5 Q Can you tell the jury what those conversations
6 were?

7 A He wanted me to go to Jersey and Connecticut with
8 firearms and I told him that's against the law because any
9 time you transfer any kind of firearms across the state
10 line, it is a federal crime. So I neglected -- I said no, I
11 cannot do that.

12 Q The firearms safety course that you offer, is it
13 a regulated course?

14 A It is regulated by the NRA.

15 Q What is the NRA?

16 A National Rifle Firearms Association. Teaches
17 firearms safety. We have exhibitions for the Olympics. We
18 teach people how to handle their firearms safely and
19 correctly. That's what it is all about.

20 Q Did Mr. Salem say to you why he wanted you to
21 take firearms to New Jersey or Connecticut?

22 A He said he had --

23 MR. KHUZAMI: Objection.

24 THE COURT: Overruled.

25 Q You can answer the question.

1 A He wanted me to go to teach the brothers over
2 there to use firearms, and I told him I cannot go over there
3 with firearms, you can come to New York City I will be happy
4 to teach you but I cannot bring any firearms over there.

5 Q Did he bring any people to the class?

6 A Yes, he did.

7 Q As we sit here today, do you have any
8 recollection whatsoever as to who the people were that came
9 to the class with Emad Salem?

10 A He just brought people from Jersey.

11 Q Pardon?

12 A He brought, you know, brothers in Jersey, to
13 teach them, and I made very clear to them this is a
14 safety --

15 THE COURT: He just asked if you remembered who
16 came.

17 THE WITNESS: No, I don't remember.

18 Q Is that a no?

19 A No, I don't remember, not everybody.

20 Q Did your class involve going to a shooting range?

21 A Yes.

22 Q How would the participants in your class get to
23 the shooting range stage?

24 A NRA have a test, OK, to teach you how to handle
25 the firearms correctly. Once you know how to handle

14389

1 firearms correctly, we take you out to the range, and by
2 doing that this shows that you have passed the course, just
3 like if you went to a school for driving a car. Once you
4 learn how the facilities and all the safety rules of driving
5 a car, same thing with the firearm. When you pass the test,
6 we give you a little certificate saying you are qualified to
7 handle firearms, you go down to One Police Plaza to get your
8 license and they investigate from there.

9 Q Are your classes open to the public?

10 A Yes.

11 Q What kinds of people come to your class?

12 A We have all nationalities. I have Jewish people,
13 Koreans, Latinos, blacks. You name it, they came. The
14 whole thing is to teach people about firearms safety. There
15 is no nationality involved.

16 Q Do you keep records of the people who attend your
17 classes?

18 A Yes.

19 Q Where are your records now?

20 A The FBI has them, the records of the people that
21 were involved in my class.

22 Q How did the FBI get them?

23 A They asked for them and I gave it to them. I
24 have nothing to hide.

25 Q Do you own a machine that is used to open bullets

14390

1 with?

2 A It's not a machine, it's called a compressor.

3 Q What does that do?

4 A OK. In competition, a lot of people that are in
5 the national rifle, into the competitive shooting, they make
6 reloads, because ammunition is very expensive, and they
7 shoot a lot of rounds of ammunition when they participate in
8 competition. So all it is is reloading, OK.

9 Q Can that machine be used to open carpenter nails?

10 A No, it's not a carpenter tool.

11 Q Can you tell the jury where you first met Emad
12 Salem?

13 A I met him in Jamaica, Queens. It was a rally for
14 all the Muslims to stop the drug dealers in the community,
15 and what happens, we get all the mosques together, and
16 security of the mosque, and we infiltrate the area where the
17 drug dealers are, to keep them out of the community, and
18 what we do, we let the people in the community know that we
19 are there, so the drug dealers will take their business
20 someplace else.

21 Q Is that where you met Emad Salem?

22 A Yes.

23 Q How did Emad Salem present himself to you?

24 A He told me he was the Green Beret of the Egyptian
25 army and he did this and he did that, and he is interested

14391

1 in coming to work with us and help with us, I said yeah,
2 fine, whatever.

3 Q You said coming to work with us, what are you
4 talking about?

5 A He wanted to know about the black Islam security,
6 that we work for security. A lot of projects call us
7 because we work with the projects to keep the drug dealers
8 out of the community. We are known as good security for
9 that. A lot of drug dealers, when they see Muslims in the
10 vicinity, they take their business someplace else.

11 Q Just one last question. I asked you about the
12 taking of the firearms to New Jersey. Was this a subject
13 that was often raised by Mr. Salem?

14 A Yes, and he kept on insisting for me to do this,
15 and I said no, I can't, it's against the rules, state law.
16 Each state has different laws and this you cannot do, it's a
17 federal crime, you can't do it.

18 Q Was Mr. Salem a friend of yours?

19 A Yes, so I thought he was, he made a medallion for
20 me and he was the best man at my wedding.

21 MR. RICCO: I have no further questions.

22 THE COURT: Anyone else?

23 MR. STAVIS: One moment, your Honor.

24 THE COURT: Mr. Stavis, representing Mr. Nosair.

25 Go ahead.

14392

1 MR. STAVIS: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. STAVIS:

4 Q Good afternoon, Mr. Ferguson.

5 A How are you, sir?

6 Q We have met before, have we?

7 A Yes, at --

8 Q Was that at the Al-Taqwah Mosque?

9 A Yes.

10 Q You mentioned the NRA. Are you a member of the
11 National Rifle Association?

12 A Yes, I am.

13 Q Is there such a thing as a lifetime membership in
14 the National Rifle Association?

15 A Yes, there is.

16 Q What is involved in that?

17 A Lifetime membership of the NRA, you have all --
18 they give you insurance, they tell you about different
19 organizations in the NRA, if you want to be a counselor,
20 firearms instructor, let you know all different activities
21 that are going on, even in the Olympics.

22 Q You mentioned that you give an NRA firearms
23 safety course.

24 A Yes.

25 Q Do you have to be qualified to give such a safety

14393

1 course?

2 A Yes.

3 Q What do you have to do in order to be qualified
4 to give an NRA safety course?

5 A You have to see a counselor. You can call the
6 NRA and they will recommend a counselor, which is a firearms
7 instructor counselor, to teach you how to teach firearms
8 safety course. They have different categories, from muskets
9 to rifle with, pistol and shotgun, and home safety and
10 personal protection.

11 Q When you are giving a National Rifle Association
12 course, are there any materials that you might distribute to
13 your students?

14 A Yes. We give them books that we have to issue
15 each student, and also we have charts to demonstrate and
16 tell them what safety firearms is all about.

17 Q Where do you obtain those books and charts?

18 A From the National Rifle Association. We have to
19 order it.

20 Q After somebody takes your National Rifle
21 Association firearms safety course, assuming that they do
22 well in the course, is there something that they receive at
23 the end of the course?

24 A They receive a certificate, say that they are
25 qualified, firearms safety course. Now they can take that

14394

1 certificate to the nearest police department where they are
2 going to, you know, get their license, mostly One Police
3 Plaza, New York City, to say that they are qualified and had
4 personal training with the National Rifle Association.

5 Q Where do you obtain the certificates from that
6 you award to your students in the firearms safety course?

7 A From the NRA.

8 MR. STAVIS: I have no further questions, your
9 Honor.

10 THE COURT: Miss London, representing
11 Mr. Elhassan. Go ahead.

12 CROSS-EXAMINATION

13 BY MS. LONDON:

14 Q Good afternoon, Mr. Ferguson.

15 A Good afternoon.

16 Q Mr. Ferguson, you are certified by the NRA,
17 correct, to give these courses?

18 A Yes.

19 Q Do you have to renew your certification from time
20 to time?

21 A Every year.

22 Q Do you have to take a test?

23 A No. The new policy is that they want to know how
24 many students do you have that year, and are you consistent
25 with classes, and they will, you know, recognize that you

14395

1 can teach more classes.

2 Q Approximately how many classes do you teach per
3 year?

4 A It depends how many people want to come for a
5 firearms safety course. Since the system is clamping down
6 on firearms, there is not that many people coming out.

7 Q You teach, do you not, an introductory course, do
8 you?

9 A Yes.

10 Q This is an introductory course on firearms
11 safety, is that right?

12 A Yes.

13 Q Does this include hands-on training, in other
14 words, the handling of real weapons?

15 A No. What we do, we are not allowed to have live
16 ammunition in the classroom or anything like that. So what
17 I do, I use a replica that looks like the real thing, works
18 like the real thing, but it is not the real thing.

19 Q And this replica cannot be loaded with real
20 ammunition, is that right?

21 A It cannot.

22 Q In your introductory classes, how many times per
23 week do you go to this class in one course?

24 A The NRA class is supposed to be two days, but a
25 lot of people work and they cannot participate every day, so

14396

1 it is like twice a week or once a week.

2 Q How many hours a day is your course?

3 A It is a 12-hour course, so I break it down for,
4 like, two hours, so I make everybody come every week, if
5 they can.

6 Q What exactly do you teach in your arms safety
7 course?

8 A The main thing is to know about the firearm, the
9 parts of the firearms. The main thing is safety, point the
10 muzzles, the front of the firearm, in a safe direction, keep
11 keep your finger off the trigger until you are ready to use,
12 and keep the action open if you are not using your firearm.

13 Q Is there an age requirement to be a student in
14 your class?

15 A The age requirement for students with their
16 parents is from -- depends on the state laws but it is from
17 21 up for pistols and for rifles and shotguns is 12 and up.

18 Q Do you advertise your classes with flyers and
19 literature?

20 A There was a time when I did when I began, and I
21 advertised through schools and churches and, you know,
22 synagogues, whoever want to learn -- because the main thing
23 is safety. If we had more safety classes, people wouldn't
24 get hurt.

25 Q Do you require the students who take your class

14397

1 to fill out an application form?

2 A Yes.

3 Q What kind of information must they put onto that
4 form?

5 A Their age, their date of birth, where they live,
6 and that's about it.

7 Q Telephone number perhaps?

8 A Yes.

9 Q These are the records which you have handed over
10 to the FBI?

11 A Yes.

12 Q I will direct your attention, Mr. Ferguson, to
13 the fall of 1992. Were you giving the NRA firearms safety
14 courses at that time?

15 A Yes.

16 Q Did you give a course at the Kalifa Mosque in
17 Brooklyn around that time?

18 A Yes.

19 Q I would ask you now if you recognize my client
20 Mr. Tarig Elhassan -- Mr. Elhassan, I would ask you to
21 stand. Mr. Ferguson, do you recognize Mr. Elhassan?

22 A Yes.

23 Q Do you recognize him as a former student?

24 A A former student, yes.

25 Q In your class?

14398

1 A Yes.

2 Q He was a student at your introductory firearms
3 course?

4 A Yes.

5 Q A number of years ago, is that right?

6 A Yes.

7 Q It would be fair to say that you taught him the
8 basic weapons safety course that you have been telling us
9 about?

10 A Basic, that is right.

11 Q Are you still teaching your courses today?

12 A Not as much.

13 Q But you are still teaching the courses today?

14 A Yes, when I have the time to teach, yes.

15 MS. LONDON: I have no further questions.

16 THE COURT: Any other defense counsel?

17 MR. LAVINE: Yes, your Honor.

18 THE COURT: Mr. Lavine, representing Fadil
19 Abdelgani.

20 MR. LAVINE: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. LAVINE:

23 Q Good afternoon, Mr. Ferguson.

24 A Good afternoon. How are you doing?

25 Q OK, and yourself?

14399

1 A Good.

2 Q Other than the Kalifa Mosque, where have you
3 given your course?

4 A First in Astoria, Queens, which is called the
5 Louis Armstrong. I was giving classes there. Then I moved
6 to Brooklyn and I was giving classes there.

7 Q Where in Brooklyn did you give your classes?

8 A Kalifa.

9 Q Have you given classes anywhere else in the city?

10 A In the city?

11 Q Yes.

12 A Yes. Kalifa and the other one, the other mosque
13 up the block -- Taqwa.

14 Q When you give the class, the 12-hour course, it
15 is broken up into two different parts, correct?

16 A Yes.

17 Q One is theory and one is practice?

18 A Well, it's not practice. The last part of the
19 class is practice, but the whole thing is theory. The whole
20 thing is to get the students -- main thing is safety, to let
21 them know about firearms, to let them know about the parts,
22 just like a car. You have to have a license for the car,
23 you have to have a license for the car. You have to clean
24 the pistol, you have to know how to clean the pistol. You
25 have to know about safety of a car, you have to know the

14400

1 same thing about a pistol.

2 Q The practice course is giving at given at a
3 shooting range?

4 A That is the last thing.

5 Q That is not given in a mosque?

6 A No, there is nothing to shoot at.

7 Q In the mosque you use the replica, is that
8 correct?

9 A Correct.

10 Q Mr. Ferguson, were you a Motown musician at one
11 time?

12 A Yeah, how did you know?

13 MR. LAVINE: Thank you very much, sir. I have
14 nothing further.

15 THE COURT: Anyone else? Any cross?

16 MR. KHUZAMI: No questions, your Honor.

17 THE COURT: Thank you very much. You are
18 excused.

19 (Witness excused)

20 MR. RICCO: Your Honor, Mr. El-Gabrownny calls as
21 his next witness Dr. Mohammed T. Mehdi.

22 MOHAMMED T. MEHDI,

23 called as a witness by the defense,

24 having duly affirmed, testified as follows:

25 THE WITNESS: Your Honor, an Islamic obligation

14401

1 of mine, should I say As-Salamu Alaikum to the people?

2 THE COURT: Go ahead.

3 THE WITNESS: As-Salamu Alaikum.

4 DIRECT EXAMINATION

5 BY MR. RICCO:

6 Q Dr. Mehdi, were you a colleague and friend of
7 Dr. Rabbi Meir Kahane?

8 A I was. I don't know that the colleague is the
9 word, but I knew Rabbi Kahane very well and we were good
10 friends of a kind.

11 Q Did you ever have an occasion to support Rabbi
12 Kahane?

13 A I sure did, on --

14 MR. MCCARTHY: Objection, relevance.

15 Q Have you ever had an occasion to meet a man who
16 claimed his name was Emad Salem?

17 A Yes.

18 Q Did you ever have an occasion to meet the man
19 known as Ibrahim El-Gabrowny?

20 A Yes.

21 Q Do you see him in the courtroom?

22 A Yes.

23 Q Can you point him out.

24 MR. RICCO: Mr. El-Gabrowny, stand, please.

25 Q Is this Mr. El-Gabrowny?

14402

1 A Yes, it is.

2 THE COURT: Indicating Mr. El-Gabrowny. Go
3 ahead.

4 Q Did you have dinner with Mr. El-Gabrowny and Emad
5 Salem at Mr. El-Gabrowny's apartment in Brooklyn?

6 A Yes, sir.

7 Q Before we get into that meeting, I would like for
8 you to take a few minutes to explain to the jury your
9 background and the circumstances that led to the dinner.

10 A To the dinner.

11 Q Tell the jury when and where you were born.

12 A I was born in Baghdad, Iraq, and reborn at
13 Berkeley, California. My education at Berkeley, I consider
14 it rebirth, and I am proud of that.

15 Q When did you come to the United States?

16 A 1949.

17 Q Why did you come here?

18 A To study at Berkeley.

19 Q What academic degrees do you hold?

20 A I finished my BA, MA, Ph.D at Berkeley, and then
21 I taught there for two years.

22 Q Do you have children?

23 A Happy to report three beautiful daughters and six
24 grandchildren.

25 Q Are you currently married?

1 A No, we are happily divorced. We are, we are
2 friends.

3 Q Did you ever have two wives?

4 A One too many. What you have against me.

5 Q Dr. Mehdi, tell me what it is you do now for a
6 living?

7 A I am the head of an American Arab and an American
8 Muslim organization.

9 Q What is the name of that organization?

10 A American Arab relations committee and the
11 National Council on Islamic Affairs.

12 Q What does the National Council on Islamic Affairs
13 do?

14 A The goal of the organization is to try to
15 interpret Islam to the American people, to explain, to
16 establish ties, to have the American Muslim community become
17 participants in the American society.

18 Q Have you published any books?

19 A Yes, I have written 10 books.

20 Q Are you the author of articles and periodicals?

21 A Many articles, many periodicals.

22 Q What are some of the publications that your
23 articles and periodicals have been published in?

24 A The New York Times, Washington Post, Christian
25 Science Monitor, Los Angeles Times. Also the late and

14404

1 beloved New York Newsday.

2 Q Have you ever appeared as an analyst or hosted a
3 television program?

4 A Yes, I have been on many many television programs
5 across the nation and analyzing one recently on this PBS
6 program on jihad in America.

7 Q Have you ever testified before congressional
8 hearings?

9 A Yes, many a time in Washington, appearing before
10 several committees of Congress to testify.

11 Q When was the last recent time?

12 A The last one was last week actually, here in New
13 York. There was a committee.

14 (Continued on next page)

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1 Q I only asked you when.

2 Can you tell the jury the circumstances in which
3 you knew Rabbi Kahane.

4 MR. McCARTHY: Objection, relevance.

5 THE COURT: Do you want to come up.

6 MR. RICCO: Yes.

7 (At the side bar)

8 MR. RICCO: Your Honor, he is going to say that
9 he has often appeared with Rabbi Kahane in public forums,
10 that he knew him many years, that they had a friendship, he
11 was greatly saddened by his death.

12 THE COURT: What is it offered to prove?

13 MR. RICCO: I think that it just gives a context
14 to his testimony about why he was at the state court trial
15 and how he knows Mr. El-Gabrowny.

16 MR. McCARTHY: The testimony, it seems to me, is
17 offered to show that this person is a friend of Meir
18 Kahane's, he was hanging around with El-Gabrowny, therefore
19 El-Gabrowny --

20 MR. RICCO: Not at all, not at all, Judge. That
21 is not an argument that I am going to make.

22 THE COURT: I guess if you can bring out bias you
23 can bring out what is alleged to be a lack of bias. I
24 assume that is what you are doing. I will allow it but --

25 MR. RICCO: It's marginal.

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1 THE COURT: It's marginal. I will let him do it.

2 (In open court)

3 THE COURT: The objection is overruled. Go

4 ahead.

5 (Continued on next page)

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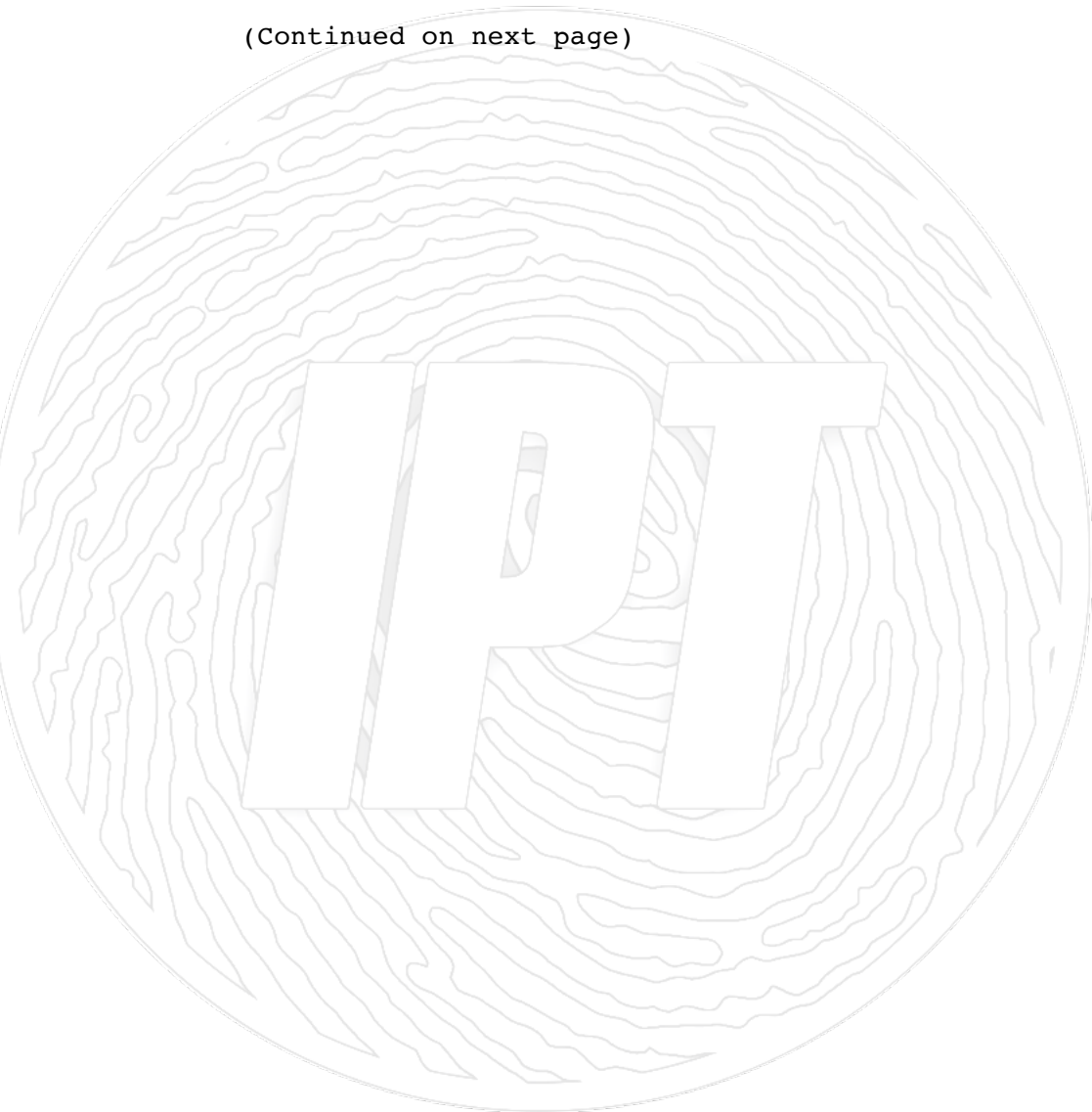
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1 BY MR. RICCO:

2 Q Dr. Mehdi, can you tell the jury the
3 circumstances under which you knew Rabbi Meir Kahane.

4 A I believe the first time was a television station
5 contacted me and the rabbi to appear on the show,
6 discussing -- yes, Channel 7 ABC here, and thereafter this
7 was an historical occasion, the first time the rabbi and
8 myself meeting. Then the news media contacted us many a
9 time, and we appeared and we discussed issues of the Middle
10 East.

11 Q How many different TV programs and radio programs
12 did you appear on with Rabbi Meir Kahane?

13 A Twenty, 25 times at least.

14 Q Did you offer any commentary on Rabbi Kahane's
15 death?

16 A I eulogized him on television, because the
17 rabbi, even though we disagreed only 100 percent,
18 nevertheless we had developed a feeling of comradeship,
19 of -- there was a rapport between him and myself. I knew
20 his jokes after 20 times appearing on television, he knew my
21 cracks. So we had developed a bit of rapport, yes.

22 Q By the way, do you know Sheik Omar Abdel Rahman?

23 A Yes, I have had the privilege.

24 Q Are you a follower of Sheik Omar Abdel Rahman?

25 A I am happy to report that I am the follower and

14408

1 possibly the only follower of Mohammed Mehdi.

2 Q Do you have Sheik Omar Abdel Rahman's phone
3 number?

4 A Presently I think is in MCC.

5 Q Before that time.

6 A Yes, yes, of course, I did have his telephone
7 number.

8 Q What did you use the telephone number for?

9 A Occasionally to discuss with him certain
10 questions of law, because the sheik is really a great
11 authority on Islamic law, and Islamic law is so very
12 important, at least as important for the Muslims as to me
13 the American constitutional law is, and he and I met many a
14 time comparing notes concerning American constitutional
15 law -- which, your Honor, has been my concern. At Berkeley
16 I studied the constitutional law.

17 THE COURT: I am not the fact finder, they are.
18 Go ahead.

19 THE WITNESS: Thanks.

20 A So the Constitution is my field of interest, and
21 the sheik is really the authority on Islamic law.

22 Q Are you aware that there was a fund established
23 for the purposes of raising money for the Nosair defense?

24 A Yes. Actually, I think I suggested that to
25 Ibrahim, because when the tragedy took place and I knew that

14409

1 Nosair needed the best of legal defense and the best of
2 legal defense needs money, I suggested to Ibrahim
3 El-Gabrownny to raise money for the defense of Nosair.

4 Q Did you have discussions with Mr. El-Gabrownny
5 during and after the trial of El Sayyid Nosair?

6 A We must have, on many issues.

7 Q By the way, did you attend the trial of El Sayyid
8 Nosair?

9 A I attended it once, and then I was introduced to
10 the judge, and then I attended it when the judgment was
11 rendered.

12 Q What were the circumstances that led to your
13 attendance at the trial?

14 A I am known as an Arab leader, prominent. I have
15 to be in contact with the Arab community, Arab issues,
16 Muslim issues, so it was only natural for me to attend the
17 trial.

18 Q Were you the author of a letter to Judge
19 Schlesinger, the judge in the state court trial?

20 A Yes, I wrote to the judge a letter.

21 Q Can you explain to the jury what it is that you
22 expressed to Judge Schlesinger?

23 MR. McCARTHY: Objection, relevance.

24 THE COURT: That is sustained. Go ahead.

25 Q I asked you earlier if you knew a man who

14410

1 presented himself as Emad Salem. Do you remember the
2 question?

3 A Yes, I remember.

4 Q How did Emad Salem present himself to you?
5 Explain to the jury.

6 A Emad Salem had seen me on television or otherwise
7 had known of me, so he introduced himself to me, and with
8 his flowery language, beautiful Arabic style, calling me my
9 excellent professor, your highness -- I'm not a highness
10 happily, I'm one of the people. But he was using the Arabic
11 flowery language, praising me, wing my confidence, and my
12 confidence, everybody can have my confidence, is very open
13 to everybody.

14 (Continued on next page)

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1 THE COURT: May I see counsel briefly at the
2 side.

3 (At the side bar)

4 THE COURT: I was also interested in an offer of
5 proof with regard to the letter to the judge.

6 MR. RICCO: Basically what he said to the judge
7 was -- I have a copy of the letter here. He says that both
8 sides are putting a lot of pressure on you to make a
9 decision that is free of political pressure. That's it.

10 THE COURT: I was just wondering what was in it.
11 That is all.

12 MR. RICCO: Your Honor, it might be easier for me
13 to lead him a little bit. I don't know if Mr. McCarthy has
14 any strong objections.

15 MR. MCCARTHY: We objected to this before with
16 the other witness. I don't think it is appropriate to go
17 into specific instances of Salem's collateral behavior,
18 particularly when it is stuff that he wasn't confronted with
19 on the stand. We are not going to sit here and object as he
20 goes through that --

21 THE COURT: Why don't you lead him through it.

22 (Continued on next page)

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1 (In open court)

2 BY MR. RICCO:

3 Q I had asked you if you had the sheik's telephone
4 number.

5 A Yes, I had.

6 Q Did you ever discuss that with Emad Salem?

7 A I think he once called me and advised me to call
8 the sheik and tell him a few things.

9 Q Do you recall what it is he wanted you to tell
10 the sheik?

11 A My memory was refreshed when I saw and heard some
12 of the tapes. I had forgotten all about it. But he had
13 called me and asked me to call the sheik and tell him that
14 Dov Hikind, the assemblyman, is a threat to the Muslim world
15 and that the sheik should be aware of how bad Dov Hikind is.

16 Q Did you do that?

17 A No. I know Dov Hikind. He and I have appeared
18 on television many times, discussing, arguing, disagreeing,
19 and he is a politician. Whatever he says to make votes,
20 appeal to his constituency, he is no threat to the Muslim
21 world.

22 Q Dr. Mehdi, when we started I asked you about
23 dinner at Mr. El-Gabrownny's house. Do you recall having
24 dinner at Mr. El-Gabrownny's house with Emad Salem?

25 A Yes, I remember, and it was a delicious fish that

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1 he had prepared.

2 Q How did you get to Mr. El-Gabrownny's house?

3 A Emad Salem drove me there.

4 Q I am going to ask you a few questions. During
5 the dinner, did you discuss the bombing of specific, on
6 specific targets here in New York?

7 A (Laughs) No, sir.

8 Q Did you discuss how to open and remove powder
9 from carpenter nails? Did you discuss with him how to take
10 powder out of carpenter nails?

11 A No, sir.

12 Q Did you discuss with him the assassination of
13 political leaders?

14 A No, sir.

15 Q The kidnapping of Judge Schlesinger?

16 A Of course not.

17 Q Did you discuss with him a plan to bust El Sayyid
18 Nosair out of state prison?

19 A Of course not.

20 Q By the way, when Nosair was in prison, you wrote
21 him a letter, didn't you?

22 A Yes, I did.

23 Q What did you do with the copies of that letter?

24 A I sent it to the news media.

25 Q Can you explain --

1 A And I believe I also sent a copy to the FBI or
2 the present authorities.

3 Q Can you describe to the jury how Mr.
4 El-Gabrownny's apartment appeared?

5 A Wow. It was more disorganized than my office.
6 Books, children all over the place, food there, food there,
7 food there.

8 Q I want to take you to a time period after Mr.
9 El-Gabrownny was arrested, OK? Did you have a telephone
10 conversation with Mr. Salem in regard to that matter?

11 A I had forgotten it except when I saw the
12 transcript of the conversation that Emad Salem had taped
13 with me. Yes, evidently we had talked about --

14 Q Did Mr. Salem discuss with you the hiring of a
15 lawyer for Mr. El-Gabrownny?

16 A Well, he was talking about the need to have a big
17 lawyer, important lawyer, and I knew that money is not
18 available, so I suggested that Legal Aid should provide the
19 support. But I didn't know that --

20 Q Wait till I ask you a question, please.

21 A No, I am frustrated about this Salem --

22 THE COURT: No, there is no question pending. He
23 asks questions, you give answers. Let's go.

24 Q Dr. Mehdi, did you send a fax to Emad Salem on or
25 around March 6, 1993?

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1 A I don't remember the date. If you give me
2 something about the content --

3 Q Did you send him a fax, a press release of a fax
4 that was sent to you by Al Gamaa Islamiya?

5 A Yes, yes, during one of these conversations that
6 he had taped, I told him that I had received a fax from
7 Cairo.

8 Q Without telling us what was in the fax, did you
9 send a copy of that to Mr. Salem?

10 A Yes, I told him that I have it and I will send it
11 to him, and I did.

12 Q Did you send it to him?

13 A Indeed.

14 Q Were you ever present when threats were made
15 against the life of El Sayyid Nosair and/or his family?

16 A I knew that there were lots of abusive telephone
17 calls.

18 THE COURT: He asked whether you were present
19 during the making of any threats. Were you?

20 THE WITNESS: Your Honor, I didn't hear the
21 question.

22 THE COURT: He asked whether you were present
23 during the making of any threats. Were you present during
24 the making of any threats?

25 A Of Nosair, no.

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1 Q Were you present at the Hilton Hotel press
2 conference?

3 A Yes.

4 Q How do you know about the Hilton Hotel press
5 conference?

6 A Because I invited the press for this, the news
7 media to this press conference.

8 Q What happened at the press conference?

9 A It was there that the attack and abuse was
10 directed at Ibrahim, not at Nosair.

11 Q What happened at the press conference?

12 A While the the spokespersons were presenting their
13 thoughts, suddenly it was interrupted by a group of noise
14 makers, threatening and disrupted the whole news media.

15 Q Since you have known Mr. El-Gabrownny, have you
16 had the occasion to discuss his reputation for law
17 abidingness and peaceful conduct?

18 A My personal experience with him is that he is --
19 have I discussed it with whom?

20 Q With other people in the community.

21 A Yes, of course.

22 Q What is that reputation?

23 A As wholesome as my own impression of him. He is
24 a family man, he is a hard working person. He tries to take
25 care of his many children, and the experience at that

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1 dinner, he was torn between taking care of the children and
2 taking care of the big guest that he had.

3 MR. RICCO: I have no further questions, your
4 Honor.

5 THE COURT: Miss Stewart.

6 CROSS-EXAMINATION

7 BY MS. STEWART:

8 Q Good afternoon, Dr. Mehdi.

9 A Good afternoon.

10 Q We have been acquainted for over 30 years, have
11 we not?

12 A In defense of freedom.

13 Q We met at a demonstration in front of the Waldorf
14 Astoria those many years ago?

15 A In defense of freedom.

16 Q I was a little thinner in those days, I think.

17 A And I was younger.

18 Q I think you indicated that you were acquainted
19 with my client Dr. Abdel Rahman, is that correct?

20 A Yes indeed.

21 Q Do you remember an occasion when you were running
22 for the Senate and you appeared at Abu Bakr Mosque?

23 A Yes, that was an historic event for an Arab and a
24 Muslim, running for the United States Senate from New York,
25 yes.

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1 Q Do you remember what the sheik said when he
2 introduced you at the mosque?

3 A As I recall, and I was surprised to notice the
4 sheik supporting my candidacy, and encouraging others to
5 vote for me or help me or contribute financially as they
6 can. I was surprised because in the traditional Arab ways,
7 voting is not part of our experience, but the sheik was a
8 modernist, urging the people to support my candidacy.

9 Q Directing your attention to the period that
10 immediately followed the bombing of the World Trade Center,,
11 did you have communication with Sheik Omar?

12 A Yes. Immediately I contacted the sheik in
13 Detroit and asked him what would be his reaction to the
14 bombing of the World Trade Center, and immediately --

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q Following that time, did you issue a verbatim
18 quote from the sheik regarding the bombing of the World
19 Trade Center?

20 MR. McCARTHY: Objection, unless it is yes or no.

21 THE COURT: You may answer it yes or no.

22 A Yes, I did.

23 Q Do you remember the exact words of that
24 particular press release?

25 MR. McCARTHY: Objection.

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1 A I do.

2 THE COURT: Sustained.

3 Q Do you remember a short time thereafter, you were
4 asked to appear as an interpreter on a television program on
5 behalf of the sheik?

6 A Yes, I do.

7 Q Did you travel in connection with that?

8 A I did. That was with ABC, to Los Angeles.

9 Q Before you left for Los Angeles, did you have
10 occasion to meet with someone here in New York?

11 A I met with many people and many of them gave me
12 different advices.

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 (Continued on next page)

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1 Q Were you asked to carry a message with respect
2 to --

3 MR. McCARTHY: Objection; leading.

4 Q Did you meet in New York with Ahmed El Sattar?

5 A Ahmed El Sattar, yes.

6 Q Excuse the pronunciation. Were you asked to tell
7 the sheik --

8 MR. McCARTHY: Objection; leading, and hearsay.

9 THE COURT: Sidebar.

10 (At the sidebar)

11 THE COURT: I am afraid I am going to have to ask
12 for an offer of proof.

13 MS. STEWART: If allowed to testify, he would
14 testify that he was given a message to give to the sheik
15 that the family of Abouhalima had asked that the sheik not
16 admit to knowing him, since he was in prison in Egypt and
17 they feared for his life. It is not offered for the truth;
18 it is offered for the fact that the message was conveyed.

19 MR. McCARTHY: I think it is offered for the
20 truth.

21 THE COURT: What do you mean you think it is
22 offered for the truth?

23 MS. STEWART: State of mind.

24 THE COURT: All right.

25 MR. McCARTHY: Not that he was tortured in Egypt

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1 but that somebody asked him not to mention --

2 MS. STEWART: His relationship.

3 MR. WASSERMAN: My client has to leave.

4 THE COURT: He will wait until we finish.

5 MR. WASSERMAN: Judge, I am not the one you have
6 to address this to.

7 THE COURT: We will not delay it any further.

8 THE COURT: Do you have anything further?

9 MS. STEWART: No, this is the last question.

10 (In open court)

11 BY MS. STEWART:

12 Q Dr. Mehdi, did there come a time that you
13 conveyed the message you were given to Sheik Omar?

14 A Yes.

15 Q Could you just tell us what the message was?

16 A It was that a specific person was not involved
17 and that the sheik did not know him.

18 Q I am sorry?

19 A A person was not known to the sheik for the
20 protection of that person.

21 Q Was the name given to you?

22 A Yes.

23 Q Who was it?

24 A Abouhalima.

25 Q Pardon me?

1 A Abouhalima.

2 MS. STEWART: Nothing further, Judge. Thank you.

3 THE COURT: Ladies and gentlemen, we are going to
4 take a short break. Please leave your notes. Please don't
5 don't discuss the case.

6 (The jury left the courtroom.)

7 THE COURT: You can step down.

8 Your client is excused, Mr. Wasserman.

9 MR. RICCO: May we have a sidebar.

10 (At the sidebar)

11 MR. RICCO: Your Honor, I just wanted you to know
12 that after Dr. Mehdi we have no more El-Gabrownny witnesses,
13 and there are a few exhibits that we are going to put in.
14 Probably we shouldn't do it today because I still have to
15 talk to Mr. Fitzgerald about it. He has to take a look at
16 the stun gun, the translations and things like that. Other
17 than that, that is it.

18 MS. STEWART: And I was relying on Mr. Ricco to
19 finish off the afternoon.

20 THE COURT: We will find something to do. Is
21 there anybody else who has anything that they can do that is
22 constructive?

23 MS. STEWART: I think that maybe the government
24 is going to raise some objections to some of my proposed
25 exhibits, which is next up on Wednesday.

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1 THE COURT: So you ought to be aware of that.

2 MS. STEWART: Yes, I would like, before we make
3 42 copies of anything.

4 THE COURT: All right.

5 (Recess)

6 (Jury present)

7 Ms. Amsterdam?

8 CROSS-EXAMINATION

9 BY MS. AMSTERDAM:

10 Q Hello, Doctor.

11 A Hello.

12 Q You were asked some questions about the events
13 after the bombing of the World Trade Center. Do you recall?

14 A Yes.

15 Q Could you please for the jury describe the
16 climate within the Muslim community after the World Trade
17 Center bombing?

18 MR. MCCARTHY: Same objection.

19 THE COURT: Sustained.

20 MS. AMSTERDAM: Your Honor, I can make an offer
21 of proof at the side.

22 THE COURT: I will hear you.

23 (At the sidebar)

24 THE COURT: First, read the question, please.

25 (Question read)

1 MS. AMSTERDAM: I could narrow it down to the
2 climate within the communities that he was a part of after
3 the arrests in the World Trade Center case.

4 THE COURT: The climate being what? I think I
5 have a sense of what you mean, but --

6 MS. AMSTERDAM: I am open for something here.

7 MR. WASSERMAN: The state of mind?

8 MS. AMSTERDAM: No.

9 MS. STEWART: The apprehension?

10 MS. AMSTERDAM: I didn't want to lead him. I was
11 trying to be more open.

12 THE COURT: Do you want to ask him: "From your
13 experience, was there any apprehension within the Muslim
14 community with respect to the World Trade Center bombing?"

15 MS. AMSTERDAM: Thank you, your Honor.

16 (In open court)

17 BY MS. AMSTERDAM:

18 Q After the bombing and subsequent arrests in the
19 World Trade Center case, could you -- withdrawn -- was there
20 a degree of apprehension within the Muslim community of
21 which you are a part?

22 A There was a great degree of apprehension. There
23 was a paranoia all over the place. People were frightened,
24 people feel that something may happen to them, and it was a
25 terrible period.

1 Q Did it upset people's willingness to even go to
2 the mosque?

3 A No, those who are going to the mosque did their
4 share despite the fact that we had received hundreds of
5 nasty phone calls, threatening phone calls, in our office,
6 abusive language.

7 Q Thank you, sir. You indicated on your direct
8 testimony that you regarded Sheik Omar as one of the leading
9 authorities of Islamic law, is that correct?

10 A That is correct.

11 Q Islamic law -- correct me if I say this
12 incorrectly -- but is that the shar'ia?

13 A That is shar'ia.

14 Q And would you explain to the jury what a shar'ia
15 consultation is?

16 A People meet and ask questions concerning certain
17 things which are not clear. It is like an advisory opinion
18 in a court of law, but under the American Constitution the
19 courts do not give advisory opinions. But in the shar'ia
20 there is the advisory opinion given.

21 Q In accordance with Islamic law, correct?

22 A In accordance with Islamic law.

23 Q Lastly, sir, in the early months of 1993, within
24 your community, the Muslim community, was there a great deal
25 of concern about events in Bosnia?

1 A Very much so. Even as of today, the tragedy in
2 Bosnia is affecting all the Muslims, and in that period the
3 demands to contribute money, clothing or go over to fight to
4 defend Bosnian Muslims' freedom.

5 Q Do you yourself personally know people who have
6 gone to Bosnia and fought there?

7 A Yes, I do.

8 MS. AMSTERDAM: Thank you very much, sir.

9 THE COURT: Anyone else? Any cross?

10 MR. McCARTHY: The government has no questions,
11 your Honor.

12 THE COURT: Thank you very much, you are excused.

13 (Witness excused)

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16 (continued on next page)

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1 THE COURT: Ladies and gentlemen, we are going to
2 break at this point because I have some matters to talk to
3 the lawyers about, and we can use the time between now and
4 5:00 to do that. As I mentioned to you earlier, we will not
5 sit tomorrow, but we will sit on Wednesday. So with that I
6 will wish a pleasant evening and tomorrow, and please don't
7 discuss the case, please don't see, hear or read anything
8 about the case, and we will see you Wednesday morning.

9 (Jury excused)

10 THE COURT: Miss Stewart, you said that you
11 thought -- maybe I should ask the government. I gather
12 there is some dispute about witnesses or evidence or
13 whatever.

14 MR. McCARTHY: For the moment, your Honor, it is
15 exhibits.

16 THE COURT: Exhibits.

17 MR. McCARTHY: We have gotten from Miss Stewart a
18 list of the exhibits that she intends to offer during the
19 defense of Dr. Abdel Rahman, which go from -- excluding for
20 the moment a transcript of Government's Exhibit 640, Abdel
21 Rahman Exhibits AA through LL, I guess.

22 In general, your Honor, what Dr. Abdel Rahman
23 seeks to offer into evidence is his own statements, in one
24 form or another. The first exhibit, Exhibit AA, is the book
25 called "The Word of Truth," which is a lengthy, I guess

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1 autobiographical book by Dr. Abdel Rahman. There are a
2 couple of public statements, some of them fairly lengthy,
3 which set forth his views of -- if I could just go through
4 my list for a moment -- the press conference, BB, which is
5 much similar to the press conference that there was some
6 evidence in the government's case that Dr. Abdel Rahman held
7 on or about June 17, 1993, wherein he discusses his views of
8 the Egyptian regime, his contention -- I should note that
9 this is a statement made after the bombing of the World
10 Trade Center, that jihad is agressions against Muslims, and
11 essentially contends that it is agressions against --

12 THE COURT: You said jihad -- I don't think you
13 meant that.

14 MR. MCCARTHY: I am sorry about that. Jihad is
15 precipitated by agressions against Muslims, whether in
16 Muslim lands or over money or life.

17 Without going on ad nauseam about this, this is
18 the general character of the evidence that he seeks to
19 offer. We frankly have a lot of pause about whether most of
20 this stuff is admissible. He is a party opponent, and under
21 Rule 801, only a party opponent's hearsay can be offered. A
22 party is not supposed to be able to offer his own hearsay
23 statements. We don't know what the theory of admissibility
24 is with respect to most of these items.

25 THE COURT: Miss Stewart.

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1 MS. STEWART: Judge, in this sedition trial,
2 which is what I characterize it, the government has offered
3 Dr. Abdel Rahman's statements to stand for the proposition
4 that he is urging his followers to commit seditious acts
5 against the government, that he is the so-called emir or the
6 godfather of what they have termed jihad in America. We are
7 offering, the overall view is that we are offering it to
8 show that at times contemporaneous with the items they have
9 offered, he was saying quite the opposite of what they
10 contend he was saying.

11 THE COURT: What you are saying is that you are
12 offering it under 106?

13 MS. STEWART: Yes.

14 THE COURT: Go ahead.

15 MS. STEWART: I can be more specific as to each
16 item, if you wish.

17 THE COURT: If you think it would help, go ahead.

18 MS. STEWART: I am just being reminded that
19 obviously a statement of intent is not a hearsay statement
20 when it is offered for that purpose.

21 THE COURT: But those are specific statements
22 such as, I am going to the movies this evening or something
23 of that sort, not intent as it is used in, for example, a
24 jury trial, I don't think.

25 MR. MCCARTHY: Your Honor, I didn't hear the last

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1 thing you said, I am sorry.

2 THE COURT: I said not intent as it is used in a
3 jury trial, I don't think.

4 MS. STEWART: I would argue that it is, because
5 that is what we are offering them for.

6 I would point out that, for example, the
7 videotape of the October 6, '93 press conference, is of
8 course also offered to belie the testimony of Abdel Rahman
9 Haggag, who claims that on this very day he had been told to
10 go and kill Mubarak, when at this press conference the sheik
11 is clearly saying tell him to meet with me and debate with
12 me, tell him to open his jails, none of which would imply
13 that he would be around to do these things.

14 THE COURT: That is a public statement, correct?

15 MS. STEWART: That is correct. It may go to
16 weight, Judge, but it doesn't go to the fact that he did not
17 say these things and that they are not contradictory to what
18 Abdel Rahman Haggag said.

19 THE COURT: If you think it would help me to
20 review the exhibits one by one -- I don't have them in front
21 of me, obviously. I haven't seen them. If you think it
22 would be helpful for me either to read them myself or to go
23 over them by any category you want to name, I would be happy
24 to do that, but if what we are talking about are simply
25 statements made at or about the same time that you think are

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1 of a different tenor than the statements that the government
2 has offered, I would sustain the objection. I should point
3 out also, however, that there were statements received that
4 were made not only at or about but directly at the same time
5 when they were fairly included within other statements that
6 the government offered, under a Rule 106 theory, and as you
7 know, there were long portions of statements received when
8 what the government proposed to offer was at least by
9 comparison a snippet. But if you think it would help me to
10 hear something more, I will hear something more. Again, I
11 don't know what the material is, you do.

12 MS. STEWART: I just would point out, Judge, that
13 since the case against my client does not involve the
14 purchase of guns or the mailing out of leaflets or any acts
15 but his spoken words, it becomes even more important to
16 introduce those spoken words which belie the government's
17 case or which could create a reasonable doubt in a juror's
18 mind, that offer some consistency as to his view of jihad,
19 and for that reason, as I say, in a sedition case it seems
20 to me that inasmuch as the hearsay rules, close quote, are
21 bent somewhat by the very charges in the indictment here,
22 that he should be allowed to defend himself by using his own
23 words, just as he is forced to defend against them the rules
24 of hearsay.

25 THE COURT: I think I disagree with both the

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1 major premise and the minor premise. The major premise is
2 that somehow the nature of conspiracy is changed by its
3 being a seditious conspiracy; it isn't. The government has
4 to prove an agreement. I don't know whether anybody has
5 lost sight of it. I haven't, and by the time the jury gets
6 done listening to the charge they won't.

7 The words that were offered here, many of them at
8 least were not, as far as I can tell, the seditious acts
9 themselves but rather were offered to show that at least in
10 some statements your client agrees with a seditious goal.
11 You still have to show an agreement. That is the nature of
12 conspiracy, and that doesn't change from one conspiracy to
13 another. The fact that seditious conspiracy happens to have
14 a political goal makes it something about which people can
15 or cannot express views, and are more inclined to express
16 views than about other things like bank robberies or drug
17 sales, although there are other people who take the view
18 that they think drugs should be legalized and sold like
19 candy, and I suppose statements endorsing that view could be
20 introduced at a drug trial.

21 In any event, I don't know of any rule that says
22 you apply the hearsay rule differently in sedition cases
23 from the way you apply it in other cases.

24 Mr. McCarthy.

25 MR. MCCARTHY: Yes, your Honor, just one point.

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1 I have not, because we only got these over the weekend and
2 there is a fairly large breadth of material, read through it
3 as thoroughly as I would like to, but I want to be clear
4 about something. There is authority in the circuit, and the
5 government doesn't contend otherwise, that a defendant can
6 get his hearsay statements in under Rule 803(3) if they fall
7 into the categories that are set forth in that rule. I
8 don't think that the rule creates the huge opening for
9 admitting everything a defendant ever said under the
10 exceptions. The exceptions are fairly narrowly drawn.
11 There are cases -- and of course we will supply them to the
12 court and Miss Stewart -- that I am aware of at least, which
13 stand for the proposition that if a defendant can show that
14 his statements fall under one of those categories of
15 admissibility under that rule, that they can be received in
16 evidence. I don't think that Rule 106 creates a separate
17 and independent basis for admissibility. I think there has
18 to be some other basis under the hearsay rules.

19 THE COURT: As I said, I haven't seen the
20 statements that Miss Stewart proposes to introduce. Do you
21 think it might help for me to look at them?

22 MS. STEWART: I think it might. I would also
23 say, Judge, although we seem to have gotten off on hearsay,
24 I would say that a statement is not introduced for the truth
25 but merely for the state of mind, such as Mubarak should be

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1 killed, he is a tyrant, is not offered necessarily for the
2 truth in that it is not a true exception to the hearsay rule
3 as such, just as the government has, I think, finally
4 alleged, at least in the Denmark tape, that that is only
5 offered for the state of mind of Dr. Abdel Rahman, and for
6 that reason it is admissible, not as against everyone but as
7 against him.

8 THE COURT: I would like to see the exhibits and
9 I would like the citations to the cases.

10 MR. McCARTHY: Yes, your Honor.

11 MS. STEWART: The other thing I would like to
12 say, with regard to the FISA's, the FISA's show Dr. Abdel
13 Rahman resolving disputes, disputes not that dissimilar from
14 the disputes he resolved between Abdel Rahman Haggag and
15 Siddig Ali, and for that reason I think we should be
16 entitled to present those, to show that contrary to the
17 allegation in the indictment that he resolved disputes
18 amongst coconspirators alone, he was resolving disputes of
19 all his parishioners, often.

20 MR. McCARTHY: Your Honor, I think it is a real
21 stretch to say that the FISA's that obviously your Honor
22 hasn't reviewed yet are of the same character as the
23 conversations involving Haggag and, I guess, Mr. Salem that
24 Miss Stewart is talking about. The ones that I have seen
25 thus far involve something to do with a woman's restroom in

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1 the mosque, another conversation that has something to do
2 with whether it is correct or incorrect for one of Dr. Abdel
3 Rahman's adherents to take over a gas station which might
4 have the effect of putting another Muslim man out of work.

5 THE COURT: That is her point, I think. Her
6 point was that he resolved disputes, period.

7 Again, let me see the exhibits. Do you propose
8 to read each of these or all of these or a representative
9 sample of them or what?

10 MS. STEWART: I think these are a representative
11 sample. There were many, many, 11 reels of FISA's, Judge.
12 This is a representative sample.

13 THE COURT: I don't mean the FISA's, I mean the
14 other material that you have.

15 MS. STEWART: I am missing the point, I am
16 afraid.

17 THE COURT: I guess I am asking you how long the
18 material is, but I will see it when I see it.

19 MS. STEWART: No, "The Word of Truth" is 150
20 pages densely packed material. We would only choose to read
21 excerpts and perhaps choose to wait until summation even, to
22 use it. But we would like it introduced for the proposition
23 that I stated.

24 THE COURT: You will get me the citations?

25 MR. MCCARTHY: I will, your Honor. Your Honor, I

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1 think we are going to have issues as well with respect to a
2 number of Miss Stewart's witnesses. I just want to make the
3 court aware of that.

4 THE COURT: Why don't you make me aware of what
5 the issues are and who the witnesses are.

6 MR. MCCARTHY: I don't know who all the witnesses
7 are. That is one aspect of the problem. Some of the ones I
8 know of I know are going to be problematic. Barbara Rogers
9 comes to mind.

10 MS. STEWART: Since she is going to be the first
11 witness, Judge, I am offering her with regard to her
12 Egyptian trip with Emad Salem and what she would tell us
13 with regard to his ties, as she knew them, to Egyptian
14 intelligence. That goes to bias, I don't think it goes to
15 any collateral issue in this case.

16 MR. JACOBS: I have some taping issues during the
17 course of the conspiracy.

18 MR. MCCARTHY: Your Honor, I would think that
19 whether or not Salem had contacts with Egyptian intelligence
20 is a collateral issue. It doesn't go to the core of the
21 case. To allow testimony on that subject would be to admit
22 extrinsic evidence on a matter that goes strictly to
23 credibility. Salem was extensively cross-examined on
24 exactly what his connections were to the Egyptian
25 government. Generally speaking, we don't have collateral

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1 trials about each witness' situations that may go to how the
2 jury appraises the credibility outside what the core issues
3 of the case are. This is an instance where that is exactly
4 what they are trying to do.

5 THE COURT: And the taping?

6 MR. McCARTHY: The taping, I suppose, depends
7 on -- this is the first I have heard about the taping. I
8 guess the taping depends on what it is he is alleged to have
9 taped with Miss Rogers involved. As I understand it, Mr.
10 Jacobs and Ms. Amsterdam are claiming destruction of tapes,
11 etc., in connection with what they call the safe house plot.
12 I don't know what opportunity they even allege that
13 Miss Rogers had to shed any light on that matter as far as
14 Salem's taping is concerned.

15 THE COURT: Is that the issue, Mr. Jacobs?

16 MR. JACOBS: There are a number of issues, but I
17 am not in a position to do my examination at this point,
18 other than to say that she is going to be examined on
19 taping. It is an issue in this case and I believe she will
20 have relevant and admissible testimony concerning what he
21 could, what he couldn't do, what he did, what he didn't do,
22 relative to during the course of the conspiracy that is
23 charged in this case, and I suppose that if the questions
24 aren't relevant and admissible --

25 THE COURT: Which is a short way of saying you

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1 don't want to ask the question.

2 I will permit her to be examined about taping.

3 We are not going to have a trial within a trial about other
4 issues.

5 MS. STEWART: I think that her testimony -- if
6 you want to take a proffer I am happy to give it. There is
7 an entire trip to Egypt that she made with him, where
8 remarks were made about meeting and getting an assignment
9 and money being passed. She also will testify that after
10 they returned on a July evening, Emad left her and went to
11 the airport, allegedly because a blind prince was arriving
12 from Afghanistan and he had to be there. I don't think it
13 needs to be repeated but clearly Emad's Egyptian agenda,
14 that is relative to his bias and the way he, quote, works
15 this case.

16 THE COURT: I will allow it. I will allow it.
17 Anything else we need to visit at the moment?

18 MR. JACOBS: A couple of lawyers need to see you
19 on a sealed matter inside, your Honor.

20 THE COURT: Other than a sealed matter inside.
21 When can we talk further about the government's
22 memo?

23 MR. STAVIS: I have read it and I have reviewed
24 it, your Honor.

25 THE COURT: And?

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1 MR. STAVIS: I disagree with it. I don't mean to
2 be flip.

3 THE COURT: No, seriously.

4 MR. STAVIS: I can answer whatever questions. I
5 believe that Count 13 --

6 THE COURT: That wasn't the part that I was
7 asking about.

8 MR. STAVIS: Is this the government's motion for
9 reconsideration of the court's decision granting Rule 29
10 relief?

11 THE COURT: Yes.

12 MR. STAVIS: I didn't see that it added anything
13 to the mix, and I would refer your Honor back to the Braxton
14 case from the Supreme Court, which I originally cited to the
15 court in arguing the Rule 29, where there was an issue about
16 firing through the open door, and the court there said that
17 even if he fired at the marshals, you cannot just assume
18 intent from that. There are all sorts of cases where
19 statements are made along with an act or where an act is
20 absolutely unequivocal, that you can get circumstantially
21 the evidence that is such for intent. As your Honor
22 recognized in ruling on this, you don't have that here.

23 Mr. McCarthy also goes back and hearkens back, as
24 he did in arguing the Rule 29, on the doctrine of
25 transferred intent.

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1 THE COURT: No, I am not interested in that.

2 MR. STAVIS: It is in the memo.

3 THE COURT: I know it is in the memo and I am
4 sorry, I should have referred to precisely the arguments
5 that I am interested in. What do you make of Yates? It was
6 an offhand statement in Yates, concurred in, to be sure, by
7 all nine justices, but they are all nine judges not one of
8 whom, as far as I know, ever tried a criminal case. But
9 notwithstanding that, it is, after all, the Supreme Court.
10 They say it would have been proper for the jury to infer
11 intent from those facts, which are remarkably similar, in
12 some ways, to these.

13 MR. STAVIS: Your Honor, I am prepared on Kwong,
14 but I am afraid I am not prepared on Yates, so if your Honor
15 would allow me to revisit the case after I have consulted
16 Yates.

17 THE COURT: Absolutely.

18 As should be obvious, I am of two minds about
19 this, which is one more than is useful. On Rule 29, I am
20 supposed to give the close bounces to the government, not to
21 you, at least the way that works. So I will reread Braxton
22 and Yates, and you do the same, please. The transferred
23 intent business hasn't impressed me from the beginning, and
24 still doesn't. I am consistent at least as to that.

25 Is there anything else we need to deal with now?

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1 I will hear Mr. Jacobs' sealed matter.

2 Yes, there is one more thing. You asked,
3 somebody asked me -- Mr. Stavis asked me to get an offer of
4 proof from the government as to their good-faith basis for
5 asking various questions.

6 MR. STAVIS: Yes, your Honor.

7 THE COURT: I got it. They had one for
8 everything except one word in one question. The word was
9 "roommate." The good-faith basis would have indicated
10 housemate. I am not going to knock somebody down for that.

11 MR. STAVIS: Housemate in terms of 24 and 26
12 Romaine Avenue?

13 THE COURT: Correct, but that is the only thing
14 for which they did not have a basis.

15 MS. STEWART: One of the issues I had was with
16 regard to Special Agent Holliman, who had administered the
17 polygraph, and you indicated that you wanted to read the
18 testimony on cross-examination. I located that. I can give
19 your Honor the pages.

20 THE COURT: Go ahead. I thought I looked at some
21 of it, but go ahead.

22 MS. STEWART: I think it would begin around 5895
23 and go over to 5896. It is, thank goodness, not unduly
24 burdensome.

25 THE COURT: No, it is not. Thank you all. See

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1 you Wednesday.

2 (Pages 14443 - 14450 sealed)

3 (Proceedings adjourned until Wednesday, July 19,
4 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.

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)

July 19, 1995
9:35 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. Is there anything we
4 need to do before we start?

5 MR. McCARTHY: We have a motion in limine, your
6 Honor, with respect to Miss Rogers. We haven't heard her
7 testimony. It may well be moot.

8 THE COURT: Is she supposed to testify today?

9 MR. McCARTHY: I understand she is the first
10 witness.

11 THE COURT: Then it is something we do need to
12 do. Does somebody want to be heard?

13 MR. JACOBS: We just got the letter, your Honor,
14 and reviewed it. I think Miss Stewart is prepared to
15 respond briefly. We just received it.

16 THE COURT: Miss Stewart.

17 MS. STEWART: Your Honor, the government cited In
18 Re Witness Before a Grand Jury for the proposition that a
19 privilege exists. We would claim that first of all this is
20 a moribund marriage, which is mentioned in the case. There
21 is no marriage any more, there is no privilege that needs to
22 be protected as far as this marriage is concerned.

23 THE COURT: That doesn't go to the question of
24 communication during marriage.

25 MS. STEWART: Secondly, Emad Salem took the

1 stand, testified, answered all questions that I put to him
2 with regard to Barbara Rogers, and did not invoke the
3 privilege at that time.

4 THE COURT: Which conversations with Barbara
5 Rogers?

6 MS. STEWART: With regard to Egyptian
7 intelligence. I specifically asked the question did you
8 ever tell Barbara Rogers and he responded no, I never did.
9 He didn't say I am invoking privilege because anything I
10 said to my wife is a privileged conversation.

11 THE COURT: I don't have the testimony. Do you?

12 MS. STEWART: I don't have it with me but I
13 certainly remember that question.

14 MR. MCCARTHY: I don't recall the question being
15 about --

16 THE COURT: Neither do I, and --

17 MS. STEWART: I will state the exact question:
18 Mr. Salem, did you ever --

19 THE COURT: No, no.

20 MS. STEWART: Maybe it will refresh your
21 recollection, Judge.

22 THE COURT: No, it won't. I want to see the
23 page.

24 MR. JACOBS: Your Honor, while we are doing that,
25 as I recall, the witness Salem turned over 10 tapes to the

1 FBI that he made with his exwife, I would say 30 percent
2 having to do with marital communications that he had with
3 his wife during the time that he was married. Those tapes
4 have been turned over to us. The witness, by taping his
5 exwife, talking about their conversations, marital privilege
6 conversation, and then turning it over to the Bureau, my
7 position is that he waived any marital privilege.

8 I am happy and I am ready to have Mr. Salem
9 called right now, to find out whether he is still going to
10 invoke the privilege. The government states that we have
11 the burden. I state that they have turned over 10 tapes
12 that have waived the privilege. If they have Mr. Salem
13 available now, let him invoke the privilege and we will find
14 out. I think the 10 tapes have waived the privilege because
15 they are in great detail about everything that took place
16 during the marriage -- you never told me this and I told you
17 this. That is all these tapes are about, is conversations
18 during the marriage.

19 So to the extent that the government is claiming
20 a privilege through Salem, even though they have submitted a
21 letter and affidavit from Salem, I think their privilege is
22 100 percent waived by the witness doing his usual taping
23 routine and giving it to the FBI. So my theory is that the
24 privilege has been waived, separate and apart from Miss
25 Stewart.

1 THE COURT: I understand your theory.

2 MR. McCARTHY: Even assuming that were correct,
3 what it would waive would be whatever privilege there was
4 with respect to those communications, the vast majority of
5 which were made during the time outside the marriage. It
6 doesn't have anything to do with communications inside the
7 marriage. What they are attempting to do and what they have
8 been attempting to do since the time Salem was on the stand
9 is turn this trial into --

10 THE COURT: Don't imitate. I am not interested
11 in your mind reading of what they are attempting to do. I
12 just want to know about the rules.

13 MR. McCARTHY: All right.

14 THE COURT: Thank you.

15 MS. STEWART: Judge, I would also just advance
16 the notion that it is always a balancing test for the court
17 to decide whether or not in a particular instance the
18 privilege should not be denied to a person, given the
19 various interests at stake in a trial.

20 THE COURT: What do you cite for that? That is
21 interesting.

22 MS. STEWART: I cite U.S. Grand Jury.

23 THE COURT: That it is always a balancing test?
24 May I see it?

25 MS. STEWART: Surely.

1 THE COURT: Thank you. Is there are a particular
2 page that you want me to look at?

3 MS. STEWART: Judge, we received this last night.
4 I had no library at my disposal. I have the case but I
5 haven't had a chance to read it.

6 THE COURT: To the extent you suggested that
7 because the marriage was terminated therefore the privilege
8 is terminated, the case stands squarely on the opposite --

9 MS. STEWART: I think the government says it is
10 presumptive and it may be rebutted. In a case where we are
11 not talking about parties to a case, we are talking about a
12 witness in a criminal case and his bias, which I think goes
13 to the very heart of his case against my client, to be
14 denied the right to explore that when he never invoked the
15 privilege when he was on the stand, he never refused to
16 answer a question based on privilege, to use it as a sword
17 when they have presented Mr. Salem --

18 THE COURT: Miss Stewart, you made that
19 representation before, and I invited you to show me where in
20 the transcript that happened.

21 MS. STEWART: I have to leave and get a copy of
22 the transcript, Judge. I don't have it here at my desk.

23 MR. MCCARTHY: If I may, I can hand up pages 5815
24 through 5818 on the Minuscript, and I think the pertinent
25 pages in the middle, too.

1 MR. JACOBS: Judge, I would like some time to
2 take a look at it.

3 THE COURT: To look at what?

4 MR. JACOBS: To cite the pages, to look at the
5 record. As I said, the government -- I still would call for
6 Mr. Salem to come in and invoke the privilege and see if we
7 are going to have it. With all due respect to the
8 government prosecutors, I would like Mr. Salem to invoke the
9 privilege, outside the presence of the jury, obviously, to
10 see if we have this issue. I think we need this question as
11 well, the question of when the separation took place. The
12 government proposes two possible separate dates, and I think
13 only the testimony of Mr. Salem is on that.

14 THE COURT: I was told that I have to solve this
15 problem now since she is going to be the first witness.

16 MR. JACOBS: I guess so.

17 THE COURT: Since she is obviously not going to
18 be the first witness --

19 MS. STEWART: Judge, that is not true. I
20 announced on Monday afternoon that I intend to call her as
21 my first witness. They sent me a letter last night.

22 MR. McCARTHY: About an hour before we got the
23 hundred pages of Arabic 3500 material.

24 THE COURT: I am not going to permit her to be
25 called until I resolve this. I have no recollection of your

1 having asked the questions. The pages that are shown to me
2 do not include any questions about the conversation. He has
3 to invoke the privilege.

4 MS. STEWART: Since I would like to conduct the
5 case in the way that is most effective for my client, I
6 would like to have a brief recess to go use the very fine
7 index system that the stenographers have provided.

8 MR. JACOBS: I join in that application.

9 THE COURT: Fine. You had some exhibits that you
10 wanted to offer that were delivered to me yesterday.

11 MS. STEWART: Yes, Judge.

12 THE COURT: Do you want to go through them in
13 order?

14 MS. STEWART: Surely, Judge.

15 THE COURT: AA is in essence, as I understand it,
16 Dr. Abdel Rahman's summation at his trial, accompanied by
17 various other things including a biographical sketch, a
18 summary of the charges themselves, then his presentation,
19 and then the verdict in the case.

20 MS. STEWART: That is correct.

21 THE COURT: There are parts of that that may very
22 well be admissible, there are parts of it that are not
23 admissible. I don't know which parts you are offering. If
24 you are offering the whole thing, the whole thing is not
25 admissible, but you may very well want parts of it.

1 MS. STEWART: Is it possible, Judge, that I can
2 offer it through the translator, in other words, vouch for
3 the authenticity of the translation, which is basically what
4 we are doing, and later offer what parts of it we wish to
5 present as a jury? If the parts that I wish to offer are
6 not admissible, they would be offered -- in other words,
7 sort of subject to connection for the defense.

8 THE COURT: It is really offering it subject to
9 admissibility.

10 MS. STEWART: Except that I go back to my
11 original argument, Judge, which is that having introduced
12 many, many documents, some of which go back to a time
13 predating this, I would say that it is not offered except to
14 show the intent of Dr. Abdel Rahman.

15 THE COURT: His own statements about his views at
16 a particular time that don't look backward at acts that he
17 performed but rather simply state his views may be
18 admissible. There are parts that do that, many parts that
19 don't. His biographical sketch is not admissible, the
20 verdict is not admissible, the summary of charges is not
21 admissible. There are a variety of things that are not
22 admissible. I don't want to be sitting there deciding what
23 it is that you should offer or not offer. I want you to
24 tell me, or tell the government and see if you can work it
25 out.

1 MS. STEWART: Perhaps I won't offer it and just
2 authenticate it with my witness, and at the time that I am
3 ready to offer it, I will hope that the things I wish to
4 offer will be admissible.

5 THE COURT: BB is the press conference.

6 MS. STEWART: The April 6, 1993, press
7 conference, that is a double rationale, in that it occurs
8 exactly at the time that Mr. Haggag is allegedly getting his
9 fatwa or not fatwa from the sheik.

10 THE COURT: This, I think, duplicates material --
11 I know that there are statements in there that I have heard
12 before at this trial, but why don't I hear from the
13 government.

14 MR. MCCARTHY: Your Honor, in that particular
15 document there are some statements of historical fact which
16 I think are hearsay and shouldn't come in. I am not
17 addressing myself to the state of mind type stuff, but
18 where, for example, at page 16 Dr. Abdel Rahman is asked
19 what he did to help the mujahideen, that kind of historical
20 fact information, I think, is inadmissible and should be
21 out. I am not sure -- I was trying to look through my
22 notes. There is one portion of one of the public statements
23 that Miss Stewart wanted to offer where the defendant said
24 something to the effect -- and I am paraphrasing, I don't
25 purport to be quoting -- that he would testify any time

1 anywhere if called to do so with respect to the World Trade
2 Center. We would obviously object to that. But other than
3 that kind of stuff, we don't have an objection.

4 THE COURT: Again, if there are parts of it you
5 want to offer and parts of it you don't --

6 MS. STEWART: I am offering the entire thing,
7 Judge. I think that it is not different from the CNN press
8 conference that the government offered which went in in its
9 entirety, and I would offer the entire thing. If there are
10 distinct objections other than the fact that the government
11 doesn't like certain things --

12 THE COURT: That is not what he is saying. What
13 he is saying is, statements as to historical fact are not
14 admissible, and that is true, they are not.

15 MS. STEWART: But aren't all statements as to
16 historical fact, Judge, in a certain sense?

17 THE COURT: No.

18 MS. STEWART: I don't quite understand the
19 distinction there.

20 THE COURT: I don't think I have to teach a
21 course on evidence in order for me to make a ruling, I
22 really don't. I really don't.

23 MS. STEWART: If someone says I went to the store
24 last week, that is a statement of historical fact.

25 THE COURT: That is right, and it is not

1 admissible to prove that he went to the store last week.

2 You told me that you were offering this under an
3 exception to the hearsay rule that I understand to deal with
4 state of mind, and I presume you understand that.

5 MS. STEWART: Yes, exactly.

6 THE COURT: The distinction between historical
7 fact and state of mind is one that I don't think to be so
8 elusive that I have to teach a course in order to make
9 clear.

10 MR. MCCARTHY: Your Honor, if I could make a more
11 focused objection to try to cut through this, we object to
12 page 16 from the point where the defendant is being asked
13 what he did to help the mujahideen. I am sorry, Judge.
14 Page 16 through page 18, about a third down the page, where
15 Dr. Abdel Rahman is quoted by the interpreter as having said
16 I am not afraid of any person calling me to testify from any
17 side. Other than that, we not only have no objection, we
18 would not object to the transcript simply being offered
19 without the need to put a translator on.

20 THE COURT: Miss Stewart.

21 MS. STEWART: Judge, it seems that since my
22 client is charged with operating an international jihad
23 organization, certainly his state of mind with regard to his
24 work in Afghanistan prior to coming to the United States has
25 relevance, and if the government wants an instruction to the

1 jury I would have no objection to that, but it would seem to
2 me that it very clearly states what his state of mind is
3 with regard to that work.

4 THE COURT: The objection to that portion is
5 sustained. You can offer the rest.

6 CC, any problem with that? There are parts,
7 again, that --

8 MR. McCARTHY: No objection.

9 THE COURT: Most of it deals with his
10 interpretation. CC is in. DD?

11 MR. McCARTHY: Your Honor, we object to DD, which
12 is basically a speech which is given after the arrests were
13 made in this case, about how in June or July of 1993
14 Dr. Abdel Rahman was announcing to the world that
15 non-Muslims should be treated by Muslims.

16 THE COURT: I don't understand what the objection
17 is.

18 MR. McCARTHY: It is unreliable. It is something
19 that was obviously --

20 THE COURT: Why can't you argue that?

21 MR. McCARTHY: We can.

22 THE COURT: What basis is that for excluding the
23 evidence?

24 MR. McCARTHY: It is calling on the court to make
25 a 403 objection. If you are ruling against me we will argue

1 it.

2 THE COURT: I am ruling against you.

3 MR. McCARTHY: Thank you.

4 THE COURT: EE.

5 MR. McCARTHY: Your Honor, EE and FF are both, as
6 I can see it, chanting with children. I don't know what the
7 relevance is.

8 MS. STEWART: Just showing his work, Judge, the
9 work that he does on a daily basis, other than we will have
10 witnesses that will testify as to the teaching of this and
11 that, to show that it is not all back room whispering on
12 Emad Salem's tape recording, that indeed his life has
13 another parameter.

14 THE COURT: Do you think that is seriously in
15 dispute?

16 MS. STEWART: I think the government has placed
17 it in dispute by bringing this indictment.

18 THE COURT: That he does anything else other than
19 whisper --

20 MS. STEWART: I think the thrust of what they
21 have put before the jury is that that is what he does, he
22 teaches only on jihad and that is what he is about, runs the
23 international organization.

24 MR. McCARTHY: I don't care enough to fight about
25 it.

1 THE COURT: Fine, EE and FF are in.

2 MR. McCARTHY: Your Honor, I should have said
3 with respect to the one as to which your Honor overruled the
4 objection, and EE and FF, the government does not ask that
5 Miss Stewart put a witness on the stand to get those in. If
6 she offers them, we won't object. The objection was
7 relevancy, not authenticity.

8 THE COURT: Good. GG was one of the FISA tapes.

9 MR. McCARTHY: May I have one moment? I may be
10 able to get rid of GG, HH and II. I think they all fall in
11 the same sort of category as EE and FF, which I think is
12 designed --

13 THE COURT: HH, II, JJ, KK and LL all fall in the
14 same category, as far as I am concerned. Right?

15 MR. McCARTHY: We have no objection.

16 THE COURT: They are in.

17 You wanted to go find your pages.

18 MS. STEWART: Yes. I think it would not take
19 more than 10 minutes.

20 THE COURT: Mr. Ricco.

21 MR. RICCO: Judge, I can complete Mr.
22 El-Gabrownny's evidence. There are some exhibits that have
23 to go in and there are three or four minutes from the Abu
24 Bakr Mosque celebration that were going to be played.

25 MS. STEWART: That is no problem, Judge. I am

1 happy to yield to my colleague.

2 THE COURT: I don't want you to start stringing
3 it out just to run the time. How long do you think it will
4 take?

5 MR. RICCO: Judge, the tape is about four minutes
6 and it is just basically putting in AA, CC -- just a few
7 exhibits. I don't think it is going to take more than 15,
8 20 minutes tops.

9 THE COURT: Is that enough?

10 MS. STEWART: I think it should be, Judge.

11 MR. RICCO: Perhaps we should just wait --

12 THE COURT: What I feel more comfortable doing,
13 frankly, is going back and telling the jury that we have a
14 delay and then start when we are ready to start. I don't
15 want to have to take a break after 15 minutes.

16 MS. STEWART: Thank you, Judge.

17 (In the jury room)

18 THE COURT: Good morning. I should start out
19 with "No, we are not breaking for the day."

20 (Laughter)

21 THE COURT: We have had a little bit of a delay
22 because I had some issues to deal with with the lawyers and
23 we had a little delay starting. That is the reason for the
24 explanation, because it has been a long one even by our
25 standards.

1 Secondly, I should tell you that I did convey to
2 Franci the wishes and thoughts that you expressed to the
3 extent that I could, and her family also, and they really
4 appreciated it. She will be back on Monday.

5 JURORS: Thank you.

6 (Recess)

7 (Continued on next page)

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1 THE COURT: Ms. Stewart?

2 MS. STEWART: Yes, Judge. The reference I was
3 referring to was at page 5821, which was apparently on the
4 reverse side of the Minuscript that you were handed up.

5 THE COURT: Right.

6 MS. STEWART: It is a question to Mr. Salem that
7 he responded to that he did not recall. Ms. Rogers does
8 recall, and I would ask to be able --

9 THE COURT: That is the blind prince issue?

10 MS. STEWART: Yes.

11 THE COURT: OK. That is fine.

12 MS. STEWART: I would advance at this point,
13 Judge, that I will hold off from asking any other questions
14 that go to privilege, because really, to sit down and
15 research the entire transcript as to whether I asked him or
16 I didn't, he was on with me for two days, I believe. That
17 is a lot --

18 THE COURT: I think we can all agree he was on
19 for a long time.

20 MS. STEWART: Very long. Mr. McCarthy most of
21 all.

22 THE COURT: All right.

23 MS. STEWART: But I will not ask any other
24 questions that go to the privilege.

25 THE COURT: Fine.

1 MS. STEWART: If I stray, I am sure Mr. McCarthy
2 will rise to the occasion.

3 THE COURT: I am sure he will.

4 What I will do is, if she's excused she will be
5 excused subject to re-call if it turns out that there is any
6 more that could be asked properly related to privileged
7 information. I would expect you to cover anything else now.

8 MS. STEWART: Exactly.

9 THE COURT: OK.

10 MS. STEWART: Yes.

11 THE COURT: Good.

12 MR. JACOBS: My position would be, your Honor,
13 that concerning any possible privileged conversations, I
14 would dispute the date, the last date the government gives.
15 I would be willing to stipulate for purposes of these
16 proceedings to October 1990, the date of the official
17 separation agreement. If not, I am ready to proceed with a
18 hearing to establish that as the date.

19 If the government wants to accept that date, I
20 will make a representation that Ms. Amsterdam and I will not
21 ask any questions concerning any privileged conversations
22 before that date. October 1990, the date of the official
23 separation agreement, we are willing to abide by that. If
24 the government is not, I am prepared to put Ms. Rogers on
25 and Mr. Salem on to establish what the official date would

1 be. I will leave it up to the government, but that is my
2 offer.

3 THE COURT: Mr. McCarthy?

4 MS. AMSTERDAM: Specifically, your Honor,
5 Ms. Rogers disputes the government's representations that
6 during the period of October '90 through sometime in the
7 middle of 1991 that they cohabited together. She adamantly
8 disputes that.

9 THE COURT: I am glad at least somebody uses the
10 word correctly. Mr. McCarthy?

11 MR. MCCARTHY: May I have a moment, your Honor.

12 (Pause)

13 MR. MCCARTHY: Stipulated.

14 MR. JACOBS: All right.

15 THE COURT: There you go.

16 MR. JACOBS: OK. Then I guess we are ready to
17 proceed.

18 THE COURT: Good.

19 (Jury present)

20 THE COURT: Good morning, ladies and gentlemen.

21 JURORS: Good morning, your Honor.

22 THE COURT: Mr. Ricco?

23 MR. RICCO: Thank you, your Honor.

24 Your Honor, the defendant Ibrahim El-Gabrownny and
25 the government have a stipulation with respect to a witness,

1 and I would like to read the stipulation.

2 THE COURT: Go ahead.

3 Again, as with other stipulations, the jury is to
4 accept whatever the subject of the stipulation is as if it
5 were proved by testimony and give it whatever weight you
6 believe it deserves. Go ahead.

7 MR. RICCO: The government and Mr. El-Gabrowny
8 stipulate that if Charles Frahm, spelled F-R-A-H-M, special
9 agent with the FBI, were called as a witness, he would
10 testify that on March 4, 1995, the following items were
11 recovered from the pockets of Mr. El-Gabrowny after he was
12 handcuffed:

13 That would be El-Gabrowny CC, which would be car
14 keys; El-Gabrowny BB, which would be two letters from the
15 Nosair Defense Committee; from Mr. El-Gabrowny's wrist would
16 be El-Gabrowny AA, which is his wrist watch, and, also, in
17 addition to the passports and the other documents that were
18 seized from the envelope, inside of that envelope was
19 El-Gabrowny DD, which are Nosair's discharges papers from
20 the Egyptian Army.

21 THE COURT: All right.

22 MR. FITZGERALD: So stipulated.

23 THE COURT: Those facts are stipulated.

24 MR. RICCO: In addition, your Honor --

25 THE COURT: Are you offering those exhibits?

1 MR. RICCO: Yes. I'm sorry, your Honor.

2 MR. FITZGERALD: No objection.

3 THE COURT: Those exhibits are received without
4 objection. Go ahead.

5 (El-Gabrowny Exhibits AA, BB, CC, and DD for
6 identification were received in evidence)

7 MR. RICCO: In addition, your Honor, the
8 defendant El-Gabrowny offers El-Gabrowny EE, which would be
9 his New York City pistol license application.

10 MR. FITZGERALD: No objection, and we agree to
11 certain redactions.

12 MR. RICCO: Yes.

13 THE COURT: All right. EE as redacted is
14 received.

15 (El-Gabrowny Exhibit EE for identification was
16 received in evidence)

17 MR. RICCO: And the government and
18 Mr. El-Gabrowny agree that in support of his application for
19 his pistol license, Mr. El-Gabrowny submitted on February 4,
20 1992 a two-page letter where he set forth all of the
21 different events that he perceived that were threats against
22 himself and his family in support of the application for his
23 pistol permit. He requested that that application be
24 expedited, and those threats were in connection with the
25 Nosair state trial.

1 MR. FITZGERALD: So stipulated.

2 MR. RICCO: Someone tells me I made a mistake.
3 The application for the license should be February 4, 1992.

4 THE COURT: That's what you said.

5 MR. RICCO: Thank you.

6 Also, previously entered into evidence has been
7 El-Gabrownny P, it was an Arabic letter. At this point the
8 defendant El-Gabrownny submits El-Gabrownny PT, which is an
9 English translation of that letter.

10 MR. FITZGERALD: Stipulated.

11 MR. RICCO: We move that into evidence.

12 THE COURT: That is received without objection.
13 (El-Gabrownny Exhibit PT for identification was
14 received in evidence)

15 MR. RICCO: And, finally, the defendant
16 El-Gabrownny submits, offers FF-738, and, your Honor. That
17 would be Mohammed Salameh's one-way ticket from New York to
18 Amsterdam dated, effective departure date of March 5, 1993.

19 MR. FITZGERALD: Stipulated.

20 THE COURT: FF-738 is received.

21 (El-Gabrownny Exhibit FF-738 for identification
22 was received in evidence)

23 MR. RICCO: Thank you, your Honor.

24 Finally, the defendant El-Gabrownny offers HH,
25 which would be a February 23, 1993 letter from the United

1 States Justice Department, Immigration and Naturalization
2 Service.

3 THE COURT: To?

4 MR. RICCO: Addressed to Mr. El-Gabrownny.

5 MR. FITZGERALD: No objection.

6 THE COURT: All right. HH is received.

7 (El-Gabrownny Exhibit HH for identification was
8 received in evidence)

9 MR. RICCO: Thank you. If I may, your Honor, I
10 would like to make reference to several of the exhibits that
11 were just introduced into evidence.

12 THE COURT: Make reference to them?

13 MR. RICCO: Read them, parts of them.

14 THE COURT: OK. Go ahead.

15 MR. RICCO: El-Gabrownny HH, the letter from the
16 Justice Department says: "Dear Mr. El-Gabrownny:
17 Congratulations. Your application for United States
18 citizenship has been granted. You will be notified of a
19 swearing-in date within the next six to eight weeks." And
20 that's dated February 23, 1993.

21 With respect to Mr. El-Gabrownny's Exhibit BB,
22 those are two letters that were recovered from
23 Mr. El-Gabrownny's pocket on March 24, 1993. One letter is
24 dated March 3, 1993. The other letter is dated March 1,
25 1993. Both letters are requesting donations on behalf of

1 Nosair's appeal to the New York State Court of Appeals.

2 Without having to read each line, essentially
3 those are what the letters set forth. They were requests
4 for donations for his appeal. These letters were in his
5 pockets on the day he was arrested.

6 With respect to El-Gabrownny PT, El-Gabrownny PT is
7 a letter from Yemen, and it reads as follows:

8 The letter is dated February 13, 1992. The
9 letter says: "In the name of Allah, the magnificent, the
10 merciful, Dear Brother Ibrahim El-Gabrownny, May Allah
11 protect you. Peace, mercy, blessings of God be upon you and
12 after. I ask Allah, the most high, the almighty, to bless
13 you with your family and your wealth and to be successful in
14 your business and to be firm in your faith in that country.
15 Dear brother, I congratulate, also congratulate myself for
16 the verdicts in the Sayyid trial, and ask Allah the most
17 high, the almighty to help him in the next stage and to
18 protect him from any harm.

19 Brother, we are in need of an amount of six
20 devices. And this part was written in English: Stone
21 gun-volt 4500. We want you to purchase it and send it to us
22 by mail to Yemen, under the name of brother Najeeb
23 El-Salahi, city of Sna'a, telephone number 215518. Pack
24 them in jackets, and I will send you the expense of it when
25 you let me know.

1 "And I thank you for the gifts which you sent to
2 the kids. This is all I'm going to explain, and convey our
3 greetings to all the brothers with you. And the peace and
4 blessings of Allah be upon you. May Allah reward you with
5 good. Your brother, Ibrahim Saeed Badawud."

6 The date is February 13, 1992.

7 Your Honor, at this point the defendant
8 El-Gabrownny would like to play the first two or three
9 minutes of Government Exhibit 384.

10 MR. FITZGERALD: No objection.

11 THE COURT: Go ahead.

12 MR. RICCO: This is what's been called the
13 celebration at the Abu Bakr mosque tape after the verdict in
14 the state court.

15 THE COURT: Go ahead.

16 MR. RICCO: With the consent of the government,
17 we are going to pause and try to identify some of the people
18 who have been identified previously.

19 (Videotape played)

20 MR. RICCO: If you can pause right here. Can you
21 back it up just a little bit. That man is Mohammed Salameh,
22 the one who is picking at his nose. Can you back it up just
23 a little bit.

24 (Laughter)

25 MR. FITZGERALD: Stipulated as to both.

1 (Laughter)

2 MR. RICCO: You can let it go forward.

3 (Videotape played)

4 MR. RICCO: Stop right there. That man in the
5 right-hand corner is Mr. El-Gabrowny. He's removing the
6 jacket from one of his children.

7 MR. FITZGERALD: Stipulated.

8 MR. RICCO: Thank you.

9 (Videotape played)

10 MR. RICCO: Can you back that up just a little
11 bit, please. OK. And can you now go forward.

12 (Videotape played)

13 MR. RICCO: Stop. That man is Mohammed Salameh,
14 again doing the same thing.

15 (Laughter)

16 MR. FITZGERALD: Stipulated.

17 MR. RICCO: OK. Thank you.

18 (Videotape played)

19 MR. RICCO: Stop. OK. Let it go forward, I'm
20 sorry.

21 Stop. The man in the middle of the screen with
22 the partially bald head is Emad Salem.

23 MR. FITZGERALD: Stipulated.

24 MR. RICCO: OK. Thank you.

25 (Videotape played)

1 MR. RICCO: Stop. The heavyset man with the cups
2 under his arms is Mohammed El-Gabrownny.

3 MR. FITZGERALD: Stipulated.

4 MR. RICCO: All right.

5 (Videotape played)

6 MR. RICCO: Stop. The man with the two plates of
7 food in his hand, you have heard testimony about him, his
8 name is Ahmed Nasser.

9 OK. Thank you.

10 (Videotape played)

11 MR. RICCO: Stop. You have heard testimony about
12 this man eating. He is attorney Michael Warren.

13 MR. FITZGERALD: Stipulated.

14 (Videotape played)

15 MR. RICCO: Stop. Back up just a little bit,
16 please. All right. The man who is reaching over with the
17 cup is Ali Shinawy, who testified earlier in the trial.

18 MR. FITZGERALD: Stipulated.

19 (Videotape played)

20 MR. RICCO: Stop. This is Abdel Sattar.

21 MR. FITZGERALD: Stipulated.

22 MR. RICCO: Thank you.

23 (Videotape played)

24 MR. RICCO: Stop. There is Emad Salem.

25 Go ahead.

1 (Videotape played)

2 MR. RICCO: Your Honor, we can stop here.

3 THE COURT: OK.

4 MR. RICCO: If the tape would continue, the
5 government and I, I think, agree that the jury would see
6 approximately 45 minutes or an hour of the same type of
7 thing with people getting up and making speeches.

8 MR. FITZGERALD: Stipulated.

9 THE COURT: OK.

10 MR. RICCO: Your Honor, with the exception of
11 some exhibits that I have to resolve with the government and
12 reserving some additional questions for other witnesses,
13 that would be the case on behalf of Mr. Ibrahim El-Gabrownny.

14 THE COURT: OK.

15 Ms. Stewart?

16 MS. STEWART: Thank you, Judge.

17 THE COURT: I call Barbara Rogers to the witness
18 stand on behalf of Dr. Abdel Rahman.

19 BARBARA ROGERS,

20 called as a witness by the Defendant Abdel Rahman,

21 having been duly sworn, testified as follows:

22 THE COURT: If you can, try to pull the chair
23 forward, and if you could lean forward and talk into that
24 microphone, everybody will be able to hear you. Thank you.

25 Ms. Stewart?

1 DIRECT EXAMINATION

2 BY MS. STEWART:

3 Q Good morning, Ms. Rogers.

4 A Good morning.

5 Q I guess the judge told you if either one of those
6 microphones, if you could sort of lean towards, the
7 interpreters have to hear it.

8 A All right.

9 Q As well as the rest of us.

10 A OK.

11 Q Ms. Rogers, is that your maiden name?

12 A Yes, it is.

13 Q What is your husband's last name?

14 A My present husband's last name is Hammaway.

15 Q And what is the name of your previous husband?

16 A Salem.

17 Q And what is his first name?

18 A Emad.

19 Q When were you married to Emad Salem?

20 A I married him November 8, 1987, in a Muslim
21 ceremony.

22 Q The room just deadens all the sound. You have to
23 lean in.

24 A Is that better?

25 THE COURT: Yes.

1 Q Can you sit forward in your chair?

2 A OK. Is that better?

3 Q That's much better.

4 Would you just repeat that answer?

5 A There was a Muslim ceremony November 8, 1987, a
6 Christian ceremony May 7, 1988.

7 Q And when were you divorced?

8 A Officially, January '93.

9 Q Going back in your life, where were you born,
10 Ms. Rogers?

11 A Born in a little, tiny town upstate, Ogdensburg,
12 New York.

13 Q Is that about as far north as you can get without
14 being in Canada?

15 A It's right in the border. You can swim back and
16 forth across to Canada in the summertime. It's a mile.

17 Q Did you go up there?

18 A Yes, I did.

19 Q Would you tell us your educational background.

20 A I have a degree in chemistry, B.A. in chemistry.
21 I went to nursing school for two years. I started a
22 master's, Ph.D. program at St. John's. I never completed
23 that.

24 Q Were you ever working on your doctorate?

25 A Yes, I was, at St. John's University.

1 Q What year was that?

2 A I started like in the late '70s. I went to
3 school at night, and as much as I could afford a course here
4 a course there, so I went from '78, I believe I started,
5 until '84, '85, a piece at a time.

6 Q Are you currently employed?

7 A No.

8 Q Have you previously been employed?

9 A Yes.

10 Q Could you tell us some of your previous
11 employment.

12 A I worked at, when I first came into the city, I
13 was with Fuji Film. I worked for the U.J.A.

14 Q What do those initials stand for?

15 A United Jewish Appeal. For a brief period of
16 time. I was with Avon, the New York Academy of Medicine,
17 Mount Sinai Hospital, and, lastly, was with Long Island
18 College Hospital.

19 Q When did you meet Emad Salem?

20 A September 26, 1987.

21 Q How did you happen to meet him?

22 A It was a blind date set up by his cousin here in
23 New York. I gave piano lessons to the woman he was living
24 with at the time, and she said, "Would you like to go out on
25 a blind date?"

1 And I, after the usual, "No, no," I went and
2 spent a brief amount of time with him, and then he came up
3 to the Taekwondo school I was teaching at and working at the
4 time.

5 Q What school was that?

6 A Taekwondo. It is a Korean form of martial arts.
7 He visited me there, and that's -- we went out for coffee
8 after he came to class that night. That's how I spent the
9 most time with him, initially.

10 Q And approximately -- strike that.

11 Can you describe any occurrences in the early
12 part of your marriage with Emad?

13 MR. McCARTHY: Objection, relevance.

14 THE COURT: Well, do you want to focus it?

15 MS. STEWART: Yes.

16 Q Where were you living after you were married?

17 A We had -- we stayed in my studio apartment. It
18 was at 81st Street. It wasn't long when we started having,
19 started getting telephone calls in the middle of the night.
20 Emad started going out meeting people in the middle of the
21 night. He'd say he'd be back in an hour or two. Our
22 mailbox was broken into a couple of times. Our apartment,
23 strange notes appeared in our apartment. This was about
24 four weeks after we were married very strange things started
25 happening.

1 Q When you say notes appeared in your apartment,
2 were those notes in English or in Arabic?

3 A The notes were in Arabic.

4 Q And were they inside your apartment?

5 A Inside the apartment, left on a coffee table.

6 Q And in this early time of your marriage, let's
7 say the first few months -- strike that.

8 Were you ever present when Emad met with anyone
9 in connection to any of these, as far as you know?

10 A We saw people, there were a couple of times I met
11 them on the subway. And he said, introduced me as a friend,
12 and he said he was doing work here in the United States.
13 One time in the middle of the night I got up after he left
14 and I went out, and I went out, and I wanted to see exactly
15 where he was going.

16 I mean, it was very strange to get a telephone
17 call, you get up in the middle of the night -- and I'm newly
18 married so, of course, I am naturally curious anyway -- so I
19 followed him and he stood on a street corner on 83rd and
20 Second speaking to an Arabic looking gentleman for about an
21 hour, and it was freezing cold. I came in, and he came back
22 about a half an hour later.

23 Q During the time of the marriage, did Emad make
24 trips to Egypt?

25 A At least five.

1 Q If you know, how were they paid for?

2 A He paid for them himself. We didn't have a lot
3 of money at the time, but the money just always appeared for
4 him to go to Egypt.

5 Q How long would he stay on, let us say -- well,
6 what was the longest he ever stayed on any of these five
7 trips?

8 A About two months.

9 Q And what was the shortest amount of time?

10 A About five weeks.

11 Q Were you aware of any business arrangements he
12 had with regard to Egypt?

13 MR. MCCARTHY: Objection.

14 THE COURT: Sustained.

15 Q Did there come a time in 19 -- are you OK?

16 A Yes.

17 Q Did there come a time in 1990 when you and he
18 made a trip to Egypt?

19 A Yes, there was. We went to Egypt in March of
20 1990.

21 Q And would you describe for us what occurred when
22 you arrived at the airport in Cairo.

23 A Well, it was the first time I've ever been
24 treated like royalty. We took Egypt Air, and everyone else
25 got off the plane and we were told to sit. Emad said, "Wait

1 here. We don't have to get off with everyone else."

2 There's a little shuttle bus that takes the
3 passengers from the tarmac to the airport, and they sent a
4 special car out for us, and I didn't have to go through the
5 regular Egyptian, you know, going through the lines. Emad
6 took all care of that, he said, "Don't worry about that."

7 I stood there and waited with a friend of his,
8 and Emad said, "Don't say very much to him. He's a friend
9 of mine. He's one of my friends in the intelligence. His
10 name is Mohammed." Very well-dressed, cultured, articulate
11 gentleman in a very expensive brown suit.

12 I talked to him for about 15 minutes, and he said
13 they were going through our luggage and that was -- when we
14 first got there we stayed at officers' quarters. Emad told
15 me that I was the first American that ever stayed in a lot
16 of these officers' quarters because he said Americans were
17 not allowed to stay there because if someone had ulterior
18 motives you could knock out a whole lot --

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 MR. McCARTHY: Move to strike.

22 THE COURT: The last part is stricken.

23 MS. STEWART: Do not -- may I just instruct the
24 witness, Judge?

25 THE COURT: Sure.

1 MS. STEWART: Or would you?

2 THE COURT: Please don't volunteer conversations
3 with Mr. Salem unless you are asked about them. OK?

4 THE WITNESS: All right.

5 Q Can you describe the officers' quarters in which
6 you stayed.

7 A Not plush. I mean, they were very nice, very
8 nice. We had a special -- it was a nice suite. I mean, not
9 plush compared to anything in New York, but nice, very nice
10 compared to Egypt. We had special tour of the pyramid.
11 They said it was in appreciation, I was told this is in
12 appreciation --

13 MR. MCCARTHY: Objection.

14 THE COURT: Sustained.

15 Q Were you shown any pictures while you were in
16 Egypt, photographs?

17 A Yes, yes. We visited his apartment at 132 Tirahn
18 in Cairo, and he wanted to show me where he lived. He
19 wanted to introduce me to some friends of his who were also
20 Egyptian Army officers. I saw pictures of Emad with Sadat.
21 I saw many pictures of him in both summer and winter
22 military uniforms with Sadat; children's pictures, family
23 pictures, his sister, his parents, family photo albums. His
24 ex-wife had destroyed a lot of them. These were in a
25 suitcase that --

1 MR. McCARTHY: Objection.

2 THE COURT: The last part is stricken.

3 Again, please don't volunteer information that
4 Mr. Salem told you. Just if you're asked what you saw, say
5 what you saw. I know it's difficult. Please, try. Thank
6 you.

7 Q How long did you stay in Egypt on this trip?

8 A About five to six weeks.

9 Q You have to speak up a little.

10 A About five and a half weeks, five and a half
11 almost six weeks.

12 Q While you were there, do you recall going
13 anywhere in particular with Emad?

14 A At one time, he said we were going to take a
15 drive --

16 MS. STEWART: Object.

17 THE COURT: Don't say what he said; say where you
18 went.

19 Q Did you go anyplace?

20 A We went for a drive, and we stopped at a place.
21 It was near, near his apartment, about 20 minutes away I
22 would say. And it was, brick wall, high, high brick walls,
23 maybe ten to twelve feet high with barbed wire around. And
24 we stopped at like a guard gate, and -- I can't say what he
25 said, right?

1 Q Right.

2 A Anyway, it was a political prison. And he went
3 inside, he said, "Don't get out" -- I'm sorry.

4 I stayed in the car.

5 Q Did you wait there?

6 A I waited there for about an hour and a half.

7 Q How long did you wait?

8 A Until he came back out. I guess that's all I can
9 say.

10 Q Did there come a time that you were preparing to
11 leave Egypt?

12 A Yes.

13 Q Did Emad return to the officers' club where you
14 were staying?

15 A Yes, he did. And he showed me a very large
16 briefcase full of money. I was -- it was a lot of money.

17 Q After you returned to New York, did there come a
18 time that Emad mentioned that he was going somewhere one
19 evening?

20 A July of 1990 I was in the kitchen doing dishes,
21 and he came out and said he had to go to the -- I'm sorry.
22 He was going to the airport.

23 Q I think you may testify, Ms. Rogers.

24 A OK. He said he was going to go to the airport to
25 meet someone, and I wasn't expecting anyone, and he hadn't

1 told me of anyone, so I said, "Well, who are you going to
2 meet?"

3 He said, "It's no one you know."

4 I said, "Who are you going" -- I always asked him
5 a lot of questions.

6 He said, "Just someone by the name of Rahman."

7 I said, "Rotman?" I said, "It's a Jewish name."

8 I said, "You don't, you don't -- you don't have
9 any Jewish friend." I said, "You don't" --

10 He said, "No, no. Not Rotman."

11 He said, "He's a blind Afghani prince. I am
12 going to meet him."

13 And I guess I can't say anything more of what he
14 said.

15 THE COURT: You can, go ahead.

16 THE WITNESS: I can?

17 THE COURT: Yes. As to this particular topic,
18 yes.

19 THE WITNESS: OK.

20 A And he said, "Do you remember what I told you in
21 Egypt?"

22 I said, "Yes."

23 And he said, "This is the beginning of my final
24 mission. It starts today."

25 Q During the time of the marriage, did Mr. Salem

1 make frequent calls to Egypt?

2 A Many, many, many.

3 Q And did he send things to Egypt?

4 A Yes. He had a niece who worked for Egypt Air,
5 and he sent packages back and forth. They were never
6 checked. They never went through customs. He had several
7 items that came back and forth.

8 Q Later on in 1990, did you and Mr. Salem separate?

9 A Yes, we did, October 1990.

10 Q And was there an extremely, if I may
11 characterize, stormy period of your relationship?

12 A Stormy, yes. That's -- very stormy.

13 Q And how long did that last?

14 A Well, it wasn't a storm that went and faded away.
15 I mean that -- I mean, I'm not sure, but over the next three
16 years or four years, I mean, there was a point when I did
17 not speak to him for a year. I had an order of protection
18 against him.

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained and stricken. The question
21 was: How long did the stormy period last? That was the
22 only question. Please don't volunteer anything other than
23 what's called for by the question. Thank you very much.

24 THE WITNESS: I guess you could say the stormy
25 period lasted until the divorce. I mean, with off and on,

1 like breaks and back and forth.

2 Q Slow down. It lasted until?

3 A Until our divorce.

4 Q And that was when?

5 A January 1993.

6 Q And were there periods when it was less stormy
7 than others?

8 A Absolutely. Absolutely.

9 Q Directing your attention, during the entire
10 period from the time of your separation, did you ever come
11 to find out that Emad was working for the FBI?

12 A Yes, I did.

13 Q Did he ask you to do anything?

14 A Yes, he did.

15 Q And what was that?

16 A I typed up lists of mosques on a word processor.
17 He was having a special mailing. March of 1993 I did a
18 letter asking for funds for Abouhalima. I made 500 copies
19 with a special bank account.

20 I did things like that. I mean, whatever he
21 asked me to --

22 Q During this period of time, did you ever speak
23 with Emad about being a double agent?

24 A Yes.

25 Q Could you tell us what was said.

1 A Emad was very -- he was very proud of it. He was
2 very proud of --

3 MR. MCCARTHY: Objection. Unless she's going to
4 answer the question.

5 THE COURT: That's sustained.

6 Q You have to just direct your answer to the
7 specific question.

8 THE COURT: Which was: Did you ever a
9 conversation?

10 THE WITNESS: Did I have a conversation?

11 THE COURT: Right.

12 Q Yes.

13 A If he was a double agent?

14 Q Yes.

15 A Yes, we had many.

16 Q And what did he say at this time?

17 A He said he was. He told me what he was working
18 on. He told me what he was going to do and why and when,
19 where, how.

20 Q Can you recall exactly what he said?

21 A We had many conversations, so I'm not exactly
22 sure. I mean, I'm not supposed to say what he said, right?

23 THE COURT: No, as to this period of time, you
24 may because you have been asked about it. Go ahead.

25 A All right. He said -- in November of 1991, he

1 told me the FBI sent him in for the Nosair -- to be part of
2 the outside group for Nosair.

3 Q Could you back off the mike a little bit.

4 A Sure. I think -- he told me so many things, it's
5 very hard for me to -- I will say November 1991, that's when
6 he said the FBI sent him in to infiltrate and to take
7 pictures of who was there, and he was to stir up the
8 anti-Jewish sentiment. And it was on Channel 5. He wanted
9 me to go home and tape it on the VCR.

10 He also had to have one of the skull caps, so I
11 went up to 97th and Third, and he wanted a prayer rug and
12 one of those skull caps. He also needed that to go to
13 Detroit in November of 1991. He was going to Detroit with
14 Abdel Rahman. I helped him rent the van. We went to
15 National Car Rental on 84th. He told me what he was going
16 to do. That's just one instance.

17 Q Did he indicate that -- what did he say at this
18 time about working for Egyptian intelligence?

19 A He never stopped working for Egyptian
20 intelligence. That was a given. He told me that he would
21 not -- he was Egyptian. That was his first love, that was
22 his first country, he was a highly trained agent, 17 years
23 worth of experience, and he was -- he wanted to do what he
24 was doing, he was glad to do it. Motives Egyptian first and
25 foremost.

1 Q Did you see Mr. Salem at Mount Sinai hospital in
2 June of '93?

3 A Yes, I did.

4 Q Did you see Mr. Salem at Mount Sinai hospital in
5 June of '93?

6 A Yes, I did.

7 Q And did you speak with him on the phone after
8 June of 1993?

9 A Yes, I did.

10 Q Up until when did you speak with him on the
11 phone?

12 A My last conversation with him was August 1994.

13 Q Have you ever been interviewed by the FBI during
14 the entire term of your marriage up until the present time?

15 A No, I have not.

16 Q Are you bitter about your divorce?

17 A I was. I am not anymore.

18 Q Are you mad that Emad Salem left you for another
19 woman?

20 A I was. I am not anymore.

21 Q And are you testifying here today voluntarily?

22 A Yes, I am. I am an American. I mean -- and I
23 believe in the truth, you know. I am here to tell the
24 truth, what I saw, and that's why I am here. I don't have
25 any ulterior motives. I just want to tell the truth.

1 MS. STEWART: Thank you.

2 THE COURT: Ms. Amsterdam, representing
3 Mr. Khallafalla.

4 CROSS-EXAMINATION

5 BY MS. AMSTERDAM:

6 Q Good morning, Ms. Rogers.

7 A Good morning.

8 Q During the period of time that you knew Emad
9 Salem, did you ever observe him to own any guns?

10 A Yes. He had two handguns that I did see.

11 Q And can you describe what they looked like for
12 the jury.

13 A One was a very small German-made gun that he
14 brought in from Egypt. He used to carry that in the leg
15 holster, an ankle holster. Another one he carried in a
16 shoulder holster, here, and it was a large gun. I don't
17 know. It may have been a 9 millimeter. It was a very large
18 gun with a large barrel.

19 Q On June 24, 1983, the day of the arrest in this
20 case, did Emad Salem contact you from a hospital?

21 A Yes, he did. He called me about 3:30 in the
22 morning and asked me to go over to the hospital.

23 Q And did you go to the hospital?

24 A I did.

25 Q Were there any FBI agents there at that time?

1 A There were three.

2 Q Do you recall who, if any -- could you name, to
3 the best of your recollection, who was there?

4 A John Anticev was there. Steven Veyera was there,
5 and there was another John there.

6 Q John Anticev?

7 A John Anticev, but there was a second John above
8 John Anticev, because he was debriefing Emad, asking, you
9 know, what happened in the warehouse --

10 Q Let me stop you for a moment.

11 John Anticev was there --

12 A John Anticev.

13 Q -- at the hospital?

14 A Steven Veyera.

15 Q Steven Veyera, who was an FBI agent, and another
16 John?

17 A Another John.

18 Q Senior?

19 A Senior to John Anticev.

20 Q That was John Crouthamel?

21 A I don't know his last name. I would know him if
22 I saw him, but I don't know his last name.

23 Q At that time in your presence did Emad Salem have
24 a conversation with the agents about his guns?

25 A Yes. Just as John -- the John whose name I

1 didn't know, the last name Crouthamel, was leaving, he said,
2 "By the way" --

3 Q Who said?

4 A Emad said to John, he said, "When you go to the
5 apartment," he said, "I keep a shotgun by the door, and
6 there are some other guns in the apartment."

7 And he said, "Don't worry about it, Emad. We'll
8 take care of it."

9 Q Who said, "Don't worry about it. We'll take care
10 of it"?

11 A John Crouthamel.

12 Q During 1993, after your divorce and before the
13 arrests in this case, did you continue to have a personal
14 relationship with Mr. Salem?

15 A Yes, I did.

16 Q And during the months of April, May and June of
17 1993, approximately how often did you see him?

18 A I would say almost every day.

19 Q And on the days that you didn't see him, were you
20 in telephone contact with him?

21 A Yes. I had several beeper -- he gave me the
22 beeper. I could always reach him, yes.

23 Q Now, during that period of time, did he show you
24 any equipment that he had, taping equipment?

25 A Yes, he did. He had a briefcase full of taping

1 equipment. He had many microphones. He had cassettes. At
2 one point he had our car, it was a Sunbird, a Burgundy
3 Sunbird --

4 Q I'm sorry. Could you say that again?

5 A Our car, which we had purchased together, he had
6 equipped with two, two microphones on each side, and I
7 helped him change tapes in that car.

8 Q Let me stop you for a moment and break this down
9 a little. During that period of time you saw various
10 recording equipment, would that be correct?

11 A That's correct.

12 Q Had you seen any of that equipment prior to 1993?

13 A Not that particular equipment. Emad had
14 equipment all the time. He was always coming home with
15 something new, something different. It was always something
16 different. This particular equipment was new, what I saw.

17 Q All right. Now, during this period of time you
18 started to say that you actually saw recording equipment in
19 a car that had belonged previously to the two of you
20 jointly?

21 A Yes.

22 Q Where were you when you saw that recording
23 equipment?

24 A He said we had to go someplace, and he had to
25 change tapes, and would I help him. And we went over to --

1 it was like 72nd, 73rd, on the west side in a little park
2 area, and he opened up the trunk and changed the tapes.
3 There were little silver reels. He put the little silver
4 reels in white envelopes. At one point he asked me to take
5 pictures of him doing this.

6 Q Let me stop you there. Did he bring the camera?

7 A He brought the camera.

8 Q And he asked you to take a photo of him changing
9 the tapes?

10 A Yes. He said, "There is a lot of problems" -- he
11 was talking to himself more -- he said, "Problems. They're
12 causing me problems. That 'GD F-ing' FBI, problems. You've
13 got to help me. You've got to protect me. You've got to
14 help me, Barbara. I want pictures of these." So --

15 Q Did you take photographs?

16 A Yes, I did.

17 Q And who took possession of those photographs?

18 A Emad took them.

19 Q During that same period of time, in May of 1993,
20 did Mr. Salem ever ask you personally to take custody of
21 some tapes that he had?

22 A Yes, he did.

23 Q And what did you tell him in response to his
24 request?

25 A When he told me they were -- what they were, I

1 said I couldn't do that. He told me he had been taping the
2 FBI. I didn't want them in the apartment, and he asked me
3 if I would take care of them.

4 I said I couldn't do that. I mean, I said, "This
5 is serious. Very serious, Emad."

6 Q Do you know what other arrangements he made with
7 those tapes, regarding those tapes?

8 A At that time the FBI knew something was going
9 down, according to Emad, so they brought his sister over
10 from Egypt --

11 Q Who brought his sister from Egypt?

12 A The FBI, the FBI paid for her ticket. They
13 wanted her to know what Emad was doing, what could be the
14 possible consequences and results of her being in Egypt.
15 They wanted to know if she was going into the Witness
16 Protection Program with him. She decided she would not go,
17 and he sent back these tapes, audio and videotapes to Egypt
18 with her.

19 Q Now, can you estimate to the best of your
20 recollection when in 1993 that was?

21 A This was May. I would say around the middle of
22 May, about the middle of May.

23 Q Thank you. Did there come a time in 1992 that
24 you had a court proceeding with Mr. Salem?

25 A Yes, during our divorce.

1 Q And during that court proceeding did Mr. Salem
2 produce any conversation, tape-recorded conversation that he
3 claimed was recorded conversation of you?

4 A Yes, he did. He had a tape that he claimed that
5 I had threatened him and his children with a gun.

6 Q Was that an accurate recording of what you had
7 said?

8 A No. No. He bragged about it. He wanted an
9 order of protection, got the order of protection --

10 MR. McCARTHY: Objection to the last part.

11 THE COURT: Sustained as to the last part.

12 (Continued on next page)

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1 Q Forgetting for a moment what the court proceeding
2 was about, did he make any statements to you as to how he
3 actually had made this tape?

4 A Yes, he bragged to me that he edited pieces of
5 tape together, and that I couldn't touch him, that he could
6 do anything, he could make anybody say anything he wanted
7 them to say, and I knew he was an expert at it and I
8 shouldn't F with him, don't try. He said, I'm way ahead of
9 you, Barbara, there is nothing you can do, don't even try.
10 He had this manufactured tape.

11 Q And this was a tape that was not a conversation,
12 an actual verbatim conversation of you?

13 A No, no, absolutely not. Never happened.

14 Q And he produced that tape in a court proceeding?

15 A Yes, he did.

16 MS. AMSTERDAM: Thank you. I have no further
17 questions.

18 THE COURT: Mr. Jacobs, representing Mohammed
19 Saleh.

20 CROSS-EXAMINATION

21 BY MR. JACOBS:

22 Q Miss Rogers, do you know if Emad Salem had
23 contact with an agent by the name of Nancy Floyd?

24 A Yes, I do. He did.

25 Q Who is she, to your knowledge?

1 A She was his superior at the FBI, one of them.

2 Q Do you know of your own knowledge when Emad Salem
3 had first contact with her?

4 A It would have been early 1990.

5 Q Do you know whether he saw her on a frequent
6 basis?

7 A Yes, he did.

8 Q Do you know if that contact continued in 1991,
9 1992, and 1993?

10 A Yes, it did.

11 Q Did you actually yourself listen when a call was
12 made to Nancy Floyd from a hospital room on June 24, 1993?

13 A I placed the call to Nancy.

14 Q Why don't you tell the jury about that. What
15 happened in that hospital room with respect to this
16 telephone call?

17 MR. McCARTHY: Objection.

18 THE COURT: Overruled.

19 Q What happened?

20 A The FBI had brought in --

21 Q Sorry. Just try to keep your voice up a little.

22 A The FBI brought in a portable phone and I was in
23 the room with Emad, and he placed a call to Nancy -- I
24 dialed the numbers to him because he was hooked up to
25 monitors and things. And it was a Connecticut number, and

1 he said, my, my last mission, I've done my last mission,
2 Nancy, it's over, my final mission. And he was very happy.

3 Q Do you know of your own knowledge when he started
4 to tape the FBI?

5 MR. McCARTHY: Objection, Rule 602 competence.

6 THE COURT: The question was of your own
7 knowledge.

8 MR. JACOBS: That is what I asked.

9 THE COURT: I know. The question was of your own
10 knowledge.

11 MR. JACOBS: I will withdraw it.

12 Q Did Emad tell you that he taped the FBI?

13 A Yes, he did.

14 Q Did he tell you why?

15 A He didn't trust them.

16 Q Did you ever see Nancy Floyd?

17 A I met her once.

18 MR. McCARTHY: I am sorry. I didn't hear the
19 last answer.

20 (Record read)

21 Q Did he introduce you to her?

22 A Yes, he did.

23 Q The evening in the hospital, June 3 into June 4,
24 the FBI gave you the phone to make the calls?

25 A The phone they brought in and set it on Emad's

1 bed. It was a portable phone. I placed the calls from
2 there.

3 Q What agents were present, if you know, that
4 evening or morning?

5 A At that time?

6 Q Yes.

7 A Both John Anticev and Steven Veyera.

8 Q They gave you a phone to make the calls, correct?

9 A Yes, that is correct.

10 MR. JACOBS: Nothing further.

11 THE COURT: Any other defense counsel?

12 We will take a short break. Please leave your
13 notes and other materials behind. Please leave your notes
14 and other materials behind. Please don't discuss the case,
15 and we will resume in a few minutes.

16 (Recess)

17 (In open court; jury not present)

18 THE COURT: Ms. Rogers, do you want to resume the
19 stand, please. Thank you.

20 (Witness resumed)

21 (Jury present)

22 THE COURT: Cross, Mr. McCarthy?

23 MR. MCCARTHY: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. MCCARTHY:

1 Q Still good morning, Ms. Rogers.

2 You told us that you came here voluntarily today?

3 A Yes, I did.

4 Q And that is because you are an American, right?

5 A The truth has to be told. I mean, I came here to
6 tell the truth.

7 Q You came here to tell the truth?

8 A Yes.

9 Q Because you believe in the truth?

10 A Absolutely.

11 Q Can you tell us how many times you met with Miss
12 Stewart prior to your testimony here today?

13 A Twice.

14 Q Can you tell us how many times you went over your
15 testimony with Miss Stewart?

16 A This morning in the coffee shop for about five
17 minutes.

18 Q That is the only time?

19 A That's it.

20 Q How about Mr. Jacobs? Did you meet with Mr.
21 Jacobs before your testimony today?

22 A This morning in the coffee shop for the same five
23 minutes.

24 Q For the first time?

25 A Yes.

1 Q Did you tell him that you distinctly remembered
2 those little white envelopes?

3 A Yes.

4 Q How many times did you meet with Ms. Amsterdam
5 before you testified?

6 A This morning.

7 MR. JACOBS: Your Honor, may we approach the
8 bench?

9 THE COURT: You may not.

10 MR. JACOBS: Let the record indicate that I want
11 to put something on the record.

12 THE COURT: Go ahead.

13 Q You tell us that you were involved in a
14 proceeding in a New York State court in which a tape was
15 introduced against you?

16 A Yes.

17 Q And it was a tape that was spliced, right?

18 A Yes.

19 Q It was not what it was originally, correct?

20 A It was not.

21 Q It was a tape that had different pieces of
22 conversation spliced together?

23 A That's right.

24 Q Did you offer to give any of the defense lawyers
25 a copy of the tape that was introduced against you in a

1 public proceeding in New York State court?

2 A I don't have a copy of the tape. Emad had the
3 spliced tape.

4 Q It was introduced in a state court proceeding?

5 A It was never introduced.

6 Q It was never introduced?

7 A It was not introduced.

8 Q Did you tell us in your direct testimony,
9 Miss Rogers, that you had a tape that was spliced introduced
10 against you in a public proceeding in New York State court?

11 MS. STEWART: Objection.

12 MS. AMSTERDAM: Objection to form, your Honor.
13 That is not what she testified to.

14 THE COURT: The jury's recollection controls. Is
15 that what you said?

16 A When we were in the court --

17 THE COURT: The question is not what happened,
18 the question is, is that what you said?

19 THE WITNESS: I am confused as to "introduce" and
20 whatever.

21 THE COURT: Was it received as an exhibit in
22 court? Did you say that it was received as an exhibit in
23 court?

24 THE WITNESS: It was never an exhibit in court.
25 He said he was going to use it as an exhibit in court and he

1 had it.

2 THE COURT: Go ahead.

3 Q Did you advise the court that you were concerned
4 that a spliced tape was going to be introduced --

5 A Yes, I did, absolutely.

6 Q And that was a public proceeding in a state
7 court?

8 A No, it was a private conversation with my lawyer
9 in a family court, and I couldn't afford to fight him in
10 family court, so he said go to civil court. It was in
11 private conversation --

12 THE COURT: The question is whether it was in
13 open court. The answer is no, it was with your lawyer?

14 THE WITNESS: Open court like this, no.

15 THE COURT: Was it before the judge?

16 THE WITNESS: No.

17 THE COURT: That was his question.

18 THE WITNESS: No.

19 Q It was you and Mr. Salem?

20 A And our two respective attorneys.

21 Q So the spliced tape that you told us about never
22 made its way into the public record, right?

23 A No.

24 Q You are telling us that it exists?

25 A It does exist. My lawyer heard parts of it, my

1 divorce lawyer.

2 Q You are testifying as Ms. Rogers today, is that
3 correct?

4 A That is correct.

5 Q Not Dr. Rogers?

6 A Not Dr. Rogers.

7 Q You occasionally tell people that you are
8 Dr. Rogers, is that correct?

9 A No, I told them I was working on a doctorate.
10 That is what I told Emad.

11 Q I don't think we can hear you back here.

12 A That is what I told Emad.

13 Q Don't you tell other people you are a doctor?

14 A No.

15 Q You are sure?

16 A Positive.

17 Q As you sit here today in front of this jury it is
18 your absolute testimony that you have never told anyone that
19 you are a doctor?

20 A No.

21 Q Sure as you are sitting here?

22 A No.

23 Q It is not your testimony --

24 MS. AMSTERDAM: Objection, your Honor, asked and
25 answered.

1 THE COURT: Overruled.

2 Q Yes or no?

3 A Have I ever introduced myself to someone as
4 Dr. Rogers?

5 Q Right.

6 A No.

7 Q Did you ever make a statement to a government
8 agency that you are a doctor?

9 A No.

10 Q You are sure?

11 A To a government agency?

12 Q Right.

13 A No.

14 Q You are sure as you are sitting here today that
15 you are not Dr. Barbara Rogers who used to work at the
16 genetics research division of the Mount Sinai Hospital
17 center?

18 A I know what you have there, yes.

19 THE COURT: The question was not whether you know
20 what he has there, the question is whether you ever
21 represented yourself as Dr. Barbara Rogers who work that he
22 has indicated?

23 A I signed a letter to the INS --

24 Q Ms. Rogers, are you the Dr. Barbara Rogers --

25 A I am not.

1 Q Do you recall writing a letter to the Immigration
2 and Naturalization Service?

3 A Yes, I did.

4 Q Do you recall writing it about your ex-husband
5 Emad Salem?

6 A Yes, I did.

7 Q During the time that you wrote that letter, that
8 was December 1992, right?

9 A That's right.

10 Q And at the time that you wrote the letter, you
11 were trying to get the Immigration Service to revoke
12 Mr. Salem's citizenship, correct?

13 A That is right.

14 Q You were trying to get them to give whatever
15 information you had at your disposal to make sure he didn't
16 get citizenship conferred on him by the Immigration Service?

17 A Through me, yes.

18 Q The country that you believe in because you
19 believe in the truth, right?

20 A That is right.

21 MS. AMSTERDAM: Objection to form, your Honor.

22 THE COURT: She answered it. Overruled.

23 Q And you told the Immigration and Naturalization
24 Service that you were Dr. Barbara Rogers, correct?

25 MS. STEWART: Objection, mischaracterization,

1 Judge.

2 THE COURT: She is the witness, you are not.

3 Overruled.

4 MR. JACOBS: May I see the document?

5 MR. McCARTHY: Sure.

6 Q Did you represent yourself as Barbara Rogers,
7 Doctor of Philosophy?

8 A I signed the letter Ph.D.

9 Q You wrote the letter, didn't you?

10 A I signed and I wrote the letter.

11 Q Ph.D with the genetics research division?

12 A Yes, I did.

13 Q Of Mount Sinai Hospital Center?

14 A That is right.

15 Q With the medical and molecular -- I am sorry --
16 medical molecular --

17 MR. JACOBS: Excuse me. The document is not in
18 evidence.

19 THE COURT: Mr. Jacobs --

20 THE COURT: 613(b).

21 THE COURT: Take your seat. Overruled.

22 MR. JACOBS: I object to the government reading
23 the letter.

24 THE COURT: Your objection again is overruled.

25 How many times does it take, Mr. Jacobs?

1 A That is the one I signed.

2 Q And that was with the medical and molecular
3 genetics division?

4 A That is correct.

5 Q You are not a doctor of philosophy, Miss Rogers?

6 A No, I am not.

7 Q You have never been a doctor of philosophy?

8 A No, I am not.

9 Q In fact you told us in your direct examination
10 that you didn't complete your master's, right?

11 A That is correct.

12 Q That is when Miss Stewart asked you whether you
13 were working towards your doctorate?

14 A That is correct.

15 Q But that is not what you told the Immigration and
16 Naturalization Service, right?

17 A That is not what I wrote, no.

18 Q Did you tell them because you were an American
19 that it was important that the truth be known?

20 MR. JACOBS: Objection.

21 THE COURT: That is sustained.

22 Q Did you tell the Immigration and Naturalization
23 Service that you wanted to make sure they didn't make Emad
24 Salem an American citizen?

25 A I signed that letter because no one would listen

1 to me on what Emad --

2 THE COURT: The question is whether you told them
3 what you said you told them. He is entitled to an answer to
4 the question as he asked it. Did you tell them that?

5 A I am not sure. Did I tell them what?

6 Q Did you tell the Immigration and Naturalization
7 Service --

8 A It was a two-page letter telling them why Emad
9 was what he was, what he was doing against the United
10 States. No one was listening to me.

11 THE COURT: Would you frame the question again.

12 MR. MCCARTHY: I will take that answer, your
13 Honor, if you will.

14 Q Go ahead. What did you tell them?

15 A I said he was not suitable to be a citizen of the
16 United States. I believe I said he was Egyptian
17 intelligence. I said he was working against the United
18 States. I said he was collecting unemployment fraudulently.
19 I said he lied many times. I said he was working for the
20 FBI off the books.

21 Q That is what you told him?

22 A I wrote letters, yes. I wrote them -- can I say
23 why?

24 Q Miss Rogers, is that what you told the
25 Immigration and Naturalization Service?

1 A Yes.

2 Q You are sure?

3 A I wrote letters to many people, the INS, the New
4 York City Police Department. I was desperate to have
5 somebody listen to me.

6 Q And you say you told them --

7 A No one listened.

8 Q Have you finished your answer?

9 A Yes.

10 Q You told them the same story that you told us
11 this morning about Mr. Salem being a double agent from
12 Egypt?

13 MS. STEWART: Objection.

14 THE COURT: That is sustained.

15 Q You told us that you told them the same thing you
16 told this jury this morning about Emad Salem working for
17 Egypt against this country?

18 A Did I tell --

19 MS. STEWART: Objection, Judge.

20 THE COURT: Overruled.

21 A Did I tell the INS that he was an agent working
22 for Egyptian intelligence?

23 Q Yes.

24 A I believe I put that in the letter. I haven't
25 read the letter in a long time. That was three years ago.

1 Q What you told them was that you had a close
2 family friend who would make sure things were taken care of
3 if the Immigration Service didn't, right?

4 A I said if they didn't listen someone had to
5 listen. I said this man should not be in the United States.
6 He is a liar, a cheat and a thief, and he actually bragged
7 about killing someone, and I said is this the kind of person
8 we want in the United States, and I said most of all because
9 he is acquiring citizenship through me. This letter was
10 written in a very unhappy stage in my life, and no one would
11 listen.

12 Q Have you finished your answer?

13 A Yes, I have.

14 Q Is there a reason you don't want to tell the jury
15 who the close family friend you had that you mentioned in
16 the letter was?

17 MR. JACOBS: Objection.

18 THE COURT: Sustained.

19 Q Didn't you tell the INS that you had a close
20 family friend who would make sure this got taken care of if
21 immigration didn't?

22 A I said it would be brought to their attention --

23 THE COURT: No, he is entitled to an answer to
24 the question as he asked it. Did you tell the INS in words
25 or substance that you had a close family friend who would

1 take care of it if they didn't?

2 A Yes, I believe I said something to that effect.

3 Q Who was the close family friend?

4 A A friend of mine at the hospital.

5 Q A friend of yours at the hospital?

6 A Yes.

7 Q Do you remember the name of the friend of yours
8 at the hospital?

9 A I remember it distinctly but I don't think --

10 Q Why don't you tell us the name?

11 A It's a doctor at the hospital.

12 Q Do you know whether the doctor at the hospital
13 that you told the Immigration Service about had a part-time
14 job as editor-in-chief of the New York Times?

15 A No.

16 Q Did you tell the Immigration Service that if they
17 didn't take action against Mr. Salem you were going to tell
18 your close family friend, the editor-in-chief of the New
19 York Times?

20 A I did, I wrote that.

21 Q Did you tell them that if they didn't do
22 something about Emad Salem, that you were going to bring
23 political and media pressure to bear on the Immigration
24 Service?

25 A No, I never said that.

1 Q You are sure? Is it not a fact that you said, I
2 know people who can bring political and public pressure to
3 bring the truth to light?

4 A To bring the truth to light. That's exactly what
5 I wrote.

6 Q And you said that you knew people who would bring
7 public and political pressure to bear on that, right?

8 A I said they would bring the truth, people who
9 could bring the truth to light.

10 Q And you told them that your close family friend,
11 the editor and chief of the New York Times, knew all about
12 this, right?

13 A I wrote that.

14 Q And that if the Immigration Service didn't do
15 something about it, he had said he would, right?

16 A I wrote that.

17 Q Miss Rogers, did you know who the editor and
18 chief of the New York Times was?

19 A I did not.

20 Q You have no idea, do you?

21 A No.

22 Q He was never a friend of yours, right?

23 A No, he was not.

24 Q Never a friend of Dr. Barbara Rogers either,
25 right?

1 A No, he was not.

2 Q You told us that no agents ever interviewed you
3 after the arrests in this case?

4 A After the arrest? Interviewed me?

5 Q Right.

6 A Are you talking about John and Steve?

7 Q I am asking you --

8 THE COURT: FBI agents, any FBI agents regardless
9 of their identity?

10 A In the formal context of an interview? No.

11 Q Is it not a fact, Ms. Rogers, that in July 1993,
12 after the arrests were made in this case, you hired an
13 attorney named Michael Stalonas?

14 A In July 1993? Yes, I did.

15 Q And you had Michael Stalonas call the United
16 States Attorney's Office, right?

17 MS. STEWART: Objection, Judge.

18 THE COURT: Overruled.

19 Q Correct?

20 A Yes.

21 Q And you had Michael Stalonas tell the United
22 States Attorney's Office --

23 MR. JACOBS: Objection.

24 THE COURT: Overruled.

25 Q -- that if we would come up with some money for

1 you and move you to the northwest, you wouldn't tell stories
2 to the media about Emad Salem, right?

3 A No, that's not what I said.

4 Q You are sure?

5 A I am positive.

6 Q The letter that you wrote as Dr. Barbara Rogers
7 in December of 1992, you wrote that on the stationery of the
8 hospital, correct?

9 A That's right.

10 Q I am showing you 35149-A for identification.
11 This was in December 1992, right? You didn't say anything
12 about your friend the doctor at the hospital in the letter,
13 did you, like you told us a couple of minutes ago?

14 A No.

15 Q Ms. Rogers, you told us on your direct
16 examination that this trip you took to Egypt was in 1990?

17 A That is correct.

18 Q And the events that you told us about that
19 occurred in Egypt and the things that you learned about
20 Mr. Salem's final mission occurred in that period of time
21 from the time you came back in 1990 into 1991?

22 MS. STEWART: Objection.

23 THE COURT: Was that your testimony?

24 MS. STEWART: Objection, Judge.

25 THE COURT: Overruled.

1 A I don't understand the question.

2 Q Is it your testimony, or was it your testimony on
3 direct examination that this stuff about the final mission
4 you heard Mr. Salem was going on occurred after you came
5 back from Egypt in 1990?

6 A He talked about the final mission when we were
7 still in Cairo.

8 Q When you were still in Cairo?

9 A When we were in Egypt.

10 (Continued on next page)

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1 Q And you continually talked about it when you came
2 back, right?

3 MS. AMSTERDAM: Objection, your Honor. We need
4 to have a side bar.

5 THE COURT: OK.

6 (At the side bar)

7 THE COURT: The objection to the conversations --
8 is that what you are getting at?

9 MS. STEWART: Yes, that he invoked the privilege
10 on behalf of Salem.

11 MS. AMSTERDAM: She didn't testify to some of it
12 because fo the marital privilege situation. Mr. McCarthy is
13 now asking questions suggesting that she simply said that
14 she found this out at a time point consistent with the
15 direct, which is not consistent with the truth, because it
16 was precluded because of the marital privilege.

17 MR. MCCARTHY: That wasn't what I was trying to
18 do and if it was what it sounded like, I apologize. All I
19 was trying to establish is that she said she things in 1990
20 and 1991, not specific conversations.

21 MS. STEWART: But if you are talking about a
22 conversation in which he said the last mission, I think if
23 you direct it to the July, I think she understands she can
24 talk about that.

25 THE COURT: Focus on it happening in that period

1 of 1990 and afterwards.

2 MR. JACOBS: Judge, I needed to place something
3 on the record. Miss Amsterdam and I met the witness Monday
4 evening in her apartment, and I wanted to make sure that the
5 record would reflect that when she said she met us this
6 morning in the coffee shop -- I just want the record to
7 reflect that we met Monday in her apartment in the evening.

8 MS. STEWART: I think the question had to do with
9 testimony.

10 THE COURT: Everybody's honor is intact.

11 (In open court)

12 THE COURT: Go ahead.

13 (Continued on next page)

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1 BY MR. McCARTHY:

2 Q You told us earlier in your testimony that you
3 met today with Mr. Jacobs and Ms. Amsterdam for about five
4 minutes in the coffee shop?

5 A That is right.

6 Q Is that the only time you met with them about
7 your testimony?

8 A Officially? Officially? No, we met officially
9 night before last for about 10 minutes.

10 Q Where did that meeting occur?

11 A At my apartment.

12 Q The direct testimony that you gave earlier today
13 about Mr. Salem's last mission, you became aware of that in
14 1990 and in 1991, is that correct?

15 A You become aware of something at one time, and I
16 became aware of that in March of 1990.

17 Q And it had thus come to your attention that he
18 was -- withdrawn.

19 Later on you learned that Mr. Salem had a final
20 mission -- I am just trying to understand your testimony
21 about when you first learned that the final mission --

22 MS. STEWART: Objection.

23 THE COURT: Sustained.

24 A I want to understand the question.

25 THE COURT: No, you don't have to understand a

1 question that I sustained an objection to. Let's move on to
2 one that perhaps I won't sustain an objection to.

3 Q Let's ask about this letter that you sent to the
4 Immigration Service in December 1992, when you were trying
5 to get Mr. Salem denied citizenship, correct?

6 A That is right.

7 Q And you were trying to bring to Immigration's
8 attention anything that you thought would be helpful in
9 trying to get them to deny citizenship, correct?

10 A That is right.

11 Q Can you tell us, please, if in that letter that
12 you wrote in December 1992 you said one word about him
13 working as an Egyptian intelligence agent.

14 A That I did not say to the INS -- he was working
15 with the INS. I mean, Emad worked for the INS.

16 THE COURT: Did you say anything to the INS about
17 Mr. Salem working as a double agent?

18 THE WITNESS: No, I did not.

19 Q Did you say one word about briefcases full of
20 money?

21 A To the INS?

22 Q Right.

23 A No.

24 MR. MCCARTHY: No further questions.

25 THE COURT: Anything else?

1 MS. STEWART: Yes, Judge.

2 THE COURT: Go ahead.

3 MS. STEWART: Judge, I would offer 35149-A into
4 evidence.

5 MR. MCCARTHY: I have no objection, with an
6 instruction from the court that it is not offered for the
7 truth.

8 THE COURT: Right, it is offered only to show
9 what she said at the time she said it. 35149-A is received.

10 (Government's Exhibit 35149-A received in
11 evidence)

12 REDIRECT EXAMINATION

13 BY MS. STEWART:

14 Q Miss Rogers, I think Mr. McCarthy mentioned
15 Michael Stalonas.

16 A Yes.

17 Q When did you first meet Michael Stalonas?

18 A 1990, 1991.

19 Q Was he hired by you at that time as an attorney?

20 A I hired him, in, must have been late 1989.

21 Q As what did you hire him?

22 A As my attorney.

23 MS. STEWART: I have nothing further, Judge.

24 THE COURT: Ms. Amsterdam, representing
25 Mr. Khallafalla. Go ahead.

1 RE CROSS-EXAMINATION

2 BY MS. AMSTERDAM:

3 Q Good afternoon, Ms. Rogers. Ms. Amsterdam asked
4 you about the tape that was used in the family court
5 proceeding. While that tape was not introduced, it was
6 used, was it not?

7 A It was used, yes.

8 THE COURT: And it affected the result --

9 THE COURT: Sustained.

10 Q Who was present in the discussion regarding about
11 the tape?

12 A Ed Kallen --

13 Q Who was that?

14 A Was Emad's divorce attorney.

15 Q Right.

16 A -- Emad, my divorce attorney, and myself.

17 Q Do you know the meaning of the word perjury?

18 A Yes.

19 Q What does that mean?

20 A Perjury means lying under oath.

21 Q Do you know what the penalties of perjury are?

22 A I don't know the exact penalties, but they are
23 severe.

24 Q Do you know what take an oath means?

25 A Yes.

1 Q What does take an oath mean?

2 A It means to promise on your honor to tell the
3 truth.

4 Q Have you taken an oath when you testified here
5 today?

6 A Yes, I did.

7 Q Is what you have said here today true?

8 A Yes, it is.

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1 MS. AMSTERDAM: Thank you.

2 THE COURT: Anything, Mr. Jacobs?

3 MR. JACOBS: No, sir.

4 THE COURT: Anyone else? Mr. McCarthy?

5 MR. McCARTHY: No, sir.

6 THE COURT: You are excused. Thank you very
7 much.

8 (Witness excused)

9 THE COURT: May I see you at the side briefly.

10 (Discussion off the report at the side bar)

11 THE COURT: Ladies and gentlemen, we are going to
12 break for lunch. Please leave your notes and other
13 materials behind. Please don't discuss the case, and we
14 will resume this afternoon.

15 MS. AMSTERDAM: Your Honor, there is something I
16 need to speak to you about on a personal matter. It can be
17 later on. Nothing to be frightened of.

18 THE COURT: Personal to you, personal to me --

19 MS. AMSTERDAM: Nothing to be concerned about.

20 THE COURT: Now that the record is clear,
21 Mr. Stavis, do I have everything from you that I need on
22 Braxton and Yates? I got a letter this morning from you.

23 MR. STAVIS: Yes, your Honor.

24 THE COURT: Is that it?

25 MR. STAVIS: Yes. I am prepared to address the

1 issue in more detail, should your Honor wish.

2 THE COURT: In how much more detail do you want
3 to address it other than what is in the letter, I guess is
4 my question. The other question to you is, when do we
5 absolutely have to get this out of the way? If the answer
6 is now, let's do it now.

7 MR. STAVIS: Your Honor, the facts have been
8 argued, the law has been argued. When we last addressed the
9 issue, which was Monday at the close of the court session,
10 your Honor raised the Yates case. I raised the Braxton
11 case.

12 THE COURT: Braxton in essence makes it clear
13 that if the door had been opened -- this is a little bit
14 unfair because I don't know how much you remember the facts
15 of that case.

16 MR. STAVIS: I read the case this morning, your
17 Honor.

18 THE COURT: If the door had been opened, the
19 attempted murder charge could have gone to the jury. That
20 is what Braxton says.

21 MR. STAVIS: I don't believe that it says that,
22 because the context in which it was raised was a stipulation
23 on a plea agreement, your Honor, and it says that you cannot
24 presume that even if the door was opened and it could be
25 established that he shot at the deputy U.S. Marshals --

1 THE COURT: You can't presume that, but it is
2 clear that if the door was opened, that would have been
3 sufficient. It is clear from Braxton, isn't it?

4 MR. STAVIS: I just read the case completely
5 differently, your Honor. It is not saying that at all. The
6 portion that I quoted -- from page 1859 -- "Even if one
7 could properly conclude that the stipulation sufficiently
8 established that Braxton shot at the marshals, it would
9 also have to have established that he did so with the intent
10 of killing them," and the argument here is, there was no
11 evidence as to the intent. There is nothing more than that
12 the gunman shot at Mr. Acosta. There is no proof to be
13 submitted to a jury for them to rely upon to come up with
14 the requisite intent to kill, your Honor. There is no proof
15 of that. That is why your Honor ordered a judgment of
16 acquittal on Count 10 and a partial judgment of acquittal on
17 Count 9.

18 THE COURT: I don't think Braxton undercuts what
19 Yates said. I think it is consistent with Yates. As I
20 said, the close bounce goes to the government in this
21 situation, and this is a close bounce.

22 MR. STAVIS: There are two points that I wish to
23 raise, your Honor. One, the standard, as your Honor knows,
24 is that the evidence must be viewed in the light most
25 favorable to the government. I understand that and my

1 arguments are based on that standard. However, a close call
2 with regard to the law does not go to the government.

3 THE COURT: I am not suggesting that. I am not
4 talking about a close call as to the law. What I am talking
5 about is a close call to the facts. He pegs two shots both
6 of which are directed at the upper portion of the victim.
7 One hits, the other doesn't.

8 MR. STAVIS: Yates was the stabbing case, your
9 Honor.

10 THE COURT: I am talking about this case. I
11 thought you meant the facts of this case.

12 MR. STAVIS: Yes, your Honor.

13 THE COURT: Two shots at Acosta, one of which
14 goes basically past his head, the other of which hits him in
15 the chest area.

16 MR. STAVIS: I am just unaware of any proof in
17 the record other than the fact of the shootings, and that is
18 insufficient.

19 But another point that I wish to make, your
20 Honor, is, your Honor ordered on July 13 a judgment of
21 acquittal with regard to Count 10.

22 THE COURT: I said I was going to dismiss, I said
23 I was dismissing that portion of Count 9, the charge of
24 attempted murder, and all of Count 10.

25 MR. STAVIS: I know that under Rule 29(c), your

1 Honor can reserve and come back to the issue. But this
2 motion was brought under Rule 29(a), and I would object to
3 your Honor changing your ruling. I do not believe that your
4 Honor has the power to change a Rule 29, particularly at
5 such time after Mr. Nosair has essentially finished his
6 presentation of the evidence.

7 THE COURT: You were very careful, as I recall
8 it, to say "no further witnesses at this time."

9 MR. STAVIS: Yes, I was, your Honor. And the
10 other point that I wish to make is, if your Honor has
11 ordered a judgment of acquittal as to Mr. Nosair with regard
12 to Count 10 and a portion of Count 9, I believe that
13 jeopardy has attached with regard to those counts and that
14 your Honor cannot now --

15 THE COURT: That depends, I suppose, on whether
16 my statement in open court is self-executing, like, for
17 example, the statement of a sentence, as to whether an oral
18 statement controls. I assume there is law on that. Mr.
19 McCarthy.

20 MR. MCCARTHY: Yes. Your Honor, two things on
21 that. I don't off the top of my head know the answer to
22 what Mr. Stavis has brought out now, although I will say
23 that he hasn't supplied any authority for the proposition.
24 I would also want to point out a couple of things factually
25 in terms of that specific point.

1 We made an application to have a reasonable
2 period of time to brief this. Mr. Stavis made a
3 representation that a witness with respect to this
4 particular incident would be called the following day, which
5 is why your Honor, instead of following the policy the court
6 has followed throughout the proceedings, to give the parties
7 a reasonable amount of time to address important issues,
8 didn't in this case. There was no period of time in the
9 proceeding that lapsed between the time that your Honor made
10 your ruling on Thursday afternoon and the time that the
11 government made a motion for reconsideration on Monday
12 morning, which I made sure to do prior to 9:30 in the
13 morning. Mr. Stavis was on notice that there was a pending
14 motion to reconsider. He claimed no prejudice, there could
15 have been no prejudice --

16 THE COURT: I don't think there was any
17 prejudice -- I don't think he is claiming prejudice because
18 I think the witness he intended to call he may still intend
19 to call, which is why he said "no further witnesses at this
20 time." That is my information.

21 MR. STAVIS: Yes, your Honor.

22 MR. MCCARTHY: I don't mean to belabor the
23 record, your Honor.

24 THE COURT: He is not making a prejudice
25 argument. What he is saying is that when it comes to Rule

1 29 motions, once you lay the card down it's played. If
2 that's the rule, that's the rule, and second thoughts don't
3 count.

4 MR. MCCARTHY: Right. I don't disagree with
5 that. I just want to make sure that's the rule.

6 THE COURT: If that's the rule.

7 MR. STAVIS: Yes, and I am also claiming it is a
8 double jeopardy violation under the Fifth Amendment of the
9 Constitution.

10 THE COURT: If you are right about the rule, then
11 it is. If you are not, then it isn't.

12 MR. MCCARTHY: I would like to be heard on that
13 when we get to the point, because there is no way on these
14 facts that I can see that he is being tried twice for the
15 same offense. This is one proceeding, it is one trial.

16 MR. STAVIS: My point is that my client has been
17 acquitted on that count and it is going to a jury after
18 acquittal.

19 THE COURT: That if you are right about the first
20 point, there is no need for the second. So the double
21 jeopardy argument is in essence superfluous. See you this
22 afternoon.

23 (Luncheon recess)

24

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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 MR. JACOBS: Your Honor, tomorrow morning, I have
4 to argue an anonymous jury motion in front of Judge
5 Weinstein in the morning. I am substituting for my wife.

6 MR. Saleh has consented to my absence --

7 THE COURT: That may be a short conversation.

8 MR. JACOBS: In any event, my client will consent
9 to my absence.

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

11 DEFENDANT MOHAMMED SALEH: Yes.

12 MR. BERNSTEIN: Judge, I have an anonymous
13 problem also tomorrow. I can't be here tomorrow --

14 THE COURT: What is it? The water?

15 MR. BERNSTEIN: -- from after about 12 noon. I
16 have a 2:30 conference. I would ask to be excepted. My
17 client has agreed. I believe the evidence will not impact
18 directly on Mr. Abdelgani. I may have James Warshaw, who is
19 the paralegal working with me on the case, sit in for me.
20 He is now admitted to practice in the Southern District of
21 New York, so he falls into a different category.

22 THE COURT: Mr. Abdelgani, is that satisfactory
23 to you?

24 DEFENDANT AMIR ABDELGANI: Yes.

25 THE COURT: Thank you very much. I gather the

1 next witness -- I don't know that it is a problem, but he
2 was sitting in the spectator section this morning, is that a
3 problem for anybody?

4 MS. STEWART: He did not show his subpoena to
5 anyone. I don't think --

6 MR. McCARTHY: It is not a problem.

7 THE COURT: It is not a problem. OK. Fine.

8 (Jury present)

9 THE COURT: Ms. Stewart?

10 MS. STEWART: Yes, Judge. I call Mustapha
11 Abdul-Haqq.

12 THE COURT: Go ahead.

13 MUSTAPHA MUHAMMED ABDUL-HAQQ,
14 called as a witness by the Defendant Abdel Rahman,
15 having been duly affirmed, testified as follows:

16 THE COURT: If you could lean forward and talk
17 either into the microphone in front of you or the one to the
18 side, either one or both.

19 THE WITNESS: OK.

20 DIRECT EXAMINATION

21 BY MS. STEWART:

22 Q Good afternoon, Mr. Abdul-Haqq.

23 A Good afternoon.

24 Q How are you employed, Mr. Abdul-Haqq.

25 A I am a member of the Newark Fire Department. I

1 am a firefighter.

2 Q Are you wearing your uniform right now?

3 A Yes, I am.

4 Q Is that because you are about to go on duty and
5 have been waiting a long time to testify?

6 A Very soon, yes.

7 Q How old are you?

8 A I am 39.

9 Q Where were you born?

10 A I was born in St. Albans, Long Island.

11 Q What is your educational background?

12 A I have two years of college.

13 Q How long have you been with the Newark Fire
14 Department?

15 A 13 years.

16 Q Where do you reside? The name of the town is
17 sufficient.

18 A South Orange, between South Orange and Newark.

19 Q And that's in New Jersey?

20 A Yes.

21 Q Do you know Dr. Abdel Rahman?

22 A Yes, I do.

23 Q And what name do you know him as?

24 A We used to always call him Sheik Omar.

25 Q When did you first see Sheik Omar?

1 A In Vailsberg. That's one of the masjids in
2 Newark. Vailsberg is like a borough --

3 Q The acoustics in this room are terrible. You
4 have to almost, not get too close to the microphone, but
5 close enough so that you can be heard.

6 A Vailsberg is like a borough or on the outskirts
7 of Newark, and he was in a small masjid, and this is where I
8 first met him.

9 Q When you say "masjid," is there an English
10 equivalent for that word?

11 A Mosque.

12 Q Mosque?

13 A Yes.

14 Q Do you see him in court today?

15 A Yes, I do.

16 Q Could you just tell us where he is sitting?

17 A He has a red imma. On the right-hand side, the
18 man with the beard.

19 THE COURT: Indicating the defendant Dr. Abdel
20 Rahman. Go ahead.

21 Q After you met Dr. Abdel Rahman, did you have
22 occasion to attend classes?

23 A Yes, on a consistent basis.

24 Q When was that, what years was that?

25 A It was near the end of '91 until he was taken in,

1 a week prior to him being arrested.

2 Q Would that be 1993?

3 A Yes.

4 Q Where were these classes held?

5 A First they were at the masjid in -- actually,
6 between the masjid and the brother named Wahid, his house,
7 but we moved to various locations; various masajids,
8 mosques.

9 Q Where were those located? In what town
10 generally?

11 A Generally, we would be between Jersey City and
12 Newark. Generally, that's where I would spend my time.

13 Q Did you ever have occasions to meet at Sheik
14 Omar's home?

15 A Oh, yes. Twice a week we would go to his home,
16 we would eat and get lessons --

17 Q What were these lessons in?

18 A Sheik Omar is a world renowned scholar, Dr. Omar
19 is a world renowned scholar, so he would go from history,
20 historical history dealing with the fundamentals of Adin, of
21 Islam, to contemporary issues, concepts dealing with Islamic
22 law, jurisprudence. He was a world-renowned scholar, so, in
23 fact, I guess as you know, he has his doctorate in Al-Azhar,
24 30 something years ago.

25 Q How many people attended this class?

1 A It varied, but I would say there were, because
2 there were people drifting in and out, it was very open.

3 Q How many was the most that ever attended, would
4 you say?

5 A I would say at one time we would have maybe 15,
6 20 something.

7 Q What was the fewest that you ever remember
8 attending?

9 A The fewest, maybe, five, ten.

10 Q Was it necessary to have a translator?

11 A Yes.

12 Q Who was the translator on some occasions?

13 A It varied. Most of the time -- it varied. I
14 would say sometimes brother Walid would translate. We had
15 several -- for a long stay we had a man from Sudan. It
16 depended on who spoke Arabic fluently and was there at the
17 time.

18 Q It was necessary to speak Arabic and what other
19 language?

20 A And English.

21 Q All right. Did you ever hear Sheik Omar answer a
22 question at this class with regard to jihad in America?

23 A No, no.

24 Q Did you ever hear him indicate that people in
25 America should steal from banks or bomb US military

1 establishments?

2 A No, no.

3 Q Directing your attention to 1995, did you have
4 occasion to be in Egypt?

5 A Yes.

6 Q Could you tell us how and why you came to be in
7 Egypt?

8 A I made Haj, and one of my stopovers was Egypt,
9 and I had to spend 18 hours in Egypt. And five of the hours
10 I spent with the police, and one of the questions was did I
11 know Sheik Omar.

12 MS. STEWART: I have nothing further for this
13 witness, Judge.

14 THE COURT: Anyone else?

15 MR. RUSSO: May I your Honor?

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 BY MR. RUSSO:

19 Q Good afternoon.

20 A Good afternoon, sir.

21 Q Just one question. You mentioned a translator by
22 name who you recalled.

23 A Walid?

24 Q Yes. What was that? Do you recall his full
25 name?

1 A No, I don't.

2 THE COURT: It was "Walid," not "Wahid," right?

3 MR. RUSSO: Walid with an L?

4 THE COURT: With an L. Not Wahid with an H
5 correct?

6 THE WITNESS: No, Wahid.

7 THE COURT: With an H?

8 THE WITNESS: Yes.

9 Q Do you see that person in the courtroom today?

10 A No.

11 MR. RUSSO: Thank you.

12 Nothing further, your Honor.

13 MS. STEWART: Mr. Abdul-Haqq, is the person Walid
14 a Palestinian, do you know?

15 THE WITNESS: Yes.

16 MS. STEWART: Thank you.

17 MR. FITZGERALD: Very brief.

18 THE COURT: Go ahead.

19 CROSS-EXAMINATION

20 BY MR. FITZGERALD:

21 Q Good afternoon, sir.

22 A Good afternoon.

23 Q You work as a fireman?

24 A Yes.

25 Q You work pretty hard saving lives in Newark?

1 A Yes.

2 Q And when you are done you go through the Holland
3 Tunnel to get to work?

4 A Yes, sir.

5 MS. STEWART: Objection.

6 MR. BERNSTEIN: Move to strike.

7 MS. STEWART: Withdrawn.

8 THE COURT: Anything else?

9 MS. AMSTERDAM: One moment, your Honor.

10 MS. STEWART: No, Judge.

11 (Counsel conferred)

12 MS. AMSTERDAM: I have no questions, your Honor.

13 THE COURT: All right. You are excused. Thank
14 you.

15 THE WITNESS: Thank you.

16 (Witness excused)

17 THE COURT: Ms. Stewart?

18 MS. STEWART: Mr. Jabara is trying to get Amin
19 Alahiri next.

20 THE COURT: OK.

21 AMIN ALAHIRI,

22 called as a witness by the Defendant Abdel Rahman,
23 having been duly sworn, testified as follows:

24 THE COURT: Go ahead, Ms. Stewart.

25 MS. STEWART: Thank you, Judge.

1 Q Good afternoon, Mr. Alahiri.

2 A Good afternoon.

3 Q How old are you?

4 A 37 years old.

5 Q In what county or town do you reside?

6 A Flushing.

7 Q Is that in New York?

8 A New York.

9 Q Where were you born?

10 A I was born in Yemen.

11 Q When did you come to the United States?

12 A I believe 1970.

13 Q And are you a citizen?

14 A Yes, I am.

15 Q When did you become a citizen?

16 A I think '71.

17 Q Just take a deep breath. It's OK.

18 Are you sure you became a citizen in '71 if you
19 came in 1970?

20 A Yes.

21 Q Are you employed?

22 A Yes, I am.

23 Q What do you work as?

24 A I repair watches and some jewelry.

25 Q Do you work for a company?

1 A Yes. I work for a few companies. Mostly out of
2 my home. I pick up and I do the work at home.

3 Q Are you married?

4 A Yes, I am.

5 Q Do you have children?

6 A Yes. I have six.

7 Q How many? I'm sorry?

8 A Six.

9 Q Could you tell us your educational background.

10 A Not a lot. I didn't finish junior high.

11 Q Were you involved with the criminal justice
12 system in the city in 1983?

13 A I was -- '83? Yes, I believe I was.

14 Q Did that involve a family dispute?

15 A Yes.

16 Q Between brothers of yours, is that correct?

17 MR. McCARTHY: Objection, relevance. Leading.

18 A Between --

19 THE COURT: May I see counsel at the side
20 briefly.

21 (Continued on next page)

22

23

24

25

1 (At the side bar)

2 THE COURT: Two things: First of all, I assume
3 "involved the criminal justice system" is a euphemism for
4 what? Arrested?

5 MS. STEWART: Well, he was arrested. He was
6 seen. Either an --

7 THE COURT: Is this one of the mediation things?

8 MS. STEWART: No. No, he was actually taken into
9 custody.

10 THE COURT: No. I am not talking about that. Is
11 he going to testify that the sheik mediated some dispute?

12 MS. STEWART: This is anticipatory
13 cross-examination softening is what this is. I mean, I have
14 no idea whether they even know this. But I figure, being
15 the government, they may well know it, and I want to bring
16 it out in anticipation of it. That is all.

17 MR. MCCARTHY: We have no way actually of knowing
18 anything since we've only gotten the name -- I wasn't even
19 sure of the spelling. We don't have any information about
20 him. We weren't given any background information at all. I
21 have no idea what this witness is here to testify about.

22 THE COURT: Since arrests don't go to
23 credibility, do you want to get to the point?

24 MS. STEWART: OK. Fine.

25 THE COURT: Thank you.

1 (In open court)

2 THE COURT: Miss Stewart, the translators have
3 asked that you keep your voice up because they can't hear
4 unless you talk into the microphone.

5 Q You have to move onto your feet and almost be on
6 top of it. Could you try it right now and see if it is
7 working.

8 Mr. Alahiri, do you know Dr. Abdel Rahman?

9 A Yes, I do.

10 Q Do you see him here in court?

11 A Yes.

12 Q Could you tell us generally where he is seated
13 and what he is wearing?

14 A He is sitting right there where I am pointing my
15 finger, and he is wearing a white and red skull cap.

16 THE COURT: Indicating Dr. Abdel Rahman. Go
17 ahead.

18 MS. STEWART: Thank you, Judge.

19 Q When did you first meet Dr. Abdel Rahman?

20 A I believe it was 1990 when he first came to the
21 U.S.

22 Q In 1990, were you associated with any particular
23 mosque?

24 A Yes, I was.

25 Q What was that?

1 A That was Masjid Farook.

2 Q Masjid, does that mean mosque?

3 A Mosque, yes.

4 Q Where is Masjid Farook located?

5 A It is located in Atlantic Avenue, Brooklyn, New
6 York.

7 Q When you say you were associated, can you tell us
8 how you were associated?

9 A I was a member of the board of trustees for, I
10 think, 13 years.

11 Q How is the board of trustees selected at Farook
12 Mosque?

13 A How was it selected?

14 Q Yes.

15 A Elections.

16 Q Is each mosque, if you know, independent of each
17 other?

18 A Yes.

19 Q There is no supreme mosque that hands down rules
20 or law?

21 A Not that I know of.

22 Q How many people would attend -- strike that.

23 In the year 1990-91, about how often would you
24 attend at services or prayers at Farook Mosque?

25 A Every day, I would say.

1 Q You have to take your hand away from your mouth,
2 I am afraid. They need to hear you.

3 A Every day.

4 Q Did you hear Sheik Omar preach at Farook Mosque?

5 A Yes.

6 Q At a Friday prayer, how many people,
7 approximately, would attend at Farook Mosque?

8 A Between 50 and a hundred to thousand.

9 Q Did you also hear Sheik Omar lecture during this
10 period of time?

11 A Yes.

12 Q The Jihad Office was located at Farook Mosque, is
13 that correct?

14 A Yes.

15 Q In this time period at Farook Mosque, did there
16 ever come a time when Sheik Omar was asked questions that
17 you recall about jihad in America?

18 A Yes.

19 Q Was his answer that you should steal from
20 banks --

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q Would you tell us what his answer was to that
24 question.

25 MR. McCARTHY: Objection.

1 THE COURT: Overruled.

2 A The answer was that I remember one time he was
3 asked by a person, if it's OK to attack Jewish -- mainly
4 Jewish targets, organizations, top leaders, extremists in
5 this country, because of what they do to the Muslims in
6 Palestine. The sheik replied no, you cannot attack here,
7 you cannot do any violence here, whether they are Jews or
8 not, and I believe the discussion went further and it got
9 kind of tense between the person who asked and the sheik.

10 Q Can you identify the person who asked, at all?

11 A No, I can't. I used to --

12 MR. MCCARTHY: Objection.

13 THE COURT: Sustained. Don't volunteer anything.
14 The answer was no, go ahead.

15 Q Did the sheik make any further suggestion to this
16 person?

17 A Yes, he did, because the person insisted, he
18 continued, he continued with that, you know, they are
19 killing men, women and children in Palestine, and their
20 support is here from the United States and from mainly the
21 Jewish organizations here. The sheik told him if you have
22 anything to do with this or if you really want to perform
23 jihad then it's not to be done here, you should go fight
24 them on the same grounds they are fighting you.

25 Q Do you remember during 1990-91 there was a

1 demonstration at the mosque?

2 A Yes.

3 Q Can you tell us what group was demonstrating
4 against whom?

5 A I believe it was a Jewish extremist religious
6 group, and they called themselves at that time -- the police
7 came and they spoke to me at the mosque. They said a group
8 calling themselves Citizens Against Terror, and the cop went
9 on to say to me that I believe this group is a Jewish group
10 and they don't like sheik and they are here to demonstrate
11 against --

12 THE COURT: Miss Stewart, that is all stricken.
13 You understand that. Yes?

14 Q Did you come to learn the name of the group that
15 was demonstrating?

16 THE COURT: Sustained.

17 Q Did there come a point that people in the mosque
18 wanted to take action at that particular demonstration?

19 MR. MCCARTHY: Objection.

20 Q If you know.

21 A Yes.

22 THE COURT: Sustained.

23 Q Directing your attention to late 1990, Mr.
24 Alahiri, at Farook Mosque, was there a time when Sheik Omar
25 was removed from the mosque?

1 A What do you mean, removed?

2 Q That he was no longer permitted to preach there.

3 A Not really. What I know is that he himself had
4 left --

5 MR. McCARTHY: Objection, unless the witness --

6 THE COURT: Sustained.

7 Q Were you present at the mosque when Sheik Omar
8 was confronted there?

9 MR. McCARTHY: Objection, unless --

10 A Yes, yes, yes. There was one time when he gave a
11 speech, which was during the Gulf War, and he was very
12 critical of Saddam Hussein Baath Party. During that time
13 there was very strong support for Saddam Hussein, and the
14 people attending the congregation, most of them supported
15 Saddam Hussein, and the sheik was, actually they cut him
16 from delivering, you know, his speech, and he was about to
17 be attacked by a group of people, and prayer was canceled,
18 and it was a violent type situation.

19 Q During 1990 and 1991 and since that time did you
20 attend lectures or sermons by Sheik Omar at any other
21 mosque?

22 A Yes, I attended most --

23 THE COURT: You will have to lean forward and
24 talk into the microphone.

25 A I attended most of his lectures that he gave in

1 Brooklyn. After he left Brooklyn, he gave lectures at
2 masjid State Street, and I believe I attended every lecture
3 that he gave. I also attended sermons that he gave at the
4 same mosque, I believe once every two weeks or every month.
5 That is in State Street, too, and I attended those.

6 Q Did you ever have occasion to drive Sheik Omar?

7 A Yes, I did.

8 Q On how many occasions?

9 A I don't remember really.

10 Q More than 10?

11 A I think so, yes.

12 Q Did you drive him in your own car?

13 A Yes.

14 MS. STEWART: I have nothing else. Thank you,
15 Mr. Alahiri.

16 THE COURT: Mr. Wasserman, representing
17 Mr. Hampton-El.

18 CROSS-EXAMINATION

19 BY MR. WASSERMAN:

20 Q Good afternoon, sir.

21 A Good afternoon.

22 Q We just met this afternoon, correct?

23 A Yes.

24 Q And I asked you if you knew my client Abdel
25 Rashid. Mr. Rashid, can you stand up, please.

1 A Yes, I do.

2 Q How do you know him?

3 A I got to know him from Masjid Farook also. Like
4 I said, I was a member there, and he used to attend there.

5 Q Have you spoken to people about him or heard
6 people speak about him?

7 A When?

8 Q Do you know his reputation?

9 A Do I know his reputation?

10 Q Yes.

11 A Yes, I do. I know him in fact personally. I
12 have sat down with him many times. We had coffee sometimes,
13 we had meals together sometimes at restaurants near the
14 mosque. Yes, I do, I know him.

15 Q Could you tell the jury what your opinion of him
16 is, what your knowledge of his reputation is?

17 A He is a very -- he is kind of emotional person, I
18 would say, in a way. He is very good. I say he have a lot
19 of passion for people, you know.

20 Q Take a moment. Just relax.

21 Have you ever observed him expressing that --

22 MR. McCARTHY: Objection, 608(b).

23 THE COURT: Sustained.

24 Q Are there any examples that you can think of?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

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

3 THE COURT: No, you may not.

4 Q Are you aware that he had been in Afghanistan?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Actually, that one I will let you ask. Go ahead.

8 Q The question was, were you aware that he had been
9 in Afghanistan?

10 A Excuse me.

11 Q Were you aware that he had been in Afghanistan?

12 A Yes, I was aware that he went to Afghanistan
13 based on --

14 THE COURT: Was that based on conversations with
15 him or based on your own firsthand knowledge?

16 THE WITNESS: What do you mean? Conversation
17 with whom?

18 THE COURT: With Dr. Rashid.

19 THE WITNESS: No, it is not based on
20 conversations with him, no.

21 THE COURT: Based on you having seen that
22 directly yourself?

23 THE WITNESS: I would say it is conversations
24 with others, before.

25 THE COURT: That is stricken. Sorry. Go ahead,

1 Mr. Wasserman.

2 Q Did you know what his function or role was in
3 Afghanistan when he went?

4 MR. McCARTHY: Objection.

5 THE COURT: No, that is sustained. Mr.
6 Wasserman, move on to something else.

7 Q In connection with Dr. Rashid's reputation, are
8 you aware of his reputation in the community --

9 MR. McCARTHY: Objection, asked and answered.

10 THE COURT: Sustained.

11 MR. WASSERMAN: If I may, Judge -- I will have a
12 side bar if your Honor prefers to discuss it.

13 THE COURT: No.

14 Q I asked you before about his reputation at Masjid
15 Farook. Do you know also his reputation in his home
16 community?

17 A His reputation is very good. He is very helpful
18 to people who live with him. I believe he was helpful to
19 some ladies who were old -- that's in his neighborhood --
20 that he had gotten few times --

21 MR. McCARTHY: Objection.

22 THE COURT: That particular example is stricken.

23 THE COURT: Mr. Wasserman --

24 MR. WASSERMAN: Your Honor, may I --

25 THE COURT: You may take your seat. Thank you.

1 MR. WASSERMAN: Your Honor, may I have a side
2 bar?

3 THE COURT: You may take your seat. Anyone else?
4 Any cross, Mr. McCarthy?

5 MR. McCARTHY: Briefly, your Honor.

6 CROSS-EXAMINATION

7 BY MR. McCARTHY:

8 Q Good afternoon, Mr. Alahiri.

9 A Good afternoon.

10 Q When you were on the board of directors at the
11 Farook Mosque, did you tell us that was in 1990?

12 A Actually, yes, it was during that time. I was
13 there before.

14 Q When was it you were on the board of directors?

15 A I think started '88, not '89.

16 Q How long did you continue, sir?

17 A I am wrong. I have to correct that. It was
18 before '89. I know it was 13 years, more or less, that I
19 was there on the board of directors.

20 Q Were you on the board of directors in 1990?

21 A Yes, I was.

22 Q Do you know a fellow by the name of Musab Yasin?

23 A Who?

24 Q Musab Yasin.

25 A Musab Yasin. The name ring a bell in my head but

1 I am not sure. I mean, I am not sure if I really know him.

2 But that name rings a bell in my head.

3 MR. MCCARTHY: Thank you, sir.

4 THE WITNESS: You are welcome.

5 THE COURT: You are excused. Thank you very
6 much.

7 THE WITNESS: You are welcome.

8 (Witness excused)

9 MS. STEWART: The defendant calls Mohammed El
10 Zoghby.

11 MOHAMED HUSSEIN EL ZOGHBY,

12 called as a witness by the defense,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. STEWART:

16 Q Good afternoon, Mr. El Zoghby. How old are you?

17 A Sixty-two.

18 Q Where were you born?

19 A In Cairo, Egypt.

20 Q When did you come to the United States?

21 A In February 1, 19970.

22 Q Are you a citizen?

23 A Yes, I am a citizen of the United States.

24 Q When did you become a citizen?

25 A 1967.

1 Q Are you employed?

2 A Yes.

3 Q What do you do?

4 A I work for the New York City Department of
5 Finance as an associate tax auditor.

6 Q Is that office located in Brooklyn?

7 A Yes.

8 THE COURT: Excuse me, sir. If you could try to
9 lean forward and talk into that microphone, because
10 otherwise the translators can't hear you.

11 THE WITNESS: Yes, I am sorry.

12 Q Are you married?

13 A Yes, I am married and have four children and two
14 grandchildren.

15 Q Are you acquainted with Sheik Omar?

16 A Yes.

17 Q Do you see him in the courtroom today?

18 A Yes.

19 Q Could you just tell us where he is sitting.

20 A He is there.

21 THE COURT: Indicating Dr. Abdel Rahman. Go
22 ahead.

23 MS. STEWART: Thank you, Judge.

24 Q When were you first acquainted with him?

25 A I think it is about 1990 when he came as a

1 visitor, and he made many lectures in El Farook Mosque and
2 many, many mosques in New York.

3 Q How often would you say you have heard him speak
4 since 1990?

5 A Many, many times, sometimes in 1992 and 1993. It
6 used to be on weekly basis, in the school in New Jersey.

7 Q Could you tell us how that came about?

8 A I have some friends who opened a school, an
9 Islamic school in New Jersey. It started in Matawan, New
10 Jersey, and they rent it from the New Jersey Board of
11 Education on Sunday, and they have about five, six classes
12 for the children, and we have one class for the parents, and
13 Sheik Omar was the one who was giving lectures to the
14 adults, to the parents. That is how I came to know him. It
15 was about two hours every week.

16 Q What was the subject upon which he was giving
17 lectures?

18 A It was two sessions, because it was from 10:00
19 a.m. to noontime, or 1:00 p.m. in the summer. It was about
20 reciting the Koran and how to read the Koran and giving us
21 the rules. It was in the first session, and the second
22 session about the interpretation and the explanation of the
23 Koran.

24 Q When you say reciting the Koran, what does that
25 mean exactly?

1 A It means reading it correctly, because most of us
2 even we were born Muslim and came here as Muslims, we didn't
3 know how to read the Koran correctly, and he is the one who
4 used to teach us how to read the Koran correctly, in the
5 right way.

6 Q With regard to the lectures, what were the
7 lectures concerned with?

8 A The lectures, generally the interpretation of the
9 chapter we read in the first session, and sometimes when the
10 occasion comes, like on Ramadan, he makes a lecture about
11 how fasting and how we do fasting, and how we live our own
12 life in Ramadan, and when it comes the holidays, of the
13 journey of Prophet Mohammed -- al salaam -- from Mecca to
14 Jerusalem and when he descended into heaven from Jerusalem
15 to heaven, it was the main subject of the lecture.

16 Q Approximately how many people were in the class
17 that met on Sunday?

18 A From 20 to 50 people were attending there.

19 Q Over what period of time were these classes
20 taking place?

21 A It was more than two years during the school
22 year, and once the school year ends, you know, we stopped
23 going to the school, but he used to give us lecture in
24 Monmouth County Park in New Jersey. It was open, it was the
25 summer, of course, and it was to be in the open.

1 Q Are you associated with any other mosque
2 currently?

3 A Yes. Currently I am the president of the board
4 of trustees of Abu Bakr El Seddique Mosque in Foster Avenue,
5 in Brooklyn.

6 Q What are your duties as a member of the board of
7 trustees?

8 A It is running the mosque on actual day-to-day
9 basis, and supervising the financial action of the place
10 because we get the contributions from the people and we pay
11 salaries for the imam, and the caretakers of the mosque.

12 Q How are you selected to be on the board of
13 directors?

14 A It is according to the institution and the bylaw
15 of the mosque, which was in the early seventies. It is by
16 the direct election from the general assembly.

17 Q Who comprises the general assembly?

18 A The Muslims who are registered in our books and
19 come to the mosque regularly.

20 Q In 1990 and '91, was Mr. El-Gabrowny, who is
21 sitting over here, associated with your mosque?

22 A Yes.

23 Q Ibrahim?

24 A Yes, Ibrahim, he was the president of the board
25 of trustees, you know, and I became the president after him.

1 Q Are you familiar with him in any other
2 connection?

3 A No. We are only in the mosque.

4 Q Did you know a person by the name of Mahmoud
5 Abouhalima?

6 A I saw him in the TV when this thing is started
7 about the World Trade Center and all these things, but I
8 don't see him many, many times like Ibrahim El-Gabrownny.

9 Q Have you ever seen Emad Salem?

10 A I saw him once, in Sheik Omar Abdel Rahman's
11 room -- apartment in Jersey City. At that day, I had an
12 appointment with the Sheik Omar to solve a family problem
13 between me and myself, and I went there, or actually --

14 THE COURT: The question was do you know Emad
15 Salem, right?

16 THE WITNESS: That's the way I met him. I met
17 him only once. This was in Dr. Omar Abdel Rahman's
18 apartment, and he came in as a security officer, security
19 supervisor, and he looked at the window, and at that time
20 the window has no shades, no curtain, no nothing, just the
21 plain glass. He say anyone can shoot from this window,
22 anyone can do that from this window -- he came supervising
23 everybody, I am the head of this place, I am -- do you take
24 care of the door, did you take care of that -- this is the
25 only very first and the very last time, other than the

1 newspapers, of course.

2 (Laughter)

3 MS. STEWART: I have to skip down my page.

4 Q What was occurring at Sheik Omar's apartment that
5 day in April that you were there?

6 MR. McCARTHY: Objection to form, in April.

7 MS. STEWART: I think he said April 6.

8 THE COURT: Do you want to establish when it was.

9 Q What was happening?

10 A There was, we were preparing for news conference
11 there in his apartment, because we tried the whole day to
12 find, you know, a convenient place for the media people and
13 for us.

14 Q Did you indicated earlier that you had an
15 appointment with the sheik, is that right?

16 A Yes.

17 Q Was he supposed to do something for you?

18 A Yes. He was supposed to mediate between myself
19 and my wife, and because she complained about me, and he
20 brought me to his apartment to teach me a lesson and give me
21 the Islamic point of view about the way a man can teach his
22 wife -- a man can behave with his wife, which, you know, I
23 didn't do a good job at that.

24 Q Were you present at a demonstration after the
25 World Trade Center occurred?

1 A Yes.

2 Q Where did that take place?

3 A It was in Jersey City, by the El Salaam Mosque in
4 Jersey City.

5 Q What had occurred there, if you know?

6 A The day before the demonstration, some people
7 came in the evening, they broke in, they broke the glasses,
8 they broke the furniture, they almost going to burn the
9 place, but thank God they didn't. But they broke everything
10 in El Salaam Mosque.

11 Q What was the purpose of the demonstration you
12 attended?

13 A To deplore what these people did.

14 Q You indicated that you heard Sheik Omar speak on
15 many, many occasions from 1990 onward, is that right, Mr. El
16 Zoghby?

17 A Yes, ma'am.

18 Q Did you ever hear him ask the question about the
19 green card, or about residency in the United States?

20 A No, he never.

21 Q Did you ever hear him ask a question about jihad
22 in the United States?

23 A No.

24 Q Did you ever hear him speak about Mubarak,
25 President Mubarak of Egypt?

1 A Yes, he used the word Mubarak, La baarak Allah
2 Feeh, meaning that Mubarak, Allah, God, will not put his
3 bounty on him.

4 THE COURT: Can you spell that.

5 MS. STEWART: For the stenographer -- I think
6 it's Arabic.

7 THE COURT: I am quite sure it is.

8 THE WITNESS: This is in Arabic and the
9 translator will try and translate that, but this is my own
10 translation --

11 THE COURT: It is not the translation.

12 MR. MCCARTHY: Your Honor I only the want to know
13 what the answer was. I don't have an objection.

14 (Record read)

15 THE COURT: Perhaps the translators can get it
16 for us later.

17 MS. STEWART: I have no further questions, Judge.
18 Thank you.

19 MR. NOOTER: I do, your Honor.

20 THE COURT: Mr. Nooter, representing Mr. Wahid
21 Saleh.

22 CROSS-EXAMINATION

23 BY MR. NOOTER:

24 Q Good afternoon, Mr. El Zoghby.

25 A Good afternoon, sir.

1 Q I would like to approach you with copies of
2 Government's Exhibits 171, 172 and 176 in evidence. Looking
3 at the first of those three documents, Government's Exhibit
4 171, which has already been described as a document that is
5 signed by something called the Liberation Party, do you
6 recognize what that document is?

7 A Yes. After the Jummah prayer, mean the Friday's
8 prayer, you will find many, many people at the door of the
9 mosque, giving us these pamphlets or these documents, and we
10 just take it because we have no time to read it, and we take
11 it and fold it and put it in our pocket. When we go home or
12 in a place, we have some time to read it.

13 Q If you look closely at that document,
14 particularly near the bottom of the second page, I think you
15 will see that it is dated sometime in March 1991, and signed
16 by something called the Liberation Party. Do you see that?
17 That is just the first one of the documents, which is 171.

18 A Yes.

19 Q During 1991, around March, do you recall what was
20 happening in this country?

21 A Yes, was the Gulf War.

22 Q During that time, were there strong feelings
23 expressed about the Gulf War in the mosques?

24 A Yes.

25 Q Were those feelings sometimes expressed by pieces

1 of paper like the one in front of you?

2 MR. McCARTHY: Objection.

3 A Yes.

4 Q Did you ever see other papers like this?

5 A Yes, many, before the Gulf War, during the Gulf
6 War, after the Gulf War.

7 Q Do you know, do you specifically remember whether
8 you might have seen this exact one?

9 A No, not necessarily, but I saw many, many
10 pamphlets --

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q Did you see any others that were signed by
14 something called the Liberation Party?

15 A Yes.

16 Q In addition to flyers, have you heard anything
17 else or seen anything else put out by something called the
18 Liberation Party?

19 A No, only these pamphlets.

20 Q These kinds of pamphlets?

21 A Yes.

22 Q Based on what you had seen in those pamphlets, do
23 you know what the Liberation Party is?

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 MR. NOOTER: I am not offering it for the truth
2 but what they purport to be.

3 THE COURT: No, sustained.

4 Q Have you seen any other documents by the
5 Liberation Party?

6 A Yes.

7 THE COURT: You already asked him that.

8 Q Looking at Exhibits 172 and 176, which are the
9 other two that I handed you, can you tell us what those
10 would be?

11 A It's kind of letters telling us what the problems
12 and the misery of the Muslims, Olmas, and how to resolve
13 these problems.

14 Q These are more or less like newsletters, is that
15 correct?

16 A Yes.

17 MR. McCARTHY: Objection.

18 THE COURT: Why don't you let him testify.

19 Q Is there kind of a title on those?

20 A Yes.

21 Q What does that mean?

22 A Al Da'wa. It is the call for Islam.

23 Q The call, C-A-L-L?

24 A Yes, the call for Islam.

25 Q Have you seen those documents or others like it

1 at any time?

2 A Yes.

3 Q Where would you see those?

4 A In any mosque. Just go to any mosque in
5 Brooklyn, in Manhattan, in Jersey City in New Jersey, you
6 will find some people standing with this in their hands.

7 Q Do that do that inside or outside the mosque?

8 A Outside the mosque.

9 Q In addition to pamphlets of this type, are there
10 other kinds of pamphlets and flyers?

11 A Yes, there is type of pamphlets, you just name
12 it, for insurance company, travel agencies, accounting
13 firms, lawyers, whatever. You take all of them, you know.

14 Q When you see flyers being handed out in front of
15 the mosque which are of a political nature like these, do
16 they necessarily reflect the beliefs of the people who run
17 the mosque?

18 MR. MCCARTHY: Objection to form.

19 THE COURT: Sustained, sustained.

20 Q Do you know who actually puts out these various
21 flyers?

22 THE COURT: Sustained.

23 Q Sir, during the time of the Gulf War, were people
24 in the mosques told a lot of things about what was happening
25 in Iraq?

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q Sir, as a Muslim --

4 MR. McCARTHY: Objection.

5 THE COURT: Mr. Nooter, may I see you at the
6 side.

7 MR. NOOTER: I just have one more question. I
8 will come to the side, certainly.

9 THE COURT: Thank you.

10 (At the side bar)

11 MR. NOOTER: Judge, we of course objected to
12 these documents. Now I feel like I have to deal with them.

13 THE COURT: I am sure you feel that to the depths
14 of your being. That does not permit you to ask irrelevant
15 and incompetent questions.

16 MR. NOOTER: I believe my next question is not
17 incompetent.

18 THE COURT: Why don't you clear it. I am not
19 talking about the question, I am talking about the witness'
20 competence to testify to it.

21 MR. NOOTER: He is just an ordinary guy in a
22 mosque. That is the point of view that I want.

23 THE COURT: This is not a survey.

24 MR. NOOTER: He is just talking about the way
25 things work in a mosque with these flyers.

1 THE COURT: No. Is that your next question?

2 MR. NOOTER: My next has to do with why he keeps
3 the flyers. There is a religious reason and I believe I
4 should be able to put that in.

5 THE COURT: He keeps all the flyers that are
6 given to him, that he picks up?

7 MR. RUSSO: Actually, yes. May I assist?

8 MR. NOOTER: There is a religious reason why you
9 cannot throw flyers away that have the word God in Koranic
10 verse.

11 THE COURT: OK.

12 (In open court)

13 (Continued on next page)

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1 BY MR. NOOTER:

2 Q Sir, you told us before that when you received
3 these flyers you oftentimes put them in your pocket and
4 walked away with them, is that correct?

5 A Yes.

6 Q As a Muslim, if you receive a flyer like this,
7 whether you agree with it or disagree with it, are you
8 permitted simply to crumple it up and throw it away?

9 A No. If there is Bismallah Ar-Rahman Ar-Rahim in
10 the name of Allah, and if there is any Koranic verses I
11 wouldn't dare to throw it away. I keep it in my home.

12 Q Is there any way to destroy a piece of paper like
13 that?

14 A Only some of the scrolls say that you can burn
15 it, but I don't burn these things with the name Allah on it.

16 Q You yourself keep them?

17 A I keep them.

18 Q Even if you don't agree with what they say?

19 A I don't necessarily agree with them.

20 MR. NOOTER: Thank you very much.

21 THE COURT: Anyone else? Any cross?

22 MR. McCARTHY: No, thank you, your Honor.

23 THE COURT: Thank you very much. You are
24 excused.

25 (Witness excused)

1 MONA AHMED,

2 called as a witness by the defense,

3 having been duly sworn, testified as follows:

4 THE COURT: Excuse me. If you could please try
5 to talk into the microphone in front of you, pull the chair
6 forward and lean forward into the microphone.

7 MS. STEWART: Your Honor, the witness has asked
8 for a translator.

9 THE COURT: All right.

10 DIRECT EXAMINATION

11 BY MS. STEWART:

12 Q Good morning, Mrs. Ahmed.

13 A Good morning.

14 A Avenal.

15 THE COURT: Excuse me, I will ask the translator
16 to please take the microphone.

17 A I live in Avenal.

18 THE COURT: That is A-V-E-N-A-L?

19 THE WITNESS: Yes.

20 Q What state is that?

21 A New Jersey.

22 Q How old are you?

23 A Thirty-five.

24 Q Are you married?

25 A Yes, I am married.

1 Q Do you have children?

2 A One.

3 Q Where were you born?

4 A In Egypt.

5 Q When did you come to the United States?

6 A In '87.

7 Q Can you tell us, Mrs. Ahmed, why do you wear the
8 head wrap?

9 A Because my religion said that.

10 Q Directing your attention to the years 1992 and
11 '93, did you have occasion to meet Sheik Omar?

12 A Yes.

13 Q Where was that?

14 A He used to come to Avenal to give us lessons.

15 Q Do you see Sheik Omar in the courtroom?

16 A Yes.

17 Q Could you point him out again.

18 THE COURT: Indicating Dr. Abdel Rahman. Go
19 ahead.

20 MS. STEWART: Thank you.

21 Q How often were the lessons given?

22 A He would come every Saturday if circumstances
23 permit it.

24 Q How many people were in this class?

25 A There could be 10, 15, 20.

1 Q What was the subject matter of the class?

2 A Interpretation of the Koran.

3 Q Were there questions and answers put to Sheik
4 Omar at this class?

5 A Yes.

6 Q Approximately how long were the classes? How
7 long did they last?

8 A If he was free, he would stay for an hour, an
9 hour and a half.

10 Q Were these classes both men and women?

11 A No, women.

12 Q Did Sheik Omar ever speak on jihad?

13 A Yes. There was a verse that talks about jihad,
14 he would explain or interpret what that meant.

15 Q Did you ever hear Sheik Omar say that jihad
16 should be performed in America?

17 A Why? I never hear him say that.

18 Q Did he ever urge you to steal from banks or bomb
19 military establishments?

20 A That could never happen because all of that is
21 against my religion. How could he say something like that
22 to me?

23 Q When you would ask him a question about some
24 Koranic issue, what is the Arabic word for what you were
25 asking?

1 A I would say to him, what is the rule of the
2 religion in this issue?

3 THE COURT: I think what she wants to know is, is
4 there an Arabic word for the act of presenting a question to
5 an imam to be resolved, a religious question?

6 THE WITNESS: There is no specific word.

7 Q Is there a word for his opinion?

8 A His personal opinion?

9 Q No, the answer he would give on a religious
10 issue.

11 THE WITNESS: Your Honor, could you please
12 instruct the witness to give sentence by sentence.

13 THE COURT: You will have to speak slowly because
14 the interpreter has to remember everything you say and then
15 translate it.

16 MS. STEWART: Maybe I can volunteer to start
17 again here.

18 THE COURT: Why don't you, Judge.

19 MS. STEWART: Thank you, Judge.

20 Q Mrs. Ahmed, do you know the meaning of the word
21 fatwa?

22 A Yes.

23 Q Could you tell us what it means to you as a
24 Muslim.

25 A I can give an example. Can I?

1 Q Please.

2 A It's a simple example, but at one time I asked
3 Sheik Omar about the coupons, sometimes the coupon would
4 expire. The cashier, sometimes she take it --

5 Q I think we either have to do it in English or in
6 Arabic. We can't do it in both.

7 A Sometimes the coupons would expire, and I asked
8 Sheik Omar, is it possible for me to give the coupon to the
9 cashier, and she would take it. He told me no, that's a
10 taboo, because we are not supposed to fool them.

11 Q When you speak of coupons, do you mean the kind
12 of coupons you give in the supermarket?

13 A Yes.

14 Q Like 25 cents off for corn flakes?

15 A Yes.

16 Q Is that opinion a fatwa?

17 A Yes.

18 Q Are you commanded to follow that opinion?

19 A No, he does not command us anything. There is
20 something that I do not know, and I ask him what is right
21 and what is wrong, and he would answer, and it's all up to
22 me, what I see.

23 MS. STEWART: I have no further questions.

24 THE COURT: Anyone else? Any cross?

25 MR. MCCARTHY: No, thank you, your Honor.

1 THE COURT: Thank you very much. You are
2 excused.

3 (Witness excused)

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

8 (Jury excused)

9 MR. WASSERMAN: Your Honor, under 405(b), I had
10 thought that from eliciting the opinion from a witness of a
11 particular characteristic --

12 THE COURT: 608(b) says sets no specific examples
13 other than relating to honesty, number one. Number two, the
14 examples you were eliciting didn't relate to honesty.

15 MR. WASSERMAN: I am sorry. I was referring to
16 405(b).

17 THE COURT: I know what you were referring to,
18 now you know what I was referring to, and let's proceed.

19 MR. BERNSTEIN: Judge, as the jurors are coming
20 in, there was cross against Mr. Abdel Haqq that was, for
21 lack of a better term, rhetorical cross-examination about
22 the Holland Tunnel. I don't think we have to address in the
23 future nonexistent rhetorical cross-examination.

24 MR. WASSERMAN: Your Honor, 608(b) refers to
25 credibility of a witness, and that is --

1 THE COURT: Mr. Wasserman, write a book about it.

2 MR. WASSERMAN: Your Honor, I am just trying to
3 understand. That rule refers to a witness' credibility, not
4 my client. If I am asking the opinion about characteristics
5 of my client, that comes under 405(b) and I am allowed to
6 elicit instances.

7 THE COURT: I still don't think that the instant
8 you were trying to elicit was relevant to the character
9 trait or that the character trait was relevant to the case.

10 MR. MCCARTHY: Your Honor, 405(b) deals with a
11 circumstance where a particular character trait is an
12 essential element of the offense, which we are not in. The
13 court correctly ruled that you can't go into specific
14 instances.

15 MR. WASSERMAN: I think the question was whether
16 this was an essential characteristic in this case.

17 THE COURT: No.

18 MR. STAVIS: Your Honor, I believe Mr. Bernstein
19 had a question on the floor. It was one that I am
20 interested in.

21 THE COURT: They don't want the tunnel question
22 any more. Can we do without the tunnel question?

23 MR. MCCARTHY: Yes, your Honor.

24 (Jury present)

25 THE COURT: Ms. Stewart.

1 MS. STEWART: The defense calls MAC indicated
2 side.

3 THE WITNESS: As-Salamu Alaikum.

4 MAKAID SAID,

5 called as a witness by the defense,
6 having been duly sworn, testified as follows:

7 THE COURT: Go ahead, Miss Stewart.

8 DIRECT EXAMINATION

9 BY MS. STEWART:

10 Q Good afternoon, Mr. Sayyid.

11 A Good afternoon.

12 Q Could you tell us what the clothing you are
13 wearing is called.

14 A Excuse me.

15 Q What the clothing you are wearing is called.

16 A OK. That's called kaftan, galabia.

17 Q Is that Egyptian?

18 A Well, that is Egyptian or -- so much people dress
19 it, most of the Muslims dress it, it doesn't matter,
20 American, Egyptian, Pakistan.

21 Q You have to talk a little bit slower, a little
22 slower.

23 A OK.

24 Q Where were you born?

25 A I born in Egypt.

1 Q When did you come to the United States?

2 A I come to United States in 1986.

3 Q Do you have a green card?

4 A Yes, I have.

5 Q Where do you reside?

6 A Sorry.

7 Q Where do you live?

8 A I live in Brooklyn.

9 Q What neighborhood in Brooklyn?

10 A Crown Heights.

11 Q Are you employed?

12 A Yes, I do. I superintendent in La Haim Realty.

13 Q Do you have any other employment? Do you have
14 any other work?

15 A As what?

16 Q Do you do any other work besides being a
17 superintendent?

18 A Yes, I have some business, falafal push cart.

19 Q Where is that falafal push cart?

20 A In front of 26 Federal Plaza.

21 Q What is your education?

22 A I have bachelor degree in business
23 administration.

24 Q Where is that from?

25 A Ein-Shams University in Cairo.

1 Q Is that in Egypt?

2 A Yes, in Egypt.

3 Q Are you married?

4 A Yes.

5 Q Do you have children?

6 A I have children. I am married, Islamic married.

7 I have three girls.

8 Q Do you know Dr. Abdel Rahman?

9 A Yes, I do, I know him.

10 Q How do you know him?

11 A He is Islamic teacher.

12 Q Do you see him here in the courtroom?

13 A Yes, I see him in the courtroom.

14 Q Would you just point him out for us.

15 A Yes, look to Omar Abdel Rahman right here.

16 THE COURT: Indicating Dr. Omar Abdel Rahman. Go
17 ahead.

18 Q Directing your attention to 1991, did you have
19 occasion to see him here in the United States?

20 A I see Dr. Abdel Rahman teach in Masjid Farook and
21 other masjids.

22 Q Did you know of him before that date, before
23 seeing him in the United States?

24 A No, I know him in United States.

25 Q Did you ever see him in any other mosque?

1 A Yes, I do, I see him in different mosques. I see
2 him in the Dawoud Mosque, I see him in New Jersey mosque.

3 Q Can you say that again.

4 A Masjid Dawoud.

5 Q D-A-W-O-U-D?

6 A Yes, they call States Mosque.

7 Q Are you a member at any mosque? Do you belong to
8 a mosque?

9 A Muslim really don't belong for any mosque but I
10 go to the mosque close to my house, Ekhwa Masjid.

11 Q Where is that located?

12 A In Eastern Parkway, Utica Avenue.

13 Q In Brooklyn?

14 A In Brooklyn, yes.

15 Q Did Sheik Omar ever preach at that mosque?

16 A Yes, he comes here and we invited him to give
17 lecture in this mosque.

18 Q How did he get to your mosque?

19 A We go there and bring him by car.

20 Q Is that your own car or somebody else's car?

21 A No, somebody else car.

22 Q How often did he come to your mosque?

23 A He usually come like once a week.

24 Q How many times would you say you have heard him
25 lecture since 1991?

1 A I cannot count it, but I hear from him a lot.

2 Q More than 50 times?

3 A I not remember, but I hear him a lot, hear him a
4 lot. Fifty maybe.

5 Q Did you ever hear him ask a question at Farook
6 Mosque with regard to performing jihad here in America?

7 A No, he never say it.

8 Q Did you ever hear him give an opinion that people
9 should steal from banks and blow up military camps here in
10 the United States?

11 A No, I don't hear that one.

12 Q Did you ever hear him speak on living in the
13 United States as a Muslim?

14 A Yes. Once somebody in my mosque ask him about
15 United States helping other countries against Muslim, we can
16 make something against United States. The sheik say no, you
17 cannot do this, you live in this country, and if you take
18 visa to come this country, that mean safe contract, you
19 cannot do anything in this country.

20 Q Did your family also attend lectures of the
21 sheik?

22 A Yes, the sheik sometimes can teach my kids Koran.

23 Q When you say teach them, what is the method that
24 he uses to teach?

25 A He teach them recite the Koran.

1 Q How old are your children?

2 A My child born here in United States. She is
3 American and she now recite three baats in the Koran. She
4 is six years old.

5 Q Did you ever speak on the telephone with Sheik
6 Omar?

7 A Yes, I do.

8 Q For what?

9 A If we get appointment to our mosque, or sometimes
10 I read our newspaper for him.

11 Q Has he visited your home?

12 A No. I wish he come, but he not come.

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

15 THE COURT: Thank you. Anyone else? Any cross?

16 MR. McCARTHY: No, thank you, your Honor.

17 THE COURT: Thank you very much. You are
18 excused. You are excused. You may leave.

19 THE WITNESS: Finished?

20 THE COURT: Yes.

21 THE WITNESS: Thank you.

22 (Witness excused)

23 THE WITNESS: As-Salamu Alaikum.

24 (Witness excused)

25 THE COURT: Ms. Stewart?

1 MS. STEWART: We call Hewiada Soliman.
2 HEWIADA SOLIMAN,
3 called as a witness by the defense,
4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. STEWART:

7 Q Good afternoon, Mrs. Soliman. How old are you?

8 A Thirty-three.

9 Q I think you will have to sit closer to the
10 microphone.

11 A Thirty-three years old.

12 Q Where were you born?

13 A Egypt.

14 Q When did you come to the United States?

15 A In March 1989.

16 Q Are you married?

17 A Yes.

18 Q Do you have children?

19 A Yes, three.

20 Q What is your educational background?

21 A The faculty of science.

22 Q In what school?

23 A Chemistry.

24 Q What school did you attend?

25 A Ein-Shams University.

1 Q That is where?

2 A Cairo, Egypt.

3 Q What years were you there?

4 A '83, until '83, the end of '83.

5 Q While you were living in Egypt, had you formed an
6 opinion of Sheik Omar?

7 A Of course, whatever was being said in the
8 newspapers and in the news and in the universities.

9 Q What was that?

10 A He was a leader of an extremist group.

11 Q Any further opinion?

12 A He was described as a terrorist and not as a
13 Muslim sheik.

14 Q Had you ever met him personally while you were in
15 Egypt?

16 A No, no.

17 Q When was it first that you met him personally
18 personally?

19 A Here in the U.S., in Matawan.

20 Q How did it come about that you met him?

21 A I heard him give a lesson.

22 Q Where was that?

23 A In Matawan.

24 Q Was that a lesson in a mosque?

25 A Something like that. It's a gathering place for

1 Muslims.

2 Q How many times did you attend lessons by Sheik
3 Omar?

4 A After that, we would attend the lessons in our
5 place, in Avenal.

6 Q What state is that in?

7 A New Jersey.

8 Q How long would these lessons last?

9 A It didn't have a specific time. It could have
10 been two hours.

11 Q Did Mrs. Mona Ahmed also attend these particular
12 lessons?

13 A Yes.

14 Q What were the subjects that Sheik Omar lectured
15 on at these lessons?

16 A First thing is the Koran. He would explain,
17 explain some of the verses from the Koran, and most of it
18 could have been something that concerned us women, because
19 all of the attendees were women.

20 Q Can you give us some examples?

21 A The most important thing for us, the things
22 concerning the hijab, things that we wear, the inheritance.

23 Q Things of particular concern to women?

24 A Yes.

25 Q Was there a question and answer period during the

1 classes?

2 A The first part, like I said, was the Koran and
3 his interpretation, and if we have any questions concerning
4 that part of the Koran which he explained. The second part
5 concerns something also in religion, called fikeh, or
6 jurisprudence.

7 Q What do you mean when you use the word fikeh?

8 A These are things that the prophet urged,
9 encouraged us, in, for example, how we pray, how we do
10 ablution before we pray, and things that have particular
11 concern to women, and that is breast feeding, divorce.

12 Q Did you ever in the time you attended the classes
13 hear Sheik Omar urge you to perform jihad here in America?

14 A Against who?

15 Q Against America.

16 A Why?

17 Q Did there ever come a time that you changed your
18 original opinion about Sheik Omar?

19 A Yes.

20 Q What was that?

21 A When I heard him speak about religion from the
22 opinion that I had already formed in Egypt about him and
23 then the opinion that I formed when I found out about him
24 when I came here, I had a different opinion altogether.

25 MS. STEWART: I have no questions.

1 THE COURT: Anyone else? Any cross?

2 MR. McCARTHY: No, thank you, your Honor.

3 THE COURT: Thank you. You are excused.

4 (Witness excused)

5 MS. STEWART: The defense calls Said Soliman.

6 THE COURT: When you take an oath, you can either
7 swear or affirm.

8 MS. STEWART: Your Honor, maybe he would like the
9 interpreter.

10 THE COURT: Fine. Could the interpreter please
11 determine whether the witness would prefer to take the oath,
12 taking the name of God or not.

13 THE INTERPRETER: Yes, he would.

14 THE COURT: Swear him.

15 SAID M. SOLIMAN,
16 called as a witness by the defense,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. STEWART:

20 Q Mr. Soliman, how old are you?

21 A Forty years old.

22 Q Where do you reside?

23 A Avenal, New Jersey.

24 Q Where were you born?

25 A Cairo, Egypt.

1 Q When did you come to the United States?

2 A 1980.

3 Q Are you a citizen?

4 A Yes, ma'am.

5 Q When did you become a citizen?

6 A 1987.

7 Q Was Hewaida Soliman, who was here just before
8 you, was she a relation of yours?

9 A Yes, she is my wife but she came after. We
10 married in Cairo, Egypt, and then she came over here.

11 Q You have three children?

12 A Yes, ma'am.

13 Q I would like to direct your attention to classes
14 that were held in Avenal, New Jersey, that were taught by
15 Sheik Omar.

16 A OK.

17 Q Can you tell us what years those were taught?

18 A About three years ago from now, three, four years
19 ago.

20 Q What days of the week were they taught, if you
21 remember?

22 A Usually it was on Saturdays.

23 Q How are you employed?

24 A Normally, this lecture or this class used to be
25 in one of us house, so mainly or 80 percent it used to be in

1 my house. So I used to go bring the sheik from his house to
2 my house, and after the class is over with, I take him back
3 and I sit with him like half hour or so till he feel secure
4 or relaxed, and then I leave.

5 Q How long a trip is it from Jersey City to Avenal?

6 A About 40 minutes, 45 minutes.

7 Q Did you use your car or the sheik's car?

8 A My car. I don't think the sheik ever have a car.

9 Q Did you attend classes that the sheik taught?

10 A Yes, men's classes but not women's. When the
11 sheik have women's classes, I leave, you know, so that he
12 can have some privacy.

13 Q How many people, approximately, would attend the
14 men's class?

15 A About 20, from 10 to 20.

16 Q These were taught weekly --

17 THE COURT: Excuse me. If you are going to be
18 responding in English, if you could lean forward and talk
19 into the microphone, because the other translator needs to
20 hear you. Thank you.

21 THE WITNESS: OK.

22 Q How long would the classes last?

23 A About hour and a half, two hours.

24 Q During any of these classes was Sheik Omar ever
25 asked if jihad should be performed in America?

1 A No, never.

2 Q Did he ever comment on the obligation of persons,
3 Muslims living in America, to America?

4 A I heard him in this incident, I remember somebody
5 ask him a question and I remember the answer for it. One of
6 the classes some guys ask him if he going to give to the IRS
7 big amount of money, and he think about taking this amount
8 of money, give it to jihad in the States. So the answer
9 from the sheik was that this is not right, you came to this
10 country and it have laws, it have to be respected and you
11 put yourself under the hand of the law, you have to respect
12 the law of the land. So it is not right to take the money
13 away from IRS and send it to jihad in some other country
14 abroad. That is the answer for this question.

15 Q How are you employed, Mr. Solomon?

16 A Excuse me.

17 Q What work do you do?

18 A I am a trucker.

19 Q What is your educational background?

20 A I have a degree in accounting back home.

21 Q Back home is?

22 A Cairo, Egypt.

23 MS. STEWART: Nothing further, Judge.

24 THE COURT: Anyone else? Any cross?

25 MR. MCCARTHY: No, thank you, your Honor.

1 THE COURT: Thank you, sir. You are excused.

2 THE WITNESS: Thank you. Al-Salamu Alaikum.

3 (Witness excused)

4 MS. STEWART: The defense calls Elson Blake.

5 ELTON BLAKE,

6 called as a witness by the defense,

7 having duly affirmed, testified as follows:

8 THE WITNESS: My name is Elton Blake, E-L-T-O-N,
9 B-L-A-K-E. As-Salamu Alaikum.

10 THE COURT: Mr. Blake, if you could lean forward
11 a little bit or pull your chair forward and try to talk into
12 the microphone so the translator can hear you. Thank you.

13 DIRECT EXAMINATION

14 BY MS. STEWART:

15 Q Good afternoon, Mr. Blake.

16 A Good afternoon.

17 Q How old are you?

18 A Thirty-three.

19 Q Where were you born?

20 A Kingston, Jamaica.

21 Q Do you have a Muslim name as well as Mr. Blake?

22 A Yes.

23 Q What is the Muslim name?

24 THE COURT: Excuse me, Mr. Blake. The

25 translators can't hear you, if you could take one of the

1 microphones and point it directly at you.

2 Q Speak into it and let's see if we can hear you.

3 A Hello.

4 Q A little closer, I think. Hello?

5 A Hello.

6 THE COURT: Perfect. Thank you.

7 Q Would you tell us your Muslim name again.

8 A Umor Abdullah Shabazz Abdul Rahman.

9 THE COURT: Can you spell that for the reporter,
10 please.

11 THE WITNESS: U-M-O-R, A-B-D-U-L-L-A-H,
12 S-H-A-B-A-Z-Z, A-B-D-U-L, R-A-H-M-A-N.

13 Q When did you come to the United States?

14 A 1982.

15 Q When did you get a green card?

16 A 1982.

17 Q Are you employed?

18 A Yes.

19 Q What kind of work do you do?

20 A I am a superintendent.

21 Q What is your educational background?

22 A I have been from preschool to high school, in
23 one.

24 Q This is in Jamaica?

25 A Yes.

1 Q Are you married?

2 A Yes.

3 Q Do you have children?

4 A Yes.

5 Q How many?

6 A Two.

7 Q When did you first see Dr. Abdel Rahman?

8 A This is summer about 1992.

9 Q Are you a member at any mosque?

10 A Masjid Ikaa, 1135 Eastern Parkway.

11 THE COURT: Can you spell that name, please.

12 THE WITNESS: I-K-A-A.

13 Q Where is it located again?

14 A 1135 Eastern Parkway.

15 Q Is that in Brooklyn?

16 A Yes.

17 Q Has Sheik Omar ever spoken at this mosque?

18 A Yes.

19 Q Can you tell us how often would he speak there
20 during the time you knew him?

21 A He used to come almost -- like on Thursdays.

22 Q How long would he stay when he came?

23 A An hour, two hours.

24 Q How would he get to your mosque, if you know?

25 A Some of us had to go and pick him up at his home.

1 Q Where was his home?

2 A In Jersey.

3 Q Were you one of the fellows?

4 A Yes.

5 Q Was this every week?

6 A Yes, most likely.

7 Q Approximately how many times altogether would you
8 say you have heard him lecture?

9 A Maybe 30, 40 times.

10 Q Did you ever hear him lecture on performing jihad
11 in America?

12 A No.

13 Q Did you ever hear him say that Muslims in America
14 should steal from banks or blow up military bases?

15 A No.

16 Q Did you ever hear him speak about Mubarak?

17 A Well, he said Mubarak is a dictator that
18 persecute Muslims, yes.

19 MS. STEWART: I have nothing further, Judge.

20 THE COURT: Anyone else? Cross? Cross.

21 MR. McCARTHY: No, thank you, your Honor.

22 THE COURT: Thank you. You are excused.

23 (Witness excused)

24 (Continued on next page)

25

1 WALEED ABU SHABAN,
2 called as a witness by the defense,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. STEWART:

6 Q What is your first name, Mr. Abu Shaban?

7 A Waleed.

8 Q Did you spell that already?

9 A Yes, W-A-L-E-E-D.

10 Q Did you ever translate for any of the sheik's
11 classes?

12 A Yes, I do.

13 Q Was that class attended by Mustafa, the fireman
14 who was just here?

15 A Yes, indeed.

16 Q Where do you reside?

17 A At the time of the classes or right now?

18 Q No, let's go back to now.

19 A Jersey City.

20 Q What is the address that you reside at?

21 A 115 Fairview Avenue, apartment 59, Jersey City,
22 07304.

23 Q Where were you born?

24 A In the Gaza Strip, Palestine.

25 Q You are a little too close. I think we are

1 losing the words. You get close but not --

2 A Gaza Strip, Palestine.

3 Q When did you come to the United States?

4 A 1993.

5 Q Are you a citizen?

6 A Yes, indeed.

7 Q What year did you come to the United States?

8 A '93. '83, I am sorry. I thought when I became
9 citizen. That was in '93.

10 Q Take your time. When you came -- let me step
11 back. Where did you receive your green card?

12 A Many I applied for it in the U.S. Embassy in Tel
13 Aviv.

14 Q Are you currently employed?

15 A Not right now, no.

16 Q Are you on disability?

17 A Yes.

18 Q When you are employed, what do you work at?

19 A A banquet coordinator.

20 Q I didn't understand that.

21 A Banquet waiter, coordinator.

22 Q Are you married?

23 A Yes.

24 Q Do you have children?

25 A Three.

1 Q Are you able to support them right now?

2 A Yes.

3 Q Is your wife receiving money not from you?

4 A Yes.

5 Q What is your educational background?

6 A I finished high school in Palestine. Then I
7 attend the Islamic college in Gaza Strip. Then I attend law
8 college in Alexandria University. Then I went to LaGuardia
9 Community College in Queens. Then I transferred to Essex
10 University in New Jersey.

11 Q You have to keep your voice up, because if she
12 can't hear you, they can't hear you back here at all.

13 A OK.

14 Q How many languages do you speak, Mr. Abu Shaban?

15 A Arabic, English, and Hebrew.

16 Q Do you know Dr. Abdel Rahman?

17 A Yes, indeed, I know him.

18 Q Do you see him in court today?

19 THE COURT: Indicating --

20 THE WITNESS: Yes.

21 MS. STEWART: He didn't find him, Judge.

22 THE COURT: He has found him now. Go ahead.

23 Q Do you remember when you first met him?

24 A Yes.

25 Q When was that?

1 A In late 1991.

2 Q Where was that?

3 A I met him at the El Salaam Masjid in Jersey City.

4 Q Where is El Salaam Mosque Masjid in Jersey City?

5 A It's in Kennedy Boulevard, in second floor.

6 Q Is there another center on Park Street?

7 A 17 Park Street. That's Islamic Center of Jersey.

8 17 Park Street. That's the Islamic Center of Jersey.

9 Q That is separate from El Salaam Mosque, is that
10 right?

11 A Yes, that is separate.

12 Q Did you also attend lectures or hear him speak at
13 other places?

14 A Yes.

15 Q What other places were they?

16 A The masjid in Brooklyn in State Street, and
17 masjid in Queens, and south Jersey.

18 Q Did you ever visit the sheik's apartment on
19 Fairview Avenue?

20 A Yes.

21 Q Can you describe what you observed happening
22 there?

23 A Nothing unusual. It's lecturing, answering phone
24 calls for people to answer the questions, and sort of things
25 like that.

1 Q Was the door locked? Were people not allowed to
2 come in?

3 A Yes.

4 Q Yes?

5 A Yes.

6 Q How many people would you usually find at the
7 sheik's house at any given time?

8 A Ten, eleven.

9 Q How many times total would you say that you heard
10 the sheik speak?

11 A I can't count. A lot of times.

12 Q More than 50?

13 A You could say more than 100.

14 Q Did you ever hear him urge the people listening
15 to him to perform jihad in America?

16 A No.

17 Q Did you ever hear him say at any time that people
18 should steal from the banks or attack military bases?

19 A No.

20 Q What did you hear him say about jihad, if you
21 remember?

22 A I remember he call in about, as in United States
23 for Muslim as a safe haven, and nobody should do anything
24 to --

25 Q Did you ever hear him -- I am sorry.

1 A As a safe haven for the Muslims of this country.

2 Q Did you ever hear him speak about Egypt?

3 A Yes.

4 Q Do you recall what he said about Egypt?

5 A His position on Egypt, to expose the Egyptian
6 government.

7 Q Can't hear you.

8 A OK. His position in Egypt, to expose the
9 Egyptian government, and how they treat the prisoners, the
10 political prisoner in Egypt, and stuff like that.

11 Q Did you ever know the sheik to mediate between
12 people?

13 A Yes.

14 Q What do you know about that?

15 A He actually mediate between my cousin and her
16 husband and a friend of mine and his wife, and the outcome
17 was very good.

18 Q How does that exactly work?

19 A It's like a marriage counselor. People comes to
20 him with a problem and he solve it.

21 Q Does he do that like a marriage counselor from
22 his personal opinion?

23 A Yes.

24 Q Does the fact that he is a sheik have anything to
25 do with it?

1 A Yes.

2 Q How does that have anything to do with it?

3 A Because usually people wants Islamic opinion and
4 he is the best to get from.

5 Q How old are your children?

6 A Eight, 6 and 3.

7 Q Did your children ever interact with Sheik Omar?

8 A Yes.

9 Q Did he teach them to rerecite the Koran?

10 A Yes.

11 Q In the building at Fairview Avenue, did you know
12 a person named Abdel Rahman Haggag?

13 A Yes.

14 Q What did you know him as?

15 A As a good friend of Sheik Omar.

16 Q Did you know from either the mosque or from Sheik
17 Omar's house a person known as Siddig Ali?

18 A Yes.

19 Q Did he ever speak to you about training?

20 A Yes, he did.

21 Q What did he say and what did you say?

22 A He said we go to New York to train for weapons
23 and stuff like that, and if you like to come, and I told him
24 it's not my hobby.

25 Q Did he say to you what that was for, that

1 training?

2 MR. McCARTHY: Objection to leading.

3 THE COURT: No, that is overruled.

4 A Excuse me.

5 THE COURT: You can ask it. Did he say what the
6 training was for?

7 A He said the training was for Bosnia.

8 Q Did you ever hear Siddig Ali speak at the mosque?

9 A Yes, indeed.

10 Q Can you characterize his speeches?

11 A It's very radical.

12 MS. AMSTERDAM: I am sorry. Very?

13 A It's very radical.

14 Q When you say that, as compared to Sheik Omar?

15 A No.

16 Q Would you explain that.

17 A When Sheik Omar speak, he speak what Islam says,
18 but when Siddig speak, he speak in his, what you supposed to
19 do, like encouraging.

20 Q Did you know Nidal Ayyad?

21 A Through the newspaper, yes.

22 Q How about Adil Kaddoumi?

23 A Yes, I know him.

24 Q Was he your friend?

25 A Very good friend.

1 Q Was he Palestinian?

2 A Yes.

3 Q Did he also attend the sheik's lectures?

4 A Many times.

5 Q How about Adil Awasat?

6 A Yes.

7 Q Did he attend the sheik's lectures?

8 A Osborn Terrace, yes.

9 Q Is he also Palestinian?

10 A Yes, he is.

11 Q Your wife, what is her ethnicity?

12 A Excuse me.

13 Q What is her background?

14 A She is half Puerto Rican and half Jewish.

15 Q Is she a Muslim?

16 A Yes.

17 Q Did she also attend Sheik Omar's lectures?

18 A Sometimes, and most of the time I used to get her
19 the script for the lessons, because she had to do the kids.

20 Q Were those the lessons that --

21 A Sheik Omar --

22 Q Pardon me.

23 A The lessons that Sheik Omar delivered.

24 Q Were they the ones that Moustafa attended as

25 well?

1 A Yes.

2 MS. STEWART: I have nothing further.

3 THE COURT: Anyone else? Ms. Amsterdam?

4 CROSS-EXAMINATION

5 BY MS. AMSTERDAM:

6 Q Good afternoon, sir.

7 A Good afternoon. How you doing?

8 Q You indicated that you had met Siddig Ali?

9 A Yes, I did.

10 Q When did you meet him, sir?

11 A I met him in Sheik Omar's house.

12 Q Do you know what year that was, approximately?

13 A Early 1992.

14 Q In 1992?

15 A Yes.

16 Q There came a time, sir, that he asked you to go
17 to training?

18 A Yes, he did.

19 Q Did he ask or was it a simple invitation or did
20 he push you to go?

21 A He said we have weekly training, we go train for
22 weapons, and we like you to come with us. I told him no,
23 indeed, I don't have no interest, it's not my hobby to deal
24 with weapons, I hate -- I told him I have no interest and
25 it's not my hobby to deal with weapons.

1 Q And the training, he said, was for Bosnia?

2 A Yes.

3 (Continued on next page)

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1 MS. AMSTERDAM: Thank you, sir.

2 THE COURT: Anyone else? Any cross?

3 MR. MCCARTHY: May I have a moment?

4 No questions. Thank you.

5 THE COURT: Thank you, sir. You are excused.

6 (Witness excused)

7 (At the side bar)

8 MS. STEWART: I am happy to start Mr. Yousery,
9 the translator, but I won't be able to finish him and we
10 have a witness coming tomorrow at 9:30.

11 THE COURT: Let's get started with Mr. Yousery.
12 Is there as to disputed matters?

13 MR. MCCARTHY: Your Honor, I don't mean to
14 interrupt. We would prefer if Mr. Yousery began tomorrow,
15 unless it is going to be with respect to the stuff that I
16 said I don't have any objection to.

17 THE COURT: If it is the stuff that you said you
18 had no objection to, there is no point in his testifying.

19 MS. STEWART: Unfortunately, the stuff that he
20 has no objection to has to be reproduced because we weren't
21 going to make 40 copies until we knew that he was definitely
22 coming in.

23 If you would like us to stipulate to the
24 transcript of bootleg 40, we could read that.

25 MR. MCCARTHY: The problem is, I just got the

1 transcript, and I had a hundred pages of Arabic stuff last
2 night.

3 THE COURT: So short of this there is nothing to
4 do?

5 MS. STEWART: There is nothing to do. The
6 government.

7 (In open court)

8 THE COURT: The well is dry for the moment,
9 ladies and gentlemen. We are going to break for the day.
10 Please leave your notes and other materials behind. Please
11 don't discuss the case, and we will resume tomorrow at or
12 about 9:30. Have a pleasant evening. Please don't read,
13 see or hear anything about this case if there should be any
14 reports about it. Good night.

15 (Jury excused)

16 THE COURT: Anything else we have to do right
17 now? No? Ms. Amsterdam, you had a matter?

18 (Proceedings adjourned until 9:30 a.m., Thursday,
19 July 20, 1995)

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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.

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S5 93 Cr. 181 (MBM)

July 20, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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2

APPEARANCES

3

4

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United States Attorney for the

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Southern District of New York

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and
SALVATORE S. RUSSO

1 (Trial resumed)

2 (Pages 14622 - 14638 sealed)

3 (In open court; jury not present)

4 MR. WASSERMAN: Your Honor, may I go on the
5 record and be excused? Mr. Ricco will cover for me and my
6 client consents.

7 THE COURT: Is that acceptable?

8 DEFENDANT HAMPTON-EL: Yes.

9 MR. SERRA: Your Honor, I have the same problem.
10 I have a little research that will probably take half an
11 hour to an hour. Mr. Stavits will cover for me and
12 Mr. Alvarez accepts.

13 THE COURT: Is that acceptable?

14 DEFENDANT ALVAREZ: Yes.

15 (Jury present)

16 THE COURT: Good morning, ladies and gentlemen.
17 I say good morning again.

18 Miss Stewart.

19 MS. STEWART: The defense calls Mohammed Yousry.

20 (Continued on next page)

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1 MOHAMMED YOUSRY,

2 called as a witness by the defense,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. STEWART:

6 Q Good morning, Mr. Yousry.

7 A Good morning.

8 Q How old are you?

9 A Thirty-nine years old.

10 Q Where were you born?

11 A I was born in Cairo, Egypt.

12 Q When did you come to the United States?

13 A 1980.

14 Q You really have to lean up forward because
15 otherwise, something you should be sympathetic with, the
16 interpreters can't hear you.

17 A OK.

18 Q Are you a citizen?

19 A No, I am a permanent resident.

20 Q Are you currently employed?

21 A Yes, I am.

22 Q As what and by whom are you currently employed?

23 A I am currently employed at Hess Translation as an
24 interpreter and translator, and as well at New York
25 University as an adjunct professor.

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1 Q Would you tell us about your previous education.

2 A In Egypt I have a bachelor degree in military
3 science, an advanced certificate in political economy.

4 Q I didn't hear that. I am sorry.

5 A An advanced certificate in political economy.

6 Can you hear that now?

7 Q That's better.

8 A In the United States right now, I am a doctoral
9 candidate, a Ph.D candidate at NYU.

10 Q What university did you attend in Egypt?

11 A Cairo University.

12 Q Would you tell us what you have done in the field
13 of translation, your past with regard to that.

14 A In 1986, I was working for Market Incorporation
15 in the United States as a translator and interpreter. As
16 well, I interpreted for the largest group of artists from
17 Egypt who came here for a tour. I believe it was like
18 two-month tour.

19 THE COURT: Your translations have been Arabic to
20 English?

21 THE WITNESS: Arabic to English and English to
22 Arabic.

23 MS. STEWART: Thank you, Judge.

24 THE COURT: It's obvious, I thought I would make
25 it explicit.

1 A Currently I am translating for Hess Translation
2 with respect to this case, for over two years.

3 Q Did you also work for NBC?

4 A I did some consultant work for them, yes.

5 Q And for the Daily News?

6 A For the Daily News, I did the translation,
7 proofreading of the election material of last mayoral
8 election.

9 Q If she can't hear you, you can be certain no one
10 back here that hear you. You just have to keep your voice
11 up.

12 A I am trying to get as close as possible.

13 Q With regard to the Egyptian theatrical group,
14 what kind of translation did you do for them?

15 A Legal material, financial material, and as well I
16 traveled with them all over the United States. They are a
17 big group, equivalent of Bill Cosby over here. So it's one
18 of the biggest groups in the Arab world.

19 Q Did you ever do any any private translation work
20 before you went to work for Hess, aside from those you have
21 mentioned?

22 A Yes, I have.

23 Q Could you tell us about that.

24 A I have done some researches for universities, I
25 have done some researches for New York Times, translating

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1 material from classical Arabic, some Egyptian dialect.

2 Things of that sort.

3 Q Have you ever taught either English or Arabic?

4 A At NYU I do teach Arabic for groups. English, I
5 did not teach English, no.

6 Q Do you teach any other courses at NYU?

7 A Yes. Currently actually for next semester I am
8 teaching a class called What is Islam? Also at York
9 College, I just signed a contract with them. I am going to
10 be teaching modern Middle Eastern history.

11 Q Have you had any other employment outside the
12 field of, let's say Arabic-English, since you came to this
13 country?

14 A Yes, I have. I worked as a counselor for UCP,
15 United Cerebral Palsy. I worked also as a counselor for
16 Young Adult Institute. So most of my work was in the social
17 service.

18 Q In connection with this case, can you approximate
19 for us how many -- let me strike that.

20 Can you approximate for us how many hours you
21 have spent translating in connection with this case since
22 you first --

23 A It's been couple of years, and that is about 100
24 weeks, times 60 hours a week. So if you figure this out,
25 it's about 6,000 hours. I worked on most of the materials,

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1 actually.

2 Q Have you ever testified as an expert in
3 Arabic-English translation before a court of law?

4 A No, this is my first time. Actually, this is my
5 first time to be in a court of law also.

6 MS. STEWART: Judge, I would move his
7 admission --

8 MR. McCARTHY: No objection.

9 THE COURT: He may express his opinion.

10 MS. STEWART: Thank you.

11 THE COURT: Again, the jurors, as is the case
12 with any other opinion witness, will give his opinion
13 whatever weight it believes it deserves in light of his
14 experience and in light of the other evidence in the case.

15 Q Mr. Yousry, would you tell us with regard to this
16 case how you came to work for Hess Translations?

17 A I was called by Hess Translations to go and work
18 on this case. I took a test, I passed it. I started to
19 translate some of the material for them. There was another
20 expert witness before me was taking the lead for as the
21 coordinator for the whole team. He resigned. Once he
22 resigned, I took his place.

23 Q Could you tell us when this was, what month and
24 year, if you recall.

25 A Two years ago. I think it was August of 1993.

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1 Q Could you tell us, what was the nature of the
2 test that you took for Hess Translation?

3 A It was classical Arabic, couple of paragraphs,
4 actually, one of them classical Arabic, which is translated
5 from Arabic to English, and another paragraph was to
6 translate from English back into Arabic, in order to make
7 sure that you understand the dialects, because in this case
8 there is different dialect. There is Sudanese, there is
9 Egyptian, there is some Syrian.

10 Q Slow down a little.

11 A OK.

12 Q Were you asked to listen to any tapes in
13 connection with the examination?

14 A At that point, yes. Some of the stuff that also
15 is transcription. But most of the tapes at that point that
16 were provided to us by the government, it was the tapes
17 themselves were not good materials, were not good quality.
18 The sounds were very bad on them. We got some of the tapes
19 later on but at that point, the hearing part was not that
20 crucial in the examination.

21 (Continued on next page)

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1 Q Can you tell us the nature of the materials you
2 were asked to work with over the entire course of
3 translating for this case?

4 MR. BERNSTEIN: Objection. Your Honor, may we
5 have a side bar, please?

6 THE COURT: Yes.

7 (At the side bar)

8 THE COURT: Mr. Bernstein, do you need a side bar
9 with me or with Miss Stewart?

10 MS. STEWART: This is not a problem that was
11 known to me.

12 MR. BERNSTEIN: I object to his testimony as to
13 his transcription or work involving anything other than what
14 Miss Stewart puts forward, and if we need a defense meeting
15 we are going to have to have it. Some of this has to do
16 with the fact that Miss Stewart came into the case late and
17 is using Mr. Yousry, which is fine but I think she is not
18 privy to certain things taking place prior to coming into
19 the case and I do not want the government to have the
20 ability to use him as an overall expert of other CM's and
21 matters in this case. If the testimony is limited to the
22 so-called disputes, what Miss Stewart is entitled to under
23 my understanding how we operate in this case, it is in the
24 dispute area --

25 THE COURT: I don't see what the prejudice is to

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1 you if it turns out that he says undisputed things are in
2 fact accurate.

3 MR. BERNSTEIN: Because he is not on the witness
4 stand to be testifying as to the panoply of all CM's or
5 bootlegs or anything else and he is not being called other
6 than for the limited purpose of those transcripts --

7 THE COURT: She wants --

8 MR. BERNSTEIN: Judge, there are aspects that
9 have to do -- that I want a defense meeting because there is
10 a problem here.

11 MS. STEWART: I will raise one thing which may
12 allay some of Mr. Bernstein's fears. I don't know whether
13 it will or not. When I called on the government for 3500
14 material with respect to Mr. Yousry, I called Mr. McCarthy
15 and I said you know, he has filing cabinets full of
16 materials, drafts, etc., etc. I said do you want
17 everything?

18 THE COURT: No.

19 MS. STEWART: That is exactly what Mr. McCarthy
20 said, please, only those materials that he will be
21 testifying about. So at this point the government is privy
22 only to those items which he is going to be testifying
23 about.

24 THE COURT: Why don't I hear from Mr. McCarthy.

25 MR. MCCARTHY: Your Honor, I frankly was going to

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1 wait to see what Miss Stewart was going to do. I assume
2 that she will put in the transcripts that she has shown to
3 me.

4 MS. STEWART: The ones that we have raised and we
5 have problems with.

6 MR. McCARTHY: If he is not being proffered as a
7 witness generally on the other transcripts, my view is that
8 it is simply background about what he did.

9 THE COURT: That is what I took it as.

10 MR. BERNSTEIN: My concern is that the government
11 not be entitled to use him as a bouncing board for being
12 able to testify that he has done transcripts of all the CM's
13 in this case because many of those in fact come from
14 inferior quality tapes and are only drafts.

15 THE COURT: There hasn't been cross-examination
16 about drafts from government witnesses and I don't see why
17 there would be here.

18 MS. STEWART: I was going to ask him the method
19 that he used which includes numerous drafts.

20 MR. McCARTHY: I have a very limited
21 cross-examination of this witness on a couple of things that
22 are in dispute.

23 THE COURT: I think we have spent more time up
24 here than it is worth.

25 (Continued on next page)

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1 (In open court)

2 THE COURT: The objection is being withdrawn.

3 Let's go.

4 Q Mr. Yousry, could you characterize the kind of
5 material that you reviewed in connection with your work for
6 Hess Translation?

7 A Sure. Different kind of materials. We worked
8 with, from hard copies, meaning written Arabic papers and
9 newspaper articles, also from tapes, audiotapes, and as well
10 as some videotapes.

11 Q And would you basically tell us the method you
12 would use. Let us say with regard to an audiotape, what
13 would be your method of translating that audiotape from
14 Arabic to English?

15 A Well, the method differs according to the kind of
16 material you are working with. So now for an audiotape --

17 MR. McCARTHY: Your Honor, a number of us, I
18 think including some members of the jury -- I am sorry to
19 interrupt -- are having difficulty hearing the witness. I
20 must say you fade in and out as far as I can tell.

21 MS. STEWART: Mr. Patel to the rescue here.

22 A How is that? Is that OK?

23 Q I think it is your voice. I think you just have
24 to realize this is an enormous room and you have to sort of
25 yell at me.

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1 A I don't want to do that. But I --

2 Q OK.

3 A So should I continue?

4 Q Why don't you start again telling us the method
5 by which --

6 A There are different methods. It depends on the
7 material that we are working with at the time. If we are
8 translating from a hard copy, you have a different method
9 than a tape, for instance an audiotape you are asking for.
10 First the audiotape is transcribed in Arabic by
11 somebody who puts headphones on, sits down, and just types
12 what he hears. And then this written material comes to me,
13 I put the headset on, sit down and listen to that tape, and
14 I do my corrections on --

15 Q Who is the other person? Is that another
16 employee of Hess that does this translation?

17 A Yes, yes, yes, yes.

18 Most of the transcription of this case was done
19 by groups of two, three teams, so it's not like one person
20 is responsible for doing the transcription on his own. So
21 actually, before I receive the material, somebody else
22 review it. So I do the final review on it. I do my
23 correction on it, I listen to it one time, and then before
24 it goes back to him to fix those errors of his, I listen to
25 it one more time.

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1 Q This is still at this point in Arabic, is that
2 correct?

3 A That's correct. You have to understand, the
4 material first in Arabic, because a lot of words on tapes
5 are in classical Arabic, so you have to consult the Arabic
6 dictionaries in order to be able to relay the meaning
7 correctly.

8 Q Would you tell us what the difference is between
9 classical Arabic, as you are referring to it, and, I guess,
10 what is Arabic?

11 A Well, it is similar to classical English and
12 today's English. If people today are trying to read
13 Shakespeare in the original form, they might have some
14 difficulty reading it. Some, actually, companies now have
15 published work, classical work in today's English. So some
16 words are not used anymore within a social context of
17 today's world.

18 So most of the stuff that we would like to
19 understand it perfectly before it is translated into English
20 is mainly religious quotation or religious notions, religion
21 concepts because mainly all of that are in classical Arabic.

22 Q Did you also consider something that might be
23 referred to as Arabic hyperbole?

24 A Oh, yes, of course, we did.

25 Q Would you define that for us.

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1 A It boils down to exaggeration, but in order to
2 put it in context to an American audience, for instance, I
3 would like to discuss the concept of a hero. Here, for
4 instance, a hero is relayed in movies, such as "Rambo" or
5 "True Lies," as a person who can do everything, which is of
6 course, you know, an exaggeration.

7 In Arabic the hero doesn't succeed in doing what
8 he or she wants to do. They die mostly in the movies. But
9 in order to describe their intent, people write poems about
10 their effort. For instance, we have poems written about
11 people who have moustaches that two eagles can stand on
12 them. Of course, you know, no eagles can stand on anybody's
13 mustache, but it's an exaggeration in showing that this was
14 a man enough to go and do this and that.

15 So the concept is similar, but in Arabic you
16 don't have this happy ending, you don't have the hero
17 prevailing. You have always the hero defeated. So in order
18 for Arabic people to express that, they kind of like
19 exaggerate the fight, and it goes back for 1400 years. So
20 it is an old tradition.

21 Q With regard to your translating, what would be
22 the next step once an Arabic transcript has been prepared?

23 A Once a final Arabic transcript has been prepared,
24 then you start the task of translating that into English.

25 Unfortunately, concepts within languages are not

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1 uniform. So some concepts are purely western concepts.
2 Let's say a concept such as bingo, we don't have that in
3 Arabic, it does not exist in Arabic. We don't have even
4 lottery system.

5 Q What concept was that?

6 A Bingo, and we don't have such concept in Arabic.
7 We don't even play lottery in Arabic. So to translate from
8 English to Arabic you have to bridge the gap between the two
9 cultures. Concepts in Arabic, for instance, words in Arabic
10 like wagaha, it does not exist in English. It does not
11 exist in Arabic. We don't have such concept -- I'm sorry.
12 It does exist in Arabic, but it does not exist in English.
13 Also there are some concepts that they exist in both
14 cultures, but understood in different ways.

15 For instance, Islam is understood in our
16 countries in different form than is being presented here.
17 Things of that sort.

18 Q After you have worked on your final Arabic
19 transcription, what happens next?

20 A After that, the English version, the first
21 English version goes into an editor and the editor sits next
22 to the person who is reviewing it and they go over it step
23 by step, making sure that everything is written down and
24 everything matches the Arabic. That would be the first
25 editing session. And then once this is done, the next day

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1 you sit down and work on it one more time before you supply
2 a final product.

3 Q The final product is an English translation, is
4 that correct?

5 A Right. Absolutely.

6 Q Could you explain to the jury the difference
7 between a translation, or the difference between translation
8 and interpretation.

9 A Interpretation mainly is oral. You interpret
10 somebody talking, let's say, in Arabic to English while they
11 are speaking. Translation is done from a hard copy, a
12 written piece of paper. When you translate, you do not
13 interpret because interpretation within this context is
14 imposing on the text. You put your own views on the text.
15 You put a western concept on the text. You cannot do that.
16 When you interpret to somebody, you are translating what
17 they say orally to another person right on the spot. That's
18 interpretation.

19 Q Such as takes place in court, is that right?

20 A Yeah, like the people who are sitting behind the
21 glass now, they are doing interpretation. This is not
22 translation. They don't have time to consult dictionaries.
23 Translation is like any other profession. A lawyer needs a
24 book to go look up a case, a doctor needs, you know,
25 medicine or whatever they need in order to do that. So

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1 translation has -- you have to consult. It is not something
2 that is done on the spot. It is a lot of work, and it's a
3 tedious process to, you know, produce a final product.

4 Q You said that translation proceeds from a hard
5 copy.

6 A Yes.

7 Q Could you tell us the different kinds of hard
8 copy you used in connection with this case.

9 A Well, some hard copies are, you know, papers from
10 newspapers, others are hard copies produced by a
11 transcriber. Other hard copies are from books, such as "A
12 Word of Truth" for instance.

13 Q What about tapes? Are they considered hard copy?

14 A Once they are written down, it becomes a hard
15 copy.

16 Q Did you also work with videotapes?

17 A Yes, I did. The problem with the videotapes is
18 they have different angle of recording than the audiotapes.
19 So sometimes you hear things on the videotape that you do
20 not -- do not exist on the audiotape, but they are the same
21 thing. It's just a different angle. So with the videotapes
22 we do what we call composite translation. If you hear it on
23 the audiotape and it does not exist on the videotape, you
24 cannot leave it out. It has to be written down.

25 Also, when you do translation, you have to

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1 distinguish between the Arabic and the English. Sometimes
2 people speak in English, so you have to put, refer to that
3 as "E" so you know what you are writing down is exactly what
4 they said. Then when they go back to Arabic, you put an A
5 in order to bring that to the attention of the reader.

6 Q In connection with your work on this case, did
7 you have occasion to listen to videotapes of Sheik Omar
8 preaching?

9 A Yes, I have.

10 Q Did you translate directly from the videotape in
11 those cases?

12 A The videotapes that I worked with with respect to
13 Sheik Omar were mainly from the Denmark and we did a summary
14 of that.

15 Some of the material of the Sheik Omar on video,
16 were, you know, press conferences, and what you do is you
17 produce an audiotape of this video. And then you work from
18 that. Because it's much faster to work on something on a
19 cassette. You place it in the machine, you can stop it with
20 your foot, you control the pedal with the feet, and then you
21 can have your hands free. So it's much faster this way.

22 Q Did you also serve as an interpreter for Sheik
23 Omar during the case?

24 A Yes, I have. I have. I believe --

25 Q In what connection was that?

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1 A I started, I think, interpreting to Sheik Omar, I
2 believe, in the beginning of March, and mainly I go with you
3 when you go, or other lawyers to go to see him in order to
4 interpret for them.

5 Q And that is at the jail?

6 A Yes. MCC.

7 Q When you say "March," you mean March of 1995?

8 A March of 1995. That was my first time, yes.

9 Q Mr. Yousry, do you have exhibits before you --
10 strike that.

11 Were there also times when you were asked to
12 review a tape and give an oral report to the attorneys on
13 that tape?

14 A Yes.

15 Q Where you did not make an actual written
16 translation of the tape?

17 A Yes.

18 Q Would you tell us what tapes, if you recall, that
19 you did that in connection with.

20 A The first instance comes to my mind is the 51
21 videotapes from the, you know, from the Denmark, I believe
22 they were provided to us, and we didn't have enough time to
23 do any translation. So what I did was I listened to the
24 tape, I write a summary of the main points, and I give you a
25 report. Actually, it was also an oral report. It was not

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1 written down in English.

2 Q Did you have occasion to translate a number of
3 FISA tapes --

4 A Yes.

5 Q -- in connection with this case?

6 A Yes.

7 Q Were there other FISA tapes that you just
8 listened to and reported back on?

9 A Yes.

10 Q Directing your attention now to what is exhibit,
11 Defendants' Exhibit 640-T, do you have that before you?

12 A No.

13 MS. STEWART: May I, Judge?

14 THE COURT: Yes.

15 THE WITNESS: Thank you.

16 MS. STEWART: Judge, may I take one moment and
17 speak with Mr. Jabara?

18 THE COURT: Yes.

19 (Counsel conferred)

20 Q I have handed you what is labeled as Defendant's
21 Exhibit 640-T.

22 MS. STEWART: Your Honor, do you have a copy of
23 that. We distributed them, but I am not sure that the clerk
24 was in the courtroom.

25 THE COURT: Whether I have or not -- I don't in

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1 fact, but I am not the fact finder. So unless it is
2 something I am going to have to rule on, you can just
3 proceed.

4 MR. MCCARTHY: There is no objection to this
5 exhibit for what it is worth.

6 MS. STEWART: OK.

7 THE COURT: All right. So it's in.

8 MS. STEWART: Thank you, Judge.

9 THE COURT: 640T is received without objection.

10 MR. RICCO: Your Honor?

11 THE COURT: Yes.

12 MR. RICCO: We need a side bar on this exhibit.

13 MR. MCCARTHY: I should have said "as to
14 foundation," your Honor.

15 THE COURT: Do you want to come up to the side.

16 (Continued on next page)

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1 (At the side bar)

2 THE COURT: What is the problem?

3 MR. RICCO: I would ask, your Honor, to strike
4 the bottom of page 15 -- it would be this one, Judge,

5 MS. STEWART: They are numbered at the top,
6 Judge.

7 MR. RICCO: All of 16.

8 THE COURT: All right.

9 MR. RICCO: All of 17.

10 THE COURT: Yes.

11 MR. RICCO: And half of 18, to this point.

12 THE COURT: OK. Do you object to keeping it out?

13 MS. STEWART: No, Judge.

14 THE COURT: OK. Then why are we having a
15 conference about this?

16 MS. STEWART: Because you said you wanted to make
17 sure relevant material was not being excluded unnecessarily.

18 (Continued on next page)

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1 THE COURT: All right. This is out.

2 What else?

3 MR. RICCO: That's it, Judge.

4 MR. STAVIS: I don't know if it is in the jurors'
5 books or not.

6 MS. STEWART: It is not in their books because we
7 decided not to do it until we actually had Mr. Yousry on. Do
8 you have any problem? There are some references to you?

9 MR. STAVIS: No, I don't.

10 THE COURT: You can have these back.

11 (Continued on next page)

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1 (In open court)

2 BY MS. STEWART:

3 Q Mr. Yousry, did you do the translation of this
4 particular tape?

5 A Yes, I have.

6 Q Is this one of the tapes that was referred to as
7 a "bootleg tape"?

8 A Yes.

9 Q Who are the persons speaking on this tape?

10 A Sheik Omar Abdel Rahman and Emad Salem.

11 Q And how did you recognize their voices?

12 A We had voice samples actually before we started.

13 Q I can't hear you.

14 A We have some voice samples that we listen to
15 before we start to work on the case. And then, of course,
16 by the time you work on it, you get familiar with the voices
17 and, you know, Emad Salem was on most of the CM's, Sheik
18 Omar's sermons, and, you know, speeches I have translated,
19 so I'm quite familiar with the voices.

20 Q The method that you have described, is that the
21 method you used to --

22 A Yes.

23 Q -- prepare this transcript?

24 A Yes, yes, yes.

25 Q Were you able to identify what accents the

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1 persons were speaking in?

2 A Yes.

3 Q And what would that be?

4 A Egyptian.

5 Q I wonder if at this point you would tell us,
6 first of all, in a transcript where it says "UI," what does
7 that denote?

8 A Unintelligible. Something that we could not
9 understand in Arabic.

10 Q And when would you use that particular word in a
11 transcript?

12 A What do you mean when you say "when"?

13 Q When would you decide that something --

14 A Because you cannot understand it on the tape.
15 You don't guess. If you do not understand it, you do not
16 hear it, you just do not guess. You put a "UI."

17 Q And when would you use words in brackets on a
18 transcript?

19 A As I mentioned before, concepts are not
20 universal. Some concepts in Arabic have to be explained to
21 the people who are going to be reading that. So this is in
22 essence a translator note, and you put that in brackets in
23 order to tell them what does that mean in its original
24 context.

25 Q There are some times in the transcripts or

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1 actually in all of the transcripts you prepared, are there
2 not, numbers in brackets. What do they refer to?

3 A The numbers are taken from the machine that we
4 work from in order to mark segments of translation just in
5 case if you want to look something up, you can say, "Look
6 after No. 40." They are counter numbers in order to make
7 our job easier later on if you want to refer back to some
8 pages or some specific line.

9 Q Where you would use three dots, a word followed
10 by three dots, what does that imply?

11 A Some of them mean that the person didn't continue
12 his thoughts. He was saying something and just moved on to
13 something else, or, if you are saying it and somebody
14 interrupted him saying "yes" or "hum" or agreeing to what he
15 or she is saying, then you put dots to refer to that, that
16 there is a continuation to that sentence following that.

17 Q On your translations you numbered pages at the
18 top, is that correct?

19 A Yes, we do.

20 Q If there are pages missing in a translation as it
21 goes before the jury, that's not because of anything you
22 did, is that right, it's not an error on your part?

23 A I believe so, yes. It's not an error on my part.
24 I have no idea what they took out.

25 Q I didn't hear what you said at the end.

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1 A I said it's not an error on my part, and I really
2 don't know why they were taken out.

3 Q There are times when you left certain words in
4 Arabic, that you did not translate them. Is there a reason
5 for that?

6 A Yes, there is. The actual word we prefer to
7 leave it in order to not to impose any western
8 interpretation on it. Some words you can't just bridge the
9 gap every time you use the word. You just tell it how, or
10 what does it mean in its original context, original form,
11 and then you keep using it. So like that, the person who is
12 reading this material will get a sense of what this word
13 means and just, you know, kind of introduced to the new
14 culture that he or she is, you know, looking to.

15 Q You used the word "context."

16 A Right.

17 Q Could you explain what you mean when you say "in
18 context"?

19 A Talking, translating, speaking is like any other
20 human activity. It has to be looked upon within the context
21 that it's taking place. Arabic words, for instance, Arabic
22 is an over 3000-years-old language and Islamic words are
23 about 1400 years old. So Islamic words within the Arabic
24 context have to be noted with their religious interpretation
25 within the Arabic language. So what I am saying basically

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1 is social information, social conditions are different in
2 the Arabic countries than the United States, here. So you
3 can't really bridge the gap without keeping that in mind.

4 Q With regard to this transcript, I wonder if you
5 would just look on page 1 of 640-T --

6 A Yes.

7 Q -- where Emad Salem mentions the word
8 "fenugreek."

9 A Yes.

10 Q Could you tell us what exactly is fenugreek.

11 A Fenugreek is a drink, we drink that in Egypt --
12 most of the Middle Eastern countries, and it's basically
13 from leaves, fenugreek leaves, and people drink that if they
14 have sore throats, if they -- you know, coughing, and it's a
15 drink similar to tea here, or coffee.

16 Q Turning to page 2 of the transcript.

17 A Yes.

18 Q There is a mention there to Mohammed Salameh,
19 Mohammed Amin.

20 A Yes.

21 Q Who do you know Mohammed Salameh to be?

22 A I believe he is one of the defendants of the
23 World Trade Center incident.

24 Q And turning to page 5, there is a reference to
25 Mahmud Abouhalima by Mr. Salem. Who do you know him to be?

1 A I believe, also, he is one of the defendants in
2 the World Trade Center incident.

3 Q Turning to page 8 --

4 A Yes.

5 Q -- Dr. Abdel Rahman asks Emad Salem if he prayed
6 the sunset, and you have in brackets "prayer."

7 A Right.

8 Q What does that refer to?

9 A Muslims pray five times a day -- dawn prayer,
10 afternoon prayer, sunset -- it's five times a day that you
11 have to pray. In this particular instance Sheik Omar didn't
12 say the word "prayer." I put it in brackets in order to
13 make the person who is going to read that aware that this is
14 a religious duty and this should be performed five times a
15 day.

16 Q In the next two lines, Emad Salem refers to
17 ablution. What is the meaning of that?

18 A Before a person start his or her prayers, they
19 should perform this ablution. They have to wash their
20 hands, their face, their heads, their feet in order to
21 cleanse themselves before they start to pray. It is a
22 ritual that has to be done also before you pray. So it's
23 done basically five times a day.

24 Q On that same page down, to where you have in
25 brackets starting at 105 and going through 219, did you not

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1 translate something with regard to those lines?

2 A From 105 to 219?

3 Q Yes.

4 A Yes. The prayer was taking place at that time.

5 Q And the bracketed words are for what purpose?

6 A In order to illustrate to the reader that this is
7 taking place. You see, you don't leave anything out of the
8 original text that you listen to --

9 Q I can't hear you.

10 A You cannot leave anything out. You have to write
11 everything down.

12 Q On page 13, there is a reference to the guys in
13 Assyout, the bottom of the page.

14 A Yeah, I found it. I see it.

15 Q Could you tell us what that is.

16 A It is a province in Upper Egypt. When I say
17 "Upper Egypt," it's actually in the south. "Upper" is with
18 respect to the flow of the river. So it's called Upper
19 Egypt. It's a province.

20 Q What river is that?

21 A The Nile. The Nile River.

22 Q Starting at counter 431, on page 19 --

23 A Yes.

24 Q -- Emad Salem says, "There is wealth in our
25 country, by God, Sheik."

14669

1 What country is he referring to?

2 A Emad Salem was referring to Egypt.

3 Q And later on, on page 23 --

4 A Yes.

5 Q -- emad Salem refers to a book that he's reading,
6 "The Missing Tenet, The Absent One"?

7 A Yes.

8 Q "Not in force." Do you see that reference?

9 A Yes.

10 Q Do you know what book he's referring to?

11 A It is an Arabic book called "Al-Farida
12 Al-Ghaibah," written by a person who was executed by the
13 Egyptian government, I believe in 1984, if I'm not mistaken.
14 His name is Mohammed Abu Salem Faraj, and he's --

15 MR. MCCARTHY: Objection.

16 THE COURT: Sustained.

17 Q At the very end of the transcript, that's on page
18 24, where Emad Salem says, "No, no, no trouble or anything,
19 at your service."

20 A Yes.

21 Q The Arabic term for "at your service," have you
22 seen that in any other tapes that you translated?

23 A Yes, I have. Actually, it's all over the tapes.

24 Q What is the Arabic, the exact Arabic words, if
25 you would repeat them slowly.

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1 A Taht amarak.

2 Q And is this a very common form of salutation?

3 A It is a very common form of salutation, yes.

4 People exchange that, a mother to a son, father to a son,
5 between a father and a, you know, a grandchild, store owner
6 and, you know, clerk, customer.

7 Q Did you prepare, putting that aside for a moment,
8 also, the transcript for BB-T?

9 A Yes, I have.

10 Q And do you know what exactly I'm referring to?

11 A No, I don't have it here, but I -- can I take a
12 look at it?

13 Q Yes.

14 A Yes, it is a press conference.

15 Q In preparing that transcript, you actually did no
16 translation, is that right?

17 A No, we did not do any translation of this thing.
18 This document we just wrote down what the interpreter said
19 after Sheik Omar Omar Abdel Rahman finished his answer. So
20 we wrote down what the interpreter said.

21 Q So basically it is a transcription of that
22 videotape, is that right?

23 A That is correct, right.

24 Q With regard to Exhibits GG through LL --

25 A Yes.

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1 Q -- which I will hand you.

2 A Yes, I have recognized them. I have prepared all
3 of them.

4 Q And they are FISA tapes, is that correct?

5 A Yes, they are.

6 MS. STEWART: And I believe we have a
7 stipulation, Judge, as to what FISA tapes mean. I don't
8 think we have to belabor the record.

9 THE COURT: The tapes taken pursuant to court
10 order under the Foreign Intelligence Surveillance Act. That
11 is what FISA stands for. Go ahead.

12 MS. STEWART: Thank you.

13 Q And is Sheik Omar on each and every one of those
14 particular tapes?

15 A Yes. Yes, he is.

16 Q And in doing these you worked from individual
17 cassettes of the conversations in each instance?

18 A Yes.

19 Q You did not work on a long reel-to-reel recording
20 did you?

21 A No, I did not.

22 Q And they were prepared in the same manner as you
23 testified with regard to --

24 A Yes.

25 Q -- the other cassettes, is that correct?

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1 A Yes. Yes, it is correct.

2 Q And there are attributions on those tapes as to
3 who is speaking besides Sheik Omar?

4 A Yes.

5 Q How did you determine the name or names to be
6 used?

7 A People introduced themselves to Sheik Omar by
8 that name, so I write that down.

9 Q So it's from the tape itself --

10 A Yes.

11 Q -- that you authenticated it?

12 A Yes.

13 Q And the date that appears on the top, where did
14 that date come from?

15 A From the tape itself.

16 Q I would lastly like to show you EE and FF.

17 A Thank you.

18 Q Did you also prepare those translations?

19 A Yes. I did.

20 Q And what is occurring on both of those tapes as
21 you translated it?

22 A These are sessions where Sheik Omar Abdel Rahman
23 is reciting the Koran for a group of children, and they are
24 reciting that after him.

25 It is, you know, it's a common procedure for a

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1 sheik to teach the Koran to children and adults as well.

2 Q Are they in fact memorizing the Koran as they
3 recite it?

4 A Yes, they are.

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 MS. STEWART: I have nothing further for Mr.
8 Yousry at this time. He will be re-called with regard to
9 some other materials that we wish to offer.

10 THE COURT: All right.

11 Does any other defense counsel wish to question?
12 Cross?

13 MR. McCARTHY: May I have a brief side bar, your
14 Honor?

15 THE COURT: Yes.

16 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: I just want to know, Mr. Yousry is
3 going to be re-called with respect to other CM's?

4 MS. STEWART: The contended material and the
5 "Word of Truth" account.

6 MR. McCARTHY: If it is all the same with the
7 court and counsel, I would rather defer and do the whole
8 thing in one shot with respect to the things I really want
9 to concentrate on.

10 THE COURT: You know what you are going to ask
11 him. I don't.

12 MR. McCARTHY: Thank you, your Honor.

13 MS. STEWART: One of our problems, Judge, is
14 because of Mr. Ricco objection, we have not removed those
15 pages. So I went as far as I could with regard to this. I
16 do have another witness I could put on. We can finish him
17 and then maybe on the break I can take those pages out so we
18 can read when we come back.

19 THE COURT: Fine.

20 (In open court)

21 THE COURT: You are excused for the moment.

22 THE WITNESS: Thank you.

23 MS. STEWART: You will be asked to come back.

24 MR. McCARTHY: Thank you, your Honor, and counsel
25 for that indulgence.

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1 MS. STEWART: The defense called Abdul-Majid
2 Hasan.

3 ABDUL-MAJID HASAN,

4 called as a witness by the Defendant Abdel Rahman,
5 having been affirmed, testified as follows:

6 THE COURT: Go ahead, Ms. Stewart.

7 DIRECT EXAMINATION

8 BY MS. STEWART:

9 Q Good morning, Mr. Hasan.

10 A Good morning, Ms. Stewart.

11 Q How old are you?

12 A I am 48 years old presently.

13 Q Where were you born?

14 A I was born in Meridian, Mississippi.

15 Q And where do you now reside?

16 A I reside in East Orange, New Jersey.

17 Q And are you married?

18 A Yes, I am.

19 Q And how many children do you have?

20 A I have three children.

21 Q And what is your profession?

22 A I am an attorney in the state of New Jersey.

23 Q Could you tell us your educational background?

24 A I obtained a bachelor degree from Kent State
25 University in Ohio. I obtained my law degree from Rutgers

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1 University in Newark, New Jersey.

2 Q Are you currently practicing law?

3 A Yes, I am.

4 Q You don't do criminal defense work, though, is
5 that right?

6 A No, I don't.

7 Q Your offices are located in Newark, New Jersey,
8 is that right?

9 A That's correct.

10 Q Are you acquainted with Dr. Abdel Rahman?

11 A Yes, I am.

12 Q Do you see him in the courtroom?

13 A Yes, I do.

14 Q When did you first meet Sheik Omar?

15 A Approximately September 1991.

16 Q And how did that come about?

17 A I was told that he was giving some lectures at a
18 masjid in Newark or Irvington, New Jersey, and so he went to
19 attend the lectures.

20 Q I have to ask you to move forward in your chair.
21 The interpreters can't interpret if they can't hear you. So
22 I appreciate that. Thank you.

23 Did there come a time that you began to meet with
24 Sheik Omar on a regular basis?

25 A Yes.

1 Q When was that?

2 A Well, he was giving lectures, I believe, every
3 Wednesday. So every Wednesday that he was giving lectures
4 from about 1991, September 1991 through maybe the week or so
5 before he was arrested, I used to go every Wednesday unless
6 he was away on a trip someplace.

7 Q And what were these lectures or classes about?

8 A Basically you might divide them, one, the study
9 of hadith, that is the sayings, the doings of the Prophet
10 Mohammed. The other would be fiqh, that is Islamic juris
11 prudence. And the other would be tafsir. This is the
12 commentary on the Koran.

13 Q And the Koran is the word of God in Arabic, in
14 the Moslem religion, is that correct?

15 A That's correct.

16 Q Did you record or did someone record and were
17 transcripts made of these classes?

18 A Yes. Initially, no one was recording, and at
19 some point in time I realized what a great benefit it would
20 be to a lot of the American brothers who were attending who
21 didn't really understand the Arabic and the ones who were
22 not present that if someone were to transcribe the lectures
23 from the translation and disseminate that information to the
24 other people that it would be a big benefit. So I did that.

25 Q Where did the lectures take place?

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1 A They were at various locations. Again, as I said
2 before, the first time that I started attending was in, I
3 believe, Irvington New Jersey or Newark. It's on the
4 borderline, the masjid there. From there we went to several
5 different brothers' apartments, and we went to Sheik Omar's
6 apartment, and, lastly, to a masjid in Jersey City, New
7 Jersey.

8 Q Do you remember the name of the mosque in Jersey
9 City, New Jersey, that you went to?

10 A Yes. Masjid Mohammed.

11 Q That is different from El Salaam mosque, is that
12 right?

13 A Yes, it's different. Different location,
14 different place, yes.

15 Q And is it also different from the Islamic Center
16 in Jersey City?

17 A Yes, it's different.

18 Q And when Sheik Omar would speak to this
19 particular group, did he use a translator?

20 A Yes.

21 Q And do you remember who any of the translators
22 were?

23 A Yes.

24 Q Could you tell us?

25 A At the Masjid Mohammed the translators were

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1 Siddig -- who was also one, was one of the parties, I guess
2 in this -- I don't remember his last name, so that is the
3 only way that I can identify him.

4 MR. FITZGERALD: We will stipulate.

5 MS. STEWART: Thank you.

6 A He was a translator.

7 THE COURT: What's being stipulated to is that
8 the Siddig that he referred to is Siddig Ali?

9 MR. FITZGERALD: Yes.

10 THE COURT: All right. Go ahead.

11 MS. STEWART: So stipulated.

12 A And there were others of which -- people who were
13 fluent in both Arabic and English would just translate, not
14 addressing themselves by their name, because it wasn't
15 important. They were just translating.

16 Q Is this the class that was also attended by
17 Mustapha Abdul-Haqq?

18 A Yes.

19 Q How many people would attend on any given
20 Wednesday?

21 A Well, initially, in 1991, when I first started
22 going, there were -- the number fluctuated, but at the
23 masjid at first there were approximately 15 or 20. And when
24 we went to the persons' apartments, because they were rather
25 confined, the numbers were less, but at Masjid Mohammed the

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1 numbers increased to perhaps 25 to 30 or more, because there
2 were -- the word was spreading about Sheik Omar's lectures
3 and people were coming from far away to hear the lectures.

4 Q I think you indicated that sometimes you met at
5 Sheik Omar's home, is that right?

6 A That's correct.

7 Q And was that an apartment on Fairview Avenue in
8 Jersey City?

9 A Yes.

10 Q Were you ever acquainted with a person known as
11 Abdel Rahman Haggag who also lived in that apartment
12 building?

13 A Yes.

14 Q What did you know him as?

15 A Well, once he brought Sheik Omar to my office for
16 professional representation. Once, during one of the
17 classes -- it might have been after the class. I'm not sure
18 whether it was after the class or before the class, Abdel
19 Rahman's brother had been assassinated in Egypt, and we went
20 over. Sheik Omar suggested that we go and just to be with
21 him to console him, to be with him during his bereavement.

22 I think it was about the same day or maybe close
23 proximity thereto that we went to the apartment, which was
24 adjacent to Sheik Omar's apartment, and we just sat there
25 and we talked and just tried to comfort him for a little bit

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1 and then we left.

2 Q And did Sheik Omar also accompany you on this
3 occasion?

4 A Yes.

5 Q Can you put a month and year to this at all?

6 A My best recollection would be that it was the
7 latter part of 1992 to about maybe -- when I say the "latter
8 part," maybe about November of 1992 to about maybe March of
9 1993.

10 Q It could have happened any time during that
11 period?

12 A Yes. But it was -- his brother had just recently
13 been assassinated.

14 MS. STEWART: I have no further questions, thank
15 you, Judge.

16 (Continued on next page)

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1 THE COURT: Cross?

2 Is there any other direct examination from any
3 other defendant? Cross?

4 MR. FITZGERALD: No. Thank you, Judge.

5 THE COURT: You are excused. Thank you very
6 much.

7 (Witness excused)

8 THE COURT: Ladies and gentlemen, we are going
9 take a short break. 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)

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1 (In open court; jury not present)

2 THE COURT: Mr. Serra.

3 MR. SERRA: Your Honor, I have the privilege of
4 being the warm body this morning whose claim is not affected
5 by the testimony, so at the request of Mr. Jabara and Miss
6 Stewart, I went upstairs to look at a few cases.

7 MS. STEWART: We have yielded to Mr. Serra to
8 argue the point for us, with gratitude.

9 MR. SERRA: Your Honor, this will in total be
10 about five minutes, because I think the position can be
11 expressed in that time, or less. Basically the government
12 alleges, as I understand the proof, CM 46, largely, that
13 Dr. Abdel Rahman was involved in ferreting out FBI
14 surveillance of himself and others because of his
15 consciousness of illegal activities. Therefore the
16 government's proof and arguments place his state of mind
17 directly in issue as to what he was doing in CM 46 and in
18 other conversations that he would testify to. Any evidence
19 which would rebut that evil motive by presenting an option
20 to the jury of finding another motive is therefore relevant.
21 I think that was the first point that the court brought up
22 in the robing room, the relevance of Senator Abourzek's
23 proffered testimony, relevance to rebut the government's
24 implication of improper motive for those conversations to a
25 legitimate one.

1 THE COURT: The testimony would be that there
2 were widespread complaints of FBI surveillance/harassment
3 during that period of time?

4 MR. SERRA: That is what I understand from
5 talking to my cocounsel.

6 THE COURT: I want to make sure I understand the
7 proffered testimony.

8 MR. SERRA: Again, for the record, I had a brief
9 conversation with Senator Abourzek. He would estimate
10 hundreds, in the neighborhood of 4 to 500 of which he not
11 only received phone calls but received affidavits and did
12 some sort of investigation. If the court wants a further
13 offer of proof, you would have to talk to cocounsel.

14 I think perhaps the discussion this morning got a
15 little sidetracked from Rule 406, and to the extent that was
16 my fault because of previous conversations, I now apologize.
17 If the issue is Dr. Abdel Rahman's motive and knowledge,
18 specific instances -- forget habits. Specific instances are
19 admissible to show that his motive was not what the
20 government says it was. Rule 406, I think the organization
21 whose habit was in issue, if this would come under the
22 rubric of 406, would be the FBI and their dealings in the
23 Muslim community, rather than mosques themselves, but I
24 don't think you need to get to 406 because there is case law
25 that where you are talking about someone's knowledge or

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1 motive, specific instances of conduct are relevant. Again,
2 I had a limited opportunity to do this, but I cite the court
3 to West v. Love, 776 F.2d 170, which is a Second Circuit
4 case from 1985. It was a 1983 suit in which basically an
5 inmate was suing under 1983 for being placed in segregation
6 and being beaten on some sort of regular basis, he alleged.
7 The court affirmed the district court letting in two
8 different things to rebut that, and I think that that
9 context is important, because although the parties may be a
10 little bit reversed here, the government sought to prove
11 Dr. Abdel Rahman's motive in these conversations. The
12 instances which were let in to rebut the plaintiff's
13 allegations in 1983 were both that he was in a unit which
14 was designed for violent people -- and the purpose of that
15 was to show the state of mind of the defendants in the way
16 they dealt with the plaintiff, not that they beat him
17 because they felt like it but that they used necessary
18 force, believing that he was a violent person. And also the
19 affirmed was letting in specific instances of the
20 defendant's own conduct.

21 Your Honor, I submit that that seemingly
22 different state of facts is relevant here because the issue
23 is Dr. Abdel Rahman -- the government has put in issue his
24 motive. He is entitled to rebut the government's motive
25 under the holding of that case both by general testimony as

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1 to what Mr. Abourzek would testify and, for that matter, as
2 to specific instances.

3 If you reach the issue of habit, there are cases,
4 including a Second Circuit case, which hold instances far
5 fewer than the 4 to 500 I understand Senator Abourzek would
6 talk about as establishing habit. The Second Circuit case
7 is Strauss v. Douglas Aircraft, 404 F.2d 1152, a Judge
8 Kaufman opinion where the number at issue was 191 instances.
9 The suit was a products liability case, which the facts
10 aren't relevant, but we are talking about 171 as opposed to
11 several hundred.

12 THE COURT: What you have told me about that case
13 tells me nothing -- forgive me. A hundred ninety-one
14 instances to prove what? Of what to prove what?

15 MR. SERRA: A hundred ninety-one instances of
16 defective cables on Douglas McDonnell aircraft.

17 THE COURT: To show?

18 MR. SERRA: To show that there was a
19 pattern/habit of their not maintaining their aircraft
20 properly.

21 But, your Honor, I am agreeing with the court in
22 that whether evidence shows a habit or pattern is dependent
23 on, for example, how many cables were there in total.

24 THE COURT: And those were documented instances
25 of defects, whereas what we are talking about here are

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1 complaints, some of which may be justified and some of which
2 may not.

3 MR. SERRA: Understood, Judge. That is why I
4 prefaced this argument by saying that I think 406 may be
5 somewhat of a red herring.

6 THE COURT: I think it is too, and that was part
7 of the point I was making this morning.

8 MR. SERRA: I think that the stronger argument
9 rather than 406, your Honor, is that the testimony is
10 admissible, as I already laid out, to rebut the government's
11 allegation of improper motive of Dr. Abdel Rahman.

12 THE COURT: What connection is there between that
13 testimony and Dr. Abdel Rahman?

14 MR. SERRA: Your Honor, again, as I understand it
15 from sitting here --

16 THE COURT: I am not talking about the
17 government's evidence. I am talking about the proffered
18 testimony.

19 MR. SERRA: I understand, your Honor. The
20 connection is the government's evidence, I think. The
21 government's evidence is, they claim that Dr. Abdel Rahman
22 is a leader of a certain segment of the Muslim community.
23 It seems to me at least hard for the government to claim on
24 the one hand that he is a leader of a community and on the
25 other hand he doesn't know what is going on in terms of law

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1 enforcement harassment.

2 THE COURT: So you are asking a jury to infer
3 that from what you propose to proffer by way of a couple
4 hundred complaints, that he was aware of this phenomenon at
5 the time --

6 MR. SERRA: I think parts of the testimony is
7 that the complaints came from virtually every segment of the
8 Muslim community in the country. Mr. Jabara would be better
9 able to speak to that. But if the government's position,
10 your Honor, is that he is a leader of the community, if
11 there is a witness who says that the complaints came from
12 everywhere in the community, to say that he is unaware of
13 them, there is no inference that the jury would be permitted
14 to make. In other words, it is not relevant under 401, the
15 fact that there is pervasive complaints doesn't make it more
16 likely than not that he knew about it. That is the way I
17 see the relevance argument.

18 THE COURT: And 403?

19 MR. SERRA: 403 in what respect, your Honor? I
20 think the proffered testimony, direct is half an hour.

21 MR. JABARA: If that. No more.

22 THE COURT: Can I hear from the government?

23 MS. AMSTERDAM: Your Honor, before the government
24 responds, my concern about the FBI, part of that, including
25 the conversation where Sheik Omar is meeting between Haggag

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1 and Siddig, is that there is this sinister inference that
2 the government would have the jury draw, that people
3 concerned about FBI surveillance have to be doing something
4 wrong. I think that what this evidence rebuts is that even
5 average law-abiding Muslim citizens fear FBI surveillance
6 and that you don't have to have a guilty mind to feel it,
7 and that, I think, is the inference that the government
8 would have the jury draw from his deciding who is an
9 informant, whether or not we should continue to work with
10 him, as if they are covering up, as if they have a guilty
11 mind and have something to fear from government informants
12 as opposed to being a way of life in the community.

13 MR. JABARA: Your Honor, the overwhelming bulk of
14 these affidavits that were gathered by this organization
15 that Senator Abourzek was the chairman of were of immigrants
16 to this country, the particular segment of the Muslim
17 American and Arab American community, the ones that were
18 involved in political activity with respect to their
19 homelands as we have here in this case.

20 THE COURT: You have now added, it seems to me,
21 another problem, which is that some of this would have to be
22 taken for its truth, which I don't think you meant to do.
23 But that is all right.

24 Mr. McCarthy.

25 MR. MCCARTHY: Yes, your Honor. Let me go first

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1 to what your Honor's last question was, which was what about
2 Rule 403. I don't think that what the court was referring
3 to --

4 THE COURT: I wasn't referring to waste of time
5 or how long it was going to take.

6 MR. McCARTHY: Whatever limited probative value
7 this testimony would have, and it requires a leap of
8 speculation that Dr. Abdel Rahman's mind set is the same
9 thing that Senator Abourzek would apparently testify about,
10 is overwhelmingly outweighed by the danger of unfair
11 prejudice. To begin with, this is a case, we should
12 remember, where the government is being accused of a
13 frame-up, accused of improper behavior. So just on its
14 face, without delving too deeply into the facts, there is a
15 great danger that testimony that the FBI always acts
16 improperly is going to be taken by the jury for exactly the
17 reason -- for the truth, that is, that the FBI acts
18 improperly all the time, therefore it must have acted
19 improperly on this occasion. So notwithstanding the reason
20 that they want to put it in or the reason that they
21 articulate for putting it in, the danger for unfair
22 prejudice is here.

23 I think that that conclusion is supported by some
24 of the citations that Mr. Serra was good enough to give me,
25 which moves me to the second point, which is that this is

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1 not about habit at all.

2 THE COURT: I think Mr. Serra, if he didn't
3 concede it exactly in words he did it, to my mind, in manner
4 and tone, that that habit/custom rule isn't his long suit
5 here. I think that is a dry hole myself, but go ahead.

6 MR. McCARTHY: I want to argue the affirmative,
7 which is not that it is habit, it is something else, which
8 is character. There is a pretty strong distinction in the
9 rules of evidence between which is which, and what we are
10 talking about here is not the kind of mindless stuff that
11 passes for habit under the rule of evidence. This is a
12 purposeful pattern of behavior in order to violate rights.
13 One of the cases, if I may have just a moment -- I think the
14 Second Circuit case stands for this as well but Perrin
15 versus Anderson at 784 F.2d 1040, a Tenth Circuit case from
16 1986 -- the jump cite is 1045 -- talks about in some detail
17 the difference between the ordinary situation in which some
18 form of character evidence is admissible for the point of
19 character versus the substantial prejudice that inheres to
20 the party against whom it is offered when specific instances
21 are admitted to support that.

22 I think it is an important distinction here that
23 what we are talking about is character, not habit, because
24 there is an FBI mind set, according to what the defense
25 wants to argue in this case, and that, I would say,

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1 exponentially increases what the danger of this particular
2 kind of evidence is if the jury were to take it for its
3 truth.

4 Let me just address for a moment not only the
5 substance of the testimony but the form in which it is being
6 offered. This point hasn't been really addressed in the
7 discussions of this morning, but clearly Senator Abourzek is
8 being offered here as an expert witness. Apparently, given
9 what I am hearing from Mr. Jabara about the abundant number
10 of affidavits that he has collected and the investigation
11 that he has undertaken, he would testify as an expert would,
12 I think under Rule 703, with respect to hearsay that he has
13 become aware of. He is apparently going to be qualified as
14 an expert in the topic of FBI misbehavior, in order to put
15 these facts in front of the jury.

16 So even if there were under Rule 403 an opening
17 to get this in, and we would argue there is not, this is
18 evidence that should have been proffered a long, long time
19 ago. It is evidence that should have been put on the table
20 a couple of weeks ago when the court was vetting the rest of
21 the expert testimony and it shouldn't come in for these
22 purposes now, and it is simply not right to hang it out
23 there on Monday and try to get it in on Wednesday or
24 Thursday, whatever day this is, without a much better
25 opportunity to digest it than we can.

1 But the main reason that this should be excluded
2 is the substance of it. Under Rule 403, it should not be
3 admitted.

4 MR. SERRA: Your Honor, two very quick points.
5 The sin qua non of an expert witness is opinion. As I
6 understand it, there is no opinion whatsoever that Senator
7 Abourzek will offer.

8 THE COURT: Part of it is you are ships passing
9 in the night here. What you are saying is what he will
10 testify to or not testify to, and part of what he is saying
11 is what the effect of the testimony will be regardless of
12 whether opinion is elicited or not.

13 MR. SERRA: Your Honor, I understand that. But
14 there is no way that this is an expert witness.

15 THE COURT: Again, just as I don't think that the
16 pattern or practice is your strong suit, I don't think that
17 being a de facto expert is his.

18 MR. SERRA: May I briefly address what I think
19 the court is about to go to, namely, the effect of the
20 testimony that you already mentioned.

21 THE COURT: Right.

22 MR. SERRA: I think that is basically the same
23 thing in Mr. McCarthy's argument that this is character
24 rather than habit. I don't want to hang their hat on
25 habit --

1 THE COURT: Miss Stewart's flowered hat.

2 MR. SERRA: It is clearly not character testimony
3 within the ordinary meaning of that phrase -- I cite West v.
4 Love for that -- if there is a purpose other than to prove
5 someone's character. The proffered purpose here is
6 Dr. Abdel Rahman's knowledge of certain facts and therefore
7 the reason he did certain things. That has nothing to do
8 with character, and if there is a purpose for proffered
9 evidence other than to prove a character trait, then it is
10 not character testimony.

11 THE COURT: I think that, as I thought inside,
12 the chain of inferences that you are asking for in essence
13 really calls for a lot of speculation. It was the question
14 I asked Ms. Stewart when she first proffered this, which is
15 are you offering him in essence as a surrogate. She said
16 no, no, no. But that is the way it comes out, and I believe
17 that the possible prejudice, some of which has been referred
18 to by Mr. McCarthy and some of which hasn't, would outweigh
19 the probative value of the testimony, and for that reason
20 the ruling stands.

21 MS. AMSTERDAM: Your Honor, I hate to be
22 self-absorbed, but I really fail to understand the issue
23 that I have raised, which is that when you listen to Sheik
24 Omar Rahman mediating a dispute as to whether or not
25 somebody is an FBI informant, that is not something that we

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1 do normally every day if we are law-abiding citizens and I
2 think the average citizen has to believe that if you are
3 concerned about surveillance, it is because you are doing
4 something wrong. If there is an alternative reason for
5 that, namely that in that community people felt, rightly or
6 wrongly, people felt persecuted, that reason ought to go to
7 the jury and they should be able to argue what they want
8 from the evidence and I should be able to argue what I want
9 from the evidence. Mr. McCarthy says this should have been
10 proffered before Monday. I have consistently raised this
11 issue regarding FBI involvement within the community.

12 MR. MCCARTHY: If I could just respond to that
13 briefly, Miss Amsterdam has not only consistently raised the
14 issue, she has consistently gotten it into evidence. Dr.
15 Mehdi testified here only a couple of days ago about raging
16 paranoia --

17 THE COURT: Whose geographic location is a whole
18 lot closer than Senator Abourzek's, if he still goes by that
19 title.

20 I still think that the chain of inferences is too
21 long and that it is speculation. Your argument is fine,
22 provided that you can show that Dr. Abdel Rahman was aware
23 of this paranoia and acting on it, and there is absolutely
24 no evidence of that and this witness can't offer it. This
25 witness cannot offer any evidence of that.

1 MS. AMSTERDAM: But isn't the fact that the
2 conversation that they talk about it and they talk to the
3 FBI -- he is clearly aware. They talk repeatedly to him
4 about FBI informants in the community. That is established
5 from the CM's.

6 THE COURT: If what you are telling me is that
7 you already have the evidence, then we are spending a lot of
8 time on an issue that is ancillary.

9 MS. AMSTERDAM: The evidence is there, but only
10 the government's spin on it is appropriately placed before
11 the jury.

12 THE COURT: No, because there are conversations
13 other than that: You have just said that there are
14 conversations other than that. I don't have a total recall
15 of this, but if there are in fact conversations other than
16 the one that is probative for you and the one that you are
17 talking about, then there is evidence that is far more
18 direct than any speculation that would be called for by this
19 witness' testimony.

20 MS. AMSTERDAM: Evidence of knowledge, but still
21 the issue of whether or not the knowledge is because of bad
22 purposes, that we are doing bad things, or the knowledge is
23 because that is a fact of life within the community, that
24 has not been established in front of the jury.

25 THE COURT: What the purpose of the actors was in

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1 this case will be decided on the basis of their behavior,
2 and the ruling will stand.

3 Can we get the jury and proceed to do what we are
4 going to do?

5 MR. BERNSTEIN: Your Honor, we are going to break
6 at quarter to 1 but no later, correct?

7 THE COURT: Guaranteed.

8 (Jury present)

9 THE COURT: Miss Stewart.

10 MS. STEWART: Judge, at this time I would move
11 Exhibits BB through LL into evidence, defendant Abdel
12 Rahman.

13 MR. MCCARTHY: Your Honor, there is no objection
14 except with respect to the prior ruling regarding the
15 redaction on BB.

16 MS. STEWART: We can work that out, Judge, over
17 the lunch break. We are not doing it right away.

18 THE COURT: Subject to that, those exhibits are
19 received.

20 (Defendant Abdel Rahman Exhibits BB through LL
21 received in evidence)

22 MS. STEWART: At this point I would ask that we
23 be permitted to read transcript 640, transcript in evidence.
24 Mr. Bernstein will read the part of Mr. Salem and Mr. Jabara
25 will read the part of Sheik Omar. The copies for the jury

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1 are on the edge of the desk here.

2 THE COURT: If we can hand those out.

3 MS. STEWART: They are not terribly efficiently
4 done but it is the last pile of the document that is there
5 in the rubber band.

6 THE COURT: So I should tell the jurors that each
7 of you will get a couple of documents, a number of documents
8 enclosed in a rubber band. The one that is being read from,
9 I gather, is the last document in that sequence.

10 MS. STEWART: That is correct. It has a label on
11 the corner that says 640T.

12 THE COURT: If you could just pull out the last
13 document and follow it, that is the one they will be
14 reading.

15 THE COURT: The first page should say 640T in the
16 upper right-hand corner of the first page.

17 I think we are OK. Go ahead.

18 (Mr. Jabara and Mr. Bernstein read to the jury
19 from Defendant Abdel Rahman Exhibit 640T in evidence)

20 MR. PATEL: Excuse me. May we have a side bar --
21 I apologize, your Honor. My mistake.

22 THE COURT: Go ahead.

23 (Reading continued)

24 MS. STEWART: Judge, could Mr. Bernstein slow
25 down? The translators are having a problem.

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1 (Reading continued)

2 THE COURT: Thank you. Ladies and gentlemen, we
3 are going to break for lunch. Please leave your notes and
4 other materials behind. Please don't discuss the case, and
5 we will resume this afternoon.

6 (Jury excused)

7 THE COURT: I understand that Mr. Saleh is not
8 feeling well.

9 MR. JACOBS: That is correct, your Honor. He
10 wishes to be not present this afternoon.

11 THE COURT: Is it all right for us to proceed?

12 DEFENDANT MOHAMMED SALEH: Yes.

13 THE COURT: Thank you. I hope you will feel
14 better.

15 MR. BERNSTEIN: I will be out for the first part
16 of the afternoon. Mr. Warshaw will be sitting for me, and
17 in his absence Mr. Lavine will cover.

18 THE COURT: Mr. Abdelgani, is that satisfactory
19 to you?

20 DEFENDANT AMIR ABDELGANI: Yes.

21 MR. BERNSTEIN: Am I incorrect? Is it possible
22 that there is a witness coming out of order first thing this
23 afternoon?

24 MS. STEWART: That is my understanding.

25 THE COURT: Does it affect your client?

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1 MR. BERNSTEIN: Yes, Judge.

2 THE COURT: How long will you be unavailable?

3 MR. BERNSTEIN: I have to be in front of Judge
4 Ammin at 2:00. I think it will be a quick conference. I
5 will ask Judge Ammin to let one of my cocounsel counsels
6 cover.

7 MS. STEWART: Judge, I am I am expecting one of
8 my witnesses this afternoon -- we can back and fill. There
9 is no order to taking someone out of order.

10 THE COURT: There is a contradiction. I will
11 come back at 2:00 and see where we are.

12 Do you want me to call Judge Ammin and see if I
13 can ask that you be taken out of order?

14 MR. BERNSTEIN: It is not a matter of out of
15 order but a call over would be helpful generally. I am
16 going to go over to the Eastern District and see the
17 prosecutor.

18 THE COURT: I will call her chambers and see if I
19 can ask for some special dispensation. Do you have the
20 docket?

21 MR. BERNSTEIN: United States versus
22 Escobar-Orejuela. It is an 11-defendant case and I am sure
23 she is well aware of it because all defendants are being
24 produced.

25 (Luncheon recess)

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

2 Time noted: 2:15

3 (Page 14701 sealed)

4 THE COURT: Is there a witness coming up?

5 MS. STEWART: Yes.

6 THE COURT: OK. Mr. Jabara is getting that
7 person?

8 MS. STEWART: I think the person is sitting at
9 the door.

10 THE COURT: Fine.

11 (Jury present)

12 THE COURT: Good afternoon, ladies and gentlemen.

13 JURORS: Good afternoon, your Honor.

14 THE COURT: Ms. Stewart.

15 MS. STEWART: We call Dr. Hassan El-Mansoury.

16 DR. HASSAN EL-MANSOURY, M.D.,
17 called as a witness by the Defendant Abdel Rahman,
18 having been duly sworn, testified as follows:

19 THE COURT: Go ahead Ms. Stewart.

20 DIRECT EXAMINATION

21 BY MS. STEWART:

22 Q Dr. El-Mansoury, if you could just lean into the
23 microphones a little bit because the interpreters have to be
24 able to hear you. Thank you.

25 How old are you?

14703

1 A I will be 46 on the 27th of July.

2 Q And where were you born?

3 A I was born in Egypt.

4 Q And when did you come to the United States?

5 A 1975.

6 Q Are you a citizen?

7 A Yes, I am.

8 Q When did you become a citizen?

9 A Around 1980.

10 Q What is your profession?

11 A I am a physician.

12 Q And do you have a specialty?

13 A Surgery.

14 Q Could you just tell us your educational
15 background.

16 A I have an M.D. degree from the University of
17 Alexandria. I was trained in surgery, and I am board
18 certified in surgery.

19 Q And are you married?

20 A Yes, I am.

21 Q How many children do you have?

22 A I have two.

23 Q Where do you reside? Just the town and state.

24 A Manalapan, New Jersey.

25 Q And did there come a time when you became

14704

1 acquainted with Sheik Omar, Dr. Abdel Rahman?

2 A Yes.

3 Q And when was that?

4 A Around 1991.

5 Q Where did you meet him and how?

6 A I met him through lessons and classes he was
7 giving in New Jersey.

8 Q Where in New Jersey was that?

9 A In Matawan, New Jersey.

10 Q And these classes that you were attending, what
11 was being taught?

12 A Mainly classes in interpretation of Koran, Sunna
13 hadith and basically question-and-answer sessions.

14 Q And do you see Sheik Omar in the courtroom today?

15 A Yes, I do.

16 Q How often did these classes meet?

17 A It was weekly classes.

18 Q And how long would they last?

19 A Probably four or five hours.

20 Q And are these the same classes, if you know, that
21 were attended by Mohammed Al-Zoghby, however I'm murdering
22 the pronunciation?

23 A Yes.

24 Q Did you ever arrange for the transportation for
25 Sheik Omar to attend these?

14705

1 A Yes, I did.

2 Q What did you arrange?

3 A We had a pool of four or five people that were
4 responsible to bring the sheik over and take him back home.

5 Q And during what time period were these classes
6 taught?

7 A You're talking about month, year or hours of day?

8 Q Month, year.

9 A Usually they lasted between September to the end
10 of June.

11 Q And what year?

12 A 1991 through 1993.

13 Q Did there come a time when you began attending
14 other functions that the sheik was at?

15 A Yes. He was giving Friday ceremony, what is
16 called khoutba.

17 Q Did you also attend lectures in other places
18 aside from --

19 A Yes. We used to attend classes that he had
20 between prayers and other classes that he attended quite
21 often, yes.

22 Q When you would attend the Friday sermons, where
23 was that?

24 A Several mosques. Sometimes I would go to Salaam
25 Mosque; sometimes it would be in a place down in south

14706

1 Jersey. Sometimes, you know, he would tell me to meet him
2 someplace where he would deliver a sermon, and I would join
3 him there.

4 Q Did you attend a demonstration at Immigration in
5 Newark in 1993?

6 A Yes, I did.

7 Q But you were not at the demonstration, is that
8 right?

9 A No, I was not.

10 Q What purpose were you there for?

11 A I was accompanying the sheik. I went with him
12 inside.

13 Q For what purpose?

14 A Basically translate for him what's going on and
15 make sure that he is OK.

16 Q Approximately how many times would you say you
17 had heard Sheik Omar speak during the time up until June
18 1993?

19 A If you consider a year and about 40 weeks, I
20 would say over a hundred times.

21 Q Did there come a time in April of 1993 that you
22 attended at his home?

23 A Yes. I was in a news conference that he had in
24 his home, yes.

25 Q Do you remember the date of that, by any chance?

1 A Approximately April.

2 Q That's 1993?

3 A Yes.

4 Q What purpose were you there for?

5 A I was there to translate for him in that news
6 conference.

7 Q Did you meet Emad Salem?

8 A Yes.

9 Q At that time?

10 A Yes.

11 Q Did you have any conversation with Emad Salem at
12 that time?

13 A Barely. I don't remember I talked to him.

14 Q When you served as the interpreter at this
15 conference before you -- strike that.

16 Did anything occur before the news conference
17 actually started?

18 A Yes. I was given a certain clothing item to wear
19 and a head cover to cover my head.

20 Q When you say cover your head, did it also hide
21 your face?

22 A Yes.

23 Q Who asked you to wear that?

24 A The sheik did.

25 Q If you know, for what reason did you wear it?

14708

1 MR. McCARTHY: Objection.

2 I will withdraw the objection.

3 THE COURT: Sustained.

4 MR. McCARTHY: I will withdraw the objection.

5 THE COURT: Go ahead.

6 A Personally, you know, I knew that the media was
7 there, newspapers and television and radio, and I didn't
8 want my identity to be known.

9 Q For what reason?

10 A I do have family in Egypt still, and if I was
11 known to be so closely involved with the sheik, I think my
12 family would be affected. Besides I was still hoping that I
13 would be able to travel back and forth to Egypt. I guess
14 today that hope is lost, I guess.

15 MS. STEWART: May I just have one moment with
16 Mr. McCarthy.

17 (Counsel conferred)

18 MS. STEWART: Judge, at this time -- well, no, I
19 don't think we need a side bar.

20 We would like to play Exhibit BB, and I would
21 like to distribute to the jury the transcript which is
22 already in evidence.

23 THE COURT: OK.

24 MS. STEWART: Judge, at this time we would like
25 to play the tape of the news conference, which is in

14709

1 evidence, I believe, and the transcript, which was also
2 moved into evidence. If it isn't, I would move BB, which is
3 the videotape of the news conference, into evidence. We
4 will be asking the jury to skip a couple of pages in the
5 middle of that transcript, and we will pause the tape at
6 that point and move it forward.

7 THE COURT: OK.

8 MR. McCARTHY: Your Honor, I have no objection to
9 the receipt of the tape with the qualification that the part
10 of the tape that's being received is that which is reflected
11 on the transcript without the redacted --

12 MS. STEWART: Can we have a side bar maybe,
13 Judge?

14 (Continued on next page)
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1 (At the side bar)

2 THE COURT: I am sure I am slow, but I just
3 didn't understand whether the tape as redacted by the
4 skipped pages in the transcript or the tape as unredacted is
5 what is being received.

6 MS. STEWART: Everything is unredacted at this
7 point, but it is being received without that portion is my
8 understanding.

9 MR. MCCARTHY: In other words, as we did on the
10 consensually monitored conversations in the government's
11 case, the only thing that is actually in evidence from the
12 tape is the part of that tape that is reflected in the
13 transcript.

14 THE COURT: In that part of the transcript that
15 the jury is going to be permitted to see, not the part that
16 we are going to skip, correct?

17 MS. STEWART: Right.

18 MR. MCCARTHY: Right.

19 THE COURT: OK.

20 MR. MCCARTHY: My understanding, your Honor, just
21 to put the court on notice, the pages that we are talking
22 about are -- there is a portion between page 16 and page 18.

23 THE COURT: OK.

24 MR. MCCARTHY: They were inadvertently left in
25 the books. We are simply going to ask the jury to skip the

14711

1 pages.

2 THE COURT: Fine.

3 MS. STEWART: We will ask Mr. Corrigan to just
4 stop the tape at that point, which will let us know that we
5 should turn our pages.

6 THE COURT: OK. Thank you.

7 (Continued on next page)

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14712

1 (In open court)

2 MS. STEWART: May we distribute the transcripts,

3 Judge --

4 THE COURT: Yes.

5 MS. STEWART: -- unless they have been
6 distributed already.

7 MR. McCARTHY: Judge, I think the headphones are
8 going to be necessary.

9 THE COURT: We will wait until everybody gets
10 them on.

11 MS. STEWART: I think we are ready.

12 Doctor, if you want to just look at the monitor
13 that is behind you.

14 THE DEPUTY CLERK: There is one in front of you.

15 THE WITNESS: Thank you.

16 MS. STEWART: I think we have lost a page here,
17 Judge, I'm not sure. It may not be on the tape. Can we go
18 back to the very beginning.

19 (Videotape played)

20 (Continued on next page)

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14713

1 MS. STEWART: If the jury would turn over to page
2 18.

3 THE COURT: I will ask you to skip over to page
4 18, please.

5 MR. McCARTHY: Your Honor, if the jurors could
6 remove their headsets so that Detective Corrigan can get to
7 the next spot on the tape.

8 THE COURT: Take your headsets off for a moment,
9 please.

10 MS. STEWART: Ready, Judge, middle of page 18.

11 (Videotape continued)

12 BY MS. STEWART:

13 Q Dr. El Mansoury, have you ever been interviewed
14 by the FBI?

15 A Yes, I was.

16 Q When was that?

17 A To the best of my recollection, it was October
18 14, 1994.

19 Q Have you ever been followed by the FBI?

20 A I am not aware of that.

21 Q Have you ever gone to Sheik Omar for a mediation?

22 A Yes.

23 Q What kind of problem did that involve?

24 A It's mostly disputes between people, between the
25 people and their families, and also between groups inside

14714

1 mosques.

2 Q Could you tell me how he exactly mediates, to
3 your knowledge?

4 A He would listen to both sides of the story, and
5 then will render judgment or an opinion, and try to
6 reconcile the different people that are fighting.

7 Q Does he do this with regard to Islamic law?

8 A Yes, to my knowledge.

9 Q In all the times you ever heard Sheik Omar speak,
10 did he ever urge people to perform jihad in America?

11 A No.

12 Q Did he ever say that America should be attacked
13 with -- that American military installations should be
14 bombed or that banks should be stolen from?

15 A No.

16 Q Did you ever hear him speak about being in
17 America with a visa and a green card?

18 A Can you repeat the question?

19 Q Did you ever hear him speak about the obligation
20 of being in America on a green card or with a visa?

21 A Yes.

22 Q Could you tell us what he said about that?

23 A He said that as long as you are living in this
24 country you have to obey the laws and respect the laws.

25 Q Are you familiar with the word sulh, S-U-L-H?

14715

1 A The Arabic word for tuberculosis?

2 Q Pardon me?

3 A Is it S --

4 Q U-L-H.

5 A Yes, yes.

6 Q Could you just explain what that implies with
7 regard, perhaps, to the mediation.

8 A Sulh means reconciliation or trying to make peace
9 between fighting groups.

10 MS. STEWART: I have no other questions, Judge.

11 THE COURT: Any other defense counsel? Any
12 cross? Mr. McCarthy.

13 CROSS-EXAMINATION

14 BY MR. MCCARTHY:

15 Q Doctor, the hundred or so times that you heard
16 Dr. Abdel Rahman speak, did any of those involve him
17 whispering in a kitchen?

18 A No.

19 Q You are saying he never told you to look for a
20 plan to attack the American military?

21 A No, he never.

22 THE COURT: Anything else?

23 MR. MCCARTHY: Yes.

24 Q You say you heard him speak a hundred times. Did
25 you ever hear him say that America was the enemy of Islam?

14716

1 A No.

2 Q In the hundred times you heard him speak?

3 A No.

4 THE COURT: Anything else?

5 MR. McCARTHY: No, thank you.

6 THE COURT: Any redirect?

7 MS. STEWART: No, Judge.

8 THE COURT: Thank you very much. You are
9 excused.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 MS. STEWART: We call Dr. Aziza Zaater.

13 (Pause)

14 AZIZA ZAATER,

15 called as a witness by the defense,

16 having duly affirmed, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. STEWART:

19 Q How old are you, Dr. Zaater?

20 A I am 49.

21 Q Where were you born?

22 A Cairo, Egypt.

23 Q When did you come to the United States?

24 A In 1976.

25 Q We have to ask you to move closer to those

14717

1 microphones, because the interpreters and we all need to
2 hear you.

3 A 1976.

4 Q Are you a citizen?

5 A I am.

6 Q What is your profession, Dr. Sattar?

7 A I am a physician, a pediatrician.

8 Q What is your education and training, briefly?

9 A I have a medical school degree from Cairo, Egypt,
10 and I am a board-certified pediatrician by the American
11 Academy of Pediatrics.

12 Q Where do you practice?

13 A In Toms River, New Jersey.

14 Q Where do you reside?

15 A Toms River, New Jersey.

16 Q Are you married?

17 A I am.

18 Q Do you have children?

19 A Two.

20 Q Are you acquainted with Dr. Abdel Rahman?

21 A I am, of course.

22 Q Do you see him in the courtroom?

23 A Yes, I see him, of course. As-Salamu Alaikum,
24 Sheik Omar.

25 Q During the time of your acquaintance, did Sheik

14718

1 Omar ever come to your home in Toms River, New Jersey?

2 A Yes, he did.

3 Q What was the reason for that?

4 A We would invite Sheik Omar to give us a lecture
5 and of course we would welcome him and have him stay with us
6 for dinner or lunch.

7 Q How many times did this happen, approximately?

8 A Three or four times.

9 Q Do you have any recollection of when this
10 happened?

11 A He started coming to our home either beginning of
12 April of 1993 or end of March.

13 Q How far is Toms River from Jersey City?

14 A It's about an hour and a half to two hours.

15 Q How did he travel to Toms River, if you know?

16 A My husband would go to Jersey City, accompany
17 him, and bring him back.

18 Q Did he ever attend the mosque at Toms River for
19 any reason?

20 A Yes.

21 Q What reasons were they?

22 A One of them was Jummah prayer, which is our
23 weekly congregational prayer, and he gave us khutba. One
24 other time was a celebration of a newborn, which we call
25 aageka --

14719

1 THE COURT: Excuse me. Could you spell both of
2 those words for the court reporter.

3 THE WITNESS: J-U-M-M-A, that's a prayer. And he
4 gave us ceremony. And A-A-Q-E-K-A. Khutba, K-H-U-T-B-A.

5 Q After the arrest of Sheik Omar, did your husband
6 have a legal relationship to him?

7 A Yes. He became the paralegal or translator to
8 Sheik Omar.

9 Q As a result of that, did he do something, if you
10 know, with materials that belonged to Sheik Omar?

11 A I think he translated some audiotapes and he was
12 reviewing some transcripts.

13 Q Was anything brought to your home?

14 A Plenty of them.

15 Q Could you tell us what it was?

16 A Audiotapes in Arabic to translate to English,
17 some transcripts to review and compare with the tapes for
18 correction, or confirmation.

19 Q Did you visit Sheik Omar at the jail?

20 A I did.

21 Q Did you review his medical records at that time?

22 A Yes, I did.

23 Q Could you just tell us what health problems you
24 ascertained that he had?

25 MR. FITZGERALD: Objection, 401.

1 THE COURT: Sustained.

2 Q In April of 1994, did you receive a phone call
3 inquiring about the purchase of tapes?

4 A Yes, I did.

5 Q Could you tell us about that?

6 A It was an evening when my husband was not at
7 home, and I received a phone call from a young man -- sounds
8 like a young man, asking for my husband first, and then when
9 I told him if I can help, he is not here, he gave me his
10 name, and he sounded like a sincere person that is looking
11 for some religious tapes because he is living with some
12 young man, a university student, and they are thirsty for
13 religious material. And he asked also that he would like to
14 donate some money for the defense fund of Sheik Omar Abdel
15 Rahman. Of course we had the tapes from Sheik Omar --

16 Q You have to speak up.

17 A We had the audiotapes of Sheik Omar's lectures
18 and sermons, Koran by his voice, and some hadeeth
19 translations -- some hadeeth explanations, I am sorry. Of
20 course I told him yes, we have all those tapes, and when my
21 husband come he can talk to him again. He was calling from
22 Los Angeles, and there was a difference in time, three hours
23 difference, and we agreed that he would call back again, and
24 he never did.

25 Q Shortly thereafter, in the early morning hours,

14721

1 did you receive a visit?

2 A In May 2 specifically, we received a visit from
3 the FBI. It was around 7:00 in the morning.

4 Q That was 1994?

5 A 1994.

6 Q Let me just show you a series of photographs that
7 have been marked Defendant Abdel Rahman Exhibits A3, A4, A1
8 and A2, in evidence.

9 THE COURT: These are in?

10 MS. STEWART: These are in evidence, Judge.

11 A Yes.

12 Q Is that the way your home appeared on the morning
13 of May 4?

14 A Yes, that's my home.

15 Q May 2, I am sorry.

16 A May 2. I am not sure if one of them was in that
17 appearance or it was after some destruction. I can't tell.

18 Q Would you look on the back and tell us the number
19 of that.

20 A It is A3.

21 Q What room in the house is that?

22 A That is my husband's office.

23 Q How long was the FBI in your home?

24 A From 7:00 a.m. to 4:00 p.m.

25 Q Can you just tell us what they took with them

14722

1 when they left?

2 A When they left, I saw boxes that are sealed, but
3 I can tell you what I am missing so far from my home now. I
4 am missing all our religious audiotapes. It's about close
5 to 4 or 600 tapes. Some of them are Sheik Omar's tapes and
6 some of them are from other sheiks from Egypt and from other
7 parts of the world.

8 We are missing all our videotapes that belong to
9 us personally, family videotapes that were shot in Egypt
10 with our family's graduation parties, for my daughter's
11 soccer and hockey games for my son. Almost everything.

12 Q Did they take anything that belonged to Sheik
13 Omar?

14 A I know that they took the dissertation of
15 Dr. Omar Abdel Rahman.

16 Q What is that, exactly?

17 A That is the subject that he did for his Ph.D. It
18 is tafseer, or explanation of ones who are of the Koran. It
19 is five volumes.

20 Q That was at your home?

21 A It was in our home.

22 Q The material that was taken of yours, did you
23 ever get it back?

24 A No, not yet.

25 Q Did the government offer recently to allow your

14723

1 husband to come and get it back?

2 A As far as I know, yes.

3 Q During the times you heard Sheik Omar speak, did
4 you ever hear him urge jihad in America, to be committed on
5 American soil?

6 A No, but I heard him speak about jihad in general
7 from the point of Koranic --

8 THE COURT: The question was whether you heard
9 him ask about jihad in the United States.

10 THE WITNESS: No, I have not.

11 Q Can you tell us what you did hear about jihad?

12 A It was his explanation of the Koran, not his
13 opinion, just explaining to us what the Koran says about
14 jihad, and jihad is a self-defense, and Muslim defense again
15 is suppression of corruption.

16 MS. STEWART: Thank you very much, Doctor. I
17 have nothing further.

18 THE COURT: Any other counsel? Cross?

19 MR. FITZGERALD: Briefly.

20 THE COURT: Mr. Fitzgerald.

21 CROSS-EXAMINATION

22 BY MR. FITZGERALD:

23 Q Good afternoon, Doctor.

24 A Good afternoon.

25 Q On the day, I believe it is May 4 -- or May 2?

1 A May 2.

2 Q May 2, sorry. On May 2 when the FBI came to your
3 home, you were aware that they had a search warrant with
4 them, correct?

5 A After they came, yes.

6 Q During the time, do you remember the name Barry
7 Lee Bush as one of the agents who was present during the
8 search of the home? If you know.

9 A I don't remember that name. I remember another
10 name.

11 Q You are aware that when the FBI assembled all the
12 materials they took from your home, that they reviewed those
13 materials with your husband before leaving your residence,
14 is that correct?

15 A I am aware of that.

16 Q Where were you -- were you present with your
17 husband -- sorry. Let me do it in English.

18 Before the FBI agents left the residence, did
19 they leave an inventory or a sheet listing the items that
20 they took?

21 A Yes, they did.

22 Q Did your husband sign the inventory?

23 A He did.

24 Q Were you present when your husband was with the
25 FBI agents as they went over the inventory?

14725

1 A I was in the house but I did not attend that
2 review myself.

3 Q Were you in the same room or a different room?

4 A Different room.

5 Q Are you familiar with a book called "The
6 Caliphate"?

7 THE COURT: Would you spell it, please.

8 MR. FITZGERALD: C-A-L-I-P-H-A-T-E.

9 A I might have seen it, I don't remember. I don't
10 think I read it.

11 Q Do you recognize that as being one of your books
12 or one of --

13 A If I see it, I would probably say yes or no.

14 Q But the title doesn't ring a bell to you?

15 A The title is a common title. It could be read as
16 any other books.

17 Q But your husband was in the other room with the
18 agents when they did the inventory, is that correct?

19 A Correct.

20 MR. FITZGERALD: Thank you.

21 THE COURT: Anything else, Miss Stewart?

22 MS. STEWART: No, Judge.

23 THE COURT: Thanks you very much. You are
24 excused.

25 (Witness excused)

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

5 (Jury excused)

6 THE COURT: I will ask the spectators please to
7 remain seated until the jury leaves. Thank you.

8 (Recess)

9 MR. RUSSO: My client asks if he can absent
10 himself for the duration.

11 THE COURT: Is he ill?

12 MR. RUSSO: Yes, your Honor. He actually has
13 been sleeping.

14 THE COURT: Do you want to leave?

15 DEFENDANT WAHID SALEH: Yes.

16 THE COURT: You understand the trial will go
17 ahead without you?

18 DEFENDANT WAHID SALEH: Yes.

19 THE COURT: That is agreeable to you?

20 DEFENDANT WAHID SALEH: Yes.

21 THE COURT: Thank you.

22 (Pages 14727 - 14734 sealed)

23 (Continued on next page)

24

25

1 (Pages 14735-14743 sealed)

2 (In open court)

3 (Jury present)

4 THE COURT: Ms. Stewart?

5 MS. STEWART: I believe Mr. Wasserman is calling
6 a witness out of turn.

7 THE COURT: I'm sorry. Mr. Wasserman?

8 MR. WASSERMAN: Yes, your Honor. I would just
9 like to step out for a moment and bring the witness in.

10 THE COURT: Go ahead.

11 ROBERT ABDULLAH,

12 called as a witness by the Defendant Hampton-El,
13 having been duly affirmed, testified as follows:

14 MR. WASSERMAN: May I inquire, your Honor?

15 THE COURT: Yes, you may.

16 DIRECT EXAMINATION

17 BY MR. WASSERMAN:

18 Q Mr. Abdullah, where were you born?

19 A Philadelphia, Pennsylvania.

20 Q Where did you go to high school?

21 A Abraham Lincoln High School in Northeast
22 Philadelphia.

23 Q Were you born Muslim or you became Muslim by
24 conversion?

25 A I became a Muslim at approximately the age of 16

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1 or 17 years old.

2 Q Did you go to college?

3 A I graduated from high school in 1977. I attended
4 Philadelphia Community College for two years. I attended
5 Temple University undergrad for a year, and after that, I
6 got a job with the University of Pennsylvania where I took
7 classes and attended that for five years. I graduated
8 college in 1985 after eight years of study.

9 Q What is your current occupation?

10 A I am an attorney.

11 Q Where did you go to law school, sir?

12 A Temple University Law School.

13 Q While you were in college, were you employed?

14 A I was. While I was working at the university, I
15 was a campus police officer at the University of
16 Pennsylvania. Prior to that I had driven taxis and done
17 other various odd jobs.

18 Q In your capacity as a campus police officer, did
19 you ever have occasion to testify in any legal proceeding?

20 A I made a couple of arrests. And as a result of
21 that, I went as a witness with regard to the arrests I made
22 when I testified, but nothing extensive.

23 Q Have you ever appeared as a witness other than
24 that?

25 A No.

1 Q After graduating law school, were you employed?

2 A When I left law school, I went to -- I moved from
3 Philadelphia to Harrisburg, Pennsylvania, and I got a job
4 with the Commonwealth of Pennsylvania Department of
5 Environmental Resources. I was -- I worked as an
6 environmental attorney.

7 Q Now, did there come a time in 1992, '93, where
8 you formed a corporation known by the initials ICEDA, ICEDA?

9 A Yes.

10 Q What does ICEDA stand for, sir?

11 A ICEDA is the Islamic Community Enrichment and
12 Development Association.

13 Q Did you incorporate that?

14 A Yes.

15 Q In Pennsylvania?

16 A Yes.

17 Q What was the purpose of ICEDA?

18 A ICEDA was organized by myself and a few other
19 Muslims in the Harrisburg area for the purpose of basically
20 establishing a masjid, a house of prayer, organizing
21 activities for Muslims, outdoor activities. We wanted to
22 put together ultimately something along the nature of
23 similar to the YMCA. We wanted to organize, put together an
24 organization that could build facilities that would provide
25 jobs and opportunities and recreational activities for young

14747

1 Muslims.

2 Q Was there any connection between ICEDA and Kelvin
3 Smith?

4 A Kelvin Smith is a friend of mine who assisted
5 with, I guess, initially the organization of ICEDA. And he,
6 myself and our families and another friend of mine, Khidr
7 Abdou Tadir, were basically the three men who were behind
8 ICEDA and we were the basic organizers of that organization.

9 Q Could you tell us, sir, how Kelvin Smith was
10 employed at the time?

11 A He was -- is a law enforcement officer with the
12 Fish and Wildlife Service, Department of Interior.

13 Q Did you live near him in the Harrisburg area?

14 A I live in Harrisburg. He lives in Perry County,
15 which is a rural county outside of Harrisburg. He lives
16 about 30 miles from me.

17 Q Can you describe his place of residence to the
18 jury.

19 A He owns a piece of property. We usually describe
20 it as either a farm or a hill. It is a property that's
21 located northwest of Harrisburg on the other side of the
22 Susquehanna River. It is in a fairly rural area, meaning it
23 is a country type area. It is not a city area. And it's
24 hilly.

25 You know, we call it a farm, but it's not really

1 property that he grows corn or anything on. It is just
2 called a farm because of the size of it. It's about a
3 36-acre plot of land, most of it is a hill. But there is --
4 he has a little pond or a little lake in front and some
5 fields. That's basically it.

6 Q Did Kelvin Smith have an Islamic name that he
7 used?

8 A Abu Mohaimon.

9 Q Who did he live with at his place?

10 A Kelvin lives with his family, which includes his
11 wife and his adopted family, a woman and her children. And
12 he has approximately ten children living on his property
13 with them. I don't know the numbers off the top of my head.
14 More than half are his own and the others are children that
15 he adopted and he raises and takes care of, provides for
16 them.

17 Q Did there come a time that there was a connection
18 of any kind between ICEDA and Kelvin's farm or Kelvin's
19 hill?

20 A Well, when we organized ICEDA, we began to make
21 plans or tried to develop ideas about how we could do some
22 fund raising and what type of activities we as an
23 organization would pursue, including -- among the activities
24 that we got involved in, was the use of Kelvin's property.
25 He used his property for purposes of camping. He had a few

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1 animals on his property, farm animals, chickens and sheep
2 and things of that nature.

3 So we decided to try to organize camping
4 activities similar to the -- something along the lines of
5 what they do with the YMCA or the Boy Scouts. We wanted to
6 have some outdoor activities that we can invite people,
7 Muslims that we knew. Myself having lived in Philadelphia,
8 I knew some Muslims from Philadelphia, and Kelvin and Khidr
9 each knew some Muslims from New York, and he thought we
10 could bring some people from the cities and invite them out
11 to this rural country area, do some camping and enjoy some
12 general outdoor activities and have some fun.

13 Q Did there come a time when that idea was
14 translated into practice? Did you begin to have any groups
15 come out?

16 A Yes. In, I guess it was the fall of 1992 there
17 were groups who began to come and participate in the
18 activities that we were trying to organize.

19 Q And where did these groups come from?

20 A We had a couple of groups that came from the
21 Philadelphia, south Jersey area. There was a group of guys
22 who came from Connecticut, and there was this group of guys
23 who came from New York.

24 Q Now, this group of guys that you've described as
25 coming from New York, when approximately did they first

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1 come?

2 A Well, they -- I first met them in January of
3 1993, January 9, 1993, as a matter of fact. As part of the
4 activities that we were pursuing as a charitable and
5 religious organization, we were trying to find ways that we
6 could practice our religious beliefs and values.

7 During the summer of 1992, I had actually met
8 with and was given permission from a local minister of an
9 Episcopal church to use his church facility, and I was
10 teaching Arabic and Islamic ideas to some of the children,
11 my children and other children that were part of our
12 organization.

13 We were trying to organize these type of
14 functions, and we were looking for a place wherein we could
15 conduct our prayers or for prayer services, and so for
16 several months we had unsuccessfully sought out someplace
17 where we could do that.

18 In December of 1992, I had the idea that, well,
19 you know, my house was fairly big, we could just conduct our
20 Friday prayers in my house. And my wife and I agreed to do
21 that. So on January 9, 1993, I had a party. The party was
22 to celebrate the opening of my home as a masjid for -- it
23 was what we called a masjid, a house of prayer, a place for
24 prayer. I opened my house as a masjid. And to celebrate
25 that, I had a party. I invited some ministers, I invited my

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1 karate instructor that I knew from the YMCA, I invited Khidr
2 and Kelvin and their families, and we were basically having
3 a celebration.

4 And this group that came from New York I guess
5 had made some time for contact with Kelvin and had decided
6 to come down for a camping trip that weekend. And he
7 brought these guys to my home on the night of that party
8 because they were in town and we were having a celebration,
9 so I met them on January 9, 1993.

10 Q Did the people who came, including that group and
11 the ones that had come before, did they pay any money to
12 have these activities during the weekend at Kelvin's place?

13 A I think the general idea was that we were
14 asked -- or actually Kelvin would ask them, Mohaimon asked
15 them for a fee of \$35 per person, which was to pay for the
16 use of his facilities, the use of his water, any food that
17 they consumed, and the use of any bullets or other
18 ammunition that they might use when we did target practice,
19 target shooting, things like that.

20 Q I am going to put up an enlarged picture, and
21 while I do so, why don't you have a drink of water.

22 A Thank you.

23 MR. WASSERMAN: Your Honor, may I?

24 THE COURT: Yes.

25 MR. WASSERMAN: Mr. Abdullah, could you step

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1 down.

2 (The witness stepped down from the stand)

3 Q Mr. Abdullah, if you would just take the other
4 side. Thank you. Speak into the microphone so the
5 interpreters can translate.

6 Could you identify the people in this picture.

7 First, is this the New York group, to the best of
8 your knowledge?

9 A Yes.

10 Q Were there more people or less people the first
11 weekend that you met them?

12 A The first weekend that I met them I believe there
13 were more people than what is in the picture right here.

14 Q Approximately how many more? Do you remember?

15 A I think there was approximately a total of 10 to
16 12 people when I first met them.

17 Q Now, looking at the picture, can you point out
18 where you are for the jury?

19 A I am in the front of this picture wearing the
20 vest and the glasses. This is myself here.

21 Q And can you recognize any other people in the
22 picture?

23 A I recognize the person standing behind me.

24 MR. WASSERMAN: You can't see?

25 JUROR NO. 6: No.

1 MR. WASSERMAN: No problem. We will straighten
2 that out. Now can everybody see?

3 Q Can you point out now anybody else that you
4 recognize.

5 A All right. This person standing behind me is, I
6 think his name is Siddig. I knew him at this time by the
7 name of Khalid, so I called him Khalid, but I believe his
8 name is actually Siddig.

9 Q This guy here and this guy here, I don't know
10 their names, I don't remember their names, but they were
11 twins or cousins or something. I know they were related.
12 They actually look alike. I believe -- this person here, I
13 believe, is Abu Ubaidah, I think that's who that is.

14 These guys over here, I am not sure, although I
15 think this guy here was the -- I remember is the tall
16 redhead guy. He was an Egyptian guy. And the guy behind
17 him, I am not sure about that, it might be Khidr.

18 (The witness resumed the stand)

19 MR. KHUZAMI: Your Honor, just for the record
20 that's Exhibit 812B.

21 MR. WASSERMAN: Thank you.

22 Q Now, could you describe for the jury what a
23 standard weekend's activities were basically for all the
24 groups that came up to Kelvin's place.

25 A OK.

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1 MR. KHUZAMI: Objection to form.

2 MR. WASSERMAN: Your Honor, I will rephrase the
3 question.

4 THE COURT: Thank you.

5 Q What were the activities that the groups would
6 engage in during their visits to Kelvin's place?

7 A Well, generally the type of be activities we did
8 were we would have them set up a camp. Generally groups
9 would arrive, usually on a Friday night. We would have them
10 set up a camp, up the hill behind where Kelvin's property is
11 located. There are houses along the front of the property
12 where the road is, and there is a big hill behind his
13 property.

14 There is a road that leads around and up the
15 hill. We would take them up the hill and had them set up
16 camp, that is, they would set up tents, they would set up
17 lean-tos, and that was part of their activity, to set up
18 these tents.

19 A lot of these guys had never participated in
20 outdoor activity as a Boy Scout or otherwise. So part of
21 their training was learning to set up a tent and set up a
22 lean-to, build a camp fire, maintain the camp fire. And
23 maybe some type of orientation, some discussion about, "This
24 is what we're going to do this weekend" or whatever. So
25 that was the general type of thing that would be done on a

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1 Friday night.

2 On Saturday mornings we would get up, we would
3 have prayers, have breakfast or something, then we would
4 probably engage in some type of calisthenics, maybe some
5 jogging, we might go out to the park and work on the
6 exercise. There was a state park, Little Buffalo State
7 Park, which is located three miles from Kelvin's property.

8 We would go over to the park and maybe -- there
9 is a course of exercise equipment. We would go through the
10 course and go to each station and do different exercises or
11 we might practice some martial arts, self-defense
12 techniques, such as: If somebody was attacking you with a
13 knife, how would you block it? Or, if someone was throwing
14 a certain particular type of kick or punch at you, how would
15 you block it and defend yourself?

16 We would practice those types of things. So that
17 would usually engage us for most of the morning. We would
18 break after that on Saturday and have lunch or prayer,
19 afternoon prayers, and later on in the afternoon we would
20 probably do some target shooting.

21 Kelvin had an area on his property which he used
22 basically to burn trash, but we also sort of, behind that
23 area was a hill that was dug out, so it was a dirt hill. So
24 we would use that as a backdrop for some short-range target
25 shooting. And we would probably, you know, engage in some

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1 target shooting with various types of guns, handguns or
2 rifles.

3 Maybe after that -- that would engage us for a
4 few hours. After that we would have more prayers, maybe sit
5 down, have a discussion or prepare something for dinner or
6 something, and later on that night we might get up and go
7 out and do some something, jogging or some running or
8 something along those lines.

9 Q Did you ever do any night runs?

10 A That's what I am saying. On Saturday evening we,
11 we would probably, in order to keep a full schedule we would
12 probably go out and do some jogging or do some type of
13 running or create some type of, like a game of some sorts,
14 you know, to engage these guys in some type of activity to
15 make them feel that they were really involved in some type
16 of organized activity.

17 So we would do such things as create a goal or
18 something to achieve. For example, there was a couple of
19 occasions where we would tell guys that -- we would go to
20 the park, we would drive to the park -- like I said, it was
21 about three miles from his property, and we would stop at
22 the entrance of the state park. There was a main road that
23 runs through the park, and we would get out, and I would
24 lead them, we would jog along the road and had to jog for
25 maybe a distance of about two to three miles, and reach a

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1 certain point at the opposite side of the park, which was
2 where the lake was.

3 But in order to make this seem like it was
4 something exciting or challenging or something, we would
5 tell them, "OK, you have to avoid being seen." So along
6 this road sometimes cars would go by, and Kelvin also would
7 drive by in his van, because Kelvin didn't -- he had
8 problems with his legs, so he didn't run with us. So what
9 he would do, he would stay in his van, and he would tell us,
10 "I am going to come by. You're not going to know when I
11 come by, and I am trying to find you guys."

12 So their objective was to get from point A to
13 point B without Kelvin finding them or seeing them along the
14 road. So we would jog along the road, and whenever a car
15 would come, we would jump down and hide behind a tree or
16 jump down and hide alongside of the road and try to avoid
17 having anyone in the car see us. So we engaged in those
18 type of activities for purposes of creating excitement and
19 the challenge.

20 Q Now, the park that you described, --

21 MR. WASSERMAN: Your Honor, may I approach?

22 THE COURT: Indicating which exhibit?

23 MR. WASSERMAN: Yes, your Honor, that's 812B,
24 your Honor.

25 THE COURT: Go ahead.

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1 Q Does that picture depict the group in the park?

2 A Yes. This photograph is a photograph of -- in
3 the state park, in Little Buffalo State Park. As I
4 indicated, they have some exercise equipment set up in a
5 little course there. I guess, roughly, maybe 10 stations
6 along this little exercise course. And you will see
7 there's, it's like a balance beam. We would hop over the
8 beam or we would -- actually, at this point, what this
9 individual here is trying to do is get up onto the bar and
10 then walk up the bar and keep his balance and avoid from
11 falling off.

12 Q Thank you. As long as I'm up here. Let me show
13 you what's been marked as Defendant's Exhibit M, Hampton-El
14 M.

15 Can you identify what's portrayed in that
16 picture?

17 A This is a photograph of Kelvin's property. It
18 looks like it's an aerial photograph looking down on his
19 property from the sky. The power lines are going across the
20 picture, so it's a very high photograph.

21 Q Is that a fair and accurate representation of
22 what his property looked like at the time that picture was
23 taken?

24 A I assume so. I mean it's a fair and accurate
25 picture of his property, yes.

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1 Q Do you know when that picture was taken?

2 A I do not.

3 Q Now, can you step down for a moment.

4 (The witness stepped down from the stand)

5 MR. WASSERMAN: Thank you.

6 Q In this picture, which has been --

7 MR. WASSERMAN: Your Honor, I would like to move
8 this into evidence as Defendant's Exhibit M.

9 MR. KHUZAMI: No objection.

10 THE COURT: M is received without objection.

11 MR. WASSERMAN: Thank you.

12 (Defendant Hampton-El Exhibit M for
13 identification was received in evidence)

14 Q Can you point out for the jury -- hold the
15 picture up, and would you speak into the microphone when you
16 do, point out to the jury where Kelvin's place is.

17 A OK. This right here is the main house of
18 Kelvin's property. This is the main living area of his
19 property. This is the road that runs along the front of the
20 property. Here's some fields that are in front of his
21 property.

22 This is like a little garage area toward the back
23 of the main living area where we sort of sat and had our
24 food or made our prayers. Over here, over here there is a
25 lake or pond, and from that point there is a little stream

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1 that runs along the front of where the houses are located.

2 This is the entrance road onto the property from
3 the main highway. Right here. And over here there is a
4 dirt road that goes up the mountain or the hill where the
5 campsite was.

6 Q Can you point out to the jury where the shooting
7 took place.

8 A The shooting took place right down here in this
9 left-hand corner, my left. Looking at it, it would be on
10 the right-hand corner, bottom corner, there is an area here
11 where Kelvin burned trash, and we shot in that area.

12 Q And can you tell the jury across the road, is
13 that Kelvin's place also?

14 A No, that property at the time that these
15 activities were taking place that property was occupied by
16 some man and his family.

17 MR. WASSERMAN: Thank you. Please take your
18 seat.

19 (The witness resumed the stand)

20 Q Now, the activities that this group in particular
21 did, was there anybody who led the activities?

22 A Well, of the group -- of the people who came with
23 this particular group, Siddig, or Khalid, tended to assume
24 the position, I think, of a leader of sorts in that he, you
25 know, he was the one that seemed to be the most vocal. He

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1 seemed to be the one that seemed to be very enthusiastic.
2 But, as far as the actual physical activities that they were
3 engaged in, beyond what Kelvin was leading them, there was a
4 guy with them named Abu Ubaidah who seemed to be their
5 training leader, if you will.

6 Q And did he train them in anything in particular
7 that you recall?

8 A I recall, one afternoon, for example, that --
9 where Kelvin had gone to work and we were all there
10 together, and the dirt road that leads up to the campsite,
11 we jogged up and down that dirt road several times, which
12 was very tiring and Abu Ubaidah was leading that.

13 We also climbed the -- under the power line there
14 is a hill, a hill with shrubs and grass and thorns and
15 things like that, and we had a target up on the hill. It
16 was a long-range target that we shot at with rifles from the
17 bottom of the hill, and, on this particular occasion, while
18 we were marching up and down this dirt road, jogging up and
19 down the road, we participated in a little race where we
20 would go out in pairs, groups of two of us would go and try
21 to climb that hill. It's a fairly steep hill, so you're
22 basically climbing with your hands and your feet to climb up
23 this hill. And the object was to see who can get up to the
24 target, hit the target and then, you know, you basically had
25 to slide down on your butt to get back down.

1 I remember that because I raced up with the tall
2 redhead guy and I beat him.

3 Q Now, were there any discussions about Bosnia
4 during the time that you were present with the group?

5 A From time to time we would sit down and engage in
6 conversations. Oftentimes conversations about mostly about
7 things like, well, you know, the Prophet Mohammed, sala
8 Allah alayh wa sallam, we would talk about Islamic values,
9 prayers and things like that, or traditions, traditions,
10 hadeeth regarding things that the Prophet said or did.

11 Occasionally while we were engaged in these type
12 of conversations, we might engage in some discussions about,
13 you know, contemporary politics, and at that point in time
14 Bosnia was something on the minds of many Muslims, and there
15 was a lot of concern expressed by this group as well as
16 other groups about what was perceived to be a terrible thing
17 going in Yugoslavia with the Serbians killing the Bosnian
18 Muslims.

19 So there was a lot of discussions, and I think
20 even prayers that were made for concern, out of concern for
21 the people who were being killed over in Bosnia.

22 Q You mentioned that you did shooting. Was there
23 any other kind of, were there any explosives activities
24 going on during this camping?

25 A No.

1 Q How many times did this particular group come to
2 Kelvin's place to the best of your recollection?

3 A I think approximately four or five times. That
4 first weekend they came, January 9, I didn't participate
5 with them because of our party, and I believe they came one
6 time. The last time that they came I wasn't there, but I
7 think I participated in activities with them about three or
8 four times.

9 Q During the shooting, were Kelvin's children
10 and/or your children present at any time?

11 A Yeah. I do remember the last time -- I remember
12 very specifically I didn't participate in any shooting
13 because I was injured at that point. I had a problem with
14 my leg. But I do remember, you know, the kids, they were
15 always running around, particularly with the target
16 shooting. And so we always, you know, we would reprimand
17 them: "Watch. Don't go over here. Don't go in front of
18 the people while they're shooting." They would generally
19 witness what was going on, and some of the kids even
20 participated in shooting. I had my kids shoot, learn how to
21 shoot and they enjoyed that and really looked forward to
22 that.

23 MR. WASSERMAN: Thank you. I have no further
24 questions.

25 THE COURT: Anyone else?

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1 Ms. London, representing Mr. Elhassan.

2 CROSS-EXAMINATION

3 BY MS. LONDON:

4 Q Good afternoon, Mr. Abdullah.

5 A Yes.

6 Q Mr. Abdullah, I would like to direct your
7 attention to the time period Mr. Wasserman was talking
8 about, late 1992, early 1993, and you testified that a New
9 York group came on several occasions.

10 About how many people came on these trips?

11 A Generally?

12 Q Generally.

13 A I think usually between, anywhere between maybe 8
14 to 12 or 8 to 15 -- no, I don't think there was ever a group
15 as large as 15.

16 Q Directing your attention to the New York group,
17 did the same people always attend?

18 A The group -- there was a group of people that
19 came when I had my party at my home. Among these people
20 there were some who didn't come back or I don't remember
21 ever seeing them again. But I think, among the group that
22 was there, there were a few people who came, as far as I
23 know, every time.

24 Siddig, for example, was one who came every time.

25 I believe Abu Ubaidah was there that first time, and I

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1 believe he came every time.

2 But there wasn't -- it wasn't always the same
3 group. Although I think in maybe the last two or three
4 times there was -- it seemed that there was a particular
5 group of guys who were the core group.

6 (Continued on next page)

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1 Q Mr. Abdullah, do you know a man by the name of
2 Tarig Elhassan?

3 A I think I know who you are talking about.

4 Q Do you see Mr. Elhassan in the courtroom today?

5 A I think so. I believe he is the individual that
6 is wearing the white turban, but he may have gained some
7 weight, and his beard is longer than when I last saw him.

8 THE COURT: Indicating Mr. Elhassan. Go ahead.

9 Q Did you recognize him as a person who had visited
10 your camp?

11 A I did. I believe, as a matter of fact, although
12 I am not absolutely certain, I think he may have been there
13 on that first meeting at my home, too. I think so.

14 Q You have told us that on the first night, that
15 the members of the group would camp up on a hill. Could you
16 describe the weather conditions up there at that time of
17 year?

18 A It was in January. It was chilly, although that
19 winter there was no real snow, but it was chilly, and it
20 wasn't always that cold for that time of year. I think it
21 was a rather mild weather. But nevertheless it was still
22 fairly cold and on some occasions it was very cold.

23 Q In that campout, that Friday night campout, did
24 somebody in the group have to stand watch or did the group
25 take turns keeping watch?

1 A Yes. Like I said, we generally tried to make
2 this an organized activity, so they were generally given
3 some type of instruction or a task to achieve or maintain.
4 For example, at night they were told, you know, you set up
5 your camp, you start a campfire, and your obligation is to
6 keep that campfire going all night. So to do that, they had
7 to have at least one guy keep watch, and they would change
8 watch every hour or so, so that the other guys could go
9 sleep and get some rest, but then after every hour another
10 individual would be wakened and he would assume the
11 responsibility to keep watch and maintain the fire.

12 Q Did they also have to keep watch for a surprise
13 attack from either you or Khidr or your other assistant?

14 A We, my friend Khidr, he liked to try to surprise
15 them, and he thought it was kind of fun to try to sneak up
16 on them and see if they can detect him coming. So that sort
17 of developed as something that we were doing as a result of,
18 you know, giving them the assignment of keeping someone on
19 watch in order to test and see if they were actually doing
20 it. You know, generally we would all do it, we would try to
21 sneak up on them and see if they were doing what we told
22 them to do, and if not we would scare them and show that
23 they had failed to do what they were told.

24 Q Is it fair to say that as city people being in
25 the outdoors and so isolated it was probably a scary

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1 experience?

2 MR. KHUZAMI: Object.

3 THE COURT: Sustained.

4 Q Is there another activity that the group
5 participated in in the camp that involved some target
6 shooting and wearing weights and running?

7 A Among the type of activities that we did, for
8 example, on a Saturday afternoon, sometimes we did it on a
9 Sunday morning. We did engage in target shooting with
10 various sized guns. So we might use a 22, we might use a
11 38, we might use a 45, we might use a rifle. Kelvin had a
12 lot of different kinds of guns. We would set up target at
13 different locations. We shot at maybe 20-foot targets, we
14 would shoot at maybe 50-feet targets. We even shot at
15 targets up on the hill which we estimated were at 200 feet.

16 In order to increase the challenge of it,
17 sometimes what we would do is, we would play a game. We
18 would put a weight on. We had some type of vest, which I
19 don't know what it was but it was a very heavy vest that
20 Kelvin had. We would wear that vest. Each individual would
21 sort of take the turn and do it. You would wear the vest
22 and then you would run from point A to point B, and a lot of
23 times it was climb up this hill, get up there and climb
24 around the bend and come back to the start. So the point
25 is, you were trying to tire them out, trying to get their

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1 adrenaline going, and as they would get back to the extreme
2 end of where they were told to run, occasionally what we
3 would do was we would tackle them or block them. They had,
4 you know, to get back to the shooting location. Then, after
5 doing all that, they were breathing hard, their adrenaline
6 was flowing, and we would say now see if you can hit the
7 25-foot target, which usually we set up as a balloon, you
8 know, see if you can shoot it and pop the balloon.

9 Q You have talked about doing some of the training
10 activities in Little Buffalo State Park. Is that a public
11 park?

12 A It's a state park, yes, public.

13 Q It is open to anyone who wants to go in there?

14 A Yes. There are no gates on it. The road runs
15 right through it. It's an open park. You can go there any
16 time, really.

17 Q You have also testified about a number of
18 activities that involved runs to avoid -- where the
19 individuals who participated tried to avoid detection. Did
20 you give them a set of hand signals by which they
21 communicated?

22 A Well, no, I didn't, per se. They were told --
23 for example, there was one time what we did was we decided,
24 or we were told we were going to run the power line. There
25 are these electrical power lines that run across Kelvin's

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1 property. So we were told at the end of the power line
2 there is a power station, an electrical power station, a
3 fairly big electrical station. See if we can find it. None
4 of us knew. I didn't know it was there either. This was
5 all new to me as well. I was participating with these guys,
6 too.

7 So what we were doing, you know, follow the power
8 line. It was dark, it was at night. You had to go over the
9 mountain, go over the hill, you had to avoid the lake or
10 lakes there. There were cornfields. We had to go from
11 Kelvin's property to the power line and see if we can find
12 it. But the challenge was, see if we can find it and get
13 there within a specified period of time, and it was about a
14 distance of, I think, a mile to two miles. We had to get
15 there within a period of time. So we had to jog, we had to
16 hustle to get there. But we were also told, stay in a line,
17 no talking, the only person that might talk would be the
18 leader, and we were told the only way you could communicate
19 would be through the use of certain hand signals. So we had
20 signals like this, OK, get down, get down, be quiet. We
21 would wave, say OK, let's go. I think a sign like this sort
22 of meant stop.

23 Q Wait a minute. For the record, Mr. Abdullah is
24 holding his right hand up, palm facing --

25 A Which I think meant -- the leader would hold his

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1 right hand up like this, which would mean stop. Obviously a
2 wave like this, waving forward, would mean let's go forward.
3 A hand motion down like this would mean get down and be
4 quiet, you know.

5 Q Could you describe another activity, which for
6 want of a better word I will call pepper mace training?

7 A There were a couple of occasions where -- and I
8 didn't participate in the pepper mace with this particular
9 group, but a couple of the groups that came, we would try
10 to, you know, experience a variety of different things, and
11 among the things we tried was pepper mace. There was
12 some -- I forget the kind of pepper. It is a very hot
13 pepper that they use to make the mace. We were told, if you
14 ever get into a fight and someone sprays you with mace, if
15 you never experienced it, you don't know how to react, you
16 will lose your edge, you will be at a disadvantage because
17 you will be afraid, not knowing what it was like. So we
18 thought, let's experience it, let's try the pepper mace.
19 Generally it burned very bad. So somebody would spray the
20 mace. It would just basically float in the air, you would
21 feel it on your eyes and in your face, and then you would
22 rush over and wash it off with the cold water.

23 Q Did you also have an activity that involved
24 wading in a pond?

25 A That wasn't a general activity that we always

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1 participated in with every group, but there was an occasion
2 where this particular group, this New York group, there were
3 some of these guys wading through the pond, the lake or the
4 pond on Kelvin's property, there were -- I only know this
5 because I had left the property to take some kids to the
6 train station, and when I got back I saw the guys walking
7 through the pond. Obviously they were trying to get from
8 one end to the other, and as I got back I realized they were
9 told to go through the pond and then follow the stream. At
10 the end of the pond it begins a little stream that runs
11 along the front of Kelvin's property. They were told to go
12 through the stream and come out the other end where the back
13 garage area was.

14 When I arrived and saw this going on, I realized
15 that Kelvin or Mohaimon and Khidr were not doing it, they
16 didn't go in with these guys, and it was a little chilly. I
17 figured they were cold and didn't want to do it, but why
18 were they making these guys do it. I jumped in because it
19 wasn't fair. We always had the idea that if we make guys do
20 something, we do it too. I jumped into this pond with them,
21 I went through the river, and we came out the other side, by
22 the cabin.

23 Q What if anything --

24 A After we got out -- I mean, at this point when
25 you going through these type of activities you get really

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1 pumped up, your adrenaline is flowing, your heart rate is
2 really up. So I'm really pumped up at this point, and at
3 this point in time I had been doing a lot of training at the
4 YMCA with a karate class, and so I was very excited, I was
5 very pumped up. So as these guys were coming out I would
6 line them up by the cabin. I told them jog in place, jog in
7 place. That was partly to keep them warm but it was also to
8 keep up the energy. We had developed a lot of energy at
9 this point. As they lined up individually, I went down the
10 line and I punched them, I punched each one of them in the
11 abdominal area, and I said tighten your muscles, and I hit
12 them, and I hit each one of them as I moved down the line.

13 Q Was this a fairly solid punch, would you say?

14 A Yeah, I hit 'em.

15 Q What was the reaction of Siddig to this punch?

16 A Understand that these guys were tired, and we
17 were pushing them, we were pushing them hard, keep going,
18 jog, jog, jog, jog in place, and I'm hitting these guys,
19 hitting these guys. When I got to Siddig, started to --
20 Siddig was crying. He was cold, he was tired, he was
21 crying, and he didn't want me to hit him. He couldn't take
22 it.

23 Q As another activity, did you also demonstrate to
24 these individuals how to slaughter chickens?

25 A Muslims believe that there is a certain proper

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1 way to slaughter an animal, and basically that is to slit
2 the throat and let the blood drip out, the idea being, you
3 know, you don't want to torture the animal. You want to try
4 to have the animal die in a rather peaceful way. So I think
5 what we did or what is generally done is that you would
6 invoke the name of Allah over the animal and you would cover
7 up its eyes, you would slit its throat and let the blood
8 drip out. Part of what we were doing was to try to learn
9 how to do these things, you know, learn to survive in the
10 outdoors. So on one occasion I slaughtered a chicken. It
11 was my first time doing it, so I wanted to do it, I wanted
12 to try to do it. But as I was doing it, you know, these
13 other guys, they didn't want to do it, they were kind of
14 squeamish at the idea of killing this bird.

15 Q Would it be fair to say that when it was target
16 practice it was the camp's policy --

17 THE COURT: Sustained.

18 MR. KHUZAMI: Objection.

19 Q Did Kelvin provide the guns that were used for
20 target practice?

21 A Yes. It was always the -- it was our policy that
22 no one would bring any of their own guns. Calvin always
23 told any group that came, do not bring any guns. He had all
24 the guns, he had plenty of guns, he would supply all the
25 weapons. He had plenty of ammunition and he had plenty of

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1 guns. He didn't want anyone to bring their own guns because
2 of his children, because of -- you know. He had his family
3 there. We were concerned about safety. We were just trying
4 to be very careful about what we were doing. We didn't want
5 anybody to be hurt, certainly not with some other gun.

6 Q You have also testified that there was discussion
7 and concern expressed about the situation in Bosnia at
8 various of the discussion periods during these training
9 sessions.

10 A There was a lot of concern about Bosnia --

11 THE COURT: There is no question pending.

12 MR. KHUZAMI: Objection.

13 Q Did the individuals in this group express anger
14 and outrage --

15 THE COURT: Sustained.

16 MR. KHUZAMI: Objection.

17 Q Did the individuals in this group express a
18 desire --

19 THE COURT: Sustained.

20 MR. KHUZAMI: Objection.

21 Q As you observed this group, did you believe that
22 they were physically prepared --

23 MR. KHUZAMI: Objection.

24 THE COURT: Sustained.

25 Q What was Mr. Elhassan's reaction to this

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1 training?

2 A Tarig?

3 Q Tarig.

4 A What was his reaction. I don't know, I think
5 generally everyone --

6 MR. KHUZAMI: Objection.

7 Q Mr. Elhassan. What was Mr. Elhassan's reaction?

8 A Elhassan's reaction was, I think he enjoyed the
9 training and I think he believed it was --

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained as to what he believed.

12 A It was my impression that he liked the
13 training --

14 MR. KHUZAMI: Objection.

15 THE COURT: Other than that he enjoyed it,
16 anything else?

17 THE COURT: Are you asking me? I am sorry.

18 THE WITNESS: Yes.

19 MS. LONDON: Let me ask ask another question.

20 Q Did he appear militant to you?

21 MR. KHUZAMI: Objection.

22 THE COURT: The objection is sustained.

23 Q Did he ever talk to you about jihad in America?

24 A No. I think that generally --

25 MR. KHUZAMI: Objection.

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1 THE COURT: The question is whether he ever
2 talked to you about it. The answer is no. Pose another
3 question.

4 MS. LONDON: I have no further questions, your
5 Honor.

6 THE COURT: Mr. Lavine?

7 MR. LAVINE: Thank you, Judge. May I approach --

8 THE COURT: Yes. May I see you at the side
9 briefly.

10 MR. LAVINE: Certainly, your Honor.

11 (At the side bar)

12 THE COURT: Do you have anything?

13 MR. BERNSTEIN: It depends on what Mr. Lavine
14 covers.

15 THE COURT: He says he has two minutes.

16 MR. KHUZAMI: No cross anticipated as of yet.

17 MS. AMSTERDAM: I have three questions.

18 (In open court)

19 MR. LAVINE: May I approach?

20 THE COURT: Please.

21 MR. LAVINE: Thanks.

22 Good afternoon, Mr. Abdullah.

23 Your Honor, could I ask for permission for my
24 client to stand up for a moment?

25 THE COURT: Yes.

1 MR. LAVINE: Fadil, will you stand up, please.

2 CROSS-EXAMINATION

3 BY MR. LAVINE:

4 Q Mr. Abdullah, this individual, who looks to be
5 the third from the right in Government's Exhibit 812B, do
6 you recognize that man?

7 A I do recognize him.

8 Q Mr. Abdelgani, will you rise, please.

9 Q Is that him?

10 A I think that is him.

11 THE COURT: For the record, that is Mr. Fadil
12 Abdelgani.

13 MR. LAVINE: Thank you, your Honor.

14 Q Mr. Abdullah, what was Mr. Fadil Abdelgani's
15 reaction to the training?

16 A I believe he had asthma, and he basically was
17 trying to keep up with them. When we jogged or when they
18 were engaged in various forms of physical activity, he got
19 winded quite a bit, and I remember on one particular
20 occasion he was laying down on the floor in the back of the
21 cabin because he had an asthma attack, and it was chilly so
22 I wrapped him up in a blanket and I put my arms around him
23 to keep him warm, because I was concerned about him. He had
24 those asthma attacks and he had difficulty keeping up with
25 us, particularly during running, distance running. But he

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1 generally tried very hard to keep up.

2 Q Were you ever present when he had any heated --
3 well, let me withdraw that.

4 MR. LAVINE: I have no further questions. Thank
5 you very much, Mr. Abdullah.

6 THE WITNESS: You are welcome.

7 THE COURT: Mr. Bernstein, representing Mr. Amir
8 Abdelgani.

9 MR. BERNSTEIN: May I approach the witness?

10 THE COURT: Yes, you may.

11 CROSS-EXAMINATION

12 BY MR. BERNSTEIN:

13 Q Just so we can clarify some things, sir, we have
14 been looking at this photograph and earlier -- this is
15 Government's Exhibit 812B in evidence.

16 THE COURT: Mr. Bernstein, you are not on the
17 air.

18 Q Sir, with respect to Government's Exhibit 812B
19 which I am showing you, you, I think, identified a gentleman
20 on the front left, to your left hand in this photograph. Is
21 that correct?

22 A That is correct.

23 Q And you identified him, I believe, as somebody
24 you thought was a relative of Mr. Fadil Abdelgani, who you
25 just identified in the courtroom, correct?

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1 A Yes. I remember they were either twins or
2 cousins and I still don't remember.

3 Q Sir, as you look around the courtroom, can you
4 identify the person in the photograph in the courtroom?

5 A I believe that would be the individual to my far
6 right.

7 THE COURT: Indicating Mr. Amir Abdelgani. Go
8 ahead.

9 MR. BERNSTEIN: Thank you. I have no further
10 questions.

11 THE COURT: Ms. Amsterdam, representing
12 Mr. Khallafalla.

13 CROSS-EXAMINATION

14 BY MS. AMSTERDAM:

15 Q Good afternoon, sir.

16 A Hello.

17 Q I represent Mr. Fares Khallafalla, who is sitting
18 at the end there.

19 Did he ever attend any of the training sessions
20 in Pennsylvania?

21 A I don't recognize him. I don't think he did.

22 Q I have a couple of brief questions for you, sir.
23 Were the sessions conducted mostly in English?

24 A It was all in English except, you know, when we
25 made prayers or things like that. You know, we do that in

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1 Arabic.

2 Q Did Siddig Ali communicate with you in English?

3 A Yes.

4 Q How good was his English?

5 A He was very fluent in English.

6 Q Did Siddig Ali tell you anything about his
7 educational background?

8 A Siddig Ali told me he had a master's degree, and
9 I perceived him to be very articulate. He was very
10 talkative. He was very verbose, he spoke very clearly. I
11 met a lot of Sudanese people when I worked at the
12 university, and I was --

13 MR. KHUZAMI: Objection.

14 THE COURT: This is not responsive. The question
15 was did he tell you --

16 MS. AMSTERDAM: I will ask another question.

17 Q Did you believe him when he told you he had a
18 master's degree?

19 A Yes.

20 MR. KHUZAMI: Objection.

21 THE COURT: Sustained. And stricken.

22 Q Sir, you described an incident when people were
23 walking through an icy pond, do you recall?

24 A Yes.

25 Q Was there any scuba diving through 12-inch ponds

14782

1 in frozen water?

2 A No.

3 Q That would be a distortion of what happened?

4 MR. KHUZAMI: Objection.

5 THE COURT: Sustained.

6 Q Lastly, sir, you described an incident regarding
7 the spraying of mace in front of people's face. Were people
8 ever tied to a tree and sprayed with poisonous gas and left
9 there?

10 A Absolutely not.

11 MS. AMSTERDAM: Thank you.

12 MR. WASSERMAN: Two very quick questions. May I?
13 Thank you.

14 THE COURT: All right.

15 REDIRECT EXAMINATION

16 BY MR. WASSERMAN:

17 Q Approximately how many weekends did the New York
18 group come up to Kelvin's place?

19 A I am guessing between four and five.

20 Q Were you there each weekend that they came up?

21 A No, I wasn't there each weekend. I think three
22 to four times I might have been there.

23 (Continued on next page)

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1 MR. WASSERMAN: Thank you, sir.

2 THE COURT: Any cross?

3 MR. KHUZAMI: None, your Honor. Thank you.

4 THE COURT: Thank you very much. You are
5 excused.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 THE COURT: Ladies and gentlemen, we are going to
9 break until Monday. Please leave your notes and other
10 materials behind. Please don't discuss the case. Have a
11 pleasant weekend. Please don't see, hear or read anything
12 about this case or discuss it with anybody else on the
13 outside. And we will see you Monday.

14 Good night.

15 (Jury excused)

16 THE COURT: If there are any loose ends that need
17 to be tied up or tied down for next week, I would like to
18 meet with the lawyers tomorrow afternoon so that we don't
19 have a half hour at the beginning of the day to do things
20 that should have been done before. I don't mean that as
21 critically as it sounds, but there we are.

22 Mr. Serra.

23 MR. SERRA: I am sorry, but I have made plans for
24 my case that involve my presence elsewhere tomorrow
25 afternoon.

1 THE COURT: Your case, meaning the case you are
2 going to present here?

3 MR. SERRA: Yes.

4 THE COURT: I have said a while back that I
5 thought people should make Fridays available. In any event,
6 Mr. Wasserman.

7 MR. WASSERMAN: I think after Miss Stewart's case
8 I have witnesses to present. Might your Honor consider that
9 since that is the next agenda to deal with that at the close
10 of business on Monday? I have witnesses that are scheduled
11 to be interviewed tomorrow afternoon. I will, of course,
12 follow your Honor's direction, but if we do it Monday
13 evening, I think Mr. Khuzami, who is representing the
14 government in connection -- or specifically heading up that
15 particular matter, they will be fairly well organized by the
16 end of business on Monday and we should be able to deal with
17 it expeditiously.

18 MR. KHUZAMI: There are a number of evidentiary
19 issues, I think, in connection with Mr. Wasserman's case. I
20 don't know how much longer Ms. Stewart has to go and whether
21 or not we will get to him on Monday. I am prepared to
22 submit a letter to the court tomorrow, outlining some of the
23 issues that might come up, or meet in the afternoon.

24 MS. STEWART: I think I am good through Monday
25 and maybe a little more. Agent Floyd is coming, Heshami, I

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1 think a little bit longer witness.

2 THE COURT: Is there anything that needs to be
3 done with regard to him or her?

4 MS. STEWART: I think I have been flayed, Judge.
5 I think I am done.

6 THE COURT: Pardon?

7 MS. STEWART: Nothing.

8 MR. JACOBS: I am happy to meet with the
9 government tomorrow and I am sure I can bring up some more
10 loose ends. That may or may not be a good idea.

11 THE COURT: Thank you for that preemptive strike.

12 MR. WASSERMAN: What time did your Honor
13 contemplate doing this tomorrow?

14 THE COURT: 2.

15 MR. WASSERMAN: Fine. I will be here.

16 MR. SERRA: Your Honor, would the court
17 approve -- I don't anticipate any issues that I would
18 address the court on --

19 THE COURT: You are excused. Understand, I am
20 not looking for business. I am not showing for business,
21 honest. I want to be able to get through next week without
22 having to make ritual apologies to the jurors because we are
23 starting half an hour late every day. If we can avoid that,
24 or some of it, by meeting tomorrow afternoon at 2 to iron
25 out a few things, then let's do it. This is strictly for

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1 lawyers, because it is all legal issues. See you then.

2 (Proceedings adjourned until Friday, July 21,

3 1995, at 2:00 p.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)

July 21, 1995
2:15 p.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 THE COURT: Miss Stewart, since your case is the
4 one that is currently on, is there anything that we --

5 MS. STEWART: Mr. McCarthy and I met yesterday
6 and we agreed that Nancy Floyd was the one potential
7 witness. If any more developed over the weekend, which I
8 don't foresee but anything is as possible, I will let them
9 know and if they wish to wait until Tuesday -- I think I
10 have enough to fill up Monday without Nancy Floyd.

11 THE COURT: That brings me to my next question.
12 You have introduced a stack of material, and is it your
13 intention to read it all?

14 MS. STEWART: Yes. Some of it will go very fast,
15 Judge. Most of it is not as dense as the government's
16 single-spaced pages.

17 THE COURT: I am simply trying to see if there is
18 anything to be shaved. But that plus witnesses, you think,
19 will fill Monday?

20 MS. STEWART: Yes.

21 THE COURT: Mr. Wasserman, I guess that brings us
22 to you.

23 MR. WASSERMAN: Yes, your Honor. If I may, I am
24 still reading the government's letter, which I just
25 received.

1 THE COURT: Then let's pass that.

2 Ms. London, did you have something you wanted to
3 raise?

4 MS. LONDON: No, your Honor.

5 THE COURT: And Mr. Jacobs has something but we
6 don't want to deal with that today.

7 MR. JACOBS: No, there are still a few open
8 matters. Just to let you know scheduling wise, Mr.
9 Fitzgerald and I and Miss Amsterdam were working on two open
10 matters, the Yousef material -- just so your Honor
11 understands where we are at, we have proposed three items, I
12 believe, and the government is considering whether they are
13 going to agree to those three items, oppose them or agree
14 and then ask for some additional items to put in. But we
15 have resolved the viewing of the material and what we want
16 to put before the jury. So now we just have to decide, I
17 guess the government has to let us know what they want to
18 do.

19 THE COURT: I am sorry. You haven't resolved how
20 you are going to view the material or whether you are going
21 to view the material?

22 MR. JACOBS: We can probably do it by stip. In
23 other words, if the government agrees to our three items and
24 hypothetically let's assume they want to put in two items,
25 we can do it by stip. I think that is something that the

1 parties can work out. If the government is going to oppose
2 our documents, then it will become a relevancy, etc.,
3 argument for your Honor to resolve. Just to let you know
4 what the open items are.

5 The second item is, there was a search of Salem's
6 car by some agents. I gave the tape to Mr. Fitzgerald, he
7 is reviewing it, and we are going to try and work out some
8 ground rules on that. That is an open item and we need to
9 proceed with that at some point. I gather the government's
10 reading the agents on the bootleg searches -- there are
11 three searches left, I believe -- and that is just a
12 question of scheduling. I think that is the open matters.

13 THE COURT: Isn't Floyd one of them?

14 MR. JACOBS: Yes. There may be some overlapping
15 on the 29th of June. There may be two agents involved
16 there.

17 THE COURT: No, I didn't think she had been there
18 herself. I thought some other person or people went.

19 MR. JACOBS: I am a little unclear who actually
20 did it. In any event, it is certainly an issue that will be
21 explored with Floyd and whoever took the actual tapes on the
22 29th of June. But I gather the government has no objection
23 to an inquiry being made by defense counsel concerning the
24 taking of the bootlegs on the various dates.

25 I think those are our outstanding matters other

1 than the sealed matter, which we do not wish to argue today.

2 THE COURT: Right. Ms. London is pulling your
3 coat.

4 MS. LONDON: There is another outstanding matter
5 that Ms. Amsterdam has that I would not want to address the
6 court on in her absence, but it is the Siddig Ali Rule 806
7 issues that Ms. Amsterdam has raised.

8 THE COURT: I know that is open. She indicated
9 yesterday, in either orders words or manner and I can't
10 recall which it was, that she and the government are still
11 talking and that there is some possibility of, if not
12 reaching agreement, at least narrowing it to a point where
13 there are relatively few issues.

14 MR. MCCARTHY: I expect to handle that on Sunday,
15 your Honor, and I don't think the court will have to resolve
16 it.

17 THE COURT: Mr. Nooter?

18 MR. NOOTER: Your Honor, I am more or less here
19 as a representative of my client, to make sure there is
20 nothing that he would object to.

21 THE COURT: That we don't do anything that hurts
22 him, OK.

23 Mr. Wasserman.

24 MR. WASSERMAN: Your Honor, there are some things
25 that I can address in a letter and there are others that I

1 would rather not, until I can do a comfortable amount of
2 research.

3 Your Honor, on character witnesses, the
4 government's main argument is that Hampton-El's good
5 reputation in Afghanistan is inadmissible on the grounds
6 that there is no substantial contact. I need to research
7 that point, but what I would offer to the court --

8 THE COURT: First of all, can we find out, good
9 character for what?

10 MR. WASSERMAN: Peacefulness.

11 THE COURT: He was over there fighting.

12 MR. WASSERMAN: No, he was not.

13 THE COURT: He was not?

14 MR. WASSERMAN: No, he was there as a medic.

15 THE COURT: Even though he was over there as a
16 medic, I don't know that in that setting peacefulness -- all
17 right.

18 MR. WASSERMAN: I think the issue may be obviated
19 by the fact that these are witnesses less for reputation and
20 primarily for the purpose he went and what he did there, and
21 I think that they are fact witnesses primarily, and unless
22 your Honor rules irrelevant what he did in Afghanistan --

23 THE COURT: What is the relevance of what he did?

24 MR. WASSERMAN: The relevance of what he did in
25 Afghanistan I think is precisely the exchange that your

1 Honor and I had just now.

2 THE COURT: To show that he didn't fight, that he
3 was a medic?

4 MR. WASSERMAN: Yes. I think it is extremely
5 important.

6 THE COURT: Does somebody want to be heard?

7 MR. KHUZAMI: First of all, I am not sure whether
8 or not a witness' testimony unless they were there and saw
9 him --

10 THE COURT: Presumably these are people who were
11 there and saw him.

12 MR. WASSERMAN: One is a witness who arranged for
13 him to go and on what basis, and will testify about what --
14 in other words, there are two -- the two witnesses, one
15 testifies as to the purpose for which my client went to
16 Afghanistan and the arrangements that my client made to go,
17 and they support the proposition --

18 THE COURT: That he went as a medic?

19 MR. WASSERMAN: Yes. The second is --

20 THE COURT: Let's stop with that. Do you have a
21 problem with that?

22 MR. KHUZAMI: I don't see the relevance of it.
23 If someone was there and can testify to what he did, I can
24 see that that has some limited relevance, but somebody's
25 arrangements about how he got there --

1 THE COURT: It is not how he got there, and it
2 sounds like one of the classic hearsay exceptions, which is
3 formulated for this case: I am going to Afghanistan, I am
4 about to leave for Afghanistan to be a medic, or -- it's a
5 statement of his future plans, in essence to show that he
6 acted then consistently with those plans and went over to
7 Afghanistan to be a medic.

8 MR. KHUZAMI: But if there is going to be
9 additional testimony immediately following as to what he did
10 in Afghanistan --

11 THE COURT: I gather there isn't going to be. Is
12 there? You say you have one person who made arrangements
13 for him to go over.

14 MR. WASSERMAN: Yes, right.

15 THE COURT: And?

16 MR. WASSERMAN: The other person, your Honor, is
17 actually someone who did not see him in Afghanistan but is
18 able to testify about his reputation in Afghanistan. So let
19 me correct myself. The first witness is really a fact
20 witness, the second is a reputation witness about his
21 reputation in Afghanistan.

22 THE COURT: For what?

23 MR. WASSERMAN: For peacefulness. He is
24 basically -- let me make the proffer to the court in some
25 detail. I think it might be helpful, and then your ruling

1 is your ruling. This witness will testify that as to two
2 periods of time in Afghanistan, first before meeting my
3 client and then after meeting my client, that he had a
4 reputation in Afghanistan as Dr. Rashid, as a medic, as a
5 peaceful person, and that the second time the reputation had
6 even grown larger.

7 THE COURT: Larger in what respect?

8 MR. WASSERMAN: Larger, that he heard about it
9 from more people, that it was in that sense larger.

10 THE COURT: But that is not reputation.
11 Reputation for having been a medic?

12 MR. WASSERMAN: I think in two contexts it is
13 relevant. One, medic in that circumstance is someone who is
14 not fighting and it is some evidence of being peaceful, but
15 that is a fact issue. The second is that people told him
16 that he was a peaceful person, and that is relevant in terms
17 of reputation, that he had a reputation for being a peaceful
18 person. That is what I am speaking of as reputation.

19 There is one case, but again the research has not
20 been detailed, but Ms. Avril from my office pulled it this
21 morning --

22 THE COURT: I don't understand. Given B, the
23 second witness who was over there, met your client, met
24 people who met your client and knew him and spoke of his
25 reputation, what is the need for A?

1 MR. WASSERMAN: Because the second witness, your
2 Honor, did not meet my client in Afghanistan, he met him in
3 Brooklyn between his own visits to Afghanistan. And the
4 relevance of witness 1 is that he is able to describe the
5 medical need, the solicitation to provide medical help in
6 Afghanistan that he gave to my client, my client's response
7 to it and arrangements in accordance with it.

8 THE COURT: Those things are not relevant. The
9 only thing that is relevant in that is a statement of
10 conduct by your client that says I am planning to go to
11 Afghanistan to be a medic. The rest doesn't come in.

12 MR. WASSERMAN: The witness who solicits him to
13 go doesn't come in?

14 THE COURT: He solicits him -- the solicitation
15 being what?

16 MR. WASSERMAN: That there is a need for medical
17 help there. In other words, Judge, if I could just turn for
18 a second, if the government had evidence that he was being
19 solicited to provide bomb making skills in Afghanistan, that
20 would come in without a doubt. I am trying to portray my
21 client as a person whose primary skills are as a medical
22 technician and that is the reason he goes to Afghanistan. I
23 think the inference by all parties concerned is that there
24 was a war going on in Afghanistan. I think it matters
25 greatly what you do in a war. If you make bombs it is

1 different from being a medic in a war, and I think being a
2 medic shouldn't be confined to his testimony.

3 THE COURT: If you have one witness saying that
4 he is a medic, that he is noted as a medic and that he is a
5 peaceful person? Do you have such a person who would
6 testify --

7 MR. WASSERMAN: If I may credit Mr. Nooter for
8 pointing out that there are two parts to the proffer. One
9 is my client's intent, why he was going. That is the first
10 witness. The first witness supports my client's testimony
11 and sets the context in which he went. What my client
12 actually did over there is again partly my client's
13 testimony and partly the reputation, that witness two comes
14 back. Neither witness, I might add, is an extensive
15 examination, but I think it is very critical to my case to
16 introduce evidence concerning my client's character and what
17 his occupation is and what his sphere of interest is, what
18 he does for a living and when he goes to a war, what he does
19 in a war. I think I should have not only my client's
20 testimony to fall back on but also those witnesses who can
21 add relevant testimony.

22 THE COURT: Obviously you are making a proffer in
23 bare bones description. That is not a criticism but that is
24 what many proffers are. If the conversation about Bosnia is
25 principally designed to elicit a lot of back and forth

1 between your client and the witness about how terrible
2 things are in Bosnia --

3 MR. WASSERMAN: If I may, this was Afghanistan --

4 THE COURT: I am sorry, Afghanistan. I
5 apologize.

6 MR. WASSERMAN: It is bare bones and in essence
7 it is not much more to do with it. The person who had made
8 the solicitation had himself been in Afghanistan, and it is
9 not to go into very much more than what I have proffered.

10 MR. KHUZAMI: Your Honor, I still have some
11 doubts about the admissibility of reputation evidence under
12 these circumstances, where he was there a brief period of
13 time predating the period of the conspiracy. But if the
14 testimony turns out to be as narrow as the proffer, I don't
15 think we have an objection.

16 MR. WASSERMAN: If it is going to be more -- I
17 don't intend to be more.

18 THE COURT: I know you don't. On the other hand,
19 we have had a couple of witnesses get on the witness stand
20 that kind of begin to emote.

21 MR. WASSERMAN: That is not my preparation and
22 not my intention.

23 THE COURT: Good. I expect responsive answers to
24 simple questions.

25 MR. WASSERMAN: Exactly.

1 THE COURT: Rather than getting up there and
2 having their moment. Sometimes their moment isn't all that
3 advantageous anyhow, when all the votes are in.

4 MR. KHUZAMI: One I think I would note so a full
5 record is appreciated, my understanding is that Mr.
6 Wasserman will be offering, attempting to offer a videotape
7 of his client's narrative from a hospital bed following his
8 return from Afghanistan where he talks about his experience,
9 and, two, that his client is going to take the stand.

10 THE COURT: He has already told us that he is
11 planning to have his client take the stand. So what he is
12 saying is that my client shouldn't take the stand and have
13 only his testimony support his having been a medic, and that
14 is fair.

15 MR. KHUZAMI: The videotape might be a prior
16 consistent statement which couldn't come in on a direct case
17 by Mr. Wasserman.

18 THE COURT: I understand that, but we haven't
19 talked about the videotape yet.

20 MR. WASSERMAN: No, we haven't, your Honor. I
21 don't know what the government's position is on the
22 videotape.

23 THE COURT: Sounds like they are against it.

24 MR. WASSERMAN: That is apparent. If I may,
25 Judge, since I don't think they detailed the position to me

1 other than saying it is a prior consistent statement --

2 THE COURT: In essence what they are saying is it
3 is hearsay. It is an out-of-court statement offered for the
4 truth of what it asserts, namely, literally, war stories.

5 MR. WASSERMAN: Might I respond to that first
6 with Mr. Khuzami because I was not prepared to deal with
7 that today.

8 THE COURT: You want to talk it over with him?

9 MR. WASSERMAN: Yes, because there may be
10 portions that are acceptable to the government. It is a
11 long video and if there are issues I think it will be a
12 confined area to take up.

13 Your Honor, again, somewhat moving backwards in
14 the government's letter on what I can respond to, on page 7,
15 Fatima Gabriel, those are several calls between my client
16 and this woman, as listed in the government's letter, of
17 June 3, June 19, June 20 and June 22. My understanding with
18 Mr. Khuzami is that I think we can reach agreement on
19 winnowing down the conversations to what I am trying to get
20 into evidence --

21 THE COURT: He was planning a trip to the
22 Philippines.

23 MR. WASSERMAN: He was planning a trip to the
24 Philippines to marry her.

25 THE COURT: That is fine.

1 MR. WASSERMAN: The only issue that I think
2 remains other than if we can't reach agreement --

3 THE COURT: I think he wants to leave out the
4 billing and cooing among other things.

5 MR. WASSERMAN: I think a certain amount of
6 billing and cooing establishes my client's state of mind and
7 also --

8 THE COURT: Your client's amorous adventures are
9 not at issue. This is not a paternity suit.

10 MR. WASSERMAN: But if on the other hand his
11 state of mind in terms of what he is focused on is going to
12 meet and marry this person in the Philippines --

13 THE COURT: I will take judicial notice of the
14 fact that attraction between men and women is a constant in
15 human affairs.

16 You started to tell me that you thought you could
17 reach agreement with the government. I think your agreement
18 should be reached with this conversation in mind.

19 MR. WASSERMAN: I will proceed on that basis. I
20 just think that you can't slice too much -- or you can slice
21 only so much from the conversation without indicating the
22 reality of what he is intending to do, and I think that is
23 another level, too. I mean, it is his intention to get
24 married and I think the reality of that level and his state
25 of mind about it, it has a certain amount of relevance. I

1 don't think it is appropriate to play two hours of billing
2 and cooing, but I don't see the problem in establishing that
3 from his conversations with this woman that he is in a
4 certain state of mind about going to the Philippines and
5 about his intentions to marry her, and then in response what
6 her intentions are. I think they are relevant in --

7 THE COURT: Her state of mind is clearly not at
8 issue.

9 MR. WASSERMAN: If your Honor would permit, let
10 me reserve a response and make one. I think it is relevant.
11 I just don't know whether -- I just would like the chance to
12 make the argument in a written form. To some extent I think
13 my problem is that the proffer begins to lead to discovery
14 that I would rather not make to the government.

15 THE COURT: They haven't seen this conversation?

16 MR. WASSERMAN: I think I have supplied your
17 Honor with all the proposed conversations. I can't vouch
18 for the fact that I have supplied your Honor with this
19 conversation.

20 THE COURT: How did these conversations --

21 MR. KHUZAMI: I think there is confusion. The
22 judge wanted to know whether or not what you were reluctant
23 to disclose were the conversations or something else?

24 MR. WASSERMAN: It is the inference that I seek
25 to draw with the jury from the conversations, an inference

1 that would be adversely affected by eliminating entirely
2 surrounding talk other than the actual, I'm coming to do
3 this and -- I don't know quite how you just extract the
4 statement from the context without affecting, one, the
5 meaning of the statement, and, two, the inference I intend
6 to suggest to the jury can be drawn from it, and I would
7 rather argue the inference first ex parte with your Honor,
8 and if your Honor feels that it is not worthy of a
9 government response, then that's that. But I think that as
10 a matter of trial strategy -- I see Mr. McCarthy having a
11 terrible headache and I don't mean to give him one, but I
12 don't think I have to give them a road map as to where I
13 want to go with something. I have to make a proffer under
14 these circumstances, but I would like to take up the
15 inference that I seek to draw with your Honor first ex
16 parte.

17 THE COURT: All right.

18 MR. WASSERMAN: Is that OK?

19 THE COURT: Yes.

20 MR. WASSERMAN: Thank you.

21 The next category actually begins on page 5,
22 conversations with Osama Mohammed, and there I rely mostly
23 on my conversation with Mr. Khuzami of yesterday evening.
24 My understanding from yesterday evening is that there were
25 three matters that the government wanted out from the

1 conversations. The first was a discussion about Mahmoud
2 Abouhalima and his torture in Egypt, two, a conversation
3 about Nosair and a setup in Attica, and three, a
4 protestation of innocence by my client to Osama Mohammed. I
5 don't have an objection to the Nosair or Mahmoud Abouhalima
6 being deleted. The protestation of innocence I would like
7 to research, but since the government has charged my client
8 with selling a gun to Emad Salem, brought in Osama Mohammed
9 has connected to the sale, as the party who at one point
10 owned the gun and then introduced a lot of conversations
11 explaining or depicting the relationship between him and my
12 client, I think that a protestation of innocence by my
13 client to Osama has some validity because according to the
14 government, they have dealt in guns, and my client saying I
15 have done nothing wrong, they are following me and I'm
16 clean, it could bring forth -- in fact if he had dealt with
17 Osama Mohammed in guns, Rashid, you know, all I am saying,
18 your Honor --

19 THE COURT: That is not what he says. That may
20 be the inference you are seeking to draw from it but that is
21 not what he says, according to what is reported here.

22 MR. WASSERMAN: I am sorry. I am not saying that
23 is what Osama said.

24 THE COURT: It is not what your client says.

25 MR. WASSERMAN: Right. It is relevant, I think,

1 under a state of mind exception because the government has
2 charged him with criminal activity with a person he is
3 talking to on the phone. It is not as if he is talking to a
4 third party not connected with the case. It is an
5 unindicted coconspirator.

6 THE COURT: All he says in the context is not
7 being afraid of surveillance.

8 MR. WASSERMAN: And that he has not done anything
9 wrong, that he is clean. I think it has relevance to the
10 charge of having obtained a gun with serial numbers
11 obliterated from Osama Mohammed to sell to Emad Salem.
12 That's the government's case.

13 MR. KHUZAMI: Your Honor, I don't think that the
14 fact that he is talking to Osama Mohammed and attempting
15 Osama's nonstatement in response renders this admissible.
16 My objection is one of 803(3) and state of mind. First of
17 all, it can be construed as a state of memory or belief
18 because it he appears to be talking about the surveillance
19 that he has been under in the past and therefore in that
20 respect it would be nonadmissible under 803(3), to prove the
21 fact believed, i.e., that he had done nothing wrong.

22 Even if it is not construed as state of memory or
23 belief as opposed to some general protestation of innocence,
24 I think it is too disconnected from any event to give
25 reliability necessary for that exception to apply. All the

1 cases I am familiar with that deal with state of mind deal
2 with an event or occurrence, someone happening upon a crime
3 scene, someone being told about a certain event and they
4 have an instantaneous response which is deemed reliable
5 exactly because it is contemporaneous with learning about
6 the event. Here it is an open-ended sort of stream of
7 consciousness statement that I think just does not have the
8 reliability that is necessary for the exception.

9 MR. WASSERMAN: The government having introduced
10 the conversations for the time period that they did, to show
11 the relationship between the parties, obviously is doing so
12 to show a continuing relationship. It is a continuing
13 conspiracy and the gun sale to Emad Salem that is alleged is
14 part of the continuing conspiracy. The calls of Osama
15 Mohammed would not have been deemed relevant by your Honor
16 but for the fact that the government is trying to show
17 precisely what I am trying to counter with a protestation of
18 innocence.

19 MR. KHUZAMI: To the extent he is referring to
20 Osama as a coconspirator, he can't get in coconspirator
21 statements. So I don't know what that adds to the analysis.

22 THE COURT: He is saying that it is unlikely he
23 would have had that conversation with Osama Mohammed if in
24 fact he had had a transaction involving a weapon because he
25 would be open to the risk that Osama Mohammed would say oh,

1 no, don't you remember that we were involved in the purchase
2 of the gun.

3 MR. KHUZAMI: First of all, it is a year later
4 after the purchase. Second of all, that goes to relevance,
5 it doesn't go to the admissibility of it.

6 THE COURT: That is true.

7 MR. KHUZAMI: I would also assert, as I stated in
8 the letter, that there is a 403 problem and the fact that
9 what this is is a general statement, I haven't done anything
10 wrong, I think --

11 THE COURT: Which I think is what the impact of
12 it is intended to be and is likely to be, and I will not
13 receive it. That conversation is out.

14 MR. WASSERMAN: Is out?

15 THE COURT: Out.

16 MR. WASSERMAN: That particular statement?

17 THE COURT: Correct. What else is there in the
18 conversation?

19 MR. KHUZAMI: The only thing we have objected to
20 are those three items. What remains of the conversation we
21 have no objection to.

22 THE COURT: Fine. That is one more thing I don't
23 have to rule on. Let's go. What else?

24 MR. WASSERMAN: I would like to simply reserve on
25 being able to respond in kind to the government --

1 THE COURT: Fine.

2 MR. WASSERMAN: I am trying to move things
3 along --

4 THE COURT: It sounds as though we are not moving
5 things along.

6 MR. WASSERMAN: I just think that if there is a
7 case that says the government is wrong, I should have an
8 opportunity to find the case. I haven't had that
9 opportunity and that is all I am saying.

10 THE COURT: OK.

11 MR. WASSERMAN: The other conversation, my
12 understanding is that the only argument against --

13 THE COURT: Which one are we on now?

14 MR. WASSERMAN: We are still on Osama Mohammed.

15 MR. KHUZAMI: Let me try and clarify it. I think
16 the only thing left is the bottom of page 6, top of page 7
17 of the letter. The May 9 conversation has a short reference
18 to the murdering of children and the cutting of women's
19 throats in Bosnia. It is a small excerpt and we would raise
20 a 403 objection to that. The rest we don't have objection
21 to.

22 MR. WASSERMAN: I think that the government has
23 introduced conversations where Osama talks about training,
24 where they talk about violence with a drug dealer and stuff
25 like that, and I think that the Bosnia talk has some

1 relevance in terms of what in essence the subject matter of
2 their interests are. However, I think that I can probably
3 reach agreement with Mr. Khuzami on those particular points.
4 I am not sure that is central and I simply haven't had a
5 chance to focus on it.

6 My understanding, your Honor, is that the
7 protestation of innocence is out unless I come up with some
8 authority that persuades you otherwise, and the Bosnia, but
9 everything else is OK. Am I correct?

10 MR. KHUZAMI: Of the Osama Mohammed conversation.

11 THE COURT: Of the Osama Mohammed conversation.

12 MR. WASSERMAN: Next is Mustafa Mohammed.

13 THE COURT: We are working backwards?

14 MR. WASSERMAN: I am sorry, that was the easiest
15 way to go.

16 THE COURT: That is fine.

17 MR. WASSERMAN: The government concedes that the
18 May 30 conversations are without objection. It contests the
19 conversations prior to May 30. I think that the
20 government's case against my client reaches a focus on the
21 relationship between my client and Mustafa Mohammed that
22 Hampton-El went to Mustafa to get detonators and that this
23 activity began on May 30. I think that the prior dealings
24 with the parties established what their relationship is, who
25 Mustafa Mohammed is, and supply needed explanation as to

1 what my client would go to Mustafa for and why he would go
2 to Mustafa for anything, and I think to simply leave it
3 where the government defines the time period and what you
4 can introduce as to an understanding of what their dealings
5 were strips the defendant of the ability to provide the jury
6 with information about the context of their dealings.
7 Without those prior conversations, the jury has no
8 information other than what my client might provide as to
9 his relationship to Mustafa Mohammed, what he has done for
10 him and what Mustafa has done for my client and what they
11 deal in and what they talk about, and it is not an issue of
12 time expenditure, it is simply an issue that the government
13 doesn't want it in because it explains a relationship
14 between the parties, and I don't see why the government
15 should be able to define or limit the time period as to what
16 the defendant can offer proof as to what they dealt with.

17 THE COURT: The only way that is going to be
18 admissible --it is not that I don't care about human
19 relationships but that is not really what we are talking
20 about here. If you are telling me that those conversations
21 make it apparent that he was talking about getting
22 automobile tires and not getting weapons, then say so. Is
23 that what you mean?

24 MR. WASSERMAN: What I am trying to say is that
25 those conversations were evidence that he would not go to

1 him for weapons or detonators, that what he goes to him for
2 is auto repair.

3 THE COURT: But that doesn't follow.

4 MR. WASSERMAN: Judge, if I may, if I don't have
5 those conversations, if my client was not testifying I would
6 have no way of presenting to this jury that the relationship
7 between Mustafa Mohammed did not start with phone calls on
8 May 30 as the government --

9 THE COURT: It is obvious that it doesn't start
10 on May 30 because it is obvious from the May 30 telephone
11 call that they knew each other already.

12 MR. WASSERMAN: But how and under what
13 circumstances they know each other is relevant.

14 THE COURT: No, it isn't. What matters is what
15 they talk about from May 30 onward. If you are telling me
16 that they talk about something other than weapons and you
17 can prove that from the prior conversations, then fine.

18 MR. WASSERMAN: Yes, I can.

19 THE COURT: How?

20 MR. WASSERMAN: Because the prior conversations
21 explain what they do talk about, that he would not be
22 someone that he would go to for detonators. If what they
23 talked about in prior conversations had to do with
24 detonators or weapons or anything in the area of getting
25 something of that kind, the government can get that in. If

1 the conversations deal with a relationship where it shows
2 that they frequent each other and what they frequent each
3 other about, then the fact that my client has contacts with
4 Mustafa Mohammed in the time period that the government
5 wants to show is relevant, I should be able to be not
6 confined to that time period.

7 THE COURT: Mr. Wasserman, if you make book at
8 your local candy store, the fact that you also have
9 conversations with the man behind the counter about Snickers
10 candy bars doesn't mean they all come in, unless you can
11 show that you have some kind of code that relates to
12 Snickers bars that shows that what the government says were
13 about gambling were really about Snickers bars. I keep
14 putting the question to you directly and you keep answering
15 about the nature of the relationship.

16 MR. WASSERMAN: The question is do the prior
17 conversations explain what he went to him for? If that's
18 the question, the answer is yes, without any question.

19 THE COURT: They explain that when he was talking
20 to him on May 30, he wasn't talking about detonators or
21 anything of the kind, and how do they explain that?

22 MR. WASSERMAN: Because they show that the --

23 THE COURT: That he talks about other things.

24 MR. WASSERMAN: But it is not just that they are
25 talking about other things. The other things explain why he

1 sees them in the period of time that the government claims
2 are contacts by phone and in person that they want to have a
3 guilty inference drawn from.

4 You know, if I may just take the facts of this
5 case, they want to show that between May 30 and June 16 my
6 client is contacting this person to obtain detonators.
7 There are prior conversations that would be relevant to the
8 jury where they would find that there were frequent contacts
9 between these people, that those frequent contacts are about
10 every subject matter but getting detonators and weapons, and
11 I think it is highly relevant for the jury to be able to
12 have those conversations in context. Otherwise it looks
13 like he first calls the guy up on May 30 because he has
14 gotten a request for detonators.

15 THE COURT: I just don't see how it follows, I
16 really don't.

17 MR. WASSERMAN: Maybe I can put it this way. The
18 frequency of the contacts between the two men establish that
19 before May 30 there was an ongoing pattern of contact. If I
20 am limited to May 30 to June 16, I can't present evidence to
21 the jury that there is a prior relationship. He is not
22 going to the store, in your example, just from that time
23 period on, he has frequented that store before. This is a
24 relationship and there is a frequency of contact. The
25 government's argument is, look who he contacts on May 30 and

1 look who he contacts between May 30 and June 16. I say that
2 is a person he has been contacting for a long time.

3 THE COURT: The particular timing -- he is
4 contacted by somebody else, right?

5 MR. WASSERMAN: On May 30.

6 THE COURT: Right.

7 MR. WASSERMAN: Yes, but the government has also
8 offered evidence that Mustafa Mohammed is an unindicted
9 coconspirator who has been involved in this conspiracy since
10 at least the spring of 1992, so prior contacts between the
11 parties would be quite relevant. The government can't
12 simply say he is involved in the conspiracy from 1989 on and
13 then say the only relevant period that we want to put in is
14 two weeks. That is unfair.

15 THE COURT: It depends on which conversation you
16 are putting in.

17 MR. WASSERMAN: That at least opens the door to
18 saying --

19 THE COURT: It doesn't open the door to every
20 single conversation he ever had with him if it involved milk
21 containers.

22 MR. WASSERMAN: I don't have access to the
23 conversations that exist before the wiretaps and I am not
24 saying that every conversation has to go in, but two factors
25 are important, I think. One is the frequency of contact and

1 two is the subject matters of the contact. I don't say
2 every call is a necessity but the government wants to
3 establish that the calls between these people, the contacts
4 between these people is focused on weapons and explosives,
5 explosives particularly, detonators, and I want to show from
6 the prior conversations that in the course of this
7 conspiracy -- because certainly the prior conversations take
8 place during this conspiracy, and they are not talking about
9 detonators.

10 THE COURT: The government isn't arguing that the
11 relationship between them is focused on detonators. What
12 the government is saying is that somebody asked your client
13 for detonators and the guy that he reached out to, who he
14 obviously knew from some other context, was somebody whom he
15 reached out to for that purpose.

16 MR. WASSERMAN: But, your Honor, it is more
17 specific than that, and let me explain. Emad Salem from the
18 government's position and other proof is that Mustafa
19 Mohammed was somebody that would help Emad build the bombs
20 in the spring of 1992. Emad testifies that he goes to my
21 client in the spring of 1992 for the detonators. Going to
22 my client in the spring of 1992 is not without going to my
23 client a year before and not without testifying that Mustafa
24 Mohammed is a player. I don't think you can rule out as
25 irrelevant the contacts during this period of bomb making

1 that starts in June 1992. It starts in June when Emad asks
2 for detonators from my client and he testifies that Mustafa
3 Assad is going to be somebody who is going to help in the
4 bomb making, and that has come out to this jury in other
5 ways besides the Emad testimony.

6 THE COURT: As I recall Salem's testimony, there
7 were calls from Siddig Ali, were there not? Or am I
8 confusing that with something else?

9 MR. WASSERMAN: With reference to what, your
10 Honor?

11 MR. MCCARTHY: With respect to what he is saying
12 about Salem's testimony, he is mixing up two different
13 things. Salem testifies that he comes down from Attica on
14 June 14 of '92 with Shinawy, and that between a conversation
15 with Nosair at Attica and the conversation with Shinawy on
16 the way back, the name Mustafa Mohammed, or Mustafa Assad as
17 he has also been referred to in the trial, is proposed to
18 Salem as somebody who will help out in the bomb making
19 projects. The connection of Mustafa Mohammed or Mustafa
20 Assad to these people has nothing to do with Hampton-El at
21 this point. When he meets with Hampton-El a couple of days
22 later, the name Mustafa Assad is not alleged to have come up
23 at all.

24 The connection between Mustafa Assad and
25 Hampton-El is shown in '93 with respect to the situation

1 where Siddig Ali and Salem go to see Hampton-El and begin to
2 speak to Hampton-El about securing detonators, and it is at
3 that point where he reaches out to Mustafa Assad. But it is
4 two different things. The original connection of Mustafa
5 Assad as shown by the evidence in the case doesn't have
6 anything to do with Hampton-El.

7 MR. WASSERMAN: The fact of the matter is that
8 the relationship between Mustafa Assad and my client goes
9 back to the initial allegations of bomb making in 1992.
10 Further, there is a mention of Mustafa in the May 30 tape
11 and a dispute between the parties as to who mentioned
12 Mustafa in the May 30 recording. There is a mention of
13 Mustafa by Emad Salem to Siddig Ali which has come into
14 evidence, where he refers to Mustafa Assad supposedly as one
15 who is going to help in the bomb making and why don't we
16 bring him into this bomb making.

17 I don't see how, given the nature of the bomb
18 making charge, I can be limited to the second stage, and
19 even as expressed by the government, he reaches out May 30.
20 It is the heart of the case, and I shouldn't be limited to
21 evidence that begins on May 30 when the charges go back to
22 June of '92.

23 MR. KHUZAMI: Your Honor, first of all, there are
24 Mr. Hampton-El's phone records in evidence. To the extent
25 to which Mr. Wasserman wants to make argument that there was

1 contact, he can do it from the phone records. It is the
2 substance which is hearsay, and unless a call prior to May
3 30 has a discussion which can somehow clarify why the two
4 may have had contact after that or why they met, it is a
5 classic example of using instances of innocent conduct to
6 try and argue against the government's case. So I don't see
7 how they are admissible.

8 Furthermore, if his client takes the stand, I
9 assume he will be free to talk about his relationship with
10 Mustafa Mohammed, and then if the government tries to argue
11 that, didn't you in this conversation talk about detonators,
12 they might have an argument on redirect that they can get
13 these in.

14 MR. WASSERMAN: Your Honor, it is really a last
15 resort when the government argues that my client can testify
16 about it. The fact of the matter is that even the issue of
17 who says Mustafa in reference to detonators on May 30 in the
18 taped conversation of CM 25 is relevant as to an argument
19 and it is an argument between the parties as to who says it
20 and it is meaningful, as to what the context was between
21 Mustafa and my client. It is not just the frequency it is
22 whether or not my client would bring up Mustafa Assad as
23 someone to go to for detonators or not.

24 THE COURT: The fact that you have proffered to
25 me that he talked about other things does not suggest that

1 he would not talk to him about that. It just doesn't.

2 (Continued on next page)

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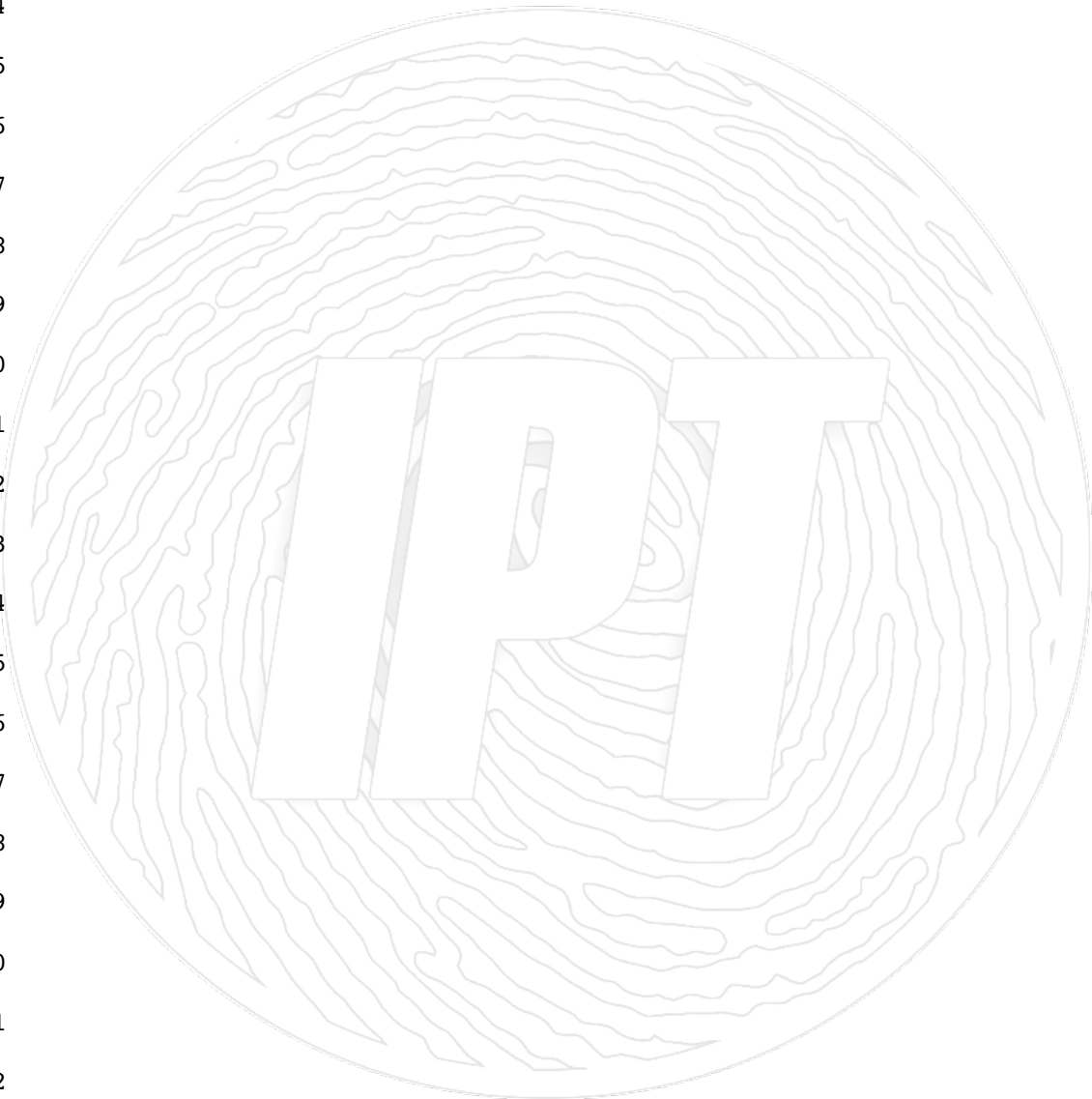
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1 MR. WASSERMAN: Well, I think that what they do
2 talk about and how they talk about it is relevant to what
3 they do talk about and how they talk about it during the
4 time period that the government is talking about.

5 THE COURT: How? I mean, stop the extractions.
6 What is it? What do they talk about and how do they talk
7 about it?

8 MR. WASSERMAN: In the first place, it
9 establishes the circumstances --

10 THE COURT: No. Be specific. What is it they
11 are talking about and how they are talking about it that
12 somehow illuminates --

13 MR. WASSERMAN: OK. In some of the conversations
14 they are talking about my client coming down and getting his
15 car repaired, in some there is conversation talking about
16 business propositions, in some there is talk about a letter
17 concerning Mustafa Assad's welfare situation, and --

18 THE COURT: What about that makes it unlikely
19 that he would have talked to him later on about detonators?

20 MR. WASSERMAN: In part because you have a
21 continuing conspiracy from June '92 where Mustafa Assad and
22 my client are engaged in bomb making, according to the
23 government, and the fact is there is no conversation
24 concerning anything about bomb making or detonators prior to
25 what the government alleges are contacts between May 30 and

1 June 16.

2 The second is that it explains why my client is
3 seeing Mustafa Assad during the guilty period, and what he
4 is seeing him about. Without that context to explain what
5 they are actually seeing each other about, the government is
6 free to create what innuendos it wants, but it is defining
7 the playing field.

8 THE COURT: I will hear from your client first.

9 MR. WASSERMAN: You will hear from my client
10 first?

11 THE COURT: I won't. The jury will.

12 If it becomes relevant then, it becomes relevant
13 then. I don't see it otherwise.

14 MR. WASSERMAN: Well, all I can say is that both
15 having been involved, according to the government, in the
16 bomb-making plot in June of '92, I don't see how the
17 government can restrict the --

18 THE COURT: Let me understand your argument.

19 Your argument is the government says your client was
20 involved in building bombs in June of '92?

21 MR. WASSERMAN: They said he was approached by
22 Emad Salem to get detonators, and Emad Salem has testified
23 that another co-conspirator at that time was Mustafa Assad,
24 that he was told by Shinawy, and then later it's brought to
25 the jury's attention again that when Emad tells Siddig on

1 CM --

2 THE COURT: Mr. Wasserman, please.

3 MR. WASSERMAN: Yes, judge.

4 THE COURT: Try responding to one question at a
5 time.

6 MR. WASSERMAN: Yes, your Honor.

7 THE COURT: They say that your client was
8 approached in June of '92 to get detonators, right?

9 MR. WASSERMAN: Yes.

10 THE COURT: You want to show that he had
11 conversations with somebody at that time that were about
12 things other than getting detonators, is that it?

13 MR. WASSERMAN: I am trying to be accurate, your
14 Honor. Not at that time. I am answering honestly. There
15 are no conversations --

16 THE COURT: I suppose I can see an argument that
17 says that, look, the government says my client was
18 approached on day three to get a detonator or detonators,
19 and that he immediately reached out for this guy, and, yet,
20 when he was approached earlier to get detonators, he was
21 talking to him about something else or he didn't approach
22 him to get detonators. But that is not what you are saying.

23 MR. WASSERMAN: I am. I just think that the days
24 are months in this case, and that what the government is
25 saying is that the plot begins in the spring of '92 and both

1 my client and Mustafa Assad are involved. Therefore,
2 conversations between that period of time throughout are
3 relevant. They haven't --

4 THE COURT: I'm sorry. The "therefore" doesn't
5 follow.

6 MR. WASSERMAN: Why not? That is what I don't
7 understand. Your Honor, I hope you understand. I am not
8 trying to provoke the court. I don't understand why if the
9 government says that is when the plot begins the
10 conversations are not relevant. They started it.

11 MR. KHUZAMI: Your Honor.

12 THE COURT: Yes.

13 MR. KHUZAMI: Putting relevance aside, these are
14 still hearsay statements. I have heard nothing as to a
15 theory as to how they are admissible. They are at best
16 prior consistent statements. They have to be coming in for
17 their truth, because the only way they can show the things
18 that Mr. Wasserman wants to show, i.e., that the
19 relationship was broader, involved other subjects, the
20 content of it must be for its truth.

21 MR. WASSERMAN: That is clearly not the case.
22 Because whether in fact he's getting his car repaired or in
23 fact he's writing a letter to welfare, those are relevant.
24 What they are talking about is relevant, and it cuts into
25 what they later talk about. It doesn't make a difference.

1 The fact that they are talking about those other matters
2 rather than detonators is relevant for the jury.

3 MR. KHUZAMI: The statement in the conversation
4 is, "I am going to come down and get my car fixed." The
5 truth being offered is that he said, "I am going to come
6 down and get my car fixed," not whether or not he did.
7 Therefore, it is offered for its truth.

8 MR. WASSERMAN: The government in saying that I
9 can point to the phone records to show frequency of contact.
10 It is vital for me to be able to show what the subject
11 matter of that contact was. Since the bomb plot begins in
12 June of '92, I should be able to show that the subject
13 matter between that period of time and the closure of the
14 case is not about, at least from the words, not about
15 explosives, detonators or bomb making.

16 MR. JACOBS: Isn't it 803(3)?

17 MR. WASSERMAN: 803(3).

18 THE COURT: That is not what it is being offered
19 to show.

20 MR. WASSERMAN: Your Honor, I am offering it for
21 a number of reasons. One of them is the state of mind of my
22 client --

23 THE COURT: No, Mr. Wasserman. The conversations
24 as you have described them have nothing to do with his state
25 of mind. They have to do with what business he was or

1 wasn't transacting with Mustafa Mohammed.

2 MR. WASSERMAN: They have to do with his state of
3 mind in approaching Mustafa Assad and what he would approach
4 him for. From that point of view, it is vital for the jury
5 to know why they would see this man, what the circumstances
6 usually are, and that this is not a person --

7 THE COURT: He habitually gets his car repaired
8 there. In my hypothetical most of the time he buys candy
9 from the candy man. Sometimes he places bets.

10 MR. WASSERMAN: What happens if I can't show the
11 subject matter of the prior conversations is I am left with
12 the fact that he has phoned him on prior occasions and has
13 seen him on prior occasions, and this I only get out through
14 my client, and I can't show that the prior contacts between
15 the parties had nothing to do with detonators.

16 The government is then free to argue that it
17 doesn't start on May 30. He's always gone to this guy for
18 munitions and explosives. They can argue a negative
19 inference and I am powerless to argue what in fact they
20 actually dealt with.

21 THE COURT: No. Mr. Wasserman, at that point you
22 are permitted to introduce the conversations to show that
23 they involved getting his car repaired.

24 MR. WASSERMAN: The inference doesn't have to be
25 argued by the government because that is the inference they

1 create by saying it is only relevant what these guys are
2 doing from May 30 to June 16.

3 THE COURT: As I said, your client you say will
4 testify. If he testifies to what his relationship was with
5 this gentleman and that his conversations later on involved
6 getting his car repaired or doing whatever other business he
7 was doing with him, I may permit you to corroborate that
8 with prior statements. Not prior statements about the
9 nature of their contact, but rather prior examples of their
10 contact about these other things.

11 I am certainly not going to let them argue -- I
12 mean, in essence tie your hands behind your back and hit you
13 by arguing, "Look at all the telephone calls he made prior
14 to May 30" when they are not letting you show the substance
15 of the calls. I will not let them do that.

16 MR. WASSERMAN: Unless I can use it as a sword
17 and show, look at all the prior calls, look at all the prior
18 meetings, and look at what they are about.

19 THE COURT: Mr. Wasserman, you may very well be
20 able to use it, if not as a sword, something that looks very
21 much like it at the time your client testifies.

22 MR. WASSERMAN: All right. Thank you.

23 THE COURT: But not by simply flying it in
24 independently.

25 MR. WASSERMAN: Your Honor, the next category of

1 FISA's is Junior Pusey. He is the landlord of the premises
2 at 251 Rogers Avenue. The essence of the government's
3 argument is that either the conversations are cumulative to
4 evidence I can already point to in the record that the --
5 there's been testimony in this case repeatedly that 251
6 Rogers Avenue was a safe house. And there's been testimony
7 by Emad Salem that it was a safe house, and there's been
8 testimony by Emad Salem that when he rented the safe house
9 in Queens, he did it using a Jewish name and a phony
10 identification and a phony beard. I think the fact that my
11 client uses his name --

12 THE COURT: Which is already in.

13 MR. WASSERMAN: I'm sorry, your Honor?

14 THE COURT: Which is already in.

15 MR. WASSERMAN: I didn't hear that.

16 THE COURT: Which is already in.

17 MR. KHUZAMI: Your Honor, I am sorry to
18 interrupt, but I think that we will withdraw our objection
19 to these and Mr. Wasserman can use them.

20 THE COURT: So we are going to have his
21 conversations with this gentleman about dog droppings and
22 other things?

23 MR. WASSERMAN: I can eliminate the dog dropping
24 one, Judge.

25 THE COURT: Thank you.

1 MR. WASSERMAN: I think the Con Ed ones, about
2 being scrupulously honest about the, you know, the bills
3 being proper and all that are relevant. I would simply say
4 that given the government's withdrawal of this objection --

5 THE COURT: How long?

6 MR. WASSERMAN: Short. Less than 15 minutes.

7 THE COURT: Less than?

8 MR. WASSERMAN: 15 minutes.

9 THE COURT: Total?

10 MR. WASSERMAN: Total.

11 THE COURT: All right.

12 MR. WASSERMAN: I think there are -- Mr. Khuzami
13 can correct me if I am wrong -- I think there are a couple
14 of open matters.

15 One is there was a letter that I on July 14, the
16 government responded on July 19 and then I responded on July
17 20. As I understand it, the court has indicated that
18 Detective Napoli's evidence vis-a-vis my client is of
19 limited relevance. I think that since he's testified in
20 essence that Emad Salem was afraid to meet my client in a
21 rush, that the import of that is that my client is
22 dangerous. There was further testimony after Detective
23 Napoli testified that he had, Napoli had instructed Emad
24 Salem not to wear recording devices to meet my client
25 because they were very surveillance conscious.

1 I think the impression created to the jury by
2 that testimony is that my client is a dangerous person. I
3 seek to cross-examine Detective Napoli on that point. I
4 think it is relevant for two reasons: For me to be able to
5 cross, or rather to examine him. One is that it is not true
6 that my client is a dangerous person and I want to be able
7 to bring that out through examination of Detective Napoli
8 because he is the one who first threw it in.

9 The second thing is it evidences, because it
10 isn't true, the bias of Detective Napoli, and that bias is a
11 larger issue in some respects than his claiming that my
12 client was dangerous.

13 I should be able to examine him concerning that
14 bias or the reasons he testified untruthfully. I would
15 point out to the government that Emad Salem wore two wires,
16 not one, to the meeting with my client. So I feel on the
17 basis of both the inference -- not, rather, the inference,
18 but the testimony that my client was dangerous and that it
19 is untrue, I have the right to call Detective Napoli and
20 examine him.

21 Also, what Detective Napoli testifies or would
22 testify to bears in on the truthfulness of Emad Salem's
23 testimony that he testified here before your Honor that he
24 was going to meet my client on July 24, and he was going to
25 meet him to pick up the stuff. June 24, I apologize.

1 That is not true. One of the ways of bringing
2 the untruthfulness of that to the jury's attention is to
3 question Detective Napoli concerning his instructions to
4 Emad Salem on June 23. I think that it is necessary to
5 bring that, to be able to bring that proof to the jury, that
6 evidence to the jury. Otherwise they are left with Emad
7 Salem's testimony that, in fact, although he hasn't gotten
8 anything from my client, he expected to, and but for the
9 fact that the arrests took place before the meeting on June
10 24, he would have.

11 Questioning of Detective Napoli would be relevant
12 towards the position that that testimony by Emad Salem was
13 totally fraudulent.

14 THE COURT: How?

15 MR. WASSERMAN: Well, he says a couple of things.
16 One, he would testify to having instructed Emad Salem to get
17 the defendant Hampton-El to buy ammunition, buy material and
18 that the office was pissed. Those are his exact words.
19 They are going to beat this case. There's going to be an
20 investigation. What he's saying on the evening of June 23
21 is get the defendant to buy something.

22 I think that is relevant towards the fact that
23 between June 23 and June 24 my client is arrested, but Emad
24 Salem has testified to this jury that my client has the
25 stuff, he's going to pick it up on June 24. I think it is

1 very relevant that as of this conversation with Napoli on
2 the evening of June 23 my client has nothing, and Emad Salem
3 is being told to contact him to get, to buy something.

4 I think the fact that Napoli tells him that the
5 office is pissed is also another important piece of evidence
6 in terms of why Napoli would testify falsely and Emad. The
7 other thing is that there is -- aside from the instruction
8 by Napoli to Salem, there is a question by Napoli as to
9 whether or not my client has intentions of joining this,
10 referring to what Emad Salem is doing with the bomb making.

11 THE COURT: That doesn't illuminate that at all.
12 I am familiar with your theory on that. I have heard it
13 five times. You have your record, Mr. Wasserman.

14 MR. WASSERMAN: Your Honor, OK.

15 Then if I may go back to the other points.

16 I think examining Detective Napoli as to the
17 truthfulness of his allegation that my client is dangerous
18 and the bias --

19 THE COURT: He made no such allegation.

20 MR. WASSERMAN: Your Honor?

21 THE COURT: He made no such allegation.

22 MR. WASSERMAN: By testifying --

23 THE COURT: Mr. Wasserman, he made no such
24 allegation. He said there was a question of risk because he
25 had asked for a quick meeting. That is all he said. You

1 keep repeating it over and over again as if the sound of
2 your voice makes it true. It doesn't.

3 MR. WASSERMAN: Your Honor, he testified
4 specifically that Emad Salem was afraid for his life because
5 he was going to meet, I mean he was going to meet my client
6 in a rush. I don't see being afraid for his life as not
7 indicating that the person he is going to meet in a rush --
8 if I was going to meet your Honor in a rush, I certainly
9 have no concern for my life.

10 THE COURT: That doesn't go to his bias. If it
11 goes to anybody's, it is to Salem, which you have already
12 cross-examined him about extensively.

13 MR. WASSERMAN: Who?

14 THE COURT: Salem.

15 MR. WASSERMAN: But I haven't been able to
16 examine Detective Napoli about it, and he has relevant
17 evidence on it.

18 I don't see, your Honor, on that point that there
19 is any issue that -- a normal meeting even in a rush doesn't
20 arouse fears of death.

21 THE COURT: The fact is you tried to get that in
22 when we had Anticev on the stand. You asked him --

23 MR. WASSERMAN: I didn't question Anticev.

24 THE COURT: We had an agent on the stand whom you
25 questioned, whether it was Anticev or somebody else, who

1 you, I believe, attempted to question on whether the office
2 was "pissed" on whether Dr. Rashid should be "gotten
3 involved" when you knew that the ruling was adverse about
4 that and shouted past objections and past rulings. It was
5 quite clear why this is being pushed, and it has nothing to
6 do with what you just said.

7 MR. WASSERMAN: Your Honor, the fact of the
8 matter that the office is pissed is not something I make up,
9 but comes from a tape from Napoli.

10 THE COURT: Mr. Wasserman, I am not saying you
11 have made it up. What I am telling you is you have done it
12 before, and that this whole business about bias, so-called,
13 is a contrivance.

14 MR. WASSERMAN: The jury then is left with
15 Detective Napoli's testimony that Emad Salem was afraid for
16 his life because he was going to meet with my client in a
17 rush. And I think --

18 THE COURT: Do you want it stricken?

19 MR. WASSERMAN: Your Honor, striking it, first of
20 all, without explaining to the jury why it is being stricken
21 leaves me without the recourse of showing that it was a lie,
22 it wasn't true, and that the person who testified to it was
23 a perjurer, and the reason why he perjured himself. Why
24 should I not be able to bring that to the jury's attention?

25 THE COURT: Mr. Wasserman, the "that" doesn't

1 follow what you propose to prove.

2 MR. WASSERMAN: What do you propose to instruct
3 the jury when it is stricken?

4 THE COURT: I don't just propose to give any
5 instruction. I propose to strike it, and, if the testimony
6 is called for, it won't include that.

7 MR. WASSERMAN: In effect, what is happening is
8 that, to clean the record of a perjury, I am being denied
9 the right to bring that to the jury's attention. That is
10 what the ruling is in effect.

11 THE COURT: Can I listen to somebody else on this
12 issue. Have you said --

13 MR. WASSERMAN: I have one more point.

14 THE COURT: All right. I will hear you.

15 MR. WASSERMAN: There will be evidence introduced
16 concerning the facility at Rogers avenue, and I think it is
17 relevant to the jury to know that, once that evidence is
18 introduced that that Detective Cordaro, who viewed the
19 facility, and who I have asked to be called as a witness,
20 also testified -- or rather, I would examine him, since I
21 did not ask him questions at this proceeding, I would
22 examine him as to what he saw on May 10, and I would examine
23 him with a view towards also bringing out to the jury that
24 his entry on May 10 there was a tape recording made, this
25 tape recording was given to an FBI agent, and this tape

1 recording has been lost.

2 I think, given the theory that's been advanced in
3 this case that there have been tapes altered and destroyed,
4 the actual record that we already have in a prior
5 proceeding, there was a tape made relevant to this case and
6 lost --

7 THE COURT: Is this something else? This is not
8 Napoli, is it?

9 MR. WASSERMAN: No.

10 THE COURT: I wanted a response with regard to
11 that.

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

13 THE COURT: I wanted a response from the
14 government with regard to that.

15 MR. WASSERMAN: I apologize.

16 MR. MCCARTHY: Your Honor, I am not going to
17 belabor much more than what was in the letter. In
18 Government's Exhibit 776 in evidence, Mr. Hampton-El tells
19 Salem that he is going to continue his efforts because it is
20 a duty and makes arrangements with Siddig Ali to meet
21 tomorrow morning at ten o'clock.

22 Whether or not it is credible that what that
23 meeting was about was connected to this conspiracy and what
24 it is alleged Hampton-El's role in it was is a function of
25 whether the jury, basically what the jury takes out of this

1 conversation and the conversations among the people in the
2 conspiracy.

3 What Napoli may have thought, instructed, etc.,
4 is completely irrelevant. Mr. Hampton-El is either in or he
5 is not in. He either was going to help them or he wasn't on
6 the basis of his own behavior, and particularly under
7 circumstances where not only are the instructions irrelevant
8 for the point that Mr. Wasserman wants to put them in for,
9 but there was no opportunity or evidence that Salem ever had
10 the ability to act on them or not because the case got taken
11 down and he never dealt with Hampton-El again. This is
12 simply not relevant.

13 MR. JACOBS: I am not prepared to accept the
14 conclusion from the government that Salem wasn't instructed
15 or didn't have the capabilities of participating in the
16 frame.

17 I mean, I am not sure if the government's
18 statement is correct on Hampton-El or any other defendant
19 because I have reason to believe he was given certain
20 instructions with certain defendants to do certain things at
21 the last minute. So, I mean, I want the government to be
22 clear, I think there were things done the day the case was
23 taken down about gathering certain evidence, planting
24 certain evidence, arranging certain evidence.

25 THE COURT: That is just the relevant sort of

1 argument, the relevant, focused, precise argument that we
2 need to illuminate this issue. Thank you very much.

3 MR. JACOBS: I didn't want -- whatever
4 Mr. Wasserman's theory is about it, I have reason to believe
5 that certain instructions were given to Salem to act out on
6 certain things by the FBI because of certain problems that
7 they were having with the case, that they wanted to plant
8 certain evidence and bring certain evidence in against
9 certain defendants.

10 MR. MCCARTHY: So then they told him to do it,
11 and then took the case down before he could do it because
12 they were plotting?

13 MR. JACOBS: Correct.

14 MR. MCCARTHY: I just want to make sure I had it
15 right.

16 MR. WASSERMAN: Your Honor, just very briefly.

17 THE COURT: Yes.

18 MR. WASSERMAN: I think Mr. McCarthy says that
19 Salem could not act on the instructions so that makes the
20 instructions irrelevant. It is precisely that which makes
21 Salem's testimony perjurious.

22 He testified that he is going to get the stuff at
23 the meeting on June 24. He knows from the conversation, or
24 we know from the conversation with Napoli there's no stuff
25 to be gotten because Napoli is telling Emad, who protested

1 not, "You've got to get the doctor to buy the stuff. You
2 have to get him to buy the material."

3 Emad's not saying, "It's there already. I am
4 picking it up tomorrow."

5 Napoli is giving him the instructions because in
6 fact there is no stuff to pick up tomorrow. You have to get
7 the doctor to buy it.

8 THE COURT: Can I hear a response to that.

9 MR. MCCARTHY: We don't know that because of what
10 Napoli said. We know that because of what Hampton-El said.
11 Hampton-El says in the conversation that he doesn't have the
12 stuff. He's put flyers out. He is hoping that something
13 comes through. But it's Hampton-El who tells us that he
14 doesn't have the stuff, not Napoli.

15 MR. WASSERMAN: If he had the stuff, Emad would
16 tell Napoli he's got the stuff. Why should you tell me I
17 have to get it?

18 MR. MCCARTHY: There is no allegation --

19 MR. WASSERMAN: Excuse me, Mr. McCarthy. I am
20 responding.

21 The logic of the instruction presupposes that he
22 doesn't have the stuff. Why should my client only be left
23 with his statements and not with Emad's and Napoli's?

24 MR. MCCARTHY: Your client should be left with
25 that because that's what is admissible. But the fact of the

1 matter is, if the government was making an allegation that
2 your client had the stuff, then it would certainly be
3 relevant, if we were arguing on the basis of something that
4 Salem said, that your client did have the stuff, to put in
5 that contemporaneously he said he didn't have the stuff.

6 But that is not what the allegation is. The
7 proof at trial in admissible form is that Hampton-El didn't
8 have the stuff and that they were planning to meet the next
9 morning. That is what the state of play is.

10 MR. WASSERMAN: If I may, that is not Emad's
11 testimony. I don't know what the government defines as "the
12 state of play," unless they are disavowing that testimony
13 and are willing to proffer to the jury that perjured
14 himself, then Emad has told the jury he's getting the stuff
15 on June 24, when we know that the last act preceding that is
16 that he is being instructed by Napoli to get my client to
17 get the stuff, something which could not possibly have taken
18 place since he never got to my client after that.

19 I'm sorry. Just one other thing. The government
20 refers, to justify their bringing out agents' instructions
21 to Salem on the grounds of defense counsels' opening that
22 Emad was out of control, etc. In the opening statement by
23 the government, they have labeled my client as the supplier,
24 as the go-to guy for weapons and munitions.

25 I think that, given that in the opening, and

1 certainly it has been consistent throughout the proof that
2 they have put in that that is their theory of the case, I
3 think it is very relevant that Emad's testifying before this
4 jury that he has the stuff to pick up on June 24, but Napoli
5 is telling Emad on June 23, without any opportunity for any
6 further action, that you've got to get him to get the stuff,
7 and Emad's not saying, "Well, he has the stuff." Rather,
8 Emad is telling him, "I just spoke to him a few hours
9 before, and he doesn't have anything for us."

10 So it couldn't be more relevant. It couldn't be
11 more important.

12 MR. MCCARTHY: I just don't think that is what
13 the testimony is. It is hard to keep responding.

14 MR. WASSERMAN: I can cite you the page if you
15 don't think it is the testimony. It is page 6600 if you
16 want to look at it.

17 MR. MCCARTHY: That is about as accurate as the
18 rest of the way you characterized the record. Mr.
19 Wasserman, in a leading question says to Mr. Salem:

20 "Q You were just saying that you expected the
21 following morning to pick up the stuff from him, is that
22 correct?

23 "A Yes, sir.

24 "Q And that you just don't understand what
25 the term 'flyers' means, is that correct?

1 "A Reply understanding, sir, reply means
2 paper, written things, on it to be distributed. This is
3 flyers, I understand. But we did not talk about flyers,
4 sir."

5 It is clear from the testimony that what Salem is
6 saying is that he expects that he may be able to pick up the
7 stuff the next morning. He is not saying that he
8 necessarily thinks that Hampton-El has it at that time,
9 which is what you are arguing.

10 MR. WASSERMAN: I think he's asked whether -- I
11 think the testimony reads exactly as Mr. McCarthy read it,
12 but not how he explains it. That is his argument to the
13 jury, and I should be allowed to present evidence which
14 counters that argument and not just simply have to argue
15 from that, Emad saying he expects to get the stuff the next
16 morning.

17 THE COURT: I have heard all I need to hear. The
18 403 objection is sustained.

19 MR. WASSERMAN: The 403 objection is that it is
20 too prejudicial to the government because it would show that
21 my client did not have the stuff that he, Emad, testified
22 to?

23 THE COURT: Mr. Wasserman.

24 MR. WASSERMAN: Yes, sir.

25 THE COURT: Stop playing rhetorical games with

1 me.

2 MR. WASSERMAN: I am not playing rhetorical
3 games.

4 THE COURT: Yes, you are. Mr. Wasserman, you
5 have sought to have that admitted from day one, and you are
6 seeking to have it admitted today to show an agent's
7 evaluation of the case against your client. That is the
8 only reason it's been offered from day one. That is the
9 only reason it is being offered today, and that is totally
10 incompetent testimony, as you know.

11 MR. WASSERMAN: Your Honor, I agree with you.
12 But I feel that you can instruct the jury that is not why I
13 am introducing it. I am introducing it to show that the
14 stuff was not there on June 24, as Emad testified it was
15 there. That is the instruction. That is the import of it.

16 I have no problem with your telling the jury it
17 has nothing to do with whether he is guilty of this
18 conspiracy or not guilty of this conspiracy. I am talking
19 about whether the stuff was there as a factual matter on
20 June 24.

21 THE COURT: Nobody claims the stuff was there on
22 June 24.

23 MR. WASSERMAN: Emad said he was going to get it
24 on June 24.

25 THE COURT: He didn't say it was there. Nobody

1 said it was there.

2 MR. WASSERMAN: But if Napoli is telling him to
3 get him to get the stuff, then it is not there on June 24,
4 and that is the last act in the play.

5 THE COURT: Nobody said it is.

6 MR. WASSERMAN: Emad is saying it is. He expects
7 to get it.

8 THE COURT: I understand your point.

9 MR. WASSERMAN: On the issue of my client being
10 dangerous, as testified to by Napoli?

11 THE COURT: Napoli did not testify that your
12 client was dangerous.

13 MR. WASSERMAN: That Emad was afraid for his
14 life?

15 THE COURT: Do you want that stricken?

16 MR. WASSERMAN: Pardon.

17 THE COURT: Do you want it stricken.

18 MR. WASSERMAN: If I may respond to that after
19 thinking. I just think that striking it doesn't get at the
20 issue of why it is false, and it is the falsity of it which
21 is the important part. Just the same way it is less the
22 conversation that is on the tape of the May 10 entry than
23 the fact that the tape is lost. If I can't bring the
24 lost --

25 THE COURT: We haven't touched on that yet.

1 MR. WASSERMAN: OK. I think they are connected
2 in a sense because the issue that the --

3 THE COURT: Mr. Wasserman, you hallucinate
4 connections where they don't exist.

5 MR. WASSERMAN: Well, if I can just very briefly
6 establish the connection, if a witness testified falsely and
7 a tape disappears, I think I am entitled to argue to a jury
8 that there is a reason involved.

9 I think that those facts are independent of the
10 subject matter of the tape, and they are independent to a
11 certain extent of the import of the statement. Whether or
12 not, you know, I am overcharacterizing it that my client is
13 dangerous or not, I think I can show that Emad never told
14 him that he was afraid for his life, rush meeting or no rush
15 meeting. I should be entitled to examine Napoli on it. I
16 think I should be able to show that the tape made of an
17 entry on May 10 at the safe house on Rogers Avenue has been
18 "lost" by the FBI.

19 THE COURT: What is the connection between those
20 two things other than the fact that you want to prove both
21 of them?

22 MR. WASSERMAN: The connection is that evidence
23 has been falsified and destroyed, and those two things
24 happened to form a major component of how a case gets
25 twisted and the bias of the case and the bias of witnesses.

1 THE COURT: Thank you very much.

2 MR. WASSERMAN: I mean, I think, if I may, I have
3 cited a case to your Honor that you can argue to a jury that
4 it is suspicious that a tape was lost. I should be able to
5 argue to a jury that it is suspicious that the tape of the
6 May 10 entry was lost. I should be able to argue to a jury
7 that Napoli, not just having his testimony stricken, that
8 Napoli, you know, that testimony is false. I should be able
9 to bring --

10 THE COURT: What does Napoli have to do --

11 MR. WASSERMAN: I am talking about his statement
12 to Emad Salem and his fear for his life about my client. I
13 should be able to bring out that Napoli has testified
14 untruthfully.

15 THE COURT: We are going to take a five-minute
16 break.

17 MR. WASSERMAN: OK.

18 (Recess)

19 THE COURT: We are on the tape.

20 MR. WASSERMAN: Your Honor, do you want me to
21 resume my position?

22 THE COURT: You can talk from wherever you like.

23 MR. WASSERMAN: I will talk from here.

24 Your Honor, if I may, the preliminary question on
25 the tape is Detective Cordaro or Frank Floridia, either one

1 of the two who entered and have testified previously --

2 THE COURT: As I understand it, they are being
3 offered to show that there was tape, the tape was lost,
4 therefore, that it was lost to conceal the fact that the
5 stuff that was seized later on was up on the wall, therefore
6 it shows that Abu Ubaidah had an innocent frame of mind
7 because he showed a building inspector in to see what was
8 probably fairly unobjectionable material anyway, and
9 therefore it shows that he had an innocent frame of mind
10 when he wrote the note, and therefore your client had an
11 innocent frame of mind. That is a house of cards.

12 MR. WASSERMAN: To the extent -- what I want to
13 proffer to the court is that I will introduce evidence that
14 shows clearly that -- again, the reason why I have connected
15 the two, and I will try to be as succinct as possible and as
16 clear as possible that the pattern is the same. What your
17 Honor is aware of from a prior proceeding --

18 THE COURT: Let's talk about the tape.

19 MR. WASSERMAN: Yes, OK.

20 It is the fact that the tape was quote, unquote
21 lost. It is the fact that Cordaro has testified that there
22 were no weapons on the wall, which is relevant. I think I
23 should be able to bring out to the jury, if he is going to
24 stick with that testimony before you in this proceeding that
25 I will have been able to present what I think is conclusive

1 testimony from a number of different ways that he is not
2 testifying truthfully. The fact of his not testifying
3 truthfully transcends --

4 THE COURT: He really did see weapons on the
5 wall, but he had to lie about that because he was going to
6 apply for a search warrant later on --

7 MR. WASSERMAN: I am not going to get into his
8 head to tell you why he lied. I think it is relevant. The
9 government put the weapons in, not me. They are trying to
10 show that those are weapons for urban terrorism, not me.

11 I want to show that it is not just -- he's lying
12 if he testifies here that he didn't see them. I can present
13 evidence that proves it conclusively, and then it fits quite
14 neatly with the --

15 THE COURT: The evidence that proves it
16 conclusively is that there was a tape that was lost?

17 MR. WASSERMAN: The evidence that proves it
18 conclusively that there is both testimonial and documentary
19 proof that those weapons were present when he was there.

20 THE COURT: What is the testimony going to prove?

21 MR. WASSERMAN: The testimony will prove that
22 there were people there prior to his entry, immediately
23 proceeding.

24 THE COURT: Who?

25 MR. WASSERMAN: About 12 different people.

1 THE COURT: Have testified that the weapons
2 were --

3 MR. WASSERMAN: No. I mean there are probably
4 ten different people who could testify that the weapons were
5 there, and there is a video which shows that the weapons
6 were there. There is my client's testimony that the weapons
7 were there. There will be the testimony of a witness who
8 was present prior to the entry on May 10 that the weapons
9 were there.

10 THE COURT: I don't see it.

11 MR. MCCARTHY: I don't know what else to say,
12 other than then if that is true, the tape seems even less
13 important than the totally unimportant thing they had seen
14 before that.

15 I seems to me if he is going to parade a bunch of
16 people in here, if he actually thinks it is worth the time
17 to bring people in to say that weapons were on the wall at a
18 time which isn't alleged to be a particularly important time
19 about that not particularly important subject, then he will
20 have his record that a bunch of people who don't have any
21 real reason to lie about it say they saw them and Cordaro
22 says he didn't see them. Therefore, whatever argument there
23 is to be made about the credibility is there to be made
24 about the credibility.

25 MR. WASSERMAN: Your Honor.

1 THE COURT: Yes.

2 MR. WASSERMAN: The government introduces the
3 weapons. They introduce the note from Ubaidah. I think the
4 evidence I have proffered -- my point is, if Cordaro
5 testifies that he didn't see any weapons, I am left with the
6 argument that he is not telling the truth. He might change
7 his testimony, given the nature --

8 THE COURT: He is not telling the truth about
9 something that is irrelevant to this case.

10 MR. WASSERMAN: The weapons were introduced by
11 the government, not me.

12 Why aren't they relevant, your Honor?

13 THE COURT: They showed them to the jury having
14 said that they were up. As far as I know, the state of the
15 record is that they were up. You now want to introduce
16 testimony from a government agent to show that he says they
17 were down at a prior time so that you can prove that they
18 were really up at a prior time so that you can prove that he
19 is lying about them having been down at a time prior to the
20 time that they were seized when they were up.

21 I have no idea what that proves.

22 It proves nothing.

23 MR. WASSERMAN: I think it proves that the
24 weapons were displayed by Ubaidah to two people who
25 presented a badge.

1 THE COURT: They were building inspectors as far
2 as he knew.

3 MR. WASSERMAN: If he had bombs, those building
4 inspectors would report back there were bombs. They were
5 two people with badges, and the fact of the matter is,
6 Judge --

7 THE COURT: Nobody is claiming they were bombs.

8 MR. WASSERMAN: What I am trying to say is the
9 fact that he openly takes them through this area --

10 THE COURT: That is exactly the house of cards
11 that I described before.

12 MR. WASSERMAN: Your Honor --

13 THE COURT: The objection is sustained.
14 You have your record many times over on that.

15 MR. WASSERMAN: Yes, I do.

16 THE COURT: OK.

17 MR. WASSERMAN: I want to thank your Honor for my
18 ability to make it.

19 THE COURT: There is no reason to thank me. I am
20 required to let you make it, and I have let you make it.

21 MR. WASSERMAN: I appreciate that.

22 THE COURT: It is, as they say, a service
23 business.

24 MR. WASSERMAN: I am trying to think if there is
25 anything -- the only thing to add is that I would like to be

1 able to, when Napoli is called, question him at that time.

2 THE COURT: There is four dots after what you
3 just said.

4 MR. WASSERMAN: Well, my understanding is that
5 other attorneys in this case are calling him and that he is
6 going to be produced, that your Honor had already indicated
7 at several stages he would be produced for them and that we
8 would see at that time what was appropriate for me to ask
9 him.

10 THE COURT: Yes. And?

11 MR. WASSERMAN: That is it. I am just simply --

12 THE COURT: If what you are telling me is that
13 you want an opportunity to get up and try to dance with the
14 ruling that I just made, I am telling you no.

15 MR. WASSERMAN: I am not saying to dance with the
16 ruling. I am saying if the areas of interest that I have
17 with him are testified to with regards to other areas, then
18 I will simply rely on that context to renew my application
19 with you. That is all.

20 THE COURT: I am sorry. Would the reporter
21 please read that back.

22 (Record read)

23 THE COURT: I think I understand what you just
24 said. I think what you just said is, if I let somebody open
25 the door to what I just ruled out, you are going to ask me

1 whether you can ask him, right?

2 MR. WASSERMAN: That is what I said.

3 MR. JACOBS: That sounded like it.

4 THE COURT: OK. That is fair.

5 MR. WASSERMAN: Fine.

6 THE COURT: OK. Have a nice weekend.

7 MR. NOOTER: Your Honor, I don't know if this has
8 to be on the record, but I would like to hand up a letter
9 for your Honor's consideration which the government has also
10 just received.

11 THE COURT: One other thing that I think should
12 be on the record, it isn't anybody else's business, but I
13 got -- Mr. Wasserman, your client, I am sure you know,
14 handed up a note yesterday.

15 MR. WASSERMAN: Through me, Judge.

16 THE COURT: Yes. I called over there about it.
17 I am being contacted back. I will tell you that with
18 regard, it is a two-part note --

19 MR. WASSERMAN: Your Honor, do you want to do
20 this in the robing room?

21 THE COURT: Let's do it inside.

22 (Pages 14856 to 14857 sealed)

23 (Proceedings adjourned to Monday, July 24, 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.

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

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

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

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

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

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

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

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

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

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

20 Defendants.

-----x

S5 93 Cr. 181 (MBM)

July 24, 1995
9:35 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 the robing room)

3 THE COURT: I gather there is an issue with
4 regard to a witness. I had asked to see people this morning
5 at 9:00.

6 MS. STEWART: I was in the counsel room, Judge.
7 I got a message from Mr. Jacobs at 9:20. I thought the
8 witness had not arrived. I thought it would be a nonissue
9 if the witness didn't arrive. He arrived, and then I came
10 right in.

11 THE COURT: We will deal with this.

12 MR. KHUZAMI: In a phone call with Miss Stewart
13 on Friday night, as well as a letter, she indicated that the
14 defense contemplated --

15 THE COURT: At what time?

16 MR. KHUZAMI: At approximately, I think we got
17 the letter at around 6 to 7:00. The government's position
18 based on a proffer by Miss Stewart, based on what testimony
19 she expected to elicit from him, the government's position
20 is that his testimony is irrelevant and we move to preclude
21 his testimony.

22 THE COURT: I gather it is Mr. Warren.

23 MS. STEWART: Michael Warren. The testimony
24 involves the arrest of the sheik at Abu Bakr Mosque on July
25 2, that he was called to represent him, he went to Abu Bakr,

1 he saw what he saw outside, what he saw inside the mosque --

2 THE COURT: What is it that he saw that is of
3 interest?

4 MS. STEWART: That it was major press event, that
5 the press was notified before the lawyers were, that there
6 were a thousand press outside, a thousand people outside the
7 mosque, at any rate, that he then conferred back and forth
8 on at least ten occasions with the command post that had
9 been set up inside the firehouse across the street, as to
10 what exactly he was being taken in for, which he was assured
11 was purely a deportation matter, that he was going to be
12 lodged in the Newark deportation facility, that there were
13 no criminal charges against him, that it was a question of
14 whether he would be extradited to Egypt or deported, and
15 that there were no criminal charges being alleged.

16 He then will describe the conditions under which
17 he surrendered and that once they were in the car, instead
18 of going to Newark, the highways of the metropolitan area on
19 the 4th of July weekend Friday were closed down completely
20 and a motorcade went at high speed to Otisville, New York,
21 and when he asked about this he was told, I just follow
22 orders. That is basically the sum of his testimony.

23 THE COURT: And that is relevant to what?

24 MS. STEWART: Judge, I think it is relevant once
25 again to what we opened on and what we contend is the frame

1 of the sheik in this case, that once he found out they were
2 not going to be able to extradite him to Egypt under a
3 treaty which Mr. Warren worked on --

4 THE COURT: Mr. Warren is going to testify to
5 that?

6 MS. STEWART: He may indicate that he worked on a
7 treaty and the government informed him at one point that
8 they would not be seeking extradition.

9 THE COURT: He is going to testify about the
10 treaty?

11 MS. STEWART: He will testify that he tested the
12 treaty as such although he didn't litigate the issue, that
13 he did the research, he found the treaty which dates back to
14 the Ottoman Empire, and that in his view extradition would
15 not lie under that treaty, since it did not cover inciting
16 to riot, and that there is also a question about double
17 jeopardy involved.

18 THE COURT: Is he being called as an expert on
19 the law?

20 MS. STEWART: No, I would say he is not being
21 called for his opinion but what he did in reference to the
22 sheik. Mostly it goes to on July 2 when he was taken into
23 custody, first of all, that a ruse was used by the
24 government, and secondly that there were no criminal
25 charges, that the government laid out to him that there were

1 no criminal charges and he relied on that.

2 THE COURT: Anybody else want to be heard?

3 MR. STAVIS: No, your Honor. I have no intention
4 of examining the witness if the witness testifies to the
5 matters Miss Stewart has proffered to the court.

6 MR. KHUZAMI: Your Honor, just two points. The
7 circumstances of the sheik's arrest or voluntary surrender,
8 whichever it is, is irrelevant to the charges in this case
9 and the circumstances of how he got up to Otisville. I
10 think the last point that Miss Stewart made is the crux of
11 this, and again she is attempting to put in what was
12 precluded through the testimony of Attorney General Reno and
13 Senator D'Amato, that is, that there is some factor, someone
14 had determined that there were no criminal charges that
15 could be brought, and the argument will be that criminal
16 charges were brought in late August because of some pressure
17 by the Egyptian government. That has been dealt with. It
18 is irrelevant. Statements made by an arrest team at a
19 command post as to what they thought of the criminal
20 charges --

21 MS. STEWART: Just to interrupt one moment, he
22 will say that in that command post he was on the phone to
23 Washington, that they had patched him to Washington.

24 MR. KHUZAMI: This is the Immigration and
25 Naturalization Service, which was not looking into criminal

1 charges but was looking into an immigration matter.

2 THE COURT: Anything else?

3 MS. STEWART: No.

4 THE COURT: The testimony is irrelevant. We are
5 not going to have a trial within a trial about what somebody
6 was or was not told at the time of Dr. Rahman's arrest. I
7 want to know why this was not raised on Friday.

8 MS. STEWART: Because we were not told by Mr.
9 Warren that he would be available and that this was the
10 testimony that he would be expected to give. We had
11 interviewed him once before. He did not call us back until
12 late Friday afternoon. The minute I heard that he would be
13 available and willing to testify, I faxed them a letter and
14 I called them on the phone both.

15 THE COURT: I am sorry. I don't believe you.

16 MS. STEWART: Judge, I don't lie.

17 THE COURT: I had a session on Friday for the
18 explicit purpose of raising matters in advance so that we
19 didn't have to do this before the day started. I got a call
20 after 6:00 that there is a late-blooming witness. I was
21 sworn in seven and a half years ago, I wasn't born then.

22 MS. STEWART: And, Judge, I am telling you that
23 we have left it up to each and every witness whether or not
24 they want to testify because of the repercussions of
25 testifying in this case, and we left it up to Mr. Warren,

1 who had some legitimate concerns concerning other people he
2 had represented, other people that the government do not
3 like that he represents, concerning trips that he has made
4 that the government is aware of. We left it up to him. He
5 called Mr. Jabara back at about 5:00, Mr. Jabara called me,
6 I called the government as soon as we knew that he was
7 willing to testify, and that's the truth, and I have lived
8 55 years and I am not in the habit of lying, particularly to
9 federal judges.

10 THE COURT: I would like you to read that.

11 (Pause)

12 MS. STEWART: I would object to this, Judge,
13 absolutely.

14 THE COURT: Why?

15 MS. STEWART: Why? Because they have been
16 delayed for many many reasons, including the government
17 having to get their act together with regard to CM's, which
18 was not done prior to trial, for many, many reasons. All
19 during May, I don't think we sat 12 days during the month of
20 May. You never instructed them at that point. You
21 acquiesced in the government's request, we all acquiesced.
22 This is a long trial. You say a half hour delay on a July
23 morning you are going to blame on me?

24 THE COURT: I told every lawyer in this case that
25 if there was a failure to disclose in timely fashion, that

1 the jury at some point was going to be made aware of the
2 reason for the delay. I don't see why I should basically
3 take the blame for your decision to play it close to the
4 vest. I have a certain amount of good will with those
5 folks, which includes not bringing them in here and making
6 them sit and wait in the jury room. There is no reason I
7 should undermine that by some lawyer taking her sweet time
8 to determine that somebody is going to testify.

9 MS. STEWART: I resent that, Judge. That is not
10 the truth and you are going to misrepresent me to the jury.

11 THE COURT: You said last week you were going to
12 do that, that you would not disclose your witnesses in
13 advance and that you would play it close to the vest.

14 MS. STEWART: And have I not told the government?
15 Only people that I added to my list did I disclose less than
16 a week ahead of time.

17 THE COURT: And when asked about the substance,
18 you declined.

19 MS. STEWART: They have the sources to check it
20 out. I don't think I have to disclose what they are going
21 to testify.

22 THE COURT: When there is any doubt about
23 testimony, as there is about testimony such as this, you I
24 think you owe it to everybody, including the court, to do
25 that.

1 MS. STEWART: I explained why, Judge, and if you
2 don't accept that, that is your responsibility. I am
3 telling you that we have left it up to each and every
4 witness. Many Egyptians will not testify. They are afraid
5 of their government. Mr. Warren is not in that position.
6 He is afraid of the American government. Therefore, he did
7 not get back to us until late Friday. I was not going to
8 put his name in when that is his concern.

9 THE COURT: Mr. Warren's hopes and fears are his
10 business, not mine.

11 MS. STEWART: I don't think this is the truth,
12 Judge, and I think it prejudices my client and I don't think
13 it is fair.

14 THE COURT: How many witnesses do you have other
15 than Warren?

16 MS. STEWART: I have to see who is there at this
17 point. I have Yousry to finish up. I have a person from El
18 Salaam Mosque. I have a kid with a videotape. I have a
19 person that appeared on the same podium as the sheik at the
20 Bosnia speech, which was the first videotape played in the
21 case. And then we have reading to do, a lot of reading to
22 do. I accomodated Mr. McCarthy, who asked me would I please
23 not call Nancy Floyd today because he won't be here, and
24 that is the only witness which he has a concern for
25 testifying without him being here. I also am not going to

1 call my last witness because I declined to end my case with
2 an FBI agent, Hesham Hamamy, tomorrow after Nancy Floyd. He
3 talks about a full scope of material facts.

4 THE COURT: Do you want to be heard?

5 MR. KHUZAMI: Your Honor, I haven't had a chance
6 to review the instruction. In terms of the witnesses, just
7 so I understand, we have the person you referred to as the
8 kid with the video. Do we have notice of that person?

9 MS. STEWART: I told Andy. He is the same person
10 who testified for Mr. Ricco. He went to El Salaam Mosque,
11 he went to Abu Bakr, he went to the outside of Al Farook.

12 THE COURT: The record should reflect that Mr.
13 Jacobs just walked in.

14 Mr. Jacobs, you gave me this morning a transcript
15 that you say you want me to review in aid of eliciting or
16 soliciting further information about Nancy Floyd.

17 MR. JACOBS: Correct, sir.

18 THE COURT: Is there some reason you didn't raise
19 this on Friday?

20 MR. JACOBS: Yes, your Honor. We had an
21 opportunity to meet over the weekend, counsel, and review
22 this transcript in some more detail, and I guess it should
23 have been raised Friday.

24 THE COURT: I guess it should have.

25 MR. JACOBS: To the extent that counsel met over

1 the weekend preparing the examination for Nancy Floyd, we
2 had an opportunity to review this in some more detail and I
3 also had an opportunity -- in any event, the answer is --

4 THE COURT: Do you want to show Mr. Jacobs the
5 instruction, because his name is going to go in there, too.

6 (Pause)

7 MR. JACOBS: I read it, your Honor.

8 THE COURT: Is there some reason why I shouldn't
9 give it?

10 MR. JACOBS: With respect to what?

11 THE COURT: With respect to raising now an issue
12 that I am going to have to deal with and delay the case.

13 MR. JACOBS: Can I have a few minutes to think
14 about it?

15 THE COURT: Sure. We have another problem that I
16 need the rest of the lawyers for.

17 MR. JACOBS: In any event, just to let your Honor
18 know, Nancy Floyd is not scheduled till tomorrow.

19 THE COURT: I understand that.

20 MR. JACOBS: That was an accommodation to the
21 government, and to the extent that --

22 THE COURT: You have had this transcript for how
23 long?

24 MR. JACOBS: Several months, your Honor. Your
25 Honor, perhaps it should have been done Friday. We just

1 didn't have a chance to meet and review what had happened
2 until over the weekend.

3 THE COURT: What happened?

4 MR. JACOBS: We had a chance, counsel who were
5 going to be doing the Nancy Floyd examination, to prepare
6 what we were going to do and to review the government's memo
7 which we got last Wednesday for the first time. I am not
8 saying between Wednesday and Friday we should not have done
9 it. That concerned the --

10 THE COURT: I would like the rest of the lawyers
11 in here.

12 (Pause)

13 MR. STAVIS: Your Honor, I have reviewed that
14 instruction and I would just ask your Honor if you would
15 consider not giving that instruction.

16 THE COURT: What is your interest?

17 MR. STAVIS: I have no interest on behalf of Mr.
18 Nosair.

19 THE COURT: Good.

20 Pages 14872 - 14880 sealed)

21 (Continued on next page)

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1 (Pages 14881 to 14887 sealed)

2 (In open court)

3 MR. PATEL: Your Honor, very briefly?

4 THE COURT: Mr. Patel.

5 MR. PATEL: I have provided the government with
6 some 3500 material for the witness that we hope to call
7 tomorrow morning.

8 MS. AMSTERDAM: We can't hear you.

9 MR. JACOBS: We can't hear you.

10 MR. PATEL: It is not worth repeating.

11 MR. WASSERMAN: I just want to put on the record
12 what I mentioned to your Honor, that my client consents to
13 being excused today. My understanding from Ms. Stewart is
14 that there is nothing coming in today that deals in any way
15 with him. I also will not be present. I have asked
16 Mr. Serra to stand in for me.

17 THE COURT: Mr. Hampton-El, is that satisfactory?

18 DEFENDANT HAMPTON-EL: It's OK, your Honor.

19 THE COURT: And in particular that we go ahead
20 even in your absence and in the absence of your lawyer.

21 DEFENDANT HAMPTON-EL: Yes.

22 MR. WASSERMAN: Your Honor, I know they are
23 terrific at it, but I would ask to try to get him back at
24 MCC as quickly as they can.

25 THE COURT: If they are terrific at it, let's

1 leave it at that. You are excused, as is Mr. Hampton-El.

2 I should also put on the record that Mr. Ricco
3 told me in the robing room that he is not feeling well and
4 his partner, Mr. Hueston --

5 MR. HUESTON: Michael Hueston.

6 THE COURT: Mr. Hueston is going to be sitting in
7 for him. Is that satisfactory, Mr. El-Gabrowny?

8 DEFENDANT EL-GABROWNY: That's OK.

9 THE COURT: Thank you very much. He is across
10 the hall, and, as I understand, will be back and forth to
11 the extent he can.

12 MR. HUESTON: Yes, your Honor.

13 THE COURT: OK. Thank you very much.

14 (Jury present)

15 THE COURT: Good morning, ladies and gentlemen.

16 JURORS: Good morning, your Honor.

17 THE COURT: We have had a long delay, even by the
18 standards of some of the long delays we have had in the
19 past. Some of it was avoidable and some of it wasn't, but
20 we are going to try to do better for you henceforth. Ms.
21 Stewart?

22 MS. STEWART: Yes. The defendant Abdel Rahman
23 recalls Jose Ivey to the stand.

24 JOSE IVEY,

25 called as a witness by the Defendant Abdel Rahman,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. STEWART:

4 Q You have testified here before the jury?

5 A Yes.

6 Q You know about the microphones, am I right?

7 A Yes.

8 Q OK. Are your qualifications the same as when you
9 testified the last time for Mr. Ricco?

10 A They are.

11 Q As a result of a request from the defendant Abdel
12 Rahman, did you do something?

13 A Yes, I did.

14 Q Would you tell the jury what you did.

15 A On July 18, which was Tuesday of last week, I was
16 asked to videotape three mosques, two in Brooklyn, and one
17 in Jersey City, to shoot the exteriors and interiors of two
18 and just the exterior of one.

19 Q Can you tell us what the names of those mosques
20 are, starting with the two in Brooklyn?

21 A Oh, I'm not -- I know the addresses, but I'm not
22 very good with the Arabic names. I'm sorry.

23 Q Was one of them on Foster Avenue?

24 A Yes, 115 Foster Avenue.

25 Q And was the name of that -- can you be refreshed

1 with the name Abu Bakr Mosque?

2 A Yes.

3 Q And was one of them on Atlantic Avenue?

4 A Yes. That was 554, 552 Atlantic.

5 Q And was that Farooq mosque?

6 A Farooq, yes.

7 Q And the third one in Jersey City --

8 A That was at 2824 Kennedy Avenue.

9 Q Boulevard, perhaps?

10 A Boulevard, excuse me.

11 Q And is that El Salaam mosque?

12 A El Salaam, yes.

13 Q I would ask you to pick up what's in front of
14 you, which we will deem marked PP, Defendant Abdel Rahman PP
15 and tell us what those two items are, PP A and B?

16 A The smaller tape is the original 8-millimeter
17 that I shot on Tuesday, and the larger tape is a VHS copy,
18 direct copy, no edits.

19 MS. STEWART: Judge, I would move both of them
20 into evidence.

21 MR. FITZGERALD: Can I have just one second.

22 MS. STEWART: May I just consult with the witness
23 one moment, Judge.

24 MR. FITZGERALD: No objection.

25 THE COURT: All right. PP A and B are received

1 without objection.

2 (Defendant Abdel Rahman Exhibits PP A and PP B
3 for identification were received in evidence)

4 MS. STEWART: May we play them at this time,
5 Judge.

6 THE COURT: Yes.

7 MS. STEWART: Thank you.

8 (Videotape played)

9 Q Mr. Ivey, if you could --

10 THE COURT: Ms. Stewart, you can't be heard from
11 there.

12 MS. STEWART: I'm sorry.

13 Q Can you see the television monitor directly in
14 front of you?

15 A Yes, I can.

16 Q Can you tell us which of the three mosques are we
17 looking at now?

18 A This is 2824 Kennedy Boulevard in Jersey City, Al
19 Farooq. The first shot was the exterior. Now we're moving
20 up the stairs, if could pause for a moment, please. Pause
21 the tape for just a moment.

22 We started from the exterior, moved on to the
23 interior stairs. We are looking up now at the second floor
24 of the building which contains the mosque, which is not part
25 of the mosque. This is to demonstrate the mosque is limited

1 to the upper floor only.

2 Please continue to play.

3 MR. FITZGERALD: I will stipulate that's the
4 Salaam mosque. He said Farooq.

5 THE WITNESS: Excuse me. Salaam.

6 A Just demonstrating that on the second floor there
7 are unrelated businesses to the mosque -- an office, an
8 insurance company, and a beauty salon.

9 The tape moves rather quickly. Now we are on the
10 third floor, coming from the second floor to the third
11 floor, we are looking now at the entrance to the mosque. We
12 are now showing on the inside left-hand side there is a
13 washing area. Panning now, we are going to look at the
14 entrance to the actual area of the mosque. Now there is a
15 reverse shot coming up showing the washing area, the
16 entrance to the mosque and a bathroom on the other side. I
17 was asked to show all the areas of the mosque. This is the
18 inside, the main floor of the mosque. Here's an office, and
19 it's basically a large, fairly large open space. Again, we
20 see the entranceway.

21 We are now going to take a small detail of the
22 office and the kitchen. This is the office that was shown
23 in the first shot. It's very small, about a two and a half
24 by two and a half floor space. This is a shot of the corner
25 in the kitchen. I apologize for moving quickly. We wanted

1 to move the video along as quickly as possible because there
2 are several places we would like to demonstrate, or I would
3 like to demonstrate.

4 This is in Brooklyn. This is 554 Atlantic
5 Avenue. I was not taking inside the mosque. I only shot
6 the outside. The mosque takes up, I was told, all five
7 floors. Pause the videotape for a moment, please.

8 I will give you a breather here. We moved pretty
9 quickly. We are now back in Brooklyn at 115 Foster Avenue.
10 I believe this is Al Farooq.

11 Q Abu Bakr.

12 MR. FITZGERALD: Stipulated.

13 A I apologize.

14 This is the exterior of the mosque, it's two
15 floors, the video will show the outside, the inside and the
16 basement.

17 Please play. The next shot is the side of the
18 mosque. There is a small stairway leading down, which we
19 will take a look at in a moment. We are now going to go
20 inside the mosque. This is the main area on the first
21 floor, just inside the entranceway.

22 Those are the stairs leading down to the first
23 floor. This is the back porch entrance that was the
24 entranceway to the rear porch of the mosque. Basically this
25 is a large open space. There are very small rooms off to

1 the side, but these are essentially large open spaces
2 without divisions. There is some sort of school in progress
3 while we were taping.

4 This is the stairway downstairs from the inside,
5 and the stairway downstairs from the outside. Moving down
6 into the lower floor, this is the main portion of the lower
7 floor just underneath the first area we saw. Again, it is a
8 large open area. Looking at the doors off to the side, we
9 passed an office and a storage room.

10 This is the first office. The second office -- I
11 was asked to show all of the rooms in the mosque with the
12 doors open and also detail inside. This is also a storage
13 room. This is a pan of the kitchen area with the pantry,
14 three bathrooms -- excuse me, four bathrooms, and a small
15 washing area.

16 Finally, we are going to continue around with a
17 view of the staircase leading up. Two small closets and a
18 boiler room, which is coming up on the next shot. Now again
19 we are on the lower floor of the mosque, and this is from
20 the two closets and across the main room over to the boiler
21 room, which was closed in the first shot.

22 The very last floor of the mosque is the third
23 floor, which has one more classroom, the imam's residence,
24 and a small -- one large classroom a small classroom and the
25 imam's residence. That is the residence there. The smaller

1 classroom. I apologize, I was maneuvering out of the way of
2 children when I was moving the camera.

3 That is the bathroom, washing area. Now we are
4 going to take a small detail of the smaller classroom, the
5 larger classroom and the residence. This is the larger
6 classroom, which is also, I guess, a play area of some sort.

7 This is the residence at the very end of the
8 hall. That's the upper floor of 115 Foster Avenue.

9 That's it.

10 Q Thank you, Mr. Ivey.

11 MS. STEWART: No further questions.

12 THE COURT: Does any other counsel wish to
13 examine?

14 MR. FITZGERALD: No. Thank you, Judge.

15 THE COURT: You are excused. Thank you.

16 THE WITNESS: Thank you.

17 (Witness excused)

18 MS. STEWART: The defendants will call Hamdy
19 Orabi.

20 HAMDY ORABI,

21 called as a witness by the Defendant Abdel Rahman,
22 having been duly sworn, testified as follows:

23 THE COURT: Mr. Orabi, if you could try to lean
24 forward or move your chair forward so that you could talk
25 into the microphone. That way everybody can hear you,

1 THE WITNESS: Sure, yes.

2 DIRECT EXAMINATION

3 BY MS. STEWART:

4 Q Good morning, Mr. Orabi.

5 A Good morning.

6 Q How old are you?

7 A 44.

8 Q And where were you born?

9 A In Egypt.

10 Q When did you come to the United States?

11 A 1981.

12 Q I think you have to lean forward, because I think
13 the interpreters cannot hear you.

14 A 1981.

15 Q Are you a citizen?

16 A Not yet.

17 Q Do you have a green card?

18 A Yes.

19 Q Where do you reside, town?

20 A I reside in Bayonne, New Jersey.

21 Q Are you married?

22 A No.

23 Q What is your line of work?

24 A I am in the vendor business, food vendor
25 business.

1 Q Would that be falafel, etc.

2 A Yes, yes.

3 Q What did you do before you went into the food
4 vendor business?

5 A I was in the real estate business, real estate
6 and appraisal business.

7 Q In doing that work, was it necessary for you to
8 ask a sheik for a fatwa?

9 A Yes.

10 Q What did that concern?

11 A It concerned religion. It concerned Islam, if it
12 is prohibited or if it is not.

13 Q With regard to what subject?

14 A With regard to the appraisal business, mortgages,
15 appraisal business for the purpose of obtaining mortgages.

16 Q Why was that?

17 A To find out if I am allowed to do that or not.

18 Q Can you tell us what was your concern when you
19 asked for the opinion.

20 A My concern is that in order for someone to buy a
21 house, he has to apply for a mortgage, and, in order for him
22 to be eligible for a mortgage, the house has to be
23 appraised.

24 So I was in the process of giving an opinion or
25 rendering an opinion on such matter, which I was kind of,

1 you know, I wanted to know exactly if that line of business
2 is lawful by Islam or not.

3 Q In what way might it have been unlawful with
4 regard to Islam?

5 A Because Islam prohibits usury and interest.

6 Q Who did you ask for this fatwa or opinion?

7 A I asked the sheik.

8 Q And which sheik is that?

9 A Sheik Omar Abdel Rahman.

10 Q Do you see him in the courtroom?

11 A Yes.

12 Q What was his response?

13 A He said no, it is against Islam to do, to do such
14 thing.

15 Q As a result of that, did you change your --

16 A Yes, I did.

17 Q Was it a necessity for you to change your --

18 A Yes, if I -- I wanted to know if I, if I
19 shouldn't do that, so then it is necessity to change.

20 Q Directing your attention to El Salaam mosque in
21 Jersey City, are you familiar with El Salaam mosque?

22 A Yes.

23 Q How long have you been associated with El Salaam?

24 A Since 1988 or '89.

25 Q And were you at any time on the board of

1 directors?

2 A I am now.

3 Q How long have you been on the board of directors?

4 A About two years.

5 Q What population in particular attends at El
6 Salaam?

7 A Mostly Egyptian.

8 Q Are Egyptian current events discussed at the
9 mosque as well as religious events?

10 A Yes.

11 Q The Mohammed mosque in Jersey City, are you
12 familiar with that?

13 A Kind of.

14 Q Do you know what population attends at the
15 Mohammed mosque?

16 A Black American.

17 Q How frequently did you attend the mosque, say
18 starting in 1988 up until the present?

19 A I can say daily.

20 Q You indicated that you know Dr. Abdel Rahman?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q When did you first become acquainted with him?

25 A About 1991.

1 Q During the period 1991 to 1993, did he preach at
2 El Salaam?

3 A Yes, he did.

4 Q How often was that?

5 A Frequently.

6 Q More than once a week?

7 A Sometimes once a week, sometimes more than once a
8 week.

9 Q He was invited by the board of directors to
10 speak, is that right?

11 A Yes, yes.

12 Q How is the board of directors chosen at El
13 Salaam?

14 A Election.

15 Q With regard to imams or sheiks, does anyone
16 assign them to a particular mosque to work in?

17 A Well, the board of directors would hire an imam
18 to do specific work, which is Islamic, you know, teaching
19 and preaching.

20 Q But that person, does that person come from like
21 a central church or a central mosque?

22 A No.

23 Q Have you also attended at other mosques where you
24 have heard Sheik Omar?

25 A Yes.

1 Q Could you tell us what those mosques are.

2 A El Farooq mosque.

3 Q Where is that located?

4 A In Brooklyn, New York.

5 Q How often did you attend there?

6 A Every now and then, sometimes when I'm in the
7 neighborhood I go there.

8 Q When you say "every now and then," could you tell
9 us what years that was.

10 A Yes. 1991 -- I mean, 1990 to, until today's
11 date. I go there sometimes.

12 Q Did you also see Sheik Omar at his home?

13 A I went once.

14 Q Where was that?

15 A In Jersey City.

16 Q Have you ever driven Sheik Omar anywhere?

17 A No.

18 Q Did you ever meet a person by the name of Emad
19 Salem?

20 A Yes.

21 Q Where did you meet him?

22 A I met him in the courthouse at the time of Sayyid
23 Nosair's trial.

24 Q Did you attend that trial?

25 A Yes, I did.

1 Q Where did you see him after that?

2 A I saw him in the mosque.

3 Q What mosque is that?

4 A Jersey City.

5 Q El Salaam?

6 A Yes.

7 Q Did there come a time when something occurred at
8 the mosque with regard to Emad Salaam?

9 A Yes.

10 Q Could you tell us what that was.

11 A One of the brothers have seen him when he was
12 praying that he was wearing certain chain which is used to
13 be given to Army men.

14 Q What happened as a result of that?

15 A He was confronted with it, and because we didn't
16 know at that time, he claimed to be a civilian and he was
17 confronted with it, and he said that he still wear it,
18 although that he is no longer in Army service.

19 Q What occurred next?

20 A Some brothers have suspected something about him,
21 that he has a certain agenda.

22 Q What occurred next?

23 A It was brought to the attention of some brothers.

24 Q What did they do? Were you one of them?

25 A Yes. We just didn't do anything because after

1 that he, he stopped coming to the mosque.

2 Q Do you have any idea what year this was?

3 A No, I don't recall what year that was.

4 Q Are you familiar with the name Zayyat,
5 Mr. Zayyat, a lawyer from Egypt?

6 A Yes.

7 Q In what connection do you know him or are you
8 acquainted with him?

9 A Well, he came once to El Salaam mosque when he
10 was in America.

11 Q Was Mr. Salem there at that time, do you recall?

12 A Maybe. I don't recall.

13 Q Did you see Sheik Omar and Mr. Zayyat, the
14 lawyer, speaking with each other on that occasion?

15 A Sheik Omar was giving a lecture and Mr. Zayyat
16 was present, so everyone was sitting together. We weren't
17 doing anything private. It was like a public gathering.

18 Q Just tell us what you observed happening after
19 the lecture was over, if anything?

20 A Nothing happened after the lecture is over. The
21 men went their way and they left.

22 Q Did you speak at all with Mr. Zayyat yourself?

23 A No, I didn't.

24 Q Did you see Sheik Omar speaking with Mr. Zayyat?

25 A No.

1 Q Did you see Sheik Omar hand Mr. Zayyat a package
2 wrapped in newspaper?

3 A No.

4 Q Is there a private kitchen at El Salaam?

5 A Yes, there is.

6 Q Is there a private office at El Salaam?

7 A Yes, there is.

8 Q Directing your attention to May and June of 1993,
9 what was, to use your word, on the agenda at El Salaam
10 mosque in those months or was happening during those months?

11 A 1992 and '93 was a change of --

12 Q No, May and June 1993 if I misspoke.

13 A May and June 19 --

14 Q '93?

15 A Specifically what? I --

16 Q Do you have any recollection of elections taking
17 place at that time?

18 A Yes. Election, yes.

19 Q Could you describe what was occurring.

20 A What happened at that time was like some kind of
21 conflict in the mosque. The board, one of the board members
22 had some kind of conflict with Dr. Omar.

23 Q What was the name of that board member?

24 A Uh, his name -- I don't -- I cannot really recall
25 his name at the present time.

1 Q If it comes back to us you can let us know.

2 A OK. Dr. Boker. I'm sorry.

3 Q What occurred, if you can tell us, at the mosque?

4 A Dr. Boker had like a personal conflict because
5 Dr. Boker has a strong personality and he wanted to be in
6 spotlight. He felt like he's being threatened. So that is
7 why he -- although that in the beginning he -- since he was
8 one of the founders, or one of the members of the board, he
9 welcomed Dr. Omar to the mosque, but after that, he wanted
10 to stop him from coming.

11 Q As a result of that, what did he do with regard
12 to these elections?

13 A What happened at that night, the police was
14 called.

15 Q When you say he was threatened, how do you mean
16 that?

17 A Threatened maybe not exactly -- in the sense he
18 thought that maybe he would not play as big a role as he
19 used to be since, I think, he felt that Dr. Omar has
20 stronger personality than him.

21 Q After the police were called, what occurred next?

22 A Well, the police was called, I think, in that
23 there is violence upstairs, which the mosque is on the
24 second floor of the building -- or the third floor of the
25 building. So the police was called to, just in case of such

1 violence to take place. But when the police came upstairs,
2 we spoke to them, and we explained, you know, to them the
3 situation: There is an election going on and there is no
4 violence whatsoever and there's no need for the presence of
5 the police. Then they left.

6 (Continued on next page)

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1 Q The next time there was a meeting, what occurred
2 then, the next meeting at the mosque after the police were
3 called?

4 A I am not quite sure what you are referring to.

5 Q Was there a meeting after that time?

6 A Yes, there is a meeting, there is meetings after
7 that.

8 Q Was Sheik Omar involved in that meeting?

9 A Present but not involved.

10 Q Do you know a person by the name of Siddig Ali?

11 A Yes, I do.

12 Q Was he in any way involved with all this?

13 A Yes.

14 MS. AMSTERDAM: I am sorry. I couldn't hear the
15 question.

16 Q Was he in any way involved in all this?

17 A Yes.

18 Q If you know, was there any form of security for
19 this meeting, this next meeting?

20 A It wasn't really a form of security but some
21 brothers came from Brooklyn, but it's not really, I don't
22 think I should put it like there was security. The brothers
23 came from New York just in case they are needed to calm the
24 brothers down. Sometimes an argument will break out or
25 something, and just, you know, you need to speak to the

1 brothers. But violence never really takes place in a
2 mosque. So there is maybe two or three brothers were
3 invited to be present at that meeting, not as security
4 guards or anything like that.

5 Q During these years you have heard the sheik speak
6 and preach, is that correct?

7 A Yes.

8 Q Do you know if one of his other duties was
9 teaching the Koran?

10 A Yes.

11 Q Did he instruct children?

12 A Yes.

13 Q What, if you know, did he instruct them with
14 regard to the Koran?

15 A Memorizing and recitation of the Koran.

16 Q Did that take place at El Salaam Mosque?

17 A Yes, it did.

18 MS. STEWART: I would just at this time, Judge,
19 like to play what is FF in evidence. It is in the jury's,
20 these books, under the tab FF.

21 MR. FITZGERALD: I have no objection to the
22 receipt of FF or FF-T.

23 THE COURT: This is an audiotape?

24 MS. STEWART: This is, Judge.

25 Q If you can put on the earphones.

1 MR. FITZGERALD: When everyone has a headset on,
2 I will play the tape.

3 THE COURT: If you would put your headsets on,
4 ladies and gentlemen.

5 (Tape played)

6 Q Mr. Orabi, what you just listened to, was that
7 children learning to recite the Koran?

8 A Yes.

9 Q During the time that you knew Sheik Omar at El
10 Salaam Mosque, who was the imam there?

11 A Sheik Abdel Khalik.

12 Q How many times would you estimate for us that you
13 heard Sheik Omar speak?

14 A While at any mosque?

15 Q Yes.

16 A How many times?

17 Q Yes.

18 A How much is plenty?

19 Q More than 50, more than a hundred?

20 A Maybe 50, maybe a hundred, and in between.

21 Q Did he ever speak about performing jihad in
22 America?

23 A Never.

24 Q Did you ever hear him ask Muslims to attack U.S.
25 military bases here?

1 A Never.

2 Q Did he ever ask people to steal from banks?

3 A Never.

4 Q What do you recall him saying on the subject?

5 A I recall that after every lecture there is time
6 for questions and answers, and brothers would ask various
7 kinds of questions, and concerning our staying here in
8 America and what is lawful and what is not lawful, which is
9 being permitted or not permitted by Islam. Sometimes the
10 brothers would ask him, we came times that credit cards for
11 phone companies would be stolen and be sold on the black
12 market or something, and the brother would ask him if that
13 is lawful by Islam, to use these stolen credit cards, he
14 would say no, it's not lawful, Islam does prohibit this.
15 Brothers would ask him if they can go for bankruptcy and
16 take the money from their credit cards and file for
17 bankruptcy. He would answer no, Islam does not prohibit
18 this. Sometimes brothers would ask him if they can do
19 certain schemes to take money from one area or another, if
20 that is prohibited or allowed or lawful by Islam, he would
21 say no.

22 So this part of the questions that were asked,
23 besides other questions questions concerning marital status
24 and things of this nature.

25 Q Did you ever hear Sheik Omar speak about Egypt?

1 A Yes.

2 Q How about Israel?

3 A No, he spoke about Egypt.

4 Q Did he speak about the United States in relation
5 to Egypt?

6 A He was not happy that the United States is
7 supporting a regime which is oppressing people in Egypt.

8 Q You heard him speak on this?

9 A I am sorry?

10 Q Did he express himself with respect to this?

11 A Yes, he wasn't happy with this.

12 MS. STEWART: Nothing further for this witness,
13 Judge.

14 THE COURT: Ms. Amsterdam representing
15 Mr. Khallafalla.

16 CROSS-EXAMINATION

17 BY MS. AMSTERDAM:

18 Q Good morning, sir.

19 A Good morning.

20 Q You indicated that you knew Siddig Ali.

21 A Yes.

22 Q Was he a friend of yours?

23 A No.

24 Q For how long had you known him?

25 A For five years or so.

1 Q Was that in connection with the mosque?

2 A No, I am sorry, less than five years. Yes, in
3 connection with the El Salaam Mosque.

4 Q Would you describe his ability to speak.

5 A Siddig is well spoken person. He seems smart.
6 He acted to be important and acted like he wanted to be in
7 charge.

8 Q Did you ever hear Siddig speak at the mosque?

9 A Yes.

10 Q Did you know whether or not Siddig ever spoke in
11 connection with college, not courses but groups of college
12 students getting together, trying to learn the Koran better?

13 A Yes, he was speaking at Rutgers.

14 Q I am sorry.

15 A At Rutgers University.

16 Q At Rutgers University?

17 A Yes.

18 MS. AMSTERDAM: I have no further questions.

19 Thank you, sir.

20 THE COURT: Ms. London, representing
21 Mr. Elhassan.

22 CROSS-EXAMINATION

23 BY MS. LONDON:

24 Q Good morning, Mr. Orabi.

25 A Good morning.

1 Q Mr. Orabi, do you know a man by the name of Tarig
2 Elhassan?

3 A Yes, I do.

4 Q Do you see him in the courtroom today?

5 A Yes.

6 Q Could you point him out to us.

7 A He is there.

8 THE COURT: Indicating Mr. Elhassan. Go on.

9 Q When did you first meet Tarig?

10 A About 1990, 1991.

11 Q Where did you meet him?

12 A In one of the mosques.

13 Q Did you become friends?

14 A Yes.

15 Q Did you socialize together from time to time
16 during this period?

17 A Yes.

18 Q Did Tarig ever speak to you about blowing up
19 bridges or tunnels or buildings in New York?

20 A Never.

21 Q What kind of person was he?

22 A Tarig is very sincere, down-to-earth person,
23 naive sometimes.

24 Q Are you familiar with his reputation in the
25 community for peacefulness?

1 A Yes. He is very peaceful and well liked in the
2 community.

3 MS. LONDON: Thank you, Mr. Orabi.

4 THE WITNESS: Thank you.

5 MS. LONDON: I have no further questions.

6 THE COURT: Any other defense counsel? Any
7 cross?

8 MR. FITZGERALD: Yes, Judge.

9 CROSS-EXAMINATION

10 BY MR. FITZGERALD:

11 Q Good morning, sir.

12 A Good morning.

13 Q You mentioned that there came a time at the El
14 Salaam Mosque when the police came?

15 A Yes.

16 Q And they were basically asked to leave because
17 they weren't necessary, is that correct?

18 A Yes.

19 Q Then there was a further meeting on a different
20 date at the El Salaam Mosque, where you mentioned that two
21 or three brothers were invited from Brooklyn to attend.

22 A The brothers were invited, really, at that
23 meeting where the police were called.

24 Q The same meeting?

25 A Yes. That was the evening of the election.

1 Q And someone reached out to a mosque in Brooklyn
2 and invited these brothers to attend in advance?

3 A It's not reached out, you know, to Brooklyn. We
4 attend different mosques, so I go to Brooklyn sometimes when
5 I am in the neighborhood, a brother from Brooklyn comes to
6 Jersey when they are in the neighborhood. They weren't
7 really just called for a specific reason or for a specific
8 purpose.

9 Q But in this case someone called the brothers in
10 Brooklyn they were familiar with?

11 A We did not call. We had election, OK, and when
12 there is an election, the election is called by the members
13 who live in the community, but in the election evening, you
14 find that other brothers from different areas, because we do
15 hold the election after the prayer, so we might find other
16 brothers from different areas performing the prayer and
17 sitting during the election meeting.

18 Q Maybe I will ask it this way: You mentioned
19 earlier that two or three brothers were invited to attend.
20 What do you mean by that?

21 A I am sorry.

22 Q You mentioned on your direct testimony that two
23 or three brothers from Brooklyn were invited to attend the
24 mosque.

25 A Yes. You see, some conflict between -- the old

1 board did not really want to hold election when their time
2 was due or was over, so they wanted, the members of the
3 mosque wanted a new election. So we were afraid that maybe
4 was some argument between the brothers who would like to
5 hold the election and old board which is still in charge.
6 So just in case that maybe an argument would, you know,
7 break out or something like that, you know, we said maybe we
8 can get some neutral brothers not from this area so if
9 something, an argument breaks out or something, they can,
10 you know, be a part of trying to find a solution or
11 resolution to the argument.

12 Q And the brothers that were invited to perform
13 that role, did that include Imam Siraj Wahhaj?

14 A No, it wasn't.

15 Q Who were the brothers?

16 A Just normal brothers. There was no really
17 specific roles for them, just usual brothers. Anyone who
18 was found in a mosque would be invited to come.

19 Q Did Imam Siraj Wahhaj attend that evening?

20 A No.

21 Q You mentioned that Sheik Abdel Rahman was asked
22 whether or not it was permissible to engage in various
23 schemes involving credit cards and things like that.

24 A Yes.

25 Q Were you ever present when he was asked whether

1 or not it became permissible if the money were used for
2 jihad?

3 A He wasn't asked that.

4 Q Is it your recollection that you never heard
5 Sheik Omar Abdel Rahman speak about Israel?

6 A No.

7 Q Finally, you mentioned that you went to Sheik
8 Omar Abdel Rahman for a fatwa concerning whether or not you
9 could work in the appraisal business.

10 A Yes.

11 Q Do you recall that?

12 A Yes.

13 Q Where did you go to him for the fatwa?

14 A I spoke to him on the phone.

15 Q On the phone. Is it fair to say that when you
16 realized you were doing appraisals for mortgages, you
17 thought it was a gray area, where you didn't know whether
18 you could do it or not?

19 A Yes, correct.

20 Q So you went to Sheik Omar Abdel Rahman for a
21 fatwa, for an indication as to whether or not it was
22 permitted or not permitted?

23 A Correct.

24 Q And if it is permitted it is called halal,

25 H-A-L-A-L?

1 A Yes.

2 Q That means it's a green light, you can go ahead
3 and doing do the business?

4 A Correct.

5 Q If it is forbidden, that is haran, H-A-R-A-N,
6 that means a red light and you can't do it?

7 A Right.

8 Q When Sheik Omar Abdel Rahman told you that
9 working in the appraisal business was haran, you stopped,
10 right?

11 A Yes.

12 Q Going to Sheik Omar Abdel Rahman for a fatwa was
13 a necessary step?

14 A Since he is scholar, yes.

15 Q Were you ever present when anyone went to Sheik
16 Omar Abdel Rahman for a fatwa as to whether it was
17 permissible to attack the United Nations or the American
18 military?

19 A I have no knowledge of this.

20 Q You don't know what if anything he said?

21 A Nothing like this happened and I have no
22 knowledge of this.

23 MR. FITZGERALD: Thank you. Nothing further.

24 THE COURT: Any redirect?

25 MS. STEWART: No, Judge.

1 THE COURT: Anyone else? Thank you, sir. You
2 are excused.

3 (Witness excused)

4 MS. STEWART: Judge, at this time we are going to
5 read GG-T, a transcript of a FISA call. I will play a
6 child. Mr. Jabara will play Sheik Omar, and Mr. Lavine will
7 be Imam Abdel Khalik.

8 I am sorry, I miscued on the cast, Judge. It is
9 Mr. Serra. Mr. Lavine is his understudy.

10 THE COURT: All right. This is Exhibit GG-T.

11 MS. STEWART: That is correct. It is in the back
12 of the book.

13 THE COURT: If everybody who is participating
14 could position themselves near microphones so they can be
15 heard.

16 (Defense Abdel Rahman Exhibit GG-T in evidence
17 read to the jury)

18 MS. STEWART: We will next read from JJ, your
19 Honor. Miss London will play the part of Iman Hassan, and
20 Mr. Jabara will maintain his role.

21 THE COURT: Is JJ in the same volume?

22 MS. STEWART: It is, Judge.

23 THE COURT: It is actually marked JJ-T.

24 MS. STEWART: Thank you, Judge.

25 (Defendant Abdel Rahman Exhibit JJ-T in evidence

1 read to the jury)

2 MS. STEWART: Tape KK-T, Judge.

3 THE COURT: Which is the next exhibit in the
4 book. Mr. Lavine will play imam of a mosque.

5 (Defendant Abdel Rahman Exhibit KK-T in evidence
6 read to the jury)

7 MS. STEWART: If I could interrupt, there is an
8 overlap of the tapes, apparently, so if they could go over
9 to page 7, near the bottom.

10 (Reading continued)

11 MS. STEWART: Next is II. Ms. Amsterdam will
12 play the role of Salwa.

13 (Defendant Abdel Rahman Exhibit II-T in evidence
14 read to the jury)

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1 THE COURT: All right. Ladies and gentlemen, we
2 are going to break for lunch. Please leave your notes and
3 other materials behind. Please don't discuss the case, and
4 we will resume this afternoon.

5 (Jury not present)

6 THE COURT: Mr. Jacobs?

7 MR. JACOBS: Your Honor, in connection with the
8 application that I am going to make this afternoon I wanted
9 to hand up Napoli's testimony, pages 4298, 4299, 4302, and
10 especially the question your Honor asked of Napoli at 4299.

11 THE COURT: All right.

12 MR. NOOTER: Your Honor, my client is asking to
13 be excused for the afternoon so that he can work on his
14 defense case.

15 (Continued on next page)

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1 THE COURT: Mr. Saleh, you want to be excused
2 this afternoon?

3 DEFENDANT WAHID SALEH: Yes.

4 THE COURT: Is it all right if we go ahead in
5 your absence?

6 DEFENDANT WAHID SALEH: Yes.

7 THE COURT: All right.

8 MR. NOOTER: Thank you very much.

9 THE COURT: Anything else? See you this
10 afternoon.

11 I'm sorry. Mr. Ricco, you want to see me?

12 MR. RICCO: Yes.

13 (Page 14924 sealed)
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1 AFTERNOON SESSION

2 2:20 p.m.

3 (In open court; jury present)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 JURORS: Good afternoon, your Honor.

6 THE COURT: Ms. Stewart.

7 MS. STEWART: The defendant Abdel Rahman calls
8 Sheik Imran Hosein.

9 IMRAN KHALID AHMAD NAZAR HOSEIN,
10 called as a witness by the defense,
11 having duly affirmed, testified as follows:

12 THE COURT: Go ahead, Miss Stewart.

13 MS. STEWART: Thank you, Judge.

14 DIRECT EXAMINATION

15 BY MS. STEWART:

16 Q Good afternoon, Sheik Hosein.

17 A Good afternoon.

18 Q Sheik, how old are you?

19 A Fifty-three.

20 Q Where were you born?

21 A In the island of Trinidad, in the Caribbean.

22 Q Would you tell us your educational background.

23 A I studied philosophy at Karachi University. I
24 studied international relations at the University of the
25 West Indies and at the Graduate Institute of International

1 Studies in Geneva. And I studied Islam, the religion, in
2 Egypt and Pakistan.

3 Q What was the name of the university in Egypt that
4 you studied?

5 A Al-Azhar University, but I just spent one year,
6 then I left.

7 Q How are you currently employed?

8 A I am the director of Islamic studies attached to
9 Masjid Darul Quran.

10 THE COURT: Would you spell that for the
11 reporter.

12 THE WITNESS: D-A-R-U-L, Q-U-R-A-N -- that's the
13 preferred spelling, normal spelling would be K-O-R-A-N --
14 Darul Quran in Long Island.

15 A And through Masjid Darul Quran I am also sent to
16 a number of different other Islamic centers and mosques and
17 churches and synagogues in New York and in New Jersey.

18 Q Do you have other duties? Do you lecture?

19 A Yes. Most of my work is teaching, teaching the
20 religion and teaching our people how to live the religion in
21 this country.

22 Q In connection with your work, do you visit
23 prisons?

24 A I do. I go to the Morristown prison once a week,
25 and teach. I lead the prayers and teach the inmates, both

1 male and female.

2 Q That is Morristown, New Jersey?

3 A Morristown, New Jersey.

4 Q Do you have a television program?

5 A I have been on the television since I came to New
6 York four years ago.

7 Q Directing your attention to January 1993, were
8 you invited to lecture at a program?

9 A I was.

10 Q Can you tell us by whom you were invited?

11 A An organizing committee had organized a fund
12 raiser for Bosnia, the Bosnian refugees. I was invited by
13 that organizing committee.

14 Q Were other speakers also invited?

15 A Yes. I was informed that Sheik Omar Abdel Rahman
16 would be one of the other speakers. I do not now recall who
17 were the other speakers, apart from both of us.

18 Q If you know, was this fund raiser publicized?

19 A It was.

20 Q How was that accomplished, if you know?

21 A Through flyers, through posters, and through
22 announcements which are usually made after the Friday
23 prayer, congregational prayer, announcements are usually
24 made at mosques.

25 Q Where was this meeting held?

1 A The fund raiser was held at a school, an American
2 school in Brooklyn, public school.

3 Q For how long, what length of time did you speak
4 at this particular fund raiser?

5 A I believe I must have spoken for about half an
6 hour.

7 Q Approximately how many people were in attendance?

8 A My guess is about 150 to 200, approximately.

9 Q Was Sheik Omar also on the program that night?

10 A He certainly was on the program, and that was one
11 of the reasons why I accepted the invitation.

12 MS. STEWART: I have no other questions. Thank
13 you, Judge.

14 THE COURT: Anyone else?

15 MR. FITZGERALD: Briefly, Judge.

16 THE COURT: Go ahead.

17 CROSS-EXAMINATION

18 BY MR. FITZGERALD:

19 Q Good afternoon, sir.

20 A Good afternoon.

21 Q Do you recall any particular groups attending
22 that speech that day?

23 MS. STEWART: Objection, Judge.

24 THE COURT: Overruled, if he knows.

25 A No, I don't recall any particular groups. There

1 was a gathering of Muslims.

2 Q Did anyone arrive at this lecture that you did
3 not expect to come?

4 A I would only expect Muslims to be there, and I
5 believe there were only Muslims.

6 Q Did you believe that any of the people who
7 arrived were part of a particular organization?

8 A No.

9 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, may I approach with
2 Ms. Stewart for a moment?

3 THE COURT: Yes.

4 (At the side bar)

5 THE COURT: Let me guess. I have few rewards in
6 life, I would now like to reap one of them. This is the
7 label again, right?

8 MR. FITZGERALD: Yes.

9 THE COURT: This was a group that showed up that
10 wasn't expected and that was the reason for the labeling,
11 and so forth.

12 MR. FITZGERALD: Right.

13 MS. STEWART: I believe the sheik had left before
14 they arrived.

15 THE COURT: I think you have a good faith basis
16 for asking whether there was some contingent Hamas group
17 that showed up, but --

18 MS. STEWART: I know that his answer is he left
19 before that occurred. I don't think he has any knowledge of
20 it.

21 THE COURT: We will see. OK.

22 (In open court)

23 (Continued on next page)

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1 BY MR. FITZGERALD:

2 Q Sir, did there come a time when members or people
3 affiliated with the Hamas organization arrived at that
4 lecture?

5 A I have no knowledge of that subject.

6 Q To your knowledge, no one from Hamas came that
7 day?

8 A I have no knowledge of that.

9 (Continued on next page)

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1 MR. FITZGERALD: Nothing further.

2 THE COURT: Anyone else? Anything else?

3 Thank you very much. You are excused.

4 (Witness excused)

5 MS. STEWART: Your Honor, the government would
6 stipulate that the sheik's testimony relates to 451, a
7 videotape that was played at the end of the first week of
8 testimony.

9 THE COURT: The stipulation is that the past
10 witness' testimony about the meeting that he attended
11 relates to Exhibit 451, which was one of Dr. Abdel Rahman's
12 speeches that was played during the first week of the trial.

13 MS. STEWART: It was a videotape.

14 THE COURT: It was a videotape that was played
15 during the first week of trial. Thank you. Exhibit 451.

16 MS. STEWART: Judge, at this time we would read
17 from Exhibit DD, the transcript T. Mr. Jabara will play
18 Dr. Abdel Rahman and I will play the voices at the end.

19 THE COURT: May I see you at the side briefly.

20 MS. STEWART: Sure.

21 (At the side bar)

22 THE COURT: I don't mean to impinge on Mr.
23 Jabara's career as a character actor. However, I am
24 serious. I don't want more notice by everybody of the way
25 in which somebody is reading a transcript than of the

1 contents of the transcript. Although I think you are trying
2 to be faithful to the text, I think sometimes it comes close
3 to conveying a message.

4 MR. JABARA: In what way?

5 THE COURT: It sometimes comes close to being
6 more a subject of notice than what is being proved in the
7 transcript.

8 MR. JABARA: Fine. This is just reading. There
9 is no coughing or laughing in it.

10 MS. STEWART: Just straight reading, I think.

11 THE COURT: I also think it is for your own
12 benefit, frankly.

13 MR. JABARA: Fine. I appreciate your calling it
14 to our attention.

15 (In open court)

16 (Defendant Abdel Rahman Exhibit DD-T in evidence
17 read to the jury)

18 THE COURT: Ladies and gentlemen, we are going to
19 take a short break. Please leave your notes and other
20 materials behind. Please don't discuss the case, and we
21 will resume shortly.

22 (Jury excused)

23 MR. SERRA: Your Honor, Mr. Alvarez is not
24 feeling well. With the permission of the court he wishes to
25 return to the MCC. He understands that we will proceed in

1 his absence and wishes to waive his presence.

2 THE COURT: Is it all right to proceed without
3 you, Mr. Alvarez?

4 DEFENDANT ALVAREZ: Yes.

5 THE COURT: Thank you very much. You are
6 excused.

7 (Recess)

8 (Jury present)

9 THE COURT: Miss Stewart.

10 MS. STEWART: We recall Mohamed Yousry.

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1 MOHAMED YOUSRY,
2 called as a witness by the defense,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. STEWART:

6 Q Good afternoon again, Mr. Yousry.

7 A Good afternoon, ma'am.

8 Q I think the other day when you were on the
9 witness stand, I failed to cover your background in the
10 study of English. Can you tell us where you first studied
11 English.

12 A I first studied English at the primary school. I
13 think we started about 6 years old. And I studied
14 throughout the whole period of primary school. Then we go
15 to a secondary school, what is the equivalent here of junior
16 high. And also I studied English there.

17 Q This was in what country?

18 A Egypt.

19 Q Did you continue at the university in the study
20 of English?

21 A Yes, we did. Also, we studied an extra language.
22 That was Hebrew.

23 Q Do you speak any other languages, other than
24 English and Arabic?

25 A A little bit of Turkish.

1 Q In working for the last two years for Hess
2 Translation -- almost the last two years -- can you tell us
3 what you relied upon to reach your opinions with regard to
4 translations?

5 A I relied upon my knowledge, education,
6 experience.

7 Q In translating, did you come across dialects?

8 A Yes, I did.

9 Q In Arabic, which dialects are those?

10 A Egyptian, Sudanese, some Syrian.

11 Q Did you come across colloquialisms?

12 A Yes, I did.

13 Q What is meant by that?

14 A There are some words, some phrases are used only
15 within certain colloquial Arabic. For instance, Egyptian
16 Arabic, or the Egyptian dialect is a dialect that is
17 understood all over the Arab world, the reason being most
18 Egyptian teachers, they go teach all over the Arab world.
19 Egyptian sheiks they go teach also, preach all over the Arab
20 world. So most Arabic-speaking nations, they understand
21 perfectly the Egyptian dialect. Some certain things you
22 have to be really a native and you have to be culturally
23 with it, like they say. Things like poker tale, for
24 instance, it shows double meaning. First it shows a person
25 who is opportunist, who just follows, a person who is

1 winning in a gambling scheme or something. It kind of like
2 describes that person to be in a sense selling himself or
3 herself to whoever is winning.

4 Q Could you say the word again for us.

5 A In Arabic or English?

6 Q In English.

7 A It's poker tale.

8 Q Are there also be idiosyncratic differences in
9 language?

10 A Expressions, yes.

11 Q Would you explain that.

12 A For instance, over here most people are familiar
13 with The Honeymooners, so Jackie Gleason says something like
14 boom zap to the moon, he probably repeats that every time he
15 gets on the show. Some people have different way of
16 expressing that stuff. Others, let's say they say devil or,
17 infidel, things of that sort.

18 Q In the course of your translations, did you have
19 certain disagreements with the translations of the
20 government?

21 A Yes.

22 Q Could you detail to some degree the categories of
23 your differences?

24 MR. KHUZAMI: Objection to form.

25 THE COURT: Sustained. Are you going to get

1 into --

2 MS. STEWART: Eventually, but it is a foundation
3 question, Judge.

4 THE COURT: All right, I will allow it.

5 A Basically with the religious concepts, or
6 concepts in general, some concepts that are used here in the
7 United States are not universal, meaning that you do not
8 have equivalent, you know, in Arabic. Some concepts in
9 Arabic do not have equivalent in English. So to provide a
10 general translation of one word and use that all the time is
11 wrong, in my opinion.

12 Q Could you give us an example of something that is
13 not translatable, from this case?

14 A We can start with word like sheik, for instance.
15 A sheik is a religious figure. Can we equate a sheik to a
16 priest? Yes and no. Can we equate a sheik to a pastor?
17 Yes and no. Can we equate him to a rabbi? The same answer,
18 yes and no. So the word sheik itself evolved within a
19 different tradition, within a different heritage.

20 THE COURT: Is it your testimony that the
21 government translations included pastor or minister or
22 anything like that instead of sheik?

23 THE WITNESS: No, it is not.

24 THE COURT: Miss Stewart, would you please focus
25 this on differences, if that is what you are trying to get

1 at. You asked for a specific example of a difference in
2 this case and that is not what you got.

3 MS. STEWART: I think I asked him for words that
4 were not translatable. I think that was my question, Judge.

5 THE COURT: No, you were starting to get into
6 differences. In any event, let's get to where he is going,
7 please.

8 Q Are you familiar with the phrase "Fares is not a
9 fares"?

10 A Yes, I am.

11 Q Does that appear in one of the CM's or
12 consensually monitored tapes in this case?

13 A Yes, it did.

14 Q Is that translatable as such?

15 A You have to understand first what the words mean.
16 You cannot translate it. You have to bridge the gap, the
17 cultural gap between the two languages before you can say I
18 can translate it or not. A fares means a flight. So when
19 you say Fares is not a fares, fares also is a person's name.
20 So using this kind of like a person's double name, Fares is
21 not a fares, that person who is called Fares or is Fares, is
22 not a knight, meaning he is not up to what he said, cannot
23 deliver, he is not a brave person. If you don't understand
24 that, that Fares can mean a person's name and at the same
25 time means a knight, then you will miss the whole meaning.

1 Q You worked on the translations of the words of
2 Sheik Omar, is that correct?

3 A Yes, I have.

4 Q Would you first translate for us the meaning of
5 his name "Abdel Rahman."

6 A In Islam, there is 99 names for God. "Rahman" is
7 one of them. It means "the merciful." You can't just call
8 somebody by God's name, so you have to call him "the servant
9 of." So the name "Abdel Rahman" means "the servant of the
10 merciful."

11 Q With regard to Exhibit AA, which I am going to
12 show you.

13 MS. STEWART: May I, Judge?

14 THE COURT: Yes.

15 THE WITNESS: Thank you.

16 Q Do you recognize what that is.

17 A Yes, I do.

18 Q And did you do the translation of that particular
19 item?

20 A Yes, I have. We worked as a team on it and I was
21 the final editor, and I translated most of it as well.

22 Q Could you just identify what it is for the
23 record.

24 A It is Dr. Omar Abdel Rahman's defense in the case
25 of the assassination of Sadat, assassination of President

1 Sadat in Egypt.

2 Q What is the name of it?

3 A It's called "A Word of Truth."

4 Q Were there any specific problems connected with
5 the translation of this particular item?

6 A Yes, there were.

7 Q Could you tell us what they are.

8 A I will go back to concepts, and also I will
9 start -- to begin with I'll start with the Koran.

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

11 (Continued on next page)

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1 (At the side bar)

2 THE COURT: First of all, has there been some
3 agreement reached as to which parts of this are admissible
4 and which are not?

5 MR. KHUZAMI: My understanding is only certain
6 parts would be identified, and none have been to my
7 knowledge.

8 MS. STEWART: I am laying the foundation, Judge.
9 I am not moving it into evidence.

10 THE COURT: Laying the foundation by going
11 through a whole cosmology. I want to get to specific. I
12 want to get to whether he translated this or didn't and
13 whether he can vouch for the accuracy of it.

14 MS. STEWART: I hear all that, and I say to you
15 that the translations in this case are crucial to us. I am
16 sorry that it is 4:20 in the afternoon. But I want the jury
17 to hear the basis for his --

18 THE COURT: I don't care.

19 MS. STEWART: I know, but I care, and my client
20 cares.

21 THE COURT: When I say "I don't care," what I
22 mean is that general statements like "you have to know the
23 Koran in order to translate this" are not going to move us
24 anyplace. I want specifics. I want to get to the point.

25 MS. STEWART: If you want a specific, I

1 specifically asked Mr. Abdel-Hafiz, "Did you refer to the
2 Koran for the officially sanctioned form of that book?" He
3 said, No, he translated it word for word, word by word. Mr.
4 Yousery is going to testify that the Koran, unlike the
5 Bible, which goes through many different translations, there
6 is one officially sanctioned English version, and that comes
7 from Saudi Arabia, and that is what he used to translate the
8 Koran.

9 THE COURT: Period?

10 MS. STEWART: Yes.

11 MR. KHUZAMI: My understanding is still that
12 there were going to be specific portions that were going to
13 be offered of this particular item.

14 THE COURT: Do you know what the specific
15 portions are?

16 MR. KHUZAMI: I don't know what they are.

17 THE COURT: Oh, for crying out loud.

18 MS. STEWART: Judge, there have been a lot of
19 things introduced by the government that specific portions
20 went in later. That is what we need to do. You said that
21 you found part of it admissible and part of it not, and --

22 THE COURT: I also said that I wasn't going to go
23 through it and weed out the parts that were or were not
24 admissible.

25 MS. STEWART: Judge, nobody has read this book

1 with a view toward what may be admissible and what may not
2 be. We haven't been sitting at the beach every day. We
3 have been working literally 18 to 20 hours a day. Nobody
4 has had the chance to read "A Word of Truth" with a juris
5 prudential eye.

6 THE COURT: You are going to spend time, though,
7 establishing a foundation for admitting it and then decide
8 whether any of it is admissible.

9 MS. STEWART: No. You are going to decide
10 whether any of it is admissible. But then bringing him back
11 later on seems to be ridiculous. It is like a five-question
12 thing here.

13 THE COURT: It is a five-question thing?

14 MS. STEWART: On "A Word of Truth," yes.

15 We better tell you the rest of this before you
16 summon us up here again.

17 THE COURT: What is the rest?

18 MS. STEWART: Mr. Yousery and I spoke to Mr.
19 Khuzami about this in advance, so I don't want to get him in
20 trouble, but in testifying I asked Mr. Yousery is there any
21 way that we can make some of these cultural differences that
22 appear in these translations more real for the jury rather
23 than just have you testifying, "A sheik is a this, a sheik
24 is a that"?

25 He put together short videotapes taken from

1 Arabic movies which illustrate three or four -- they're very
2 short. They're not more than five or ten minutes each at
3 the most. There are three separate concepts that we want to
4 use the language found in the various tapes, and they
5 illustrate various concepts as they exist.

6 For example, one of them is "at your service"
7 being used as a form of polite good-bye by people in a
8 respectful settling. One of them is "abu" being used not as
9 an alias, as Mr. Salem testified, but as a form of address
10 that is very common in the Arabic world. The third involves
11 "sheik" and what exactly is a sheik, how he operates, what
12 he does.

13 Those three we, they form the basis of his
14 opinion. They are illustrative of the material he was asked
15 to deal with.

16 MR. KHUZAMI: As long as these are just
17 demonstrative and not entered into evidence, we don't have
18 an objection.

19 THE COURT: How long is this going to take?

20 MS. STEWART: I really think they are no more
21 than -- when we did it at the office it was no more than 15
22 minutes for the whole thing -- the testimony, the showing of
23 the tape, and then the cuing up of the next tape to show. I
24 mean, it could be a little longer, maybe 20 minutes, but
25 they are short.

1 THE COURT: 20 minutes each?

2 MS. STEWART: No.

3 THE COURT: This is a colossal waste of time.

4 I will allow it.

5 MS. STEWART: Not to us, Judge. Not to us.

6 THE COURT: I know, but you are one side of the
7 case.

8 MS. STEWART: I know.

9 (Continued on next page)

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1 (In open court)

2 Q Mr. Youseery, in working with the sheik's material
3 in "A Word of Truth," and, indeed, in the sermons and other
4 places where there was a quote from the Koran, how did you
5 go about translating that?

6 A Well, first, there is only one edition of the
7 Koran that I used and I referred to. This is the official
8 translation of the Koran that most -- actually, all Muslims
9 recognize to be the translation of the Koran.

10 So I have to do the Koranic search first to
11 locate this verse within that book. Then I put it in the
12 text, in English, you know, either highlighted or underline
13 it, and I put where it is coming from the Koran, let's say
14 the second sura, third verse.

15 Q When you say "the translation," what translation
16 are you referring to?

17 A I'm referring to the official translation
18 published in Saudi Arabia by, you know, the official
19 translation agency. It is done by a person called Abdellah
20 Yousef Ali, and it is the only translation in English that
21 Muslims read and Muslims refer to.

22 Q You testified earlier that in part you rely upon
23 your experience in translating. Would you explain what you
24 mean by that.

25 A My knowledge and my skills and my education are

1 all part of my experience. Also, a part of that experience
2 is where I led the actual life in Egypt, so actually I can
3 put stuff within context because I, you know, I was a little
4 bit probably fortunate enough to live there for 24 years,
5 and I don't think anybody here, I mean from the jury at
6 least, lived there for 24 years.

7 THE COURT: Don't volunteer please.

8 Ms. Stewart, move this along, please.

9 Q Have you prepared anything with which to
10 illustrate some of the concepts that the jury will find in
11 this case?

12 A Yes.

13 Q That you have translated?

14 A Yes, I have.

15 Q Directing your attention to Exhibit MM, would you
16 tell us about that.

17 A Well, Exhibit MM is excerpts from Egyptian movies
18 that deal with the concept of a sheik. It shows the
19 language that a sheik uses. It shows his role within the
20 community. It shows the way he speaks and the respect that
21 he gets from people, in order to illustrate or share that
22 with others so that they will be aware of the context that
23 he or she speaks in.

24 Q And did you also prepare transcripts in English
25 of what is being spoken on the screen?

1 A Yes, I have.

2 MS. STEWART: Judge, these are marked for
3 identification only, but I would ask that they be passed out
4 to the jury as an aid to their understanding.

5 THE COURT: MM?

6 MS. STEWART: MM, NN, OO and PP are stapled
7 together and they are designated T.

8 Strike the double P. That is my error.

9 Q Mr. Yousery?

10 A Yes.

11 Q Do you have the transcripts?

12 A Yes, I do.

13 Q Directing your attention to MM, can you tell us
14 what the action portrays in the first segment?

15 A Well, the first segment is, it will show a
16 celebration in a small village by farmers and they are
17 celebrating their crops and the sheik is coming to
18 congratulate them so they stop immediately the shouting and
19 the chanting and they go and kiss his hand.

20 MS. STEWART: Do you want to play it.

21 (Videotape played)

22 THE WITNESS: I would just stop here, please.

23 Q Is the transcript for this excerpt at 65 of the
24 Bates stamped material.

25 A Yes.

1 Q Can you tell us what concept you think was
2 presented there that would be unfamiliar --

3 A Well, actually, language is a life thing, so it
4 has also a social role. And the sheik, where he goes into a
5 place, his social function was at that time to go, you know,
6 extend his congratulations to them. Yet they stopped and
7 they went and kissed his hand, as if they are the one who
8 are, you know, giving him the congratulations. So it shows
9 the respect that the sheik gets, and at the same time it
10 shows that there is no, you know, I mean, like odors going
11 around or something. It shows just like without even
12 speaking they do that.

13 Q By the way, is that a very young Omar Sharif who
14 is kissing the sheik's hand?

15 A Yes. You're right.

16 Q The second scene summary, what does that portray?

17 A It is from the same movie, and it portrays the
18 social function of a sheik. He is acting as a conscience of
19 a community and is going to confront a landowner in Egypt.
20 They are called pasha. It is a title given to them by the
21 king. So he goes to that pasha to point out the mistake
22 that he did and actually confront him and use
23 confrontational language within his religious discourse.

24 MS. STEWART: The Arabic is on the headphones, if
25 anyone cares to --

1 THE WITNESS: I think they changed the tape.

2 They are playing another tape.

3 A This is also a different tape?

4 Q It is still on MM?

5 A It's still on MM, right.

6 This is the right scene.

7 MS. STEWART: OK. This is the right scene.

8 Thank you.

9 (Videotape played)

10 THE WITNESS: Will you stop here, please. Thank
11 you.

12 Q Does, at one point, the sheik say to the pasha,
13 "God knows that you are an apostate and the devil's
14 partner"?

15 A Yes, he does.

16 Q Is the man in fact the devil's partner?

17 A No, he's exaggerating.

18 MR. KHUZAMI: Objection.

19 THE WITNESS: Sorry.

20 THE COURT: I will allow it. Go ahead.

21 A No, he's not. It is just an exaggeration on the
22 part of the sheik, and he's using a religious language that,
23 you know, illustrates that what the pasha did is actually
24 wrong and should not be done. He's using that in a
25 confrontational manner just to point out what that, you

1 know, pasha did is wrong.

2 Q Would you explain the third segment that we are
3 about to see.

4 A It's about a village chief who wants to marry a
5 young girl who is already married to a poor farmer, and he's
6 taking along with him a sheik in order to ask him to give a
7 fatwa to the young woman's husband to divorce her.

8 Q And then what happens?

9 A Actually, after that, also the chief's village,
10 you know, justice of the peace, and they force this poor
11 peasant to divorce the woman, and after that the woman goes
12 to a third sheik asking him for another fatwa where he told
13 her that this is wrong and it's Islamically not correct.
14 And it illustrates -- I'm sorry, I didn't mean to interrupt.

15 Q Does this begin at page 68, 69 and 70?

16 A Yes. It does.

17 (Videotape played)

18 MS. STEWART: Could you just stop that for one
19 moment, Detective.

20 Q Could you just identify the three people in the
21 picture now.

22 A The one in the middle is the poor farmer. The
23 one to the right is the village chief. The one to the left
24 is the sheik.

25 Q Thank you.

1 A This is the second excerpt where he is forcing
2 the farmer to divorce the wife. As you can see, there are
3 two more people in there, bodyguards or police, soldiers are
4 pushing him and forcing him to do so.

5 Q This is at page 70?

6 A Right. As you see, there is another sheik also
7 in the picture. So now two sheiks are trying to convince
8 him.

9 Q Is this the third segment?

10 A Yes, that is the third segment.

11 Q Where does this take place?

12 A In a mosque.

13 Q This is on page 71?

14 A Yes, it's marked Excerpt III.

15 (Videotape played)

16 MS. STEWART: Would you pause it there for a
17 moment.

18 Q Who is the woman?

19 A She is the woman that the village chief wants to
20 marry.

21 Q Thank you.

22 (Videotape played)

23 THE WITNESS: Would you stop here, please.

24 Q Mr. Yousery, are you familiar with the word
25 "fatwa"?

1 A Yes, I am.

2 Q With regard to the thee excerpts we just saw
3 here, how does that word or concept fit into these three
4 excerpts?

5 A Well, the first sheik that we've seen in the
6 first scene gave a fatwa to the poor farmer, telling him
7 that it is right or correct Islamically to follow what the
8 village chief said.

9 The second sheik came on the scene, performed the
10 divorce procedure, also convincing the poor peasant or the
11 farmer that this fatwa should stand. The third fatwa was
12 different and the third sheik basically told the woman that
13 you should not listen to that. This is wrong. It
14 illustrates that a fatwa can be given from different sheiks,
15 and it's not binding. You can go and ask somebody else for
16 a different opinion.

17 Q Did you also prepare a group of excerpts that are
18 labeled "NN"?

19 A Yes, I have, I did.

20 Q Can you tell us to illustrate what concept were
21 they prepared?

22 A I believe the concept is "abu," "the father of."

23 Q I'm sorry.

24 A "The father of."

25 Q Would you tell us what the word "abu" is used as

1 commonly in the Arabic world?

2 A It is used very commonly in the Arabic world or
3 in the Arab world. We use that to call somebody by the name
4 of their first son. So if your first son is Mohammed, your
5 name is Abu Mohammed. If your first, you know, child is a
6 girl, and it's Lynn, so you become Abu Lynn. Things like
7 that.

8 Q Are the excerpts also included in the transcripts
9 that you prepared?

10 A Yes, they are.

11 MS. STEWART: Could we play from NN. I believe
12 it starts at 56 of the transcript.

13 Q Could you tell us about the first one that we are
14 seeing?

15 A Well, there is a bully who is trying to secure a
16 job for himself singing at somebody's wedding, and his name
17 is Hassan, and his son's name is Ali. So they call him Abu
18 Ali.

19 This is a second segment where a person named
20 Jamilah Abu Huraid. She is an Algerian, and her father's
21 name is Abu Huraid, so they call her by Jamilah Abu Huraid,
22 Jamilah, daughter of the father Huraid.

23 Here is a father sitting down awaiting his son
24 coming home, and the mother of the son calls him Abu
25 Hussein, and he calls her Um Hussein.

1 The son is coming home and they are happy because
2 he just graduated. As you see, she calls the father still,
3 Abu Hussein, and the father calls her Um Hussein.

4 Q Page 60, or 80 I'm sorry.

5 A Actually, no, it's 62. This particular scene is
6 62. That is a family gathering, and, you know, a cousin is
7 calling his cousin by the name Abu Ali.

8 This is the final scene, a student who is
9 studying, and he's overhearing conversation from the
10 neighbors, and she's calling her husband Abu Hanafi, a woman
11 is calling her husband by the name Abu Hanafi. That's it.

12 Q In any of these scenes, was the word "abu" used
13 as an alias for someone?

14 A No.

15 Q Now, with regard to 00 --

16 A Yes.

17 Q -- Mr. Yousery --

18 A Yes.

19 Q -- you did the translation for Exhibit 640, which
20 is a conversation between Sheik Omar and Emad Salem, is that
21 right?

22 A Yes, I did.

23 Q At the very end, when Emad Salem leaves he says,
24 "at your service," is that right?

25 A That's right.

1 Q Can you tell us again what the Arabic is for
2 that?

3 A The Arabic word for it is taht amrek.

4 Q Did you hear this expression in Exhibit 950 and
5 951 when you worked with them?

6 A Yes, I did.

7 Q Did you do full translations of those tapes?

8 A No, I did not.

9 Q Were you asked to listen to that specific part?

10 A Yes, I was.

11 Q Is Exhibit 509 a conversation with Sheik Omar and
12 Sayyid Nosair?

13 A Yes.

14 Q Is 951 a conversation between Sheik Omar and
15 Mahmud Abouhalima?

16 A Yes.

17 Q Is this expression used in that?

18 A Yes, it was.

19 Q Could you tell us how this expression is used in
20 Arabic generally.

21 A It is very commonly used among the Arab people.
22 You can say that to a customer if she's coming to the store
23 or if he's coming to a store. You can say that to your son,
24 for instance, if your son wants something from you. You can
25 say to him, "At your service," "taht amrek." It is a normal

1 way of greeting people. You can say that for, in a sense if
2 somebody is coming and asking to marry your daughter, you
3 can as well say the same thing, taht amrek, or "at your
4 service."

5 Q Did you prepare illustrations of this as the ones
6 we have seen before?

7 A Yes, two very short excerpts.

8 MS. STEWART: Can we put in 00.

9 Q Is this at the beginning of the transcript?

10 A Yes, it is. It is 54.

11 (Videotape played)

12 THE WITNESS: That is the end of the first
13 excerpt.

14 (Videotape played)

15 THE WITNESS: That's it.

16 MS. STEWART: Thank you.

17 Judge, I misspoke when I said Exhibits 950 and
18 951. I had meant to refer to 850 and 851.

19 THE COURT: OK.

20 Q Mr. Yousery, did you have certain disagreements
21 with the government with regard to translations on various
22 CM tapes?

23 A Yes, I did.

24 Q Directing your attention to CM46, which I believe
25 is 348 in evidence, and CM6, which I believe is Exhibit 306

1 in evidence, did you provide alternative translations for
2 those particular CM's or portions thereof?

3 A Yes, I did.

4 Q Can you indicate in the government translation
5 how disagreements were indicated?

6 A They were underlined.

7 Q I would show you your translation of CM46, 348TZ,
8 Abdel Rahman. Do you recognize that to be your translation
9 of this particular tape?

10 A Yes, I do.

11 MS. STEWART: Judge, we will move in those
12 portions only that are in disagreement with the government.

13 MR. KHUZAMI: No objection.

14 THE COURT: All right. Those are received.
15 Those portions of 348TZ.

16 (Abdel Rahman Exhibit 348TZ for identification
17 was received in evidence)

18 Q Did you also prepare an excerpt from CM6, Exhibit
19 306?

20 A Yes, I did.

21 Q Is that excerpt marked 306TZ, and was that handed
22 out to the jury on Thursday?

23 A Yes, I believe it was.

24 Q To the best of your ability, is that a true and
25 accurate translation?

1 A Yes, it is.

2 MS. STEWART: I would move that also in, Judge.

3 MR. KHUZAMI: No objection.

4 THE COURT: All right. That is received without
5 objection, as well.

6 (Abdel Rahman Exhibit 306TZ for identification
7 was received in evidence)

8 Q Did you also prepare a portion of the translation
9 of the Danish tape, Exhibit 550?

10 A Yes, I did.

11 Q And was that portion to the best of your ability
12 to translate?

13 A Yes.

14 Q And is that numbered Exhibit 550TZ Abdel Rahman?
15 Is the number right?

16 A That's 550T, page 10.

17 Q Abdel Rahman?

18 A Yes.

19 MS. STEWART: I would move that into evidence,
20 Judge.

21 THE COURT: That is 550T?

22 MS. STEWART: I think it's Z.

23 MR. KHUZAMI: No objection.

24 THE COURT: All right. 550TZ is received without
25 objection.

1 (Abdel Rahman Exhibit 550TZ for identification
2 was received in evidence)

3 Q Mr. Yousery, I call your attention to Exhibit 808
4 in evidence. Can you identify that for us.

5 A I don't have it on me. Thank you.

6 It is one page written in Arabic.

7 Q What do you recognize that to be?

8 A It is --

9 Q Strike that.

10 Was this a document that was entered into
11 evidence by Abdel Rahman Haggag, if you know?

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained.

14 Q Could you tell us what the subject matter of this
15 particular document is.

16 A It is criticism of the Saudi government.

17 Q I believe you testified that you have translated
18 materials, particularly the materials of Sheik Omar. How
19 many pages total would you say you have translated in the
20 last two years?

21 A About three volumes, four volumes. It's an
22 enormous amount.

23 Q And do these include sermons?

24 A Yes.

25 Q Speeches?

1 A Yes.

2 Q Press conferences?

3 A Yes.

4 Q Question-and-answer periods?

5 A Yes.

6 Q FISA tapes?

7 A Yes.

8 Q "The Word of Truth"?

9 A "A Word of Truth," yes.

10 Q When you translated this particular document at
11 my request orally, what is your opinion as to whether or not
12 this particular document was authored by Sheik Omar?

13 MR. KHUZAMI: Objection.

14 THE COURT: Do you have an opinion?

15 MS. STEWART: Pardon me?

16 THE COURT: Do you have an opinion as to whether
17 the words in that document were authored by him?

18 THE WITNESS: Yes, I do.

19 THE COURT: He can testify to what it is.

20 A I don't think it was authored by Dr. Omar Abdel
21 Rahman.

22 Q What is the reason for that?

23 A It is written by someone who is not educated.

24 It's plainly in street, slang language. It does not quote
25 from the Koran. The Arabic grammar is all wrong, mostly on

1 the first page. It does not use any support from the
2 Prophetic tradition. Those are very clear in Sheik Omar
3 Abdel Rahman's writing, speeches and lectures. This front
4 and back page here does not appear to be authored by him at
5 all.

6 Q You have to back off the mike a little bit.

7 A OK.

8 Q Directing your attention to bootleg 39, which is
9 Exhibit 639-1 in evidence, did you have any disagreement
10 with the translation of this particular item?

11 A Yes, I did.

12 Q Can you tell us with what was your disagreement?

13 A My fundamental disagreement with this particular
14 portion was a word used in Arabic, wajha.

15 MS. STEWART: Judge, I wonder if the jury could
16 look at Mr. Yousery's translation. I believe it is 639TZ,
17 which was handed out in a rubber band on Thursday when we
18 did not have the help of Ms. Schwartz here.

19 THE COURT: If they have it they can look at it.

20 Q Mr. Yousery, can I refer you to the first page of
21 that exhibit and ask you where is the word that is your
22 disagreement with the government.

23 A It is on the fifth line. Where it says "we,"
24 three dots, "the sheik must remain a symbol."

25 Q How did the government translate the word for

1 "symbol"?

2 A They translated it as "a front."

3 Q Were you present in court during the testimony,
4 or during some of the testimony of Emad Salem?

5 A Yes, I was.

6 Q Do you remember that Mr. McCarthy asked him a
7 question with regard to this?

8 MR. KHUZAMI: Objection.

9 THE COURT: Sustained.

10 Q Do you recall a point in his testimony where he
11 was asked to give an --

12 MR. KHUZAMI: Objection.

13 THE COURT: Sustained. There's no way to do it.
14 So instead of thinking of a way to do it, please move on to
15 something else.

16 Q Is there more than one word for the word "front"
17 in Arabic?

18 A Yes, there is.

19 Q Could you tell us the words as you know it that
20 would mean the word "front"?

21 A Gabha.

22 Q What is the word that was used in CM39?

23 A "Wajha."

24 Q What is the fair meaning of that in Arabic?

25 A It means "a symbol."

1 Q And the word "front," what is the definition of
2 the word "front" in Arabic?

3 A It's front of a building, military front. It
4 does not mean the same thing in English. In other words,
5 the word "front" or the concept "front" as a person who
6 stands and people hide behind him, in Arabic we don't say
7 "front," we say "cover."

8 So the concept is different.

9 Q And it is your testimony that the word wajha --
10 MR. KHUZAMI: Objection to form.

11 THE COURT: Sustained as to form.

12 Q Mr. Yousery, the word "wajha" in Arabic as used
13 in bootleg 39, Exhibit 639, does that mean "symbol"?

14 A Yes.

15 MR. KHUZAMI: Objection to to form.

16 THE COURT: Sustained.

17 Q What does it mean?

18 A The word "wajha" means --

19 THE COURT: He's already testified to that.

20 Would you please move to something else. Thank you.

21 Q Mr. Yousery, there were words in your
22 translations that were not translated from the Arabic, is
23 that correct?

24 A Yes, that's correct.

25 Q Is the word "Allah" one of those words?

1 A No, it is not.

2 Q What does the word "Allah" mean?

3 A It means God.

4 MS. STEWART: I have no other questions, Judge.

5 THE COURT: May I see counsel at the side
6 briefly.

7 (Continued on next page)

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IPT

1 (At the side bar)

2 THE COURT: Does anybody else have questions of
3 this witness?

4 MR. STAVIS: No, but I have a witness out of turn
5 who is the next witness.

6 MS. STEWART: Tomorrow?

7 MR. STAVIS: Yes, I didn't know if you wanted to
8 discuss schedule.

9 THE COURT: How long is your cross?

10 MR. KHUZAMI: It will be probably 20 minutes, a
11 half hour.

12 THE COURT: We will break.

13 (In open court)

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

18 (The jury was excused)

19 THE COURT: You can step down.

20 THE WITNESS: Thank you.

21 (Witness excused)

22 THE COURT: Yes, Ms. London?

23 MS. LONDON: Yes, your Honor. Tomorrow morning I
24 expect to be absent from the courtroom for about 45 minutes
25 in the early part of the morning.

1 THE COURT: In the beginning of the day?

2 MS. LONDON: Yes, from about quarter to 10 until
3 about 10:30, your Honor. The lawyer who has been associated
4 with me on the case, I move his admission to the Southern
5 District. Mr. Elhassan has consented to my absence. I have
6 spoken with co-counsel, and I don't believe there will be
7 any witnesses with testimony that relate to Mr. Elhassan.

8 THE COURT: Is that satisfactory to you,
9 Mr. Elhassan? Yes? I am not getting any response.

10 DEFENDANT ELHASSAN: Yes.

11 MS. LONDON: He said yes it is, your Honor.

12 THE COURT: Thank you.

13 MS. LONDON: Mr. Jacobs will cover for me.

14 THE COURT: Thank you.

15 Is there something about a witness out of order?

16 Is that something I have to deal with?

17 MS. STEWART: No, I think we can work it out,
18 Judge. We are just going to --

19 THE COURT: Fine. I am supposed to see counsel
20 inside, correct?

21 MR. JACOBS: Correct.

22 (Pages 14969 to 14976 sealed)

23 (Proceedings adjourned to Tuesday July 25, 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

July 25, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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United States Attorney for the
Southern District of New York

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1 (Pages 14981 through 14994 sealed)

2 (In open court; jury not present)

3 MR. SERRA: Your Honor?

4 THE COURT: Yes.

5 MR. SERRA: With the court's permission, Mr.

6 Ricco, who is available, will not be sitting in court this
7 morning. So Mr. Hueston will be instead, and I will be
8 available to consult.

9 THE COURT: Is that all right, Mr. El-Gabrowny?

10 DEFENDANT EL-GABROWNY: Yes.

11 THE COURT: Thank you.

12 MR. SERRA: Thank you, your Honor.

13 THE COURT: Thank you, Mr. Hueston.

14 Mr. Yousery, you can come on up.

15 MOHAMED, YOUSRY, resumed.

16 (Jury present)

17 THE COURT: Good morning, ladies and gentlemen.

18 JURORS: Good morning, your Honor.

19 THE COURT: Good morning, Mr. Yousery.

20 You are still under oath.

21 THE WITNESS: Yes, your Honor.

22 THE COURT: Cross.

23 MR. KHUZAMI: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. KHUZAMI:

1 Q Good morning, sir.

2 A Good morning.

3 Q Now, Mr. Yousery, you testified yesterday that
4 you had a disagreement with the government's translation or
5 part of the translation on tape 39, is that correct?

6 A Yes, sir, that's correct.

7 Q Tape 39, the corresponding transcript that you
8 did was the exhibit 639TZ, is that right?

9 A That's right.

10 Q That is a conversation between Dr. Abdel Rahman,
11 Siddig Ali and Emad Salem, correct?

12 A Correct.

13 Q A couple of times in that conversation Sheik
14 Rahman, according to your translation, indicates that he
15 wants to be a symbol for Muslims, is that correct?

16 A That's correct.

17 Q The government translated the Arabic word as
18 "front," correct?

19 A Correct.

20 Q Both you and the government translators agree on
21 the word that Sheik Abdel Rahman used, is that correct?

22 A That's right.

23 Q And he used the word "wajiha" or "wagiha," is
24 that correct?

25 A Yes.

1 Q So there is no dispute that he used that word?

2 A No.

3 Q You also told us, I believe, during your direct
4 examination last week, that preparing accurate transcripts
5 can be a very slow and tedious process, is that right?

6 A That's true.

7 Q And sometimes you have to listen to the tape over
8 and over again to make sure that you get it right?

9 A Right.

10 Q And that what you do when you do that is
11 translating as opposed to interpreting, and I think you gave
12 the example of the courtroom interpreters, they do
13 interpreting?

14 A Right.

15 Q As a translator, your job is to figure out
16 exactly what was said, exactly what the speaker said and
17 translate those words as accurately as possible into
18 English, is that right?

19 A That's right.

20 Q When you translate, as opposed to interpret, you
21 have time to consult reference materials, is that right?

22 A That's right.

23 Q You can use dictionaries, for example, is that
24 right?

25 A Right.

1 Q I think you described a dictionary as a tool that
2 translators use to get the job done right, correct?

3 A That's correct.

4 Q You gave the example of like a lawyer looks up a
5 case in a book or a doctor does the same, correct?

6 A That's true.

7 Q So I assume when you heard Sheik Omar Abdel
8 Rahman use the word "wajiha" or "wagiha," the first thing
9 you did was look the word up in the dictionary?

10 A No, I did not.

11 Q You didn't look it up.

12 Did you ever look up the word in the dictionary?

13 A After I found out it was disputed, I did.

14 Q OK. What dictionary did you use?

15 A I used Arabic-to-Arabic dictionaries.

16 Q Are you familiar with the Al-Mawrid

17 Arabic-to-English dictionary?

18 A Yes.

19 Q That Arabic-to-English dictionary is a dictionary
20 that gives you the Arabic word and then gives you a
21 corresponding English translation, is that correct?

22 A That's correct.

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

24 THE COURT: Yes.

25 Q Let me show you, Mr. Yousery, what's been marked

1 as Government Exhibit 35153A for identification and ask you
2 to take a look at that, and I believe there is a yellow
3 Post-it on the page. I believe it's 1217 where the word
4 "wajiha" or "wagiha" is listed.

5 MS. STEWART: Do you have a copy of that, Mr.
6 Khuzami?

7 Q Do you see that word listed there, Mr. Yousery?

8 A Yes, I do.

9 Q It gives three definitions for that word, is that
10 correct?

11 A Yes, it does.

12 Q Could you read for us the first definition that's
13 listed.

14 A The first says "front."

15 Q "Front."

16 And "front" is the way that the government
17 translator translated the word "wajiha," is that correct?

18 A That's right.

19 Q Could you read the other two definitions listed
20 after the word "front."

21 A "Face, front, part."

22 Q Nowhere in these three definitions do you see the
23 word "wajiha" defined as "symbol," do you?

24 A No.

25 Q If you would please go to page 595 of the same

1 book, I believe it is also marked with a yellow Post-it, for
2 a definition of the word "ramz," R-A-M-Z.

3 A I see it.

4 Q What is the first definition given for the word
5 "ramz"?

6 A "Symbol."

7 Q Dr. Abdel Rahman when he spoke on tape 39 did not
8 use the word "ramz," is that correct?

9 A No, he did not.

10 Q Now, does the same dictionary, Al-Mawrid, also
11 make an English-to-Arabic dictionary, is that correct?

12 A I believe so.

13 Q And in an English-to-Arabic dictionary, they give
14 you the English word and then the Arabic definition, is that
15 correct?

16 A That's right.

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

18 THE COURT: Yes.

19 Q Let me show you what's been marked as Government
20 Exhibit 35153B for identification. I ask you if you would
21 look up the word "front."

22 Do you see that?

23 A Yes.

24 Q It lists a number of different definitions for
25 the word "front," is that correct?

1 A That is correct.

2 Q If you go to the sixth definition, it uses the
3 word "wajiha," is that correct?

4 A That's true.

5 Q Can you read for the court the first definition
6 of the word "wajiha" under the listing for the word "front."

7 A It says "face."

8 Q And No. 6?

9 A No. 1 you asked for, right?

10 Q Six. After the reference to "wajiha"?

11 A It says, "A person who is trying to conceal an
12 identity of somebody else."

13 Q Does it also make a reference to, aside from
14 concealing the identity, taking a certain means to hide a
15 certain fact?

16 A Yes.

17 MS. STEWART: Judge, may I see what Mr. Khuzami
18 is referring to.

19 MR. KHUZAMI: Certainly.

20 Q The definition of "wajiha" in this
21 English-to-Arabic dictionary, which is listed under the word
22 "front," lists as one of the definitions, "Person or
23 something that takes a certain means to hide a certain
24 fact," is that correct?

25 A In this dictionary.

1 Q Anywhere in that definition of the word "front,"
2 does it define it as "symbol"?

3 A In this Lebanese dictionary, no.

4 Q Let's check another dictionary.

5 MR. KHUZAMI: May I approach, your Honor?

6 THE COURT: Yes.

7 Q I show you what's been marked as Government
8 Exhibit 35153C for identification, Arabic-English
9 dictionary, "Hans Wehr Dictionary of Modern Written Arabic."
10 I wonder if you could take this and look up the
11 word "wajiha." I think it is also marked, I believe, on
12 page 1054. Do you see that?

13 A Yes, I do.

14 Q What is the first definition under the word
15 "wajiha"?

16 A "Face."

17 Q And the second?

18 A "Outside."

19 Q The second one is the word "front" --

20 A "Front."

21 Q I'm sorry?

22 A "Front."

23 Q "Front" is the second definition, correct?

24 A Right. That's correct.

25 Q And it doesn't list the word "symbol" anywhere

1 there, does it?

2 A It does not.

3 Q Mr. Yousery, do you know of a single Arabic
4 English dictionary that lists as the definition of the word
5 "wajiha" the word "symbol"?

6 A I don't use Arabic-to-English first. First I use
7 "Arabic to Arabic" to understand the meaning of the word.

8 Q You use an Arabic-to-Arabic dictionary?

9 A Absolutely, yes, sir.

10 Q Do you know whether or not persons who write
11 Arabic-to-Arabic dictionaries have an understanding of the
12 English language?

13 A The point is not to translate from Arabic to
14 English --

15 Q I'm sorry. If you can please answer the
16 question.

17 THE WITNESS: I'm sorry. I didn't get the
18 question.

19 THE COURT: Could you repeat it, please.

20 Q Do you know whether or not persons who write
21 Arabic-to-Arabic dictionaries have a full and complete
22 understanding of the English language?

23 A No.

24 Q No, you don't know?

25 A I don't know.

1 Q You told us a lot in your testimony about
2 concepts, is that correct?

3 A That's right.

4 Q You told us that some things don't translate from
5 Arabic to English accurately or correctly, is that correct?

6 A That's right.

7 Q So you take it upon yourself to come up with what
8 you think is the most accurate English translation of the
9 Arabic concept, is that right?

10 A Within the context, yes.

11 Q That is a decision that you make as a translator,
12 correct?

13 A I put it in brackets as a translator note.

14 Q The answer to my question is, yes, that's a
15 decision you make as the translator, correct?

16 A Yes.

17 Q In other words, you describe what can be
18 accurately translated -- withdrawn.

19 For these concepts, I think you described in your
20 testimony that your role as you see it is in some sense to
21 fill in the cultural gaps between the Arabic and the English
22 languages, correct?

23 A Correct.

24 Q Were you filling in cultural gaps when you
25 translated "wajiha" as "symbol" rather than "front"?

1 A I was not.

2 Q You were not.

3 In your direct examination, you told us also that
4 you've done more for Sheik Omar Abdel Rahman than just
5 translate tapes and documents, correct?

6 A Correct.

7 Q You have attended meetings with the defense
8 lawyers, is that correct?

9 MS. STEWART: Objection, Judge.

10 THE COURT: It allow it. Did you?

11 Q Yes or no.

12 A Yes, I did.

13 Q And you have attended meetings with the
14 defendants as well, is that correct?

15 A I'm sorry. I didn't hear you.

16 Q You attended meetings with the defendants as
17 well, correct?

18 A Not without the lawyer.

19 Q And you've also attended meetings with Sheik Omar
20 Abdel Rahman and his lawyers, correct?

21 A Correct.

22 MS. STEWART: Objection, Judge.

23 THE COURT: Overruled.

24 Q Now, do you recall also translating pages 51 and
25 52 of Exhibit 306T? Do you recall that?

1 A If I take a look at it, I'll --

2 Q Sure.

3 A Yes.

4 Q If you turn to the second page, please, the third
5 attribution from the top, do you see that?

6 A I do.

7 Q That is an attribution where you've translated
8 Siddig Ali's statements as, "You wouldn't tell him what you
9 are going to do. You -- no, you ask him what is right and
10 what is wrong, that's his way and that's it." Correct?

11 Do you see that?

12 A Yes, I do.

13 Q And the "him" that Siddig Ali is referring to is
14 Sheik Omar Abdel Rahman, correct?

15 A Correct.

16 Q Now, the words "right" and "wrong" that you
17 translated there, are the Arabic words "halal" and "haram,"
18 is that right?

19 A I'm not sure. I have to see my notes.

20 Q Do you have your notes with you?

21 A I believe it's in the other room.

22 Q Well --

23 A If you have the tape I can listen to it.

24 Q OK. The word "halal," is translated as "lawful
25 or legal or permissible," is that correct?

1 A Within the religious context, yes.

2 Q And the word "haram is translated as "prohibited
3 or forbidden or illicit," correct?

4 A Within the religious context, yes.

5 MS. STEWART: I can't hear the --

6 THE COURT: He said --

7 THE WITNESS: Within the religious context, yes.

8 Q So if the words "halal" and "haram" are spoken on
9 CM6, which is Exhibit 306T, those would be accurate
10 translations of those words, correct?

11 A If they were referring to a religious matter,
12 yes.

13 (Continued on next page)

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1 Q And the words right and wrong, do you know
2 whether or not those are listed in the dictionaries as
3 definitions of halal and haran?

4 A Of right and wrong, I am not sure.

5 Q Why don't you pick up again, please, if you
6 would, the Al-Mawrid Arabic to English dictionary --

7 A I believe you took it already.

8 Q I am sorry, it is on your right.

9 Q Would you please look up in there the word halal.

10 A Yes, I see it.

11 Q That is defined as lawful or legal or licit or
12 permissible, is that right?

13 A It is mentioned twice, actually.

14 Q Do you see those definitions?

15 A Yes.

16 Q Do you see the word right listed in there?

17 A No, I don't.

18 Q If you look up the word haram, which I believe
19 refers you to the word moharam, which is also marked?

20 A Yes, I see that.

21 Q That is defined as prohibited or forbidden or
22 illicit, is that right?

23 A Within an Islamic context, yes.

24 Q There is no -- the word wrong is not cited as a
25 definition of the word moharam, is that right?

1 A That is right.

2 MR. KHUZAMI: Your Honor, I have no further
3 questions, but I would offer into evidence excerpts from the
4 dictionaries cited by the witness. That is Government's
5 Exhibits 35153A, 35153B and 35153C, which contain just the
6 excerpted pages.

7 MR. JABARA: No objection.

8 THE COURT: 35153A, B and C are received without
9 objection.

10 (Government's Exhibits 35153A, B and C received
11 in evidence)

12 THE COURT: Miss Stewart.

13 (Continued on next page)

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1 REDIRECT EXAMINATION

2 BY MS. STEWART:

3 Q Mr. Yousry, I would just like you to look at
4 35153A and B now in evidence.

5 A What is that exactly?

6 Q The government's dictionary pages.

7 A Which one?

8 Q The dictionary you are holding in your hand, what
9 is the name of that?

10 A It is Arabic to English dictionary.

11 Q Pardon me.

12 A It is Al-Mawrid Arabic to English dictionary.

13 Q Is the name of that Al-Mawrid?

14 A Right. This is 1993 edition.

15 Q Would you characterize this particular dictionary
16 for us.

17 A This is a dictionary written by a Lebanese
18 scholar.

19 Q What?

20 A A Lebanese scholar.

21 Q A what scholar?

22 A Lebanese scholar.

23 Q Do you know of other dictionaries, Arabic to
24 English and English to Arabic?

25 A Yes, I do.

1 Q Can you tell us as an expert who is which is the
2 most reliable Arabic to English and English to Arabic
3 dictionary?

4 A Alias.

5 Q Can you spell that.

6 A It is A-L-I-A-S.

7 Q You indicated to Mr. Khuzami that when you are
8 translating a word you first consult an Arabic to Arabic
9 dictionary?

10 A Yes.

11 Q Is that right?

12 A That is right.

13 Q What is the purpose of doing that?

14 A Some words are not used in modern time.
15 Classical Arabic mostly is not used in today's world, so you
16 have to look it up in Arabic dictionary in order to
17 understand its original meaning, and that is why I look it
18 up.

19 Q Did you look up the word wagiha in the Arabic to
20 Arabic dictionary?

21 A Yes, I did.

22 Q Why did you look it up?

23 A I looked it up after I found out the government
24 is contesting that.

25 Q What did you find in the Arabic to Arabic

1 dictionary, whose name I won't try to pronounce, that you
2 used?

3 A I used an Arabic to Arabic called the Ocean of
4 the Oceanss, which is the oldest Arabic to Arabic
5 dictionary, and I found out that the translation of wagiha
6 from Arabic to Arabic means something to refer to.

7 Q Means something --

8 A Something to refer to, something that you can use
9 as a kanaya. The word kanaya in Arabic means like a satire.

10 THE COURT: Can you spell that for the reporter.

11 THE WITNESS: K-A-N-A-Y-A. You can use it for
12 something else.

13 Q When you look up a word in a dictionary, you get
14 a literal meaning, do you not?

15 A Yes.

16 Q In translating, do you use literal meanings only?

17 A No, we don't.

18 Q I think you mentioned context in your answers.

19 A Yes, I do.

20 Q Would you discuss literal meanings and context
21 with connection with translation.

22 MR. KHUZAMI: Objection to form.

23 THE COURT: Rephrase that.

24 Q What do you mean by context and literal
25 translations, literal meanings in connection with

1 translations?

2 A If I may use an example, for instance here,
3 salespeople in the United States say they are going to make
4 cold calls, and if you translate that into Arabic, it does
5 not have any meaning at all because that particular concept
6 does not exist in Arabic. So you cannot say the cold call.

7 Q Cold call?

8 A Cold call, meaning they going to call somebody
9 from scratch, start a new business, start a new account, get
10 somebody to buy something for them. In Arabic that does not
11 exist, so you can't translate it as a cold call. You have
12 to tell them what that means. Words like when hell freezes
13 over, in Arabic they mean when I shave my mustache, things
14 that are impossible to happen.

15 In particular the word wagiha was used more than
16 once, on the CM's -- I am sorry, the FISA's. Sheik Abdel
17 Khalik was mentioning to Sheik Omar Abdel Rahman that there
18 is a teacher someplace and Sheik Omar said that he does not
19 teach any more, he just review thesis and verses and Sheik
20 Khalik that's a wagiha and that does not represent a front
21 that people hide behind. That is a symbol for institution
22 where people can go and enroll where this person is.

23 Q Could I just interrupt you a moment?

24 A Sure, please.

25 Q You said that this tape is a FISA that was moved

1 into evidence, is that right?

2 A Yes, that is right.

3 Q It is a conversation between Imam Abdel Khalik
4 and Dr. Abdel Rahman, is that right?

5 A That is right.

6 Q And you say that where you translated the word
7 symbol it was the word wagiha, is that right?

8 A Right.

9 Q Have you seen the word used in context in other
10 situations, other than the transcripts and the tapes in this
11 case?

12 A Yes, I have.

13 Q Could you tell us where?

14 A In Arabic newspapers.

15 Q Can you tell us the context that it was used in
16 there?

17 A There was a person who died, and he was described
18 by his colleagues to be a wagiha for all the artists in
19 Egypt, because he led a perfect life. He was always home on
20 time, he never, you know, have any secrets in his life, and
21 that represented a wagiha, for all artists.

22 Q I would like you to look at, if you have up there
23 the government's Exhibit 35153C -- that's the Hans Wehr
24 dictionary.

25 A Which dictionary?

1 Q Hans Wehr. The author is W-E-H-R, a Dictionary
2 of Modern Written Arabic.

3 A Yes, I have that. I found it.

4 Q Why don't I show you mine. It's just easier, I
5 think.

6 MS. STEWART: May I approach, Judge?

7 THE COURT: Yes, you may.

8 A Yes.

9 Q The definition that you repeated for Mr. Khuzami
10 for wagiha was face, comma, front, semi-colon, is that
11 right?

12 A Right.

13 Q In your understanding does that mean front taken
14 as the same meaning as face, meaning the face of a building,
15 the front of a building?

16 A Right.

17 Q It does not mean a front you hide behind?

18 A Right.

19 Q Mr. Khuzami asked you about attending meetings of
20 the defendants and attending meetings of counsel with
21 Dr. Abdel Rahman. What was your purpose in attending these
22 meetings?

23 A I used to serve as an interpreter for the
24 lawyers.

25 Q As a?

1 A Interpreter for the lawyers.

2 Q Is that all you did at these meetings?

3 A That's all what I did.

4 Q Mr. Khuzami asked you about the words halal and
5 haram.

6 A Right.

7 Q Basically as meaning licit and illicit, those two
8 words, is that right?

9 A Right.

10 Q Within the religious context, are there
11 gradations of meaning between saying something is licit and
12 something is illicit?

13 A Yes, there is.

14 Q Could you tell us what those gradations are?

15 A First I will say that in Arabic it is mubah,
16 M-U-B-A-H, mustahw, M-U-S-T-A-H-W, and then makrouh,
17 M-A-K-R-O-U-H, and that translated as recommend, neutral,
18 discourage.

19 Q Discouraged was that last word?

20 A Right.

21 MS. STEWART: I have nothing further, Judge.

22 THE COURT: Anything else, Mr. Khuzami?

23 MR. KHUZAMI: No, your Honor.

24 THE COURT: Thank you. You are excused.

25 THE WITNESS: Thank you.

1 (Witness excused)

2 MR. PATEL: Your Honor, at this time we call

3 Mr. Ehteshamul Haque.

4 EHTESHAMUL HAQUE,

5 called as a witness by the defense,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PATEL:

9 Q Mr. Haque, I am going to ask you to speak into
10 the microphone, speak slowly and keep your voice up. As you
11 can see, this is a large courtroom and it is often difficult
12 to hear.

13 Mr. Haque, are you here in response to a
14 subpoena?

15 A Yes.

16 Q Could you tell the ladies and gentlemen of the
17 jury where you were born.

18 A Bangladesh.

19 Q How long have you been in the United States?

20 A Fifteen years.

21 Q Do you have a green card?

22 A Yes.

23 Q Are you married?

24 A Yes.

25 Q Do you have children?

1 A Yes.

2 Q Could you tell the ladies and gentlemen of the
3 jury about your educational background.

4 A I have a bachelor's degree with honors in
5 statistics.

6 Q Is that statistics?

7 A Right. Master's in statistics. I have finished
8 my Ph.D course work in industrial engineering operation
9 research from Polytechnic University in Brooklyn, New York.

10 Q Have you ever received a security clearance from
11 any branch of the United States government?

12 A Yes.

13 Q What level of security clearance did you receive?

14 A They call it TSC.

15 Q What does that mean?

16 A Top security clearance.

17 Q What did you receive that security clearance in
18 reference to?

19 A To work on a defense project.

20 Q What project was that?

21 A Patriot missile.

22 Q Is that the Patriot missile system?

23 A Yes.

24 Q Since you have come to this country, have you
25 ever been employed as a teacher?

1 A Yes.

2 Q Where was that?

3 A New York, Queens, New York.

4 Q In what school?

5 A St. John's University.

6 Q When was that?

7 A 1986-76 academic year.

8 Q Are you currently employed?

9 A Yes.

10 Q What are you currently employed as?

11 A A convenience store manager.

12 Q We have met before, have we not?

13 A Yes.

14 Q You spent some time talking to me in my office
15 yesterday?

16 A Yes.

17 Q You have also spoken with representatives of the
18 FBI, have you not?

19 A Yes.

20 Q Have you ever met Mr. Nosair?

21 A No.

22 Q Have you ever spoken with him?

23 A No.

24 Q Were you employed in November of 1990?

25 A Yes.

1 Q How were you employed?

2 A New York City yellow cabdriver.

3 Q Had you been driving a cab prior to November
4 1990?

5 A Yes.

6 Q For how long had you been driving a cab?

7 A Three years, approximately.

8 Q Prior to November 1990, had you ever driven a cab
9 in the area of Lexington Avenue and 48th Street here in
10 Manhattan?

11 A Yes.

12 Q About how often would you say that you drove a
13 cab in that area?

14 A Approximately ten times in a given shift of 12
15 hours.

16 Q How many shifts a week did you work?

17 A One shift.

18 Q One shift a week or one shift a day?

19 A One shift a day?

20 Q How many days a week did you work?

21 A Sometimes five days, sometimes six days,
22 sometimes seven days.

23 Q So during that time you were in the area of
24 Lexington Avenue and 48th Street 10 or 15 times --

25 MR. KHUZAMI: Objection to form.

1 THE COURT: Sustained as to form.

2 Q I would like to direct your attention to shortly
3 after 9:00 p.m. on the evening of November 5, 1990. Were
4 you working at at that time?

5 A Yes.

6 Q Where were you working at that time?

7 A 48th Street and Lexington Avenue.

8 Q Were you driving a cab at that time?

9 A Yes.

10 MR. PATEL: Your Honor, if I may set up the
11 diagram.

12 Q Mr. Haque, could I ask you to step down and
13 approach what I have set up, which has been marked
14 Government's Exhibit 4 with a plastic overlay which has been
15 marked Government's Exhibit 4A.

16 (Witness steps down from witness stand)

17 Q Mr. Haque, could I ask you to draw on
18 Government's Exhibit 4A with the magic marker in your hand
19 how you got onto Lexington Avenue, just with a dotted line.

20 A From Park Avenue, making a right turn over here.

21 Q Did your cab come to a halt at some point?

22 A Yes.

23 Q Why was that?

24 A A gentleman flagged down the cab.

25 Q Where did the cab come to a halt?

1 A Right here.

2 Q Why don't you draw a box to symbolize the cab and
3 just write "taxi" inside it.

4 That was directly in front of the post office?

5 A Yes.

6 Q What were the lighting conditions in the area
7 that evening?

8 A Street lights.

9 Q Were there any lights outside the post office?

10 A No.

11 Q When you came to a halt outside the post office,
12 can you tell the ladies and gentlemen of the jury what
13 happened?

14 A A gentleman flagged down the cab over here, so I
15 pulled over right near the car. Then I observed one
16 gentleman running straight across diagonally, empty-handed,
17 nothing on his hand, another gentleman right right behind
18 this man number one, person number one, another gentleman
19 chasing him with a gun on his hand, and there approximately
20 3 to 5 feet there are three other people right behind man
21 number two.

22 Q The man number one was running in what direction?

23 A Direction towards the post office.

24 Q How was he running?

25 A He was running particularly for his life, trying

1 to get away from the gunman.

2 Q How far was man number two -- how far behind man
3 number one was man number two?

4 A Approximately five feet, five to six feet.

5 Q Was there anybody by the post office?

6 A The postal police officer.

7 Q Was there anything obstructing your view of the
8 postal police officer?

9 A No.

10 Q Did the postal police officer have anything in
11 his hand?

12 A A gun.

13 Q When you first saw the postal police officer, was
14 the gun in his holster or or in his hand?

15 A On his hand -- in his hand.

16 Q The man number one -- could you indicate for the
17 ladies and gentlemen --

18 THE COURT: Mr. Patel, you can't be heard.

19 MR. PATEL: I am sorry, your Honor.

20 Q Could you indicate, just point with your hand
21 where the entrance to the post office is.

22 A Right here.

23 Q Where is the sidewalk?

24 A This is the sidewalk.

25 Q Did man number one ever get to the sidewalk?

1 A Yes, he did.

2 Q What happened when he got to the sidewalk?

3 A The man number one got shot.

4 Q Who shot man number one?

5 A Postal police officer.

6 Q Was that the only shot you heard that evening or
7 saw that evening?

8 A No.

9 Q What was the first shot that you saw fired that
10 night?

11 A I saw a flash, flash of light going out and
12 directly hitting man number one, which unarmed person.

13 Q Who fired the first shot?

14 A Postal police officer.

15 Q Did anyone fire a shot after the postal police
16 officer fired?

17 A Man number two fired back.

18 Q Was man number two on the street or on the
19 sidewalk?

20 A On the sidewalk.

21 Q Could you indicate where man number one was, with
22 a "1," when he was shot.

23 A This is man number one.

24 Q Where was man number two when he fired at the
25 postal police officer?

1 A Directly behind him, behind the man number one.

2 Q After these shots, were there any other shots
3 fired that night?

4 A Yes.

5 Q What did you see?

6 A After the second shot, after the fire is being
7 returned from man number two, postal police officer fired
8 back again. At that particular point, I ducked down inside
9 my cab, for my own safety.

10 Q What did you see on the street just before you
11 ducked down?

12 A Man number one fell down on the ground.

13 Q What happened to the postal police officer, sir?

14 A He also falling to the ground.

15 Q Did you see any blood around where man number one
16 was?

17 A Yes, I did.

18 Q What about around the postal police officer?
19 Were you able to see any blood?

20 A I don't remember.

21 Q What about man number two? What about him?

22 A He was also down on the ground.

23 Q Were you able to see any blood down on the ground
24 where man number two was?

25 A I don't remember.

1 Q I think you can return to the witness stand.

2 (Witness resumes stand)

3 Q Mr. Haque, I would like to approach you with two
4 pictures, Government's Exhibits 6D and 6U -- which I think,
5 your Honor, may be in the jury's books if they have those
6 books.

7 Mr. Haque, I am showing you what has been marked
8 as Government Exhibit 6U in evidence. Do you see that?

9 A Yes.

10 Q Would you circle on this copy of the exhibit
11 where your cab was that evening. Mark with an X with that
12 red magic marker.

13 MR. PATEL: Your Honor, I will show this to the
14 government now. It doesn't show up terribly well.

15 THE COURT: Do you want to circulate it?

16 MR. PATEL: If I may, your Honor.

17 THE COURT: Go ahead.

18 MR. PATEL: I will show it to Mr. Khuzami first.
19 Your Honor, the witness made a red mark right by
20 the curb. It is a little difficult to see but I believe the
21 jurors will see it.

22 Q Mr. Haque, I am showing you Government Exhibit 6D
23 in evidence. Is that the position that the first man fell
24 in after he was shot?

25 A Yes.

1 MR. PATEL: Your Honor, may I also display this
2 to the jury?

3 THE COURT: Yes.

4 Q After you heard these shots and you ducked down,
5 what did you do?

6 A When the firing stopped, then I got back to my
7 seat, and tried to drive off from there.

8 Q And did you leave the area?

9 A Yes, I did.

10 Q Sometime later that evening, did you return to
11 the area of 48th and Lexington Avenue?

12 A Yes, I did.

13 Q About how much later that evening did you return?

14 A Approximately -- I am not sure. I have to look
15 at my taxi log sheet. That has the exact time when I
16 returned over there.

17 Q Approximately, if you recall?

18 A Approximately one hour 30 minutes, but I have to
19 look at my taxi log sheet

20 MR. PATEL: Your Honor, I am going to approach
21 the witness with what has been Bates stamped number 5246.

22 THE COURT: Is it an exhibit?

23 MR. PATEL: Under the current marking system,
24 your Honor, this is 35152D as in David.

25 THE COURT: Go ahead.

1 Q Mr. Hang, showing you that exhibit, do you
2 recognize that?

3 A Yes.

4 Q What do you recognize that to be?

5 A I left 48th and Lex --

6 Q Mr. Haque, what is that piece of paper?

7 A This is --

8 Q Don't show it to the jury, just tell them what it
9 is.

10 A This is the taxi log sheet.

11 Q Is that the log sheet that you kept that night?

12 A Yes.

13 Q Does that refresh your recollection as to what
14 time you returned to Lexington Avenue and 48th Street that
15 evening?

16 A Yes.

17 Q What time did you return?

18 A 10:15 p.m. sharp.

19 Q When you returned to the scene at 10:15, what did
20 you see?

21 A Bloody clothing and the postal police inspector.

22 Q Where were the bloody clothes?

23 A On the street.

24 Q On the street or on the sidewalk?

25 A On the sidewalk.

1 MR. PATEL: If I may just one moment, your Honor.

2 Q Mr. Haque, I am approaching you with Government's
3 Exhibit 6U. Does that photograph show where the bloody
4 clothes you saw on the sidewalk that night were?

5 A Yes.

6 Q When you returned to the scene, did you speak to
7 any police officers or law enforcement people?

8 A I have seen a postal police inspector identified
9 himself.

10 Q Did you go anyplace with that postal inspector?

11 A Yes.

12 Q Where did you go?

13 A 17th precinct.

14 Q When you got to the 17th precinct, did you speak
15 to an assistant district attorney?

16 A Yes.

17 Q Do you recall his name?

18 A Mr. Greenbaum.

19 Q How much time did you spend in the 17th precinct
20 on November 5?

21 A Approximately nine hours and 25 minutes.

22 Q What time did you get out of the 17th precinct?

23 A 7:25 in the morning.

24 Q That's in the morning of November 6?

25 A Yes.

1 Q Have you ever testified about any of the events
2 you have testified about here today at any other proceeding?

3 A No.

4 MR. PATEL: Your Honor, I have no further
5 questions at this time.

6 THE COURT: Cross?

7 MR. KHUZAMI: Yes, your Honor.

8 MR. PATEL: Your Honor, one moment, please.

9 Thank you, your Honor. Nothing further.

10 THE COURT: Mr. Khuzami.

11 CROSS-EXAMINATION

12 BY MR. KHUZAMI:

13 Q Good morning, Mr. Haque.

14 A Good morning.

15 Q Mr. Haque, you have spoken about these events on
16 a number of occasions in the past, haven't you?

17 A Yes.

18 Q You were interviewed by the police on November 5,
19 1990, the night of the shootings?

20 A Yes.

21 Q And you wrote down a statement at that time about
22 what you had seen, is that right?

23 A Yes.

24 Q Then some months later, you met in the district
25 attorney's office at 100 Centre Street, is that right?

1 A Yes.

2 Q And at that time they asked you some more
3 questions about what you had seen that night?

4 A Yes.

5 Q They in fact showed you on that later occasion
6 the notes that you had written on the night that you saw the
7 shooting, right?

8 A Yes.

9 Q On this later occasion, you basically confirmed
10 that what you had written in the note on the night of the
11 shooting was accurate, is that right?

12 A Yes.

13 Q And then you also spoke to a Mr. Gonzalez, is
14 that correct?

15 A Yes.

16 Q And that was sometime this year?

17 A Yes.

18 Q And Mr. Gonzalez told you that he was an
19 investigator working for Mr. Nosair, is that right?

20 A I don't remember.

21 Q Do you remember that he said that the Nosair case
22 was preparing to go forward, the defense case was preparing
23 to go forward?

24 A I don't remember.

25 Q All right. On November 5, 1990, when you were

1 interviewed by the police, you told them that you were
2 driving south on Lexington Avenue that night, correct?

3 A I don't remember saying that statement.

4 MR. KHUZAMI: May I approach, your Honor?

5 THE COURT: Yes.

6 Q Let me show you, Mr. Haque, what has been marked
7 35152B for identification, and I ask you to take a moment
8 and read it.

9 (Pause)

10 A Yes.

11 Q Do you see that?

12 A Yes.

13 Q Do you recognize that as a note you wrote that
14 night?

15 A Yes.

16 Q Isn't it a fact, Mr. Haque, that on the night of
17 November 5, 1990, you were driving your cab south on
18 Lexington Avenue -- correct?

19 A Yes.

20 Q And someone flagged down your cab on the east
21 side of the street, correct?

22 A No.

23 Q Where did the person flag down your cab?

24 A West side of the street in front of the post
25 office.

1 Q Excuse me, west side, correct. And you saw at
2 that time two persons running across the street, correct?

3 A Right.

4 Q And you saw one person in front, correct?

5 A Yes.

6 Q And you saw that that person was holding a gun,
7 correct?

8 A I don't remember he was unarmed.

9 Q You don't remember he was unarmed. Why don't you
10 pick up what is marked 3515B and read the first and second
11 paragraph, starting with the words "Two persons."

12 A What I wrote down over there, that --

13 THE COURT: Don't tell us what you wrote. He
14 just wants you to read that to yourself.

15 THE WITNESS: OK.

16 Q You saw one person in front with the gun that
17 night, correct?

18 A Yes.

19 Q And you saw somebody behind him, correct?

20 A Right.

21 Q And you described -- withdrawn. And the person
22 behind him was running behind him, correct?

23 A No.

24 Q What was the second person, what was the person
25 behind doing?

1 A The second person was chasing the first person.

2 Q When you say chasing, do you know whether or not
3 the person was chasing him or whether or not the person was
4 just running?

5 A No. First --

6 Q My question is, when you saw the second person,
7 do you know whether or not he was chasing him or do you know
8 just that he was running behind him?

9 A No, he was chasing the first person.

10 Q What is the difference between chasing him and
11 running behind him when you are in your cab?

12 A Well, I saw it. The first person was
13 empty-handed and second person right behind him, trying to
14 get the first person.

15 Q You just told us a moment ago that the first
16 person had a gun in his hand, is that right?

17 (Pause)

18 Q Isn't that right, Mr. Haque? The person in front
19 had a gun, correct?

20 A No.

21 Q No. Do you recall telling the police officers on
22 November 5 of 1990 that the man in front had a gun?

23 A If I remember it correctly, I gave them a copy of
24 that.

25 Q I am sorry.

1 A If I recall it correctly, when I write down this
2 statement in the precinct, I gave --

3 THE COURT: Mr. Haque, the question was simply
4 did you tell the police officers that night that the man in
5 front had a gun? Did you tell them that?

6 THE WITNESS: I don't remember.

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

8 THE COURT: Yes.

9 Q Let me show you what has been marked 35152A and
10 I would just ask you to read this document, please.

11 (Pause)

12 Q Have you had a chance to read that?

13 A Yes.

14 Q Having read that, does that refresh your
15 recollection that on November 5, 1990, you saw a man running
16 across Lexington Avenue in front, that had a gun in his
17 hand?

18 A No.

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20 (Continued on next page)

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1 Q It doesn't?

2 A No.

3 Q I refer you specifically to the statement that
4 says --

5 MR. PATEL: Objection.

6 THE COURT: Sustained.

7 Q Mr. Haque, let me refer you back to Government
8 Exhibit 35152B. Do you have the document there, Mr. Haque?

9 A No.

10 Q What is that?

11 A Some of my notes.

12 Q Those are your notes?

13 A What the statements "objection," "sustained," and
14 "overruled" mean. It is a note of mine saying, the judge
15 says "sustained" what does it mean by that, because I have
16 never been to court before.

17 MR. PATEL: Your Honor, I believe that was a
18 question of when your Honor says "sustained" --

19 THE COURT: I thought he was testifying that he
20 had notes on what those things meant.

21 MR. PATEL: I think he was asking your Honor when
22 your Honor says sustained what that means.

23 THE COURT: What that means is you don't have to
24 answer the question.

25 Q Mr. Haque, before you read that statement, you

1 indicated in response to one of my questions that you don't
2 remember whether or not the man in front had a gun or not,
3 is that correct?

4 A The man in the front is unarmed.

5 Q Is unarmed?

6 A Yes.

7 Q If you would please take a look at Government
8 Exhibit 35152A, the police report. Do you see that?

9 A This is not, this is not what I told --

10 Q Could you please answer the question. Sir, take
11 a look at 35152A.

12 A Yes.

13 Q Paragraph 2, do you see that?

14 A Yes.

15 Q Do you see the sentence that starts, "This
16 male" --

17 THE COURT: Sustained.

18 MR. KHUZAMI: I am just directing him where to
19 read, your Honor.

20 THE COURT: You can direct him by paragraph
21 number.

22 Q Paragraph 2, Mr. Haque, six lines down, if you
23 could please read that sentence.

24 A "Diagonally across the street" --

25 THE COURT: No, read it to yourself.

1 A Yes, I have read it.

2 Q Having read that, does that refresh your
3 recollection that the man in front had a gun and fired at
4 the postal police officer?

5 A No.

6 Q Did you read the sentence that begins with the
7 word "this"? Did you see that sentence six lines down from
8 the top of paragraph 2?

9 A Yes, I read it.

10 Q Do you see that?

11 A Yes.

12 Q You read that.

13 Does that refresh your recollection that on
14 November 5, 1990 you told a police officer that the man in
15 front had a gun and shot at the postal police officer.

16 MS. AMSTERDAM: Objection, your Honor.

17 MR. PATEL: Objection, your Honor.

18 THE COURT: Sustained as to form.

19 Q Having read that, Mr. Haque --

20 A Yes, I did.

21 Q -- isn't it a fact that on November 5, 1990 --

22 MS. AMSTERDAM: Objection as to form, your Honor.

23 THE COURT: Overruled.

24 Q Isn't it a fact --

25 THE COURT: Sorry. Sustained.

1 Q Mr. Hague, isn't it the case that on November 5,
2 1990 the man in front --

3 MS. AMSTERDAM: Objection.

4 Q -- had a gun --

5 THE COURT: Overruled.

6 Q -- and shot at the postal police officer?

7 A Repeat the question, please.

8 Q Isn't it a fact that on November 5, 1990, the man
9 in front had a gun and shot first at the postal police
10 officer?

11 A No.

12 Q Reviewing that document does not refresh your
13 recollection?

14 A I gave --

15 Q The question, Mr. Hague, is whether or not that
16 document refreshes your recollection or not.

17 A I have never said --

18 Q Mr. Hague --

19 THE COURT: The only question was does the
20 document refresh your recollection or not, or does it change
21 your recollection or not. Does it?

22 THE WITNESS: No.

23 Q Now, did you also tell -- withdrawn.

24 Did you also indicate -- withdrawn.

25 On the night of November 5, 1990, isn't it also

1 the case that as soon as you heard shooting you ducked down
2 in your cab?

3 A After the second bullet was fired, I ducked down.

4 Q I'm sorry. When what?

5 THE COURT: The second bullet.

6 A After the second bullet was fired, then I ducked
7 down.

8 Q Now, the statement -- withdrawn.

9 You indicated during your direct testimony that a
10 postal police officer shot the first gun, is that correct?

11 A Yes.

12 Q Would you please take a look at Government
13 Exhibit 35152B, the handwritten note, and read the last half
14 of the middle paragraph.

15 MR. PATEL: Objection, your Honor.

16 THE COURT: I don't have the document.

17 MR. PATEL: I'm sorry, your Honor, could we --

18 THE COURT: Do you want to come up?

19 MR. PATEL: Yes.

20 (Continued on next page)

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1 (At the side bar)

2 THE COURT: OK. What is the objection?

3 MR. PATEL: The objection, your Honor, is I think
4 that Mr. Khuzami is asking the witness -- is essentially
5 possibly misleading the jury and certainly confusing the
6 witness as to what was in the statement. He's taking it out
7 of context.

8 THE COURT: I don't think he's taking it out of
9 context as to who shot first, so if that is the objection,
10 it is overruled. The second paragraph indicates that
11 whoever it was who was carrying a gun shot first rather than
12 second.

13 MR. PATEL: I think your Honor just stated our --
14 it was whoever was carrying the gun -- withdrawn.

15 Your Honor, as long as we're here, there is
16 another issue, that this witness in 1990 told a postal
17 police officer that he did not want to get the officer, the
18 postal police officer in trouble. I believe that the door
19 is now open for that consistent statement.

20 MR. KHUZAMI: I don't understand what he means by
21 the door now being opened. I don't know what inconsistency
22 he is referring to or why that isn't a hearsay statement
23 that is not admissible.

24 THE COURT: I think what he is saying is that the
25 witness said in 1990, I guess, that he gave a false report

1 of what happened in order to avoid getting the postal police
2 officer in trouble.

3 MR. PATEL: Your Honor --

4 THE COURT: That sounds like what it is to me.

5 MR. PATEL: If your Honor is referring to this,
6 he will explain this is a false report, but not one of his
7 creation.

8 MR. KHUZAMI: That is apples and oranges.

9 THE COURT: What I meant was that --

10 MR. PATEL: This is not false. At worst it's
11 incomplete.

12 THE COURT: It says the other person, whoever was
13 carrying the gun, fired first. Now what he is saying is he
14 wrote that in order to avoid getting the postal police
15 officer in trouble.

16 MR. PATEL: Not that he wrote that. I am not
17 able to make a linkage between the report and him saying
18 that one of the things he told the police that night is that
19 he did not want to get the officer, the postal police
20 officer in trouble. The reason for that is that night he
21 told them the postal police officer fired first.

22 MR. KHUZAMI: I don't see the door that has been
23 opened.

24 THE COURT: The door that's been opened is
25 suggesting inconsistencies between his testimony and prior

1 statements, and I will allow it for whatever it proves about
2 what he was making up and what he wasn't making up, if
3 anything.

4 MR. SERRA: Your Honor?

5 THE COURT: Yes.

6 MR. SERRA: In my capacity for covering for
7 Mr. Wasserman, Mr. Hampton-El needs to use the facilities.

8 THE COURT: You want me to interrupt the cross?

9 MR. SERRA: What is the court suggesting?

10 THE COURT: I don't know. Are you willing to
11 take a break at this point?

12 MR. KHUZAMI: Sure.

13 THE COURT: Fine. Let's take a break.

14 MR. SERRA: Thank you.

15 (In open court)

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

20 (The jury was excused)

21 MR. McCARTHY: Your Honor, with respect --

22 THE COURT: You can step down.

23 THE WITNESS: Thank you, your Honor.

24 (With it mess excused)

25 MR. McCARTHY: With respect to the materials that

1 were referred to in the conference this morning, they have
2 been distributed to counsel.

3 THE COURT: OK.

4 MR. MCCARTHY: I should have asked your Honor,
5 and I do that now, to remind counsel that the discovery
6 materials that they receive in the case are given out
7 pursuant to a nondisclosure order.

8 THE COURT: That is true. I am sure they are
9 aware of that.

10 (Recess)

11 EHTESHAMUL HAQUE, resumed.

12 (Jury present)

13 THE COURT: Mr. Khuzami?

14 MR. KHUZAMI: Thank you.

15 CROSS-EXAMINATION (Continued)

16 BY MR. KHUZAMI:

17 Q Mr. Haque, didn't you say on the night of
18 November 5, 1990 that you saw the postal police officer get
19 shot first?

20 A I don't remember.

21 Q Didn't you also say that the postal police
22 officer got shot first, and he then fired back?

23 A I don't remember.

24 Q You spoke to Mr. Gonzalez earlier this year, is
25 that correct?

1 A Yes.

2 Q You have told us in detail here today what it is
3 that you remember about the night of November 5, 1990,
4 correct?

5 A Yes.

6 Q You have told us about where the people were as
7 they were running across the street, is that correct?

8 A Yes.

9 Q You told us about the gunshots, correct?

10 A Yes.

11 Q You even told us about the bloody clothes,
12 correct?

13 A Yes.

14 Q Isn't it a fact, Mr. Haque, that you repeatedly
15 told a Mr. Gonzalez when he spoke to you on the telephone
16 that you couldn't remember anything about that night?

17 A Yes.

18 Q That was earlier this year?

19 A Yes.

20 Q In fact, you said that it is hard to remember
21 anything right now, correct, that is what you told
22 Mr. Gonzalez?

23 A I don't remember exact wordings.

24 Q I'm sorry. You don't remember what?

25 A I don't remember the exact wordings.

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

2 THE COURT: Yes.

3 Q Let me show you what's been marked as Government
4 Exhibit 35152C, and ask you to look at the bottom of this
5 first page and the top of the next page.

6 Do you see that, Mr. Haque?

7 Do you see that section, Mr. Haque?

8 A What line you are referring to?

9 Q I am talking about the bottom of page 2 and the
10 top of page 3.

11 A Yes.

12 Q Do you see that?

13 A Yes.

14 Q In fact, didn't you say to Mr. Gonzalez that it
15 is hard to remember anything right now?

16 A Yes.

17 Q You further said that I can't tell you or testify
18 about anything right now, didn't you?

19 A Yes.

20 Q You told him, that's all I remember. I don't
21 remember anything specifically or anything, didn't you?

22 A What line you are referring to?

23 Q I'm sorry?

24 A What line you are referring to?

25 Q Well, forget the document for a moment. As you

1 sit here today, isn't it a fact that you told Mr. Gonzalez
2 that, I don't remember anything specifically or anything?

3 A Yes.

4 Q And Mr. Gonzalez had identified himself to you as
5 an investigator for Mr. Nosair, isn't that correct?

6 A No.

7 Q He did not?

8 A No.

9 Q Did he tell you that he was preparing the defense
10 case for Mr. Nosair?

11 A I don't remember.

12 (Continued on next page)

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1 Q Why don't you take a look at page 2 of that
2 document, first page, which is labeled page 2, in the middle
3 of the page.

4 A Yes.

5 Q Having read that, isn't it the case that he
6 identified himself as a man working for the attorneys that
7 represent Mr. Nosair?

8 A Yes.

9 Q Mr. Haque, didn't you also tell Mr. Gonzales that
10 you didn't see how many guns that the guys had? I am not
11 asking you about the document yet, Mr. Haque. As you sit
12 here today, isn't it a fact that you told Mr. Gonzales that
13 you didn't see how many guns the guys had?

14 A I don't remember.

15 Q Why don't you take a look at page 7, middle of
16 the page.

17 A What line you are referring to?

18 Q 14 and 15. Do you see those lines?

19 A Yes.

20 Q Isn't it a fact that you told Mr. Gonzales that
21 you didn't see how many guns the guys had?

22 A Yes.

23 Q And right after that, you told them the whole
24 thing happened in like 20 seconds, correct?

25 A Yes.

1 Q Isn't it also a fact, Mr. Haque, that when you
2 were asked whether or not the guys that were chasing had
3 guns, you said you didn't know, it was too dark?

4 A What line we are in, please?

5 Q Page 14, lines 15 through 19.

6 A Page 15, sir?

7 Q Page 14, lines 15 to 19.

8 A Yes.

9 Q Do you see that?

10 A Yes.

11 Q Isn't it a fact that you told Mr. Gonzales that
12 you didn't see how many guns or any guns that the guys
13 chasing had, because it was dark?

14 MR. PATEL: Which page is that, Mr. Khuzami?

15 MR. KHUZAMI: 14.

16 MR. PATEL: Objection, your Honor.

17 THE COURT: May I see it.

18 Overruled.

19 Q Isn't it a fact, Mr. Haque, that that is what you
20 told Mr. Gonzales?

21 A What line are you referring to, sir?

22 Q That is lines 15 to 19.

23 A Yes.

24 Q That interview by the investigator for Mr. Nosair
25 took place earlier this year, is that correct?

1 A Yes. I don't remember what date or what day.

2 Q It was earlier than your testimony here today?

3 A This is the first time I have seen this
4 transcript, this morning.

5 Q The question is, your discussion with
6 Mr. Gonzales took place sometime earlier this year, correct?

7 A Yes.

8 Q And you met with Mr. Patel last night, is that
9 correct?

10 A Yes.

11 Q There is one thing that you are sure about, is
12 that right, Mr. Haque? The one thing you are sure about is,
13 you picked up a man in your cab that night, didn't you?

14 A Yes.

15 Q He was a white person, is that right?

16 A Yes.

17 Q He was carrying some things in his hand?

18 A Yes.

19 Q And in fact he had to pound on your hood to get
20 you to stop your cab, is that right?

21 A Repeat that, please.

22 Q He had to pound on your hood to get your cab to
23 come to a complete stop, isn't that right?

24 A Would you repeat it, please.

25 Q He hit the front of your cab with his land,

1 pounded on the cab to get your attention so the cab would
2 come to a complete stop, is that right?

3 A Yes.

4 Q And then he got in your cab, correct?

5 A Yes.

6 Q And then you drove him home, is that right?

7 A Yes.

8 Q And one thing you are sure about is that that man
9 had a better view than you of what happened that night.

10 MS. AMSTERDAM: Objection. Calls for
11 speculation.

12 THE COURT: Sustained.

13 Q Isn't it a fact, Mr. Haque, that you told the
14 investigators --

15 MR. PATEL: Objection.

16 MR. KHUZAMI: Withdrawn.

17 Q Didn't you say that the man you picked up in your
18 cab that night had a better view than you did of what went
19 on in front of the post office?

20 MR. PATEL: Objection.

21 THE COURT: That I will allow. Did you say that?

22 Q You be you can answer.

23 A Yes.

24 MR. KHUZAMI: No further questions.

25 THE COURT: Redirect? Mr. Patel.

1 REDIRECT EXAMINATION

2 BY MR. PATEL:

3 Q Mr. Haque, was there anything blocking your view
4 of the postal police officer that night?

5 A No.

6 Q Did you tell Mr. Gonzales that the postal police
7 officer fired first?

8 A Yes.

9 Q Are you testifying here based on what you said
10 previously or what you saw that night?

11 A What I saw that night.

12 Q In a night, November 5, 1990, do you remember
13 meeting with a postal police inspector or a postal
14 inspector?

15 A Yes.

16 Q Do you remember telling that postal police
17 inspector that you did not want to get the postal police
18 officer in trouble?

19 A Yes, I did.

20 Q What did you mean by that?

21 A Thing was, what I observed --

22 Q Let me withdraw that question.

23 What did you observe that made you think that the
24 postal police officer might be in trouble?

25 A Because he fired first to an unarmed person.

1 MR. PATEL: No further questions, your Honor.

2 One other question. Excuse me.

3 Q Mr. Khuzami showed you 35152A. Do you have that
4 document in front of you?

5 A 35152A.

6 Q You have seen that report before, haven't you?

7 A Yes.

8 Q You spoke to Mr. Gonzales about that report?

9 A Yes.

10 Q You told him it was bogus?

11 A Yes.

12 Q You met with Mr. Greenbaum, the ADA in this case,
13 correct?

14 A Yes.

15 Q And you complained about the inaccuracies of that
16 report then, didn't you?

17 A Yes, I did.

18 Q And he apologized to you, didn't he?

19 A Yes, he did.

20 MR. PATEL: Thank you. No further questions.

21 Q You didn't write that report, can you?

22 A No, I did not.

23 Q That was written by a police officer, is that
24 right?

25 A Yes.

1 MR. PATEL: Thank you.

2 THE COURT: Anything else, Mr. Khuzami?

3 MR. KHUZAMI: One moment, your Honor.

4 RECROSS-EXAMINATION

5 BY MR. KHUZAMI:

6 Q Mr. Haque, when your cab was rolling that night,
7 when the gentleman that you picked up had to pound on the
8 hood, it was rolling that night because you had ducked down
9 in the cab, is that correct?

10 A No.

11 Q And your foot was off the brake?

12 A No.

13 Q It was just rolling on its own?

14 A I was trying to take off.

15 Q You were trying to take off with a man in front
16 of your cab?

17 A Yes. I --

18 MR. KHUZAMI: No further questions.

19 REDIRECT EXAMINATION

20 BY MR. PATEL:

21 Q Mr. Haque, would you like to finish the answer to
22 the question Mr. Khuzami just asked you, as to what you were
23 doing when your cab took off, where that man was?

24 A The man was hiding front end of the cab. I was
25 trying to take off and I didn't see him, so he just popped

1 up in the front of the cab, saying please don't kill me,
2 please don't kill me, take me with you. I said who the hell
3 are you.

4 Q Did you take him with you?

5 A Yes, I did.

6 (Continued on next page)

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1 MR. PATEL: Thank you.

2 THE COURT: Anything else, Mr. Khuzami?

3 MR. KHUZAMI: No.

4 THE COURT: Thank you, Mr. Haque. You are
5 excused.

6 MS. STEWART: May we, Judge?

7 THE COURT: Yes.

8 (At the side bar)

9 MS. STEWART: As to scheduling, I wanted to know
10 how you want to play it. I have a witness that will
11 probably take 45 minutes on direct and then I have two short
12 tapes to be read aloud. Are we going to break for lunch in
13 the usual manner?

14 THE COURT: Yes.

15 MS. STEWART: So I guess I should read the tapes
16 and call him in the afternoon.

17 THE COURT: Yes, whatever --

18 MS. STEWART: Fine. I didn't know how you wanted
19 to work it, whether you wanted to work late -- that's fine.

20 (In open court)

21 THE COURT: Miss Stewart.

22 MS. STEWART: Your Honor, at this time the
23 defendant Abdel Rahman would offer to have read HH-T, with
24 Mr. Jabara playing Omar Abdel Rahman and Hamdi played by Mr.
25 Hueston, Michael Hueston.

1 THE COURT: This is Exhibit HH-T, and that is in
2 the same binder we have been using?

3 MS. STEWART: Yes. May he sit in the witness
4 box, Judge, and use the microphone there?

5 THE COURT: Sure. HH-T. Go ahead.

6 (Defendant Abdel Rahman Exhibit HH-T in evidence
7 read to the jury)

8 MS. STEWART: Judge, we will now read LL-T. I
9 will be the female speaker and Mr. Jabara will be Sheik
10 Omar.

11 (Defendant Abdel Rahman Exhibit LL-T in evidence
12 read to the jury)

13 THE COURT: Ladies and gentlemen, we are going to
14 break at this point for lunch. Please leave your notes and
15 other materials behind. Please don't discuss the case, and
16 we will resume this afternoon.

17 (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 MR. PATEL: Your Honor, I would just like to
4 offer into evidence Government Exhibit 6U-1, which was the
5 copy of Government Exhibit 6U that Mr. Hague marked during
6 his examination, and Government Exhibit 4-A which is the
7 transparency overlay of Government Exhibit 4.

8 THE COURT: No objection to either one of those?

9 MR. KHUZAMI: No objection.

10 THE COURT: Those are received.

11 MR. PATEL: Thank you.

12 (Government Exhibits 6U-1 and 4-A for
13 identification were received in evidence)

14 (Jury present)

15 THE COURT: Good afternoon, ladies and gentlemen.

16 JURORS: Good afternoon, your Honor.

17 THE COURT: Ms. Stewart?

18 MS. STEWART: Dr. Abdel Rahman calls Adam Hishan
19 Hamawy.

20 ADAM HISHAN HAMAWY,

21 called as a witness by the Defendant Abdel Rahman,
22 having been duly affirmed, testified as follows:

23 THE COURT: Go ahead, Ms. Stewart.

24 DIRECT EXAMINATION

25 BY MS. STEWART:

1 Q Good afternoon, Mr. Hamawy.

2 A Hello.

3 Q I know the pronunciation is bad.

4 How old are you?

5 A 26 years old.

6 Q Where were you born?

7 A Cairo, Egypt.

8 Q When did you come to the United States?

9 A When I was seven months old.

10 Q And are you a citizen?

11 A Yes, I am.

12 Q And what town do you reside in?

13 A I now reside in Old Bridge, New Jersey.

14 Q And with whom do you reside?

15 A My parents and my brother.

16 Q Give us your educational background.

17 A I went to high school in Old Bridge. I went to

18 Rutgers University in New Brunswick, New Jersey, and now I

19 am in New Jersey Medical School in Newark.

20 Q What was your major in college?

21 A Biology.

22 Q And what year are you in in medical school?

23 A Fourth year.

24 Q Are you making rounds these days?

25 A Yes.

1 Q Are you anxious to get back to that?

2 A Yes.

3 Q Do you know Dr. Abdel Rahman?

4 A Yes, I do.

5 Q Do you see him in the courtroom?

6 A Yes.

7 THE WITNESS: Asalam Alaykum.

8 DEFENDANT ABDEL RAHMAN: Wa Alykum Al-Salaam.

9 Q When did you first meet?

10 A 1991.

11 Q Where was that?

12 A At Matawan Middle School, in Matawan Middle
13 School in New Jersey.

14 Q What was the occasion?

15 A Our community usually has, every Saturday night
16 they usually have a speaker come in and talk about
17 something, and that day he came in to speak.

18 Q Did you see him after that date?

19 A Yes.

20 Q Where did you see him after that date?

21 A After that in various different occasions I have
22 seen him in, you know, speak at different mosques all over
23 New Jersey. I have seen him in his home. I have seen him
24 come to the school several times.

25 Q Directing your attention to November 1991, the

1 latter part of the month, can you tell me what occurred
2 then.

3 A Yes. During the Thanksgiving of that year, we
4 went on a trip to Detroit.

5 Q And who is "we"?

6 A Myself, Sheik Omar, Sheik Abdel Khalid from the
7 Salam mosque.

8 Q Could you spell that for us.

9 A A-B-D-E-L, K-H-A-L-I-D. That's a
10 transliteration. It's not really a correct spelling for
11 that, I guess. And Al-Hamdi Moussa, Hamdi Ali, Emad Salem
12 and a person named Adel, A-D-E-L. I don't recall a last
13 name for him.

14 Q When were the plans made for this trip?

15 A My plans were made the night before. I mean, I
16 had not been planning to go on this trip until the night
17 before.

18 Q You mentioned Emad Salem.

19 A Yes.

20 Q Had you met Emad Salem before this trip?

21 A No, just the morning of that trip.

22 Q Directing your attention to the morning of the
23 trip, where were you -- what happened next?

24 A OK. I went to Sheik Omar's house, and there at
25 his house was Emad Salem and Sheik Abdel Khalid was there.

1 I think Hamdi Ali was there also. No, I think -- yeah,
2 Hamdi Ali, we picked him up from the masjid. So it was just
3 Sheik Abdel Khalid. I met Salem and also Adel was there.

4 Q When you say you picked up Abdel Khalid -- no,
5 I'm sorry. Who did you pick up from the masjid?

6 A We picked up Hamdi Ali from the masjid.

7 Q And what is the masjid?

8 A The masjid Al-Salam in Jersey City.

9 Q Is that a mosque?

10 A Yes.

11 Q What were you traveling in, what kind of a
12 vehicle?

13 A It was a minivan, a white minivan.

14 Q And who was driving in Jersey City?

15 A In Jersey City Emad Salem was driving.

16 Q And when you arrived in Jersey City, how were you
17 dressed on that occasion?

18 A I was dressed in jeans and a T-shirt.

19 Q How was Emad Salem dressed?

20 A In a business suit, olive green business suit.

21 Q And the other persons that were attending?

22 A Ali was dressed in like black jeans and a leather
23 jacket. Hamdi Ali and Sheik Abdel Khalid and Sheik Omar
24 were all wearing white galabias, the long robes.

25 Q Was there anyone else that you picked up before

1 you left for Detroit?

2 A Yes. We went and picked up Hamdi Moussa from his
3 home in Avenel.

4 Q How long was the trip to Detroit?

5 A 13 hours.

6 Q Who drove?

7 A Most of the trip Hamdi Moussa drove, but there
8 was some alternation between him and Hamdi Ali.

9 Q And where did Sheik Omar sit during the trip?

10 A In the middle seat.

11 Q How many tiers of seats were there in the van?

12 A Three tiers. There was two front seats, there
13 was a middle tier, and then the last, the back seats.

14 Q Did anyone sit with Sheik Omar in that middle
15 seat?

16 A Yes. Emad Salem sat in the seat.

17 Q Do you recall anything that was discussed on the
18 way out in the van?

19 A It was -- I mean, various things were discussed.
20 I mean, it was a 13-hour trip, there was nothing specific
21 really, regular conversation.

22 Q Do you remember the sheik and Emad discussing
23 Mubarak?

24 A No, I don't.

25 Q Do you remember anyone talking about training on

1 the way out?

2 A On the way out, no.

3 I recall that Emad Salem was discussing the
4 Nosair trial several times because he was saying how he had
5 attended that and that he was, you know, we needed to get
6 more support for that, and, you know, it was something good
7 to support.

8 Q How many hours later did you arrive in Detroit?

9 A It was a 13-hour trip from when we started from
10 Avenel, New Jersey, to Detroit.

11 Q Is it fair to say it was nighttime when you got
12 there?

13 A Yes.

14 Q Where did you go when you got to Detroit?

15 A To the Westin Hotel.

16 Q What happened there?

17 A There was a conference. We arrived at night.
18 The conference, I think, was supposed to start the next day
19 in the morning. We got -- we were greeted by the people
20 running the conference and we were given a suite for the
21 sheik. The suite was supposed to be for all of us, but Emad
22 Salem wanted a room for his own, and he got one on his own,
23 and one of us -- I think it was Adel who stayed with him in
24 that room.

25 Q What was the subject matter of the conference, if

1 you recall?

2 A It was Islamic economy. Economic -- it was an
3 economy conference. I don't recall the exact title of it.

4 Q Did anything occur with regard to Emad Salem
5 after you got to Detroit?

6 A With regard to him? I mean --

7 Q Did you observe anything about Emad Salem?

8 A Well, throughout the trip, I mean, he just didn't
9 fit in right. He was, he just wasn't like -- first of all,
10 we had just met him, and he wasn't just like the normal
11 Muslim that you usually meet, and, like, usually when, when
12 someone meets you, and if we're like a good Muslim and
13 everything, we get along very well. But he just, he
14 seemed -- there was something not right about him.

15 There was -- nobody really trusted him from the
16 start. He just wasn't dressed right. He asked the wrong
17 questions. He wasn't appropriate for the normal person who
18 would attend a conference like this.

19 Q Did you have suspicions about him?

20 A Yes.

21 Q And what were those suspicions?

22 A From the beginning we thought that he was
23 probably working for the Egyptian intelligence.

24 Q Did anything else occur that made you think that?

25 A He would, I mean, specifically he would ask

1 everyone, "What's your name?" And he wouldn't just settle
2 for your first name. I mean, like usually when you say
3 "What's your name?"

4 "Oh, my name is Adam," or something like -- or
5 Hishan. He wanted to know specifically my last name. He
6 wanted to take pictures throughout the trip, and he was
7 always asking like the sheik, you know, especially on the
8 way up about the Nosair trial. He was asking specifically
9 like did you tell him to do this or, you know, is there
10 something else going on that might be like -- he just
11 wasn't, you know, it just wasn't right.

12 Q Did there come a time that you went to a mosque
13 in Detroit?

14 A Yes.

15 Q And what occurred there?

16 A It was Friday and the sheik went there and he
17 gave the Friday sermon, khutba, and after that, after the
18 sermon, there was a collection of money. Basically two
19 different collections were made. One for, which Sheik Abdel
20 Khalid took, and it was a fund raiser for the mosque
21 Al-Salam in Jersey City. They were trying to make a new
22 mosque because the old one was getting run down. It was too
23 small for the people going there. So there was a collection
24 for that, and there was a collection which Sheik Omar took
25 which was for the families of the mujahideen overseas.

1 Q Did there come a time that you returned from
2 Detroit?

3 A Yes.

4 Q Who returned together?

5 A Everyone that went, except for Sheik Omar and
6 Adel. They flew back.

7 Q During the trip back, was there any discussions
8 in the van?

9 A The same way as the way up. It was basically
10 regular conversation. There wasn't nothing specific,
11 really.

12 Q Was there a dispute at all at any point?

13 A At the very end there was a dispute over like
14 who's going to pay for the van, but it wasn't -- I mean,
15 this was like basically when I was being dropped off.

16 From what I recall, like from the beginning Emad
17 Salem had said that he was going to pay for the van for the
18 whole trip or something like that, and then on the way back
19 he was kind of like making it seem that it was like a --
20 would be a big hardship on him, so we had offered we'd pay.

21 Q Slow down a little if you could.

22 A I'm sorry.

23 Q That's OK.

24 A We offered to help pay for this. And I believe
25 Hamdi Moussa didn't want to pay for this unless he saw a

1 receipt. I mean, he was willing to pay for it, but he said,
2 "Let's see the receipt," so we could divide the money
3 evenly, and Emad Salem got very upset about that.

4 Q On the way to Detroit, did you ever hear Sheik
5 Omar say to Emad Salem to turn his gun on Mubarak?

6 A No, I recall nothing like that.

7 Q Did there ever come a time that you were in the
8 hotel room with Sheik Omar and Emad Salem and you were
9 discussing dynamite and building bombs?

10 A No. But Emad Salem was discussing that he could
11 do that. He was -- I mean, throughout the trip he was also
12 bragging about his abilities, about how he was in the
13 Egyptian special forces and that, you know, he had fought in
14 the 1973 War against Israel, and that amongst his things
15 that he would blow up bridges.

16 So he was often discussing about his abilities
17 and he offered to Sheik Omar as like, you know, maybe you
18 could like, you know, could I help you in some way or
19 something like that.

20 Q When you were in the van, where were you sitting
21 in relation to Sheik Omar and Emad on the trip out?

22 A I was in the back seat against the window, right
23 behind Sheik Omar.

24 Q When you were in the suite in Detroit, where were
25 you staying in relation to Sheik Omar?

1 A I was in the same room.

2 Q After you returned from Detroit -- strike that.

3 When you returned to Detroit in December of 1991,
4 were you employed at that time?

5 A Yes.

6 Q Were you going to college at all?

7 A No, this was the time between my college -- I
8 just finished college, and I took a year off before I
9 started medical school.

10 Q I just would like to show you what has been
11 marked -- well, before that, did you attend the trial of
12 Sayyid Nosair in state court at all during the months of
13 November and December 1991?

14 A No.

15 Q I would like to show you something that's been
16 marked in evidence 387H.

17 Is that you in that picture?

18 A No, it isn't.

19 Q Can you read the name on the bottom?

20 A It says Hemami.

21 Q Could you spell your name for us, your last name
22 one more time?

23 A H-E-M -- H-A-M-A-W-Y.

24 Q Are you nervous?

25 Do you have a beeper today, Mr. Hamawy?

1 A Yes, I do.

2 Q In 1991, '92 did you have one?

3 A No, I didn't.

4 Q When did you first get a beeper?

5 A 19 -- it was the fall of my second year. So I
6 guess that would be the fall of '93, fall or winter of '93.

7 Q Directing your attention to the summer of 1992,
8 what did you do that summer?

9 A The summer of '92, this was right before I
10 started medical school, me and my friends from college, we
11 took a trip to London and then to Egypt. It was really a
12 trip to Egypt, but we stopped off at London for a while, and
13 we went to Saudi Arabia for umrah, like a small pilgrimage.

14 Q What is an umrah?

15 A It is a minor pilgrimage. It doesn't fulfill the
16 requirements of Haj, which is the requirement for every
17 Muslim to make, but it's still a trip to Mecca and Medina.

18 Q And on this trip, where did you go first?

19 A We went to London.

20 Q And from whom did you get the tickets for this
21 trip?

22 A We got it from a travel agent in Newark. His
23 name was Abdel Sattar.

24 Q And who recommended this travel agent?

25 A Sheik Omar.

1 Q Is this same person a mailman, if you know?

2 A Not that I know of, no.

3 Q Do you know another Abdel Sattar that is a
4 mailman?

5 A I know another Abdel Sattar. I don't know if he
6 is a mailman or not.

7 Q When you got to London, where did you stay?

8 A The first night we stayed at the Edwardian Hotel,
9 and then after that we went to a youth hostel.

10 Q And how did you find the youth hostel?

11 A Another friend of Sheik Omar's, Abdel Sattar had
12 travelled with us to London because I guess he had business
13 there. So he had stayed the first night with us, and he
14 had, he called a friend, another friend of his, his name is
15 Abdel Maguid, who knew of a place for us to stay that would
16 be much cheaper than a five-star hotel which is where we
17 were staying.

18 Q Did there come a time that you met a person named
19 Abdel Maguid in London?

20 A Yes, we did.

21 Q What was his business, if you know?

22 A He worked in a small bookstore in, I guess, in
23 London or the outskirts of London.

24 Q Did it have any specialty, this bookstore?

25 A He sold some Islamic books, yes.

1 Q And what arrangement did he make for you and the
2 person you were traveling with?

3 A About two doors down from his book store there
4 was a youth hostel, and he knew the people that stayed there
5 or ran the place, so he was able to get us a room there.

6 Q What is the name of the person you were traveling
7 with, besides Abdel Sattar?

8 A Like I said my friends from college. One was
9 Nidal, and the other one's name is Jihad.

10 Q And what was Nidal's last name?

11 A Hozein, H-O-Z-E-I-N, as in Nancy.

12 Q Where did you travel to after you were in London?

13 A After London we went to Egypt.

14 Q And after that?

15 A After Egypt we went to Saudi Arabia to Jiddah.
16 We went there by boat. So we went to Jiddah then to Mecca
17 then to Medina.

18 Q After Saudi Arabia?

19 A After Saudi Arabia, we all went back to Egypt. I
20 split off from the group and went to Palestine.

21 Q Where did you go to there?

22 A Jerusalem.

23 Q Did there come a time that you returned to
24 London?

25 A Yes.

1 Q Did you see anyone while you were there?

2 A No. We gave Abdel Maguid a call to see how he
3 was and thank him for the trip on the way there, but we
4 stayed basically for just like two days. We went straight
5 to the youth hostel.

6 Q You said in the fall of '92 you started medical
7 school, is that right?

8 A Yes.

9 Q Directing your attention to January 1992, did you
10 attend any event in connection with Sheik Omar?

11 A January 1992? I don't recall, no.

12 Q Do you remember an event in Newark, New Jersey in
13 connection with Sheik Omar?

14 A Yes.

15 Q What was that?

16 A There was a demonstration. It was a
17 demonstration -- in front of the immigration office over
18 whether he should stay in the United States or not.

19 Q Directing your attention to the spring of 1993,
20 did you have occasion to see Emad Salem again?

21 A Yes.

22 Q Where was that?

23 A In Sheik Omar's house, his apartment.

24 Q What was the occasion for that?

25 A There was a press conference there.

1 Q And do you remember a month and year -- a year I
2 said already -- what month that was?

3 A It was probably April of '93. It was during my
4 spring break of my first year.

5 Q How did you come to be there?

6 A That year I really had been like, you know,
7 because of my studies, I hadn't been able to see Sheik Omar
8 that much, so I had called him earlier that week and told
9 him, "It is my spring break now. If you need anything, you
10 can just give me a call."

11 He called me and said he needed me to come up
12 because he wanted me to translate something for him.

13 Q Do you remember what it was that you were
14 translating?

15 A Yes. There was a fax coming in from a human
16 rights organization in Egypt, and it was in Arabic, and he
17 want it translated in English for the press conference.

18 Q If you recall, was President Mubarak of Egypt in
19 the country at that time?

20 A Yes, he was.

21 Q I think you indicated that you have heard Sheik
22 Omar speak at home and in mosque classes, etc.?

23 A Yes.

24 Q Did you ever hear him speak on jihad against
25 America?

1 A Against America? Not, not in America. No, not
2 against America.

3 Q Did you ever hear him urge Moslems to attack
4 military bases or to rob banks?

5 A No.

6 Q Did you ever hear him speak about America and
7 their role as to Islam?

8 A Yes, he did. He spoke about that.

9 Q Could you characterize for us what you recall him
10 saying?

11 A He basically, you know, was very critical of
12 America's foreign policy against Muslims in general,
13 especially during the Gulf War, their support for Israel in
14 general. And, like, their lack of any action in Bosnia.
15 Basically the entire foreign policy of the United States he
16 was very critical of.

17 Q Directing your attention to the summer of '94,
18 did you have occasion to go somewhere in the summer of 1994?

19 A Yes.

20 Q And where did you go?

21 A I went to Bosnia.

22 Q How did you come to go to Bosnia?

23 A The previous summer, during the summer of '93 --
24 usually between the first and second years in medical school
25 everyone does research, and I had tried to arrange to do

1 research in Bosnia, you know, because you could usually do
2 it, you don't have to do it in the medical school. That was
3 arranged but kind of fell apart because it was supposed to
4 be on the border with Bosnia and Croatia, and during that
5 time the relations had fallen apart, so I wasn't able to go.

6 During the summer of '94, I was given the
7 opportunity, because one of my professors had given me the
8 extra two weeks in addition to the three weeks I normally
9 have off, making it five weeks, so I was able to go to
10 Bosnia and basically help with the humanitarian effort
11 there.

12 Q Were you working in connection with an
13 organization?

14 A Yes.

15 MR. FITZGERALD: Objection as to 401.

16 THE COURT: Sustained.

17 Q What exactly did you do when you were there?

18 MR. FITZGERALD: Same objection.

19 THE COURT: Same ruling.

20 Q Mr. Hamawy, have you ever been interviewed by the
21 FBI?

22 A Yes, I was.

23 Q When was that?

24 A February of this year.

25 Q 1995?

1 A Yes.

2 MS. STEWART: Nothing further, Judge.

3 THE COURT: Any other defense counsel?

4 Any cross?

5 MR. FITZGERALD: Yes, please, Judge.

6 CROSS-EXAMINATION

7 BY MR. FITZGERALD:

8 Q Good afternoon, sir.

9 A Hello.

10 Q Now, if I could speak to you I guess first about
11 the trip you took to Detroit, the late fall of 1991.

12 You do recall that trip obviously?

13 A Yes.

14 Q Now, you mentioned on direct examination that you
15 did not recall hearing a conversation between Emad Salem and
16 defendant Abdel Rahman about Mubarak during the van ride out
17 to Detroit, is that correct?

18 A Yes.

19 Q Do you recall hearing Emad Salem -- strike that.

20 Do you recall hearing defendant Abdel Rahman talk
21 about Mubarak at any time that weekend?

22 A No. Not really.

23 Q Do you ever recall at any time during that
24 weekend defendant Abdel Rahman talking about Mubarak as "the
25 loyal dog of America in the Middle East"?

1 A He referred to him that way several times, yes.

2 Q OK. Was it that weekend that he did it?

3 A I don't recall that weekend. But I'm sure, that,
4 you know, if he were to refer to him, that might have been a
5 reference to him, yes.

6 Q Would you remember it? If you heard defendant
7 Abdel Rahman talk about Mubarak that weekend, would that
8 stick in your mind?

9 A If he talked about Mubarak that weekend, I would
10 have probably remembered it, yes.

11 Q You were there when defendant Abdel Rahman gave a
12 speech that weekend, is that correct?

13 A Yes.

14 Q Have you seen the video of that speech since that
15 time?

16 A Yes.

17 Q Let me approach you with what's been marked as
18 Government Exhibit 388T. I will direct your attention to a
19 particular page, page 5.

20 With regard to the particular portion of page 5
21 that I have pointed out with my finger, does that refresh
22 your recollection as to whether or not defendant Abdel
23 Rahman made a speech that weekend concerning the person who
24 is "the backstabber who became the loyal dog to America"?

25 A Yes.

1 Q But you simply in the number of years that passed
2 don't recall that now, is that fair to say? You didn't
3 recall that before you saw the transcript?

4 A Right, like I said, he referred to him several
5 times. If he referred to him, that's probably what he said.
6 So he did refer to him during his speech.

7 Q You mentioned that this was a conference on
8 Islamic economy, is that correct?

9 A Yes.

10 Q Now, the speakers at that conference included
11 Dr. Abdel Rahman, correct?

12 A Right.

13 Q He spoke about jihad, not economics, is that
14 correct?

15 A In a way it is not really correct. But he did
16 speak about jihad, but it was in reference basically -- it
17 wasn't jihad in specific. He was talking about the Camp --
18 the Madrid Peace Conference.

19 Q And the Madrid Peace Conference was something
20 that he was very much against, correct?

21 A Yes.

22 Q He viewed it as surrender to the enemies,
23 correct?

24 A Yes.

25 Q That was not about economics, is that correct?

1 A In a way it was, because basically he set the
2 standard, that the, you know, the peace conference in
3 general, because it wasn't the same -- he had a speaker
4 speak right after him, so he set the stage of why the peace
5 conference wasn't correct Islamically and why it shouldn't
6 be done.

7 And one of the reasons that it wouldn't be a good
8 reason to have it, that peace conference, is because
9 economically it would hurt the other Muslim countries in the
10 Middle East and this was, you know, I think he might have
11 referred to it during his speech. I don't recall exactly,
12 but I know that the speaker right after him spoke
13 specifically about how the economic disadvantages of a peace
14 conference, of a peace treaty would affect the Muslims.

15 Q Did defendant Abdel Rahman talk during that
16 speech about conquering the land of the infidels?

17 A I don't recall specifically, but he might have,
18 yes.

19 Q If you could look at page 2 of that same
20 document, the fifth line from the top. Does that refresh
21 your recollection whether he talked about jihad for the sake
22 of God and conquering the land of the infidels?

23 A Yes, but you're kind of taking it out of context.

24 Q Was this a trade war?

25 A Excuse me?

1 Q Was this a trade war, or was it jihad?

2 A It was a struggle in the sake of God, yes. It
3 was a jihad.

4 Q And the jihad, was that by commerce, competitive
5 manufacturing, or was this war against the enemies of Islam?

6 A Like I said, it's not a commerce thing. It
7 was -- he was saying that we shouldn't have the peace
8 conference in the first place. There should be no commerce.

9 Q So it wasn't a commerce thing?

10 A It wasn't a commerce thing, no.

11 Q But the conference was called, "Towards a Global
12 Islamic Economy"?

13 A Yes.

14 Q Was another speaker at that conference someone by
15 the name of Dr. Ahmad Nofal?

16 A Yes. He was the one who spoke right after him.

17 Q And were you familiar with Dr. Ahmad Nofal?

18 A I had heard of his name before, but that was the
19 first time I heard him.

20 Q Did you see him speak on further occasions after
21 that?

22 A Yes.

23 Q And is Dr. Ahmad Nofal a jihad figure, a figure
24 in the jihad?

25 A No, not really.

1 Q Have you ever heard Dr. Nofal to be affiliated
2 with the Hamas movement?

3 A No.

4 Q Never?

5 A Never.

6 Q Another person who was invited to speak at that
7 conference was Dr. Hassan, H-A-S-S-A-N, El-Turabi,
8 T-U-R-A-B-I, is that correct?

9 A Yes, he was invited.

10 Q In fact, he didn't attend, but appeared by video,
11 is that correct?

12 A Yes.

13 Q And Dr. Hassan El-Turabi you know to be the head
14 of the National Islamic Front in the Sudan, is that correct?

15 A That's what I hear. I am not very sure. I
16 guess. I know he's an important figure there.

17 Q And he's an important figure in the jihad
18 movement, is that correct?

19 MS. AMSTERDAM: Objection to "jihad movement."

20 THE COURT: Sustained.

21 Q Did you hear the word "jihad" more than once that
22 weekend, is that fair to say?

23 A Yes.

24 Q Now, did you ever attend a speech by defendant
25 Abdel Rahman in Brooklyn in January 1993 in a public school?

1 A No.

2 Q You mentioned that you took a trip to England
3 with a person by the name of Abdel Sattar?

4 A Yes.

5 Q Would that person be El-Komey, E-L-K-O-M-E-Y?

6 A I am not sure of his name. He's a travel agent
7 in Newark. I think he works for a travel agency called the
8 Flying Angels.

9 Q Is it Flying Angle Travel Service?

10 Is it in Jersey City?

11 A No, it's in Newark.

12 Q You mentioned you that you went with a schoolmate
13 by the name of Nidal?

14 A Yes.

15 Q And you attended Rutgers University?

16 A Yes.

17 Q Did you also know another person by the name of
18 Nidal who attended Rutgers University?

19 A No.

20 Q Did you know a person by the name of Nidal Ayyad?

21 A No, I don't.

22 Q You've never spoken to him?

23 A Never spoken to him.

24 Q Did you know a person by the name of Abdo Rahman
25 Haggag?

1 A Yes.

2 Q Have you spoken with Haggag about Nidal Ayyad?

3 A No.

4 Q Sitting here today, it is your testimony that you
5 do not know personally Nidal Ayyad?

6 A Yes.

7 Q You mentioned that when you were in London you
8 met a person by the name of Abdel Maguid, would that be
9 Abdel Maguid Hasan, M-A-G-U-I-D, H-A-S-A-N?

10 A Yes. I believe that was his last name.

11 Q And he was an attorney who was born in Egypt, is
12 that correct?

13 A I don't know what he did. I know he was
14 Egyptian, yes.

15 Q You mentioned that he was involved in the
16 bookstore business, is that correct?

17 A Yes.

18 Q Were you aware of whether or not -- are you aware
19 that Abdel Maguid Hasan in England was involved with the
20 movement Gamaat Al-Gama'a Al-Islamiya?

21 A No, I wasn't aware of that.

22 Q Did you ever hear Abdel Maguid Hasan speak to
23 speak in Denmark and Pakistan about Al-Gama'a Al-Islamiya?

24 A No, but I know that his wife was Pakistani so he
25 might have -- I don't know.

1 Q Did you ever hear Abdel Maguid Hasan speak on the
2 telephone using code names?

3 A No.

4 Q Did you ever hear Abdel Maguid Hasan speak on the
5 telephone to defendant Abdel Rahman?

6 A Yes.

7 Q Did you hear him using code names?

8 A No, I didn't hear him speaking. I was once in
9 the apartment with Sheik Omar, and I know that he was
10 speaking to Abdel Maguid because he had picked up the phone
11 and I know they were talking.

12 (Continued on next page)

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1 Q Do you know what the organization Gamat Al Gamaa
2 Islamiya is?

3 A In Egypt, yes. There is two different ones.
4 There is one in Egypt and one in Pakistan.

5 Q You are familiar with the organization?

6 A I have heard of it, yes.

7 Q Do you know any members of the organization?

8 MS. STEWART: Objection, Judge.

9 THE COURT: I will allow it. Do you?

10 Q Do you know any members of the organization?

11 A I assume that Sheik Omar was, yes.

12 Q Do you know any other members?

13 A As for the -- I don't know. I could assume that
14 people --

15 THE COURT: Don't assume. He asked if you know.

16 A No, I don't.

17 Q Miss Stewart asked you questions about the
18 various speeches and lectures that you heard defendant Abdel
19 Rahman give over the years. Do you recall those questions?

20 A Yes.

21 Q You knew defendant Abdel Rahman going back to
22 1991, is that correct?

23 A Yes.

24 Q Right through to the present day, correct?

25 A Yes.

1 Q And you are familiar with the various things he
2 would say in different speeches, is that correct?

3 A Yes.

4 Q Did there come a time when you learned -- just
5 yes or no -- when you learned from the press, from the
6 media, anywhere, that some arrests were made in June 1993,
7 of Siddig Ali and others?

8 A I had heard, yes.

9 Q Did you notice then that after the arrests were
10 made of Siddig Ali and that became publicly known, that the
11 tone of defendant Abdel Rahman's speeches changed markedly?
12 Yes or no.

13 A No, they did not.

14 Q Did you hear defendant Abdel Rahman prior to the
15 arrest talk with about how America is the enemy of Islam?

16 A Yes.

17 Q And you heard prior to the arrest about how
18 Israel is the enemy of Islam, correct?

19 A Yes.

20 Q Did you hear about how Muslims had to do jihad
21 against the enemies of Islam before the arrests in June
22 1993?

23 A Of course. That's what he always talked about.
24 He talked about jihad, you know.

25 Q Let me approach you with what has been received

1 in evidence yesterday as defendant Abdel Rahman Exhibit
2 DD-T. I approach you with a copy of it.

3 When you said before that defendant Abdel Rahman
4 would talk about how Israel is the enemy of Islam, did you
5 hear any comments made in those times about how Islam is
6 tolerance and one should never speak a bad word about the
7 people of the book?

8 MS. STEWART: Objection, Judge.
9 Mischaracterization.

10 THE COURT: Did you hear that in words or
11 substance?

12 THE WITNESS: Excuse me. Could you repeat the
13 question.

14 THE COURT: Would you rephrase it.

15 Q Prior to the arrests being made in June 1993, was
16 defendant Abdel Rahman giving speeches about the theme of
17 tolerance and how people should not speak badly about Jews
18 or Christians or peoples of the book?

19 MR. STAVIS: Objection as to form.

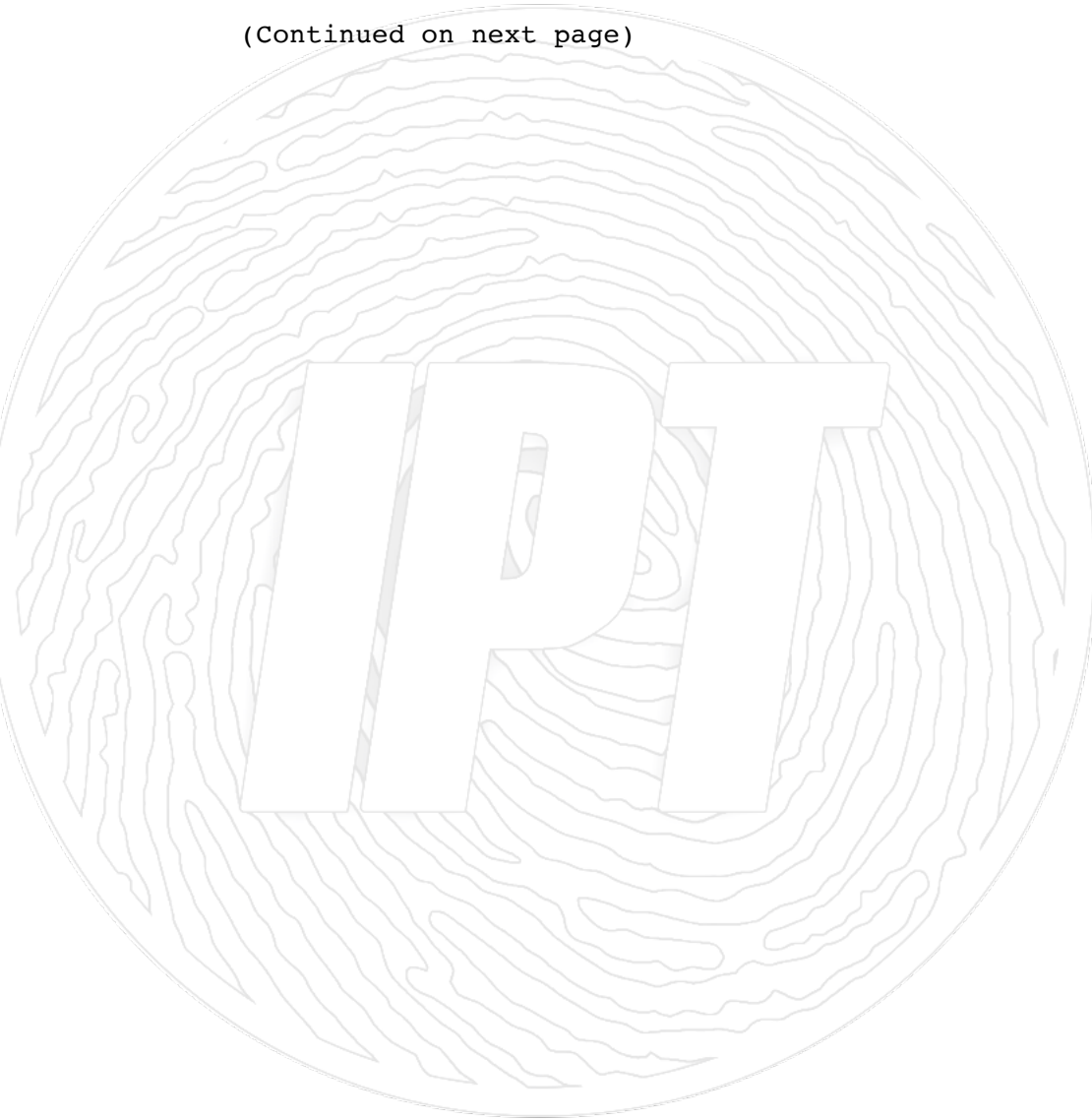
20 THE COURT: Overruled.

21 A OK. Are you asking if he said like, if he spoke
22 kindly towards the people of the book, I had heard him speak
23 about that but not in speeches in public forums. I had
24 heard him in small classroom type settings, because usually
25 when he spoke in public he spoke about jihad, that's what he

1 spoke about. But in small settings, in regular lessons and
2 type of thing, he would talk about Islam in general and that
3 is when he would give those -- he would talk about something
4 like that.

5 (Continued on next page)

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1 Q So privately he was kinder towards Judaism?

2 MS. STEWART: Objection to "prior to."

3 THE COURT: Sustained.

4 MR. FITZGERALD: One second, Judge.

5 THE WITNESS: Am I supposed to be looking at
6 something here?

7 THE COURT: No.

8 MR. FITZGERALD: Nothing further.

9 THE COURT: Any redirect?

10 MS. STEWART: No, Judge. Thank you.

11 THE COURT: Thank you, sir. You are excused.

12 (Witness excused)

13 MS. STEWART: I believe we have another witness
14 that will be here tomorrow.

15 THE COURT: Ladies and gentlemen, we are going to
16 have to break early today. If you are keeping score, this
17 is partly the government's fault and partly mine. Actually,
18 it is mostly the government's fault and partly mine. But we
19 are going to break now for the day. Please leave your notes
20 and other materials behind. Please don't discuss the case,
21 and we will resume tomorrow at 9:30.

22 (Jury excused)

23 MR. KHUZAMI: Your Honor, just one item.

24 THE COURT: Yes.

25 MR. KHUZAMI: There are enough real issues not to

1 have to bring up potential ones, but I want to bring the
2 court's attention to it.

3 MR. BERNSTEIN: We can't hear you. Sorry.

4 MR. KHUZAMI: One issue on which I want to
5 apprise the court. In connection with Mr. Wasserman's case,
6 he intends putting in a number of excerpts of CM
7 conversations.

8 THE COURT: I have seen some of the
9 correspondence.

10 MR. KHUZAMI: We are going to review some of
11 these items this afternoon. It may turn out that some of
12 these were not designated as excerpts in dispute during the
13 government's case. If that turns out to be the case we may
14 have an issue in the defense case as to putting in versions
15 of those transcripts.

16 MR. WASSERMAN: Your Honor, if I may, just for
17 the record, whatever is under discussion as raised by Mr.
18 Khuzami are matters that have been brought to the judge's
19 attention as matters in dispute, usually on more than one
20 occasion. In other words, this is not new but rather old.

21 MR. KHUZAMI: Issues, whether or not they were
22 designated as disputed in the transcript going to the jury.

23 THE COURT: Since there has been held out to me
24 the possibility that this thing might resolve itself, I
25 would just as soon not hear who hit John.

1 MR. BERNSTEIN: There may be some defense counsel
2 objections on the same lines. We are trying to work that
3 out amongst all defense counsel.

4 MR. WASSERMAN: I am not aware of any and I think
5 Mr. Bernstein and I have worked whatever we had out.

6 THE COURT: I am now alert to the possibility of
7 peace breaking out all over.

8 May I see Ms. Stewart and the government in the
9 robing room.

10 (Pages 15093 - 15095 sealed)

11 (Proceedings adjourned to 9:30 a.m. Wednesday,
12 July 26, 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.

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)

July 26, 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 (Trial resumed)

2 (In open court; jury not present)

3 MS. STEWART: Your Honor, I mentioned to
4 Ms. Schwartz, Ms. Black will perhaps be playing some cued
5 tapes in the course of my examination of Ms. Floyd.

6 (Jury present)

7 THE COURT: Good morning, ladies and gentlemen.

8 JURORS: Good morning.

9 MR. STAVIS: I have two exhibits to place in
10 evidence.

11 THE COURT: All right, Mr. Stavis.

12 MR. STAVIS: Your Honor, at this time defendant
13 Nosair introduces PPP, which was previously introduced into
14 evidence on the cross-examination of Emad Salem as source
15 tape 8-1.

16 THE COURT: That is received without objection.

17 (Defendant Nosair Exhibit PPP received in
18 evidence)

19 MR. STAVIS: Also at this time defendant Nosair
20 introduces what has been previously marked for
21 identification as Government's Exhibit 124. It was
22 recovered from Mr. Nosair's home on November 6 of 1990, and
23 it is entitled "18th Airborne Corps Noncommissioned Officers
24 Academy Land Navigation Map Reading Compass Course
25 Patrolling."

1 THE COURT: That is received without objection as
2 well.

3 (Government's Exhibit 124 received in evidence)

4 THE COURT: Miss Stewart.

5 MS. STEWART: The defense calls Special Agent
6 Nancy Floyd.

7 NANCY RENEE FLOYD,

8 called as a witness by the defense,

9 having been duly sworn, testified as follows:

10 THE COURT: Miss Floyd, if you could try to keep
11 your voice up and do as you are doing, that is, talk into
12 the microphone, that way the translators and everybody else
13 can hear you.

14 Go ahead, Ms. Stewart.

15 MS. STEWART: Thank you, Judge.

16 (Continued on next page)

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1 DIRECT EXAMINATION

2 BY MS. STEWART:

3 Q Good morning, Agent Floyd.

4 A Good morning.

5 Q We have not met before, is that correct?

6 A No, ma'am.

7 Q I think you have to move forward to be close to
8 these microphones or else we won't be able to hear you.

9 A Is that better?

10 Q Not too close. Yes, thank you.

11 A OK.

12 Q Agent Floyd, by whom are you employed?

13 A The Federal Bureau of Investigation.

14 Q In what capacity?

15 A I am a special agent for them.

16 Q During the years 1991, 1992, were you in contact
17 with an asset known as Emad Salem?

18 A Yes, ma'am, I was.

19 Q Did that continue into 1993?

20 A Yes, ma'am, it did.

21 Q Before you became an agent for the FBI, did you
22 undergo any special training?

23 A Yes, ma'am, as all agents are required to go
24 through Quantico.

25 MS. AMSTERDAM: I am sorry. I couldn't hear you.

1 A As all agents are required to go through
2 Quantico.

3 Q How long was that training?

4 A It is approximately three months.

5 Q Was that training physical as well as classroom?

6 A It consists of physical, classroom and firearms.

7 Q Did there come a time when you took your oath?

8 A Yes, ma'am, I did.

9 Q When was that?

10 A You take it the first day that you are there and
11 you take it again when you receive your credentials.

12 Q Can you tell us what year that was in?

13 A That would have been around June 1 of 1987 for
14 the first oath and around August 28 for the second oath, of
15 1987.

16 Q Had you been employed by any law enforcement
17 prior to becoming a special agent of the FBI?

18 A No, ma'am, I was not.

19 Q What is your educational background, Agent Floyd?

20 A I have a degree from the University of Texas at
21 Arlington, in criminal science.

22 Q When you took your oath, you swore to uphold the
23 laws of the United States, is that correct?

24 A Among other things, yes, ma'am.

25 Q It wasn't the laws of any other country, was it,

1 Agent Floyd?

2 A No, ma'am.

3 Q Having worked for the FBI since 1987, by 1981 you
4 were sensitive to the fact that --

5 THE COURT: Miss Stewart, I think you mean 1991.

6 MS. STEWART: What did I say, Judge?

7 THE COURT: '81.

8 MS. STEWART: Sorry.

9 Q Excuse me.

10 A It's OK.

11 Q Having become an agent in 1987, you were aware,
12 were you not, in 1991, that damage could be done to a case
13 by an informant that was working for a foreign intelligence
14 agency?

15 MR. MCCARTHY: Objection.

16 THE COURT: I will let her answer whether she was
17 aware of that.

18 A Aware that damage can be done by an asset from a
19 foreign country?

20 Q No, no. By an asset on a case that is working
21 for a foreign intelligence agency?

22 A I guess it would depend on which case he was
23 working for.

24 MR. MCCARTHY: Objection to form.

25 Q Pardon me. Your answer is --

1 A It would depend on which case he was working for.
2 If he was an asset from a foreign country working on a
3 foreign case I guess he would be beneficial, but if he was
4 an asset working for a foreign country on one of our cases,
5 he would not be beneficial.

6 Q When you say beneficial, would it be the
7 problem -- strike that.

8 You used the word beneficial. Would it be indeed
9 a problem if an agent --

10 A Not necessarily. We work double agents all the
11 time.

12 Q If the informant was given a special mission that
13 the agency did not know about, would that be a problem?

14 MR. McCARTHY: Objection to form.

15 THE COURT: Sustained as to form.

16 Q Miss Floyd, if you were using an asset and were
17 not aware and the agency were not aware that this asset was
18 working for a foreign intelligence, would that be a problem?

19 A It would depend on the circumstances. Not
20 necessarily.

21 Q If the person's primary loyalty were to another
22 country would you --

23 MR. McCARTHY: Objection to form.

24 MS. STEWART: I can rephrase it, Judge.

25 THE COURT: Thank you.

1 Q If you were to learn in the course of the
2 investigation that your asset had a primary loyalty to
3 another country with an interest in that investigation --

4 MR. McCARTHY: Objection to form.

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

6 (At the side bar)

7 MR. McCARTHY: My objection is that these are a
8 series of multipart hypotheticals that assume facts that are
9 not in evidence in this case, which I suppose on redirect I
10 could get up and ask a bunch of hypotheticals that are
11 borderline relevant to the facts of this case. I think if
12 Miss Stewart is going to ask these kinds of questions she
13 ought to lay the basis.

14 THE COURT: I think what she is asking is were
15 you sensitized to the potential difficulty in these areas.
16 Whether they are relevant or not, you can argue.

17 MS. STEWART: That is correct, and I think what
18 Mr. McCarthy does is cross, not redirect, but I am not going
19 to quibble.

20 THE COURT: And these side bars are not evidence.

21 (In open court)

22 (Continued on next page)

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1 BY MS. STEWART:

2 Q Miss Floyd, let me restate my question -- Agent
3 Floyd, sorry. In the years 1991, '92, '93, were you
4 sensitized to the fact that having a foreign agent as an
5 asset could create a problem for the Bureau?

6 A The area that I worked during that time, we
7 worked agents that were foreign -- were, I guess, citizens
8 of foreign countries regularly, all the time, without any
9 problems. Obviously any time you work any asset there could
10 be a problem, but in this capacity we worked him without any
11 problems, and would it have been perceived to be a problem
12 for me, no.

13 Q I think my question, Agent Floyd, was not as to
14 citizens of foreign countries but agents of foreign
15 countries.

16 A I worked with agents of foreign countries too on
17 a regular basis and they didn't prove a problem in our
18 investigations. As I said before, any asset can be a
19 problem but who their loyalties are to does not necessarily
20 create a problem.

21 Q So it would be your testimony then that if a
22 person were discovered to be an agent working for a foreign
23 government, this would cause no consternation on your part?

24 MR. MCCARTHY: Objection to form.

25 THE COURT: Sustained.

1 MS. STEWART: I will rephrase it, Judge.

2 Q It would be your testimony then that as far as
3 you were concerned as a special agent of the FBI, if you
4 were to discover that someone you had been using as an
5 informant was indeed also an agent for a foreign government,
6 this would not create a problem?

7 A In and of itself not necessarily, no, it would
8 not necessarily create a problem. It would be something
9 that we would want to know about and deal with but it does
10 not necessarily make it a problem.

11 Q Why would you want to know about it and deal with
12 it?

13 A Because it is additional information that could
14 help with your case.

15 Q It could help with your case? It only could help
16 with your case? Is that your testimony?

17 A I am saying that it could help. You have to give
18 me specific examples if you want me to get more specific,
19 but you are asking in general if somebody working for a
20 foreign government is always a problem. The answer is no.
21 If we found out after working him that he was part of a
22 different country's intelligence base, that would be
23 something that we could deal with but it would not
24 necessarily be a problem.

25 Q You indicated that it is something you would want

1 to deal with, is that right?

2 A That we might have to, not necessarily that we
3 would but just something that we might have to deal with.

4 Q In 1991 when you first began speaking with Emad
5 Salem, did you know that he was an operative for Egyptian
6 intelligence?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 Q You first debriefed Emad Salem with regard to the
10 Middle East in August of 1991, is that correct?

11 A That is false.

12 Q When did you first debrief Emad Salem with regard
13 to Middle Eastern intelligence?

14 A I obtained information about Emad in Middle
15 Eastern intelligence almost from the beginning because it
16 was part of his background.

17 Q Was there not an August debriefing where he told
18 you that he had worked in Egyptian intelligence?

19 A There was an August debriefing but the question
20 was what was my first.

21 Q Can you tell us the month and year of your first,
22 Miss Floyd?

23 A My first debriefing with Emad would have been
24 around April of 1991.

25 Q And you would not have made a report about that,

1 is that correct?

2 A Yes, ma'am, I would have, but it has to do with a
3 different subject that does not pertain to these
4 proceedings.

5 Q I believe I asked you with regard to the Middle
6 East. Was this debriefing with regard to the Middle East?

7 A This debriefing did not at this time regard the
8 Middle East.

9 Q So in fact your first debriefing with regard to
10 the Middle East was in August 1991?

11 A That I do not know.

12 Q I would like to show you -- I believe this is
13 3534Z, Emad Salem. May I approach, Judge?

14 THE COURT: Yes.

15 A Thank you.

16 (Pause)

17 THE COURT: Do you want to pose a question with
18 regard to the exhibit, Ms. Stewart?

19 MS. STEWART: Yes.

20 Q Agent Floyd, does that refresh your recollection
21 with regard to the August 1991 debriefing?

22 A Yes.

23 Q Do you need some more time with that document?

24 A If you want me to read the whole thing, yes.

25 THE COURT: Miss Stewart, why don't you pose a

1 question, because otherwise all she is going to be doing is
2 looking at the document, without any idea of what you are
3 going to ask.

4 Q This debriefing generated a 9-page single-spaced
5 report, is that right?

6 A That is correct.

7 Q Emad told you in the course of this that Egypt
8 has intelligence agents in the United States, is that right?

9 A Yes.

10 Q And he also gave you intelligence, did he not, on
11 numerous other countries in the Middle East, is that right?

12 MR. MCCARTHY: Objection to form, intelligence.

13 MS. STEWART: Strike, I will rephrase it, Judge.

14 THE COURT: Go ahead.

15 Q Did he also give you information about numerous
16 other countries in the Middle East?

17 A Yes, he did.

18 Q If I may just retrieve that from you, it's my
19 only copy.

20 A Yes, ma'am.

21 Q He informed you, did he not, that he worked for
22 army intelligence in Egypt while he was still residing
23 there?

24 A In Egypt?

25 Q Yes.

1 A Yes, it is my recollection that he did say that.

2 Q And that he had frequent contact with old friends
3 that were still part of army intelligence, is that right?

4 A Yes.

5 Q He also went on to give you information about
6 Libya, is that right?

7 A Yes.

8 Q He indicated that he knew Colonel Qaddafi, is
9 that correct?

10 A That's what he reported.

11 Q And that he had met Saddam Hussein, is that
12 correct?

13 A Yes, ma'am.

14 Q And that this was all in connection with his
15 prior intelligence work for the Egyptian army.

16 A Yes.

17 Q He gave you factual information, did he not,
18 about the atomic capacity of various countries in the Middle
19 East?

20 MR. McCARTHY: Objection to form.

21 THE COURT: Sustained as to form. Did he discuss
22 the topic of the atomic capacity of various Middle East
23 countries?

24 THE WITNESS: Yes, he rendered his opinion on the
25 atomic capacity of various Middle East countries.

1 Q Did he also give you personal opinions with
2 regard to events in the Middle East?

3 A Yes, ma'am, he did.

4 Q Did you ever try to verify any of the facts that
5 he gave you on this debriefing?

6 A As far as what his capacity was in the military,
7 I was shown his passport, which indicated that he was a
8 retired member of the military. He showed me various
9 pictures of himself in military uniform during military
10 exercises, medals that he had won, etc., but we did not
11 contact the Egyptian government to verify any of the facts
12 that he gave us.

13 Q With regard to his information on the Middle
14 East, did you attempt to verify any of those facts that he
15 supplied you with?

16 A Those facts were passed on to the appropriate
17 agency, which is not us. That would be the Central
18 Intelligence Agency.

19 Q So you wouldn't know as you sit there whether or
20 not these are things that could found out in the New York
21 Times, for example, is that right?

22 A You mean to verify the facts?

23 Q Yes.

24 A Subsequently, I think the New York Times and a
25 lot of other newspapers have verified his facts. But if you

1 are saying did I think that he can retrieve that information
2 from the New York Times, I don't know. You would have to
3 ask him.

4 Q It was in this debriefing that he told you about
5 Muammar Qaddafi's black blood, is that right?

6 A Yes.

7 Q Were these facts passed on to the CIA, if you
8 know?

9 A I do not know in what form the information was
10 passed on to the CIA. That is not my job, to do so.

11 Q He told you, did he not, that he had gathered
12 this information because he was a member of Sadat's
13 Republican Guard and had traveled to various countries, is
14 that right?

15 A He never mentioned the words Republican Guard to
16 me. I don't recollect that, no.

17 Q Did he indicate that he had traveled to these
18 countries and had these opportunities because he was
19 connected --

20 A It is my understanding that he had met them
21 either through his travels and/or their travels into Egypt.

22 Q As you sit there today, do you believe this to
23 have been reliable information?

24 A I know now that a lot of that information that
25 you have given us is in fact not true.

1 Q Did you have a further debriefing with him during
2 the week of October 23 to 30, 1991?

3 A Unless I see a document -- I mean, I had hundreds
4 of them.

5 MS. STEWART: This is 3534W at page 22. May I
6 approach, Judge?

7 THE COURT: Yes.

8 Q Does that refresh your recollection that you met
9 Emad Salem during the week of October 23 to 30, 1991?

10 A I can confirm that this does represent that
11 meeting. I would have to read it in order to refresh my
12 memory of what transpired during the meeting.

13 Q Does it refresh your memory that the meeting took
14 place?

15 A Yes, ma'am.

16 Q Does it refresh your memory that the meeting took
17 place on a daily basis?

18 A Yes.

19 Q Can you tell us where those meetings took place?

20 A Numerous places. Do you want me to list them
21 all?

22 Q Yes.

23 A That I can remember, some took place at his place
24 of residence, some took place at various restaurants
25 throughout the New York City area: TGI Friday's, Juanita's,

1 Houlihan's, and at this point that's about all the places I
2 can remember off the top of my head.

3 Q How long would each meeting last, if you recall?

4 A It would vary from 30 minutes to hours, depending
5 on what information we needed to retrieve from him.

6 Q Once again, this was for informational purposes,
7 is that right?

8 A Yes, ma'am.

9 Q If you recall, did Emad Salem mention again his
10 ties to Egyptian intelligence?

11 A In this meeting?

12 Q Yes.

13 A I would have to read it.

14 THE COURT: Miss Stewart, is there a particular
15 page that you want to focus on?

16 MS. STEWART: I think it is only three pages
17 long.

18 THE WITNESS: Which page is that, ma'am?

19 THE COURT: She didn't indicate a page.

20 MR. MCCARTHY: Your Honor, I am going to object
21 to form, Egyptian intelligence, without further
22 clarification.

23 MS. STEWART: I am sorry. I did not hear Mr.
24 McCarthy, Judge.

25 THE COURT: What he said is that he objects to

1 using the phrase Egyptian intelligence unless you indicate
2 which --

3 MS. STEWART: We will come to that.

4 MR. McCARTHY: Then I object.

5 THE COURT: That objection is sustained.

6 MS. STEWART: I will deal with it right now.

7 Q Agent Floyd, I have been using the term Egyptian
8 intelligence. Did Emad Salem tell you that there were
9 different branches of Egyptian intelligence?

10 A Yes, ma'am, he did.

11 Q Did he say that there was a general intelligence
12 and also military intelligence?

13 A I believe he explained to me that there is, if I
14 understand it correctly, three different types of
15 intelligence. There is the equivalent of the FBI, which he
16 referred to always as the the Egyptian FBI and I think it is
17 our equivalent of the FBI. Then there is a military
18 intelligence and a general intelligence, is the way I
19 understood it.

20 Q Did you have occasion to discuss this earlier
21 with Mr. McCarthy?

22 A Did I what?

23 Q Did you discuss this particular subject earlier
24 with Mr. McCarthy?

25 A I have discussed the entire case with Mr.

1 McCarthy.

2 Q I am asking about this particular issue.

3 A I can't state specifically this one, but I am
4 assuming -- I have discussed the whole case. It would have
5 come up, I am assuming. I would have told him this because
6 it would have been pertinent information.

7 Q Is it your understanding that military
8 intelligence was one of the intelligence gathering agencies
9 of the Egyptian government?

10 A Yes, ma'am, I just listed it as one of them.

11 Q If I fail to say military intelligence, will
12 understand that that means military intelligence?

13 A No, ma'am, you will have to specifically state
14 which one, because it is my understanding that he had
15 friends in different areas of the intelligence. So you will
16 have to specifically state which ones you are referring to.

17 Q It is your understanding that he had friends in
18 general intelligence, Agent Floyd?

19 A That is my understanding. I never asked him
20 which one or who they were, so they could have been in any
21 or all, or none.

22 Q It can't be none, because you just said you knew
23 he had friends in general intelligence --

24 A I am saying that is what he told me. I never
25 verified because I never got names.

1 Q And is it your understanding that in the third
2 branch, the FBI branch, that Mr. Salem also had friends
3 there?

4 A I just said it could have been. I never verified
5 because I never obtained names.

6 Q But he told you this, is that right?

7 A No. He just said that he had friends within the
8 intelligent community. He never said who or what, that I
9 can recall.

10 Q So that when Emad Salem said to you the
11 intelligence community, you understood that to mean all
12 three branches of the Egyptian intelligence he --

13 A Any, all, or none.

14 Q All or none. We will come to that.

15 (Continued on next page)

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

2 (At the side bar)

3 THE COURT: Mr. Serra, would you calm your client
4 down, please.

5 MR. SERRA: I don't know what is happening,
6 Judge. I am sitting behind him.

7 THE COURT: He is rather obviously and rather
8 strenuously emoting in the direction of the jury and if he
9 doesn't cut it out I will throw him out.

10 MR. SERRA: I will tell him, your Honor.

11 THE COURT: Thank you very much.

12 (In open court)

13 (Continued on next page)

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1 BY MS. STEWART:

2 Q As part of this debriefing of Emad Salem in
3 October 1991, were you given a list of persons that Egyptian
4 army intelligence kept a close track of?

5 A Yes.

6 Q Did you ever verify any of the names on that
7 list?

8 A In what way do you mean verify?

9 Q Did you ever try to find out who any of those
10 people were?

11 A I did not, because I did not work the case. I
12 merely gathered the information from Emad. It was passed on
13 to the agents who in fact handled this case.

14 Q If you know, did they pass it on to the CIA?

15 MR. MCCARTHY: Objection.

16 THE COURT: Sustained.

17 Q Your only work was to pass it on to the agents
18 who worked the case, is that right?

19 A Right.

20 Q And that would be Special Agent John Anticev?

21 A He worked it to a certain point, and also
22 Detective Louie Napoli.

23 Q If you know, did anyone of you ever verify that
24 these people had all been -- strike that.

25 Was one of the names on that particular list

1 Dr. Omar Abdel Rahman?

2 A Yes, it is.

3 Q Did you ever come to find that each and every one
4 of the names on that list were Dr. Abdel Rahman's
5 codefendants in the Sadat assassination trial?

6 A No.

7 MR. McCARTHY: Ask for an instruction.

8 THE COURT: Again, the question says that certain
9 things are facts. It is the answer that is the evidence.
10 The question doesn't establish that something is or isn't a
11 fact. Go ahead.

12 Q Did you ever try to establish whether any of
13 those particular persons who were on that list were ever in
14 the United States?

15 A I was told that two of them --

16 THE COURT: No, don't. That is stricken. Don't
17 tell us what you were told. The question was did you ever
18 try to establish whether anybody on the list was in the
19 United States. Did you?

20 THE WITNESS: I knew that two were.

21 Q Was Dr. Abdel Rahman one of them?

22 A Yes.

23 Q Were the rest either executed or in prison? Did
24 you find that out?

25 A No.

1 MS. STEWART: If I may retrieve that book, Judge.

2 Q November 19, 1991, a teletype was sent by you to
3 the director of the FBI regarding Emad Salem, is that right?

4 A You would have to show me the document.

5 Q This is 3534C, page 3. May I, Judge?

6 THE COURT: Yes.

7 A Thank you.

8 Q Does that refresh your recollection as to the
9 generation of this particular report?

10 A Yes, ma'am, it does.

11 Q This was based on your prior meetings and
12 debriefings with Mr. Salem, is that correct?

13 A No. This is an exact form teletype that is sent
14 down for a specific purpose but it would not necessarily
15 represent all debriefings.

16 Q Not all, but the material contained therein, you
17 would have learned as a result of speaking with Mr. Salem,
18 is that right?

19 A Yes, ma'am.

20 Q You reported, did you not, that Mr. Salem had
21 strong ties within Egyptian intelligence?

22 A Yes, ma'am.

23 Q And that he had no desire to engage in
24 intelligence gathering against Egypt, is that right?

25 A Yes, ma'am.

1 Q But that he would against any other Middle
2 Eastern country or any radical fundamental religious groups,
3 is that right?

4 A Yes, ma'am.

5 (Continued on next page)

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1 Q And he would not provide any details to you with
2 regard to Egypt, is that also true?

3 A No. It said that he does not have a desire to
4 engage in intelligence gathering against Egypt.

5 Q Would you turn to the very last paragraph of that
6 report.

7 A Unfortunately, the last part of that refers to
8 blacked out information, but does not refer to --

9 Q Does it say that no details will be provided on
10 Egypt?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 MS. STEWART: May I, Judge?

14 THE COURT: Yes.

15 Q Did you indicate to your superiors that Mr. Salem
16 was reluctant to give much more details on Egypt?

17 A That is not my recollection of what I told my
18 superiors, no.

19 Q Is that what is reported in this particular
20 report?

21 MR. McCARTHY: Objection to form.

22 THE COURT: Sustained.

23 Q Agent Floyd, this is your report, is it not?

24 MR. McCARTHY: Objection to form.

25 THE COURT: Ms. Stewart, can we move this along a

1 bit, please.

2 MS. STEWART: I am trying to, Judge.

3 THE COURT: Fine.

4 Q You authored this report, did you not?

5 A Yes, ma'am, I did.

6 Q It is your testimony that you don't recall
7 whether or not you wrote that he was reluctant to provide
8 details with regard to Egypt?

9 MR. MCCARTHY: Objection. That's not what it --

10 THE COURT: Sustained.

11 Q Were you made aware in December of 1991 that Emad
12 Salem reported a contact with one Mahsoum Marzouk, the
13 Egyptian consul in New York?

14 A If you have a document that I can look at, I
15 can -- I mean, we had numerous conversations, and the exact
16 dates I am sorry, but four years later, I can't give you.

17 MS. STEWART: This is C25 and 26.

18 THE WITNESS: Thank you.

19 A This is not my report.

20 Q My question was, were you made aware of that
21 fact?

22 MR. MCCARTHY: Objection.

23 THE COURT: Sustained.

24 Q On or about December 16, 1991, were you present
25 at a meeting with John Anticev, Emad Salem, and yourself

1 where Emad Salem was tasked to you to contact Egyptian
2 intelligence?

3 A That's not how the meeting went, no.

4 Q If you would turn to page 64 on the Bates stamp
5 of that particular exhibit.

6 The word "tasked" is a Bureau term, is it not?

7 A I think it is -- it is an English term. It's not
8 specifically used by us, no.

9 Q Given the job of or asked to do?

10 A We would use those words as much as "tasked."
11 It's not just a Bureau word, no, ma'am.

12 Q It means given -- asked to do something, though,
13 is that fair to say? That's what "tasked" means, is that
14 right?

15 MR. MCCARTHY: Objection.

16 THE COURT: I will allow it. Is that --

17 THE WITNESS: That is the way I understand the
18 meaning to mean.

19 THE COURT: OK.

20 Q This meeting took place, did it not, after an
21 Egyptian lawyer had been reported upon by Emad Salem, is
22 that right?

23 A This January 9 meeting?

24 Q No, the meeting on December 16, 1991 that is
25 reported in that particular item. Are we not on the same

1 page. Let me help you.

2 A I've got "64" stamped on there.

3 Q It starts over here.

4 A Oh, 63, OK.

5 Q 63.

6 A And your question is that --

7 Q I can repeat the question.

8 Do you recall a meeting with yourself, Emad
9 Salem, and Special Agent Anticev following a report by Emad
10 Salem regarding an Egyptian lawyer present in the United
11 States?

12 A We had a meeting and that topic was talked about
13 along with several others.

14 Q At this meeting, is it not true that Emad Salem
15 was asked to contact his contacts in Egyptian intelligence
16 to alert them to search this lawyer's luggage?

17 A The way I understood it, he was asked to contact
18 his friends in Egypt to see if, in fact, they he could have
19 his luggage searched. Like, as I said before, ma'am, I
20 never got a name of his friend in Egypt. I have no
21 verification whatsoever of what or who he is.

22 THE COURT: That wasn't the question. The
23 question was simply whether he was asked to do that.

24 THE WITNESS: Yes, he was.

25 Q Was that done, if you know, because it would have

1 been illegal to search the lawyer's luggage here in the
2 United States?

3 A It wouldn't be illegal if we had obtained a
4 search warrant, but they didn't want to obtain one.

5 Q Could you answer my question.

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained.

8 Q Would it have been illegal in your mind, Agent
9 Floyd, to have gone to JFK, stopped this lawyer, and opened
10 his luggage and searched it?

11 THE COURT: Without a warrant?

12 MS. STEWART: Without a warrant.

13 MR. McCARTHY: Objection.

14 THE COURT: That is sustained.

15 Q What was the reason Emad Salem was asked to make
16 a contact in Egypt?

17 A You would have to ask John, because John wanted
18 it done. I was just present for it.

19 Q You didn't know what was going on at this
20 meeting? You were just standing there?

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained and stricken.

23 Q Did you know what was happening at this meeting?

24 A No, I did not.

25 Q You didn't know anything that was going on with

1 regard to --

2 A I did not --

3 Q -- the search of the luggage?

4 A No, I knew about that. You asked me the reason
5 to the search. I did not know what the reasonings were.
6 That had transpired between John and Emad. I was not
7 present for that part.

8 Q Were you there when Agent Anticev told Emad
9 Salem, "Don't tell them the FBI has anything to do with
10 this"?

11 A Yes, I was.

12 Q Did you also make a contribution to this meeting
13 with regard to other information?

14 A Concerning?

15 Q I think I ask the questions.

16 MR. McCARTHY: Then I object to form.

17 THE COURT: Sustained.

18 Q Did you mention at this meeting with Emad Salem
19 and John Anticev in which the lawyer's luggage was discussed
20 whether or not you would have to tell the authorities in
21 Egypt about Emad Salem's report about Dr. Abdel Rahman and
22 the alleged life threatening of Mubarak?

23 A It is my recollection that Emad was requested to
24 see if his friends could arrange the search of the luggage.
25 However, at no time did we ask him to specifically report on

1 the Mubarak assassination by Rahman. That was done through
2 a misunderstanding on his own.

3 Q But you mentioned it at this time, is that right?

4 MR. MCCARTHY: Objection to "it."

5 THE COURT: What is the "it"?

6 MS. STEWART: Pardon me?

7 THE COURT: You are asking her whether she
8 mentioned what?

9 Q Did you mention that Egypt would have to be
10 alerted with regard to Mubarak and this alleged threat?

11 A The way I remember it is that if in fact Egypt
12 was going to be informed, they would be informed through
13 official channels.

14 MS. STEWART: I ask that that be struck, Judge.
15 I asked if she mentioned it.

16 THE COURT: The question was, did you mention
17 that in words or substance at the meeting?

18 THE WITNESS: That Egypt would be contacted or
19 for Emad? I am confused.

20 THE COURT: Did you mention at the meeting, in
21 words or substance, that Egypt would be contacted about an
22 alleged threat on Mubarak?

23 THE WITNESS: I don't remember. I can read the
24 report and see if in fact -- but I don't remember.

25 Q Please do.

1 A Thank you.

2 The answer is yes.

3 Q Is it fair to say there was a mistake made by
4 Emad with regard to that information at a later date?

5 A In connection to what he did with it?

6 Q Yes.

7 A Yes.

8 Q When did you find out about this mistake, if you
9 recall?

10 A It would have been shortly after, but the exact
11 time, I do not recall.

12 Q Would it have occurred on January 8, 1992?

13 A It could have. I don't recall the exact date.

14 Q Do you recall a date in early January when you
15 called Emad to ask him about a weird call he had received?

16 A You would have to show me the --

17 Q It is at page 43 in that book.

18 A 43 as in the stamped "43 "?

19 Q As in Bates stamp 43.

20 MR. McCARTHY: On 3534C still?

21 MS. STEWART: Yes.

22 MR. McCARTHY: Thank you.

23 Q Does that refresh your recollection as to the
24 date that something occurred?

25 A Yes, ma'am.

1 Q Can you tell us what that date was.

2 A That was January the 8th.

3 Q If you recall, do you remember learning that John
4 Anticev had been beeped by Emad as a result of receiving a
5 weird call?

6 A It is, as in this report, it is my understanding
7 that, yes, he received a telephone call and beeped John
8 Anticev afterwards.

9 Q You said to him, did you not, on the telephone
10 that day, Ms. Floyd, you'd gotten a weird call, do you
11 remember saying that to Mr. Salem?

12 A I don't remember it. But if you can refresh my
13 memory, I am not saying I didn't say it. I am just saying I
14 don't remember it.

15 Q This is 614-31 for identification.

16 A Yes, ma'am.

17 Q To the best of your recollection, were you
18 contacted because Emad had been contacted by a male with an
19 Egyptian accent?

20 A Yes, ma'am.

21 Q Had that male refused to identify himself?

22 A That was my understanding, yes, ma'am.

23 Q And had he asked for a meeting with Mr. Salem?

24 A Yes, ma'am.

25 Q And he used certain names of friends of

1 Mr. Salem's in asking for this meeting?

2 A I don't remember if he used names. I think he --
3 it's my recollection that he just mentioned that he was,
4 that they had common friends. I don't remember exactly
5 specific names.

6 Q Emad called the FBI because he was afraid at that
7 point, is that right?

8 A Among other things, yes.

9 Q He thought that it might be -- that his "cover"
10 might have been blown, is that right?

11 A That was one of the concerns, yes.

12 Q And if you know, did he ask John Anticev to
13 respond to the location where he had agreed to meet this
14 person?

15 A I am aware that he wanted coverage of that
16 location.

17 Q Would that have been 86th Street and Broadway?

18 A The exact location, I don't know. If you had a
19 document that said that to be it, I could refresh my memory.

20 Q Do you know where Emad Salem lived?

21 A Yes, I do.

22 Q And where was that?

23 A He lived on Broadway.

24 Q Do you know the street?

25 A Broadway.

1 Q You don't know the cross street?

2 A The cross streets, I believe, were somewhere
3 around 85th or 86th.

4 Q You called Emad after you got the message from
5 Anticev, is that right?

6 A I don't recall at this time how the order went,
7 but at some point, yes, I did contact Emad.

8 Q You had a conversation with him, at any rate,
9 regarding this meeting that was about to take place, is that
10 right?

11 A Yes, ma'am.

12 Q This was before the meeting took place, is that
13 right?

14 A Yes, ma'am.

15 Q And he gave you details, did he not, about the
16 previous telephone call with this mysterious Egyptian with
17 an educated accent?

18 A Yes, ma'am.

19 Q You indicated, did you not: You don't think it
20 is any intel, do you? Do you remember saying that to Emad?

21 A I don't remember it, but if you have something
22 that can refresh my memory, I will --

23 Q 614-31, page 3.

24 A Yes, ma'am. Thank you.

25 Q After you mentioned this to Emad, did he say to

1 you that he had to go downstairs then?

2 A If I can look at the transcript, I can tell you
3 exactly how it transpired. I just can't, after four years,
4 remember.

5 Q OK.

6 A Thank you.

7 Yes, that's what he says, that he's going to have
8 to end the conversation and go down there.

9 Q Why did you ask him that question, Agent Floyd,
10 with regard to intelligence?

11 A Because he said that the Egyptian was -- it
12 sounded like an educated person.

13 Q In your mind that equated to being someone from
14 intelligence, is that right?

15 A It was a distinct possibility.

16 Q Immediately after he says he has to go down to
17 meet him, does he then change the subject of the
18 conversation?

19 A Yes.

20 Q Did you have occasion to call him back later that
21 night with regard to this particular meeting?

22 A If you have a transcript that I can refresh my
23 memory, I mean, I definitely called him back at some point.
24 Whether or not it was that night, I don't know.

25 Q I am just trying to see if I have two of them.

1 A Thank you. Do you want this one back?

2 MS. STEWART: 614-39, Mr. McCarthy.

3 MR. McCARTHY: Thank you.

4 Q Does that refresh your recollection that you
5 called him back that evening?

6 A Yes.

7 Q You did not have any awareness that Emad Salem
8 was making tapes of those conversations at that time, did
9 you?

10 A No, I did not.

11 Q He told you, did he not, that the person was from
12 Egyptian intelligence, is that correct?

13 A Those are his words.

14 Q And he said that he was straight from Cairo is
15 what he had been told, is that right?

16 A He says: I mean, he's coming straight from
17 Cairo.

18 Q Then you inquired as to what information this
19 intelligence officer wanted, did you not?

20 A Immediately after, I think, I asked if he would
21 be willing to meet with us.

22 Q Would you go back to the very top of page 2.

23 A Right. I said: Do you think he would want to
24 meet with any of us?

25 Q And the line ahead of that?

1 A Mr. Salem's comment?

2 Q Well, your question is on the page preceding, is
3 it not? Did you not say: OK, what information does he
4 want?

5 A Yes, ma'am.

6 Q Did not Mr. Salem reply: Rahman and the whole
7 cells around him and this and that?

8 A That was his response, yes, ma'am.

9 Q Did you then ask Mr. Salem three times whether or
10 not this person would want to meet with the FBI?

11 A Yes.

12 Q Did Mr. Salem, was he able to comprehend what you
13 were asking him?

14 A I see he said: Pardon me? And: I'm sorry, as
15 if he did not understand me.

16 Q He finally indicates that he didn't mention that
17 to this person, this intelligence officer from Egypt, is
18 that right, in the middle of the page?

19 A Yes, that's right.

20 Q Did he then indicate to you that he was going to
21 meet him again the following morning, the very bottom of
22 page 2.

23 A Yes, 9 o'clock in the morning.

24 Q Did you indicate that you felt that it was
25 necessary to consult with John before that happened?

1 A I think that that's actually me saying I am going
2 to meet somebody at 9 o'clock in the morning -- or I'm
3 confirming that Emad is supposed to meet with somebody at 9
4 o'clock in the morning.

5 Q Did you indicate that in the morning you had to
6 talk to Special Agent John Anticev about this meeting with
7 general intelligence?

8 A Right.

9 Q This is at page 3?

10 A Yes, on 3.

11 Q Was the reason why you felt you had to meet
12 because you had to be careful about what we tell them, too?
13 The middle of page 3.

14 A I believe I said we need to think of what we are
15 going to need to do.

16 Q Did you later in this conversation find out that
17 Salem had, indeed, told Egyptian intelligence about the
18 alleged Mubarak assassination?

19 A As I said before, we later found out that Emad
20 had mentioned this to his friends. We did not know who they
21 are or what branch, if any, intelligence they were
22 affiliated with.

23 Q Do you remember Emad saying to you in this
24 conversation, Special Agent Floyd: Remember that I told you
25 that I will -- gonna inform my people, the Army intelligence

1 about that, ah, Rahman asking for, ah, Sadat for, ah,
2 Mubarak's assassination?

3 A Yes. That's what Emad said.

4 Q Now, with hindsight you are saying you don't know
5 whether or not it was intelligence or anyone else, is that
6 what you are saying?

7 A Exactly. You previously asked me information
8 about Emad as to whether or not I knew all of it to be true
9 or not true and I told you then that some of it I found out
10 is not true some of it I still do not know.

11 Q Well, you know, do you not, that Emad definitely
12 met with someone that January night, do you not?

13 A Yes, ma'am.

14 Q I would like to show you what was previously
15 marked Defendants' O for identification. I ask you if you
16 recognize that.

17 A I recognize the picture, yes.

18 Q That was a picture that was taken by Special
19 Agent Anticev, who was there when Emad had the meeting, is
20 that right?

21 A At this point, I don't know who took it, but,
22 yes, it was taken by one of us.

23 MS. STEWART: Judge, I would move it into
24 evidence.

25 MR. MCCARTHY: May I have a brief voir dire?

1 THE COURT: Yes.

2 VOIR DIRE EXAMINATION

3 BY MR. McCARTHY:

4 Q Your testimony is that you recognize the scene
5 depicted in this photograph?

6 A I don't recognize the scene. I recognize that
7 photograph itself.

8 Q Did you see the scene that's depicted in this
9 photograph as it was taken?

10 A Never.

11 MR. McCARTHY: I object.

12 THE COURT: Sustained.

13 MS. STEWART: May I have another try, Judge?

14 THE COURT: Observing the evidentiary rules,
15 sure.

16 DIRECT EXAMINATION (Continued)

17 BY MS. STEWART:

18 Q Was it represented to you by your fellow
19 agents --

20 THE COURT: Sustained. That is what I meant.

21 Q Did you ever show this picture to Emad Salem?

22 A That I do not recall, no.

23 Q Going back for a moment to the search of the
24 lawyer's luggage by Emad's friends or intelligence contacts
25 or whatever, did you ever get a report on whether or not

1 that had occurred?

2 A I did not, no.

3 Q Did you give Emad any instructions at all that
4 night on the phone with regard to dealing with a person
5 contacting him from another intelligence?

6 A In this phone conversation?

7 Q Yes.

8 A Can you give me a minute to finish reading it?

9 Q Sure. If you would turn to page 5.

10 A Yes. If you can just direct me.

11 Q And over to page 6.

12 A I am sorry. There were two page 5s.

13 If you are referring to the middle transaction
14 here, where I tell him what he could possibly say --

15 Q I will re-pose the question.

16 Did you at any point in this conversation give
17 Emad Salem directions about how to conduct himself with
18 regard to foreign intelligence?

19 A With regard to this one specific person, yes.

20 Q With regard to this one specific person, did you
21 tell him that he could meet him at 9, that he could tell him
22 that all the information he had to give he had given him
23 already, and that if they wanted more information they had
24 to speak to a friend of Emad's?

25 MR. MCCARTHY: Objection to "they."

1 MS. STEWART: Or he.

2 Well, I'll read it.

3 A Do you want me to read it?

4 Q Well, is that in essence what you began telling
5 Emad?

6 MR. McCARTHY: Objection.

7 Q Did you tell Emad: My thing is that you meet
8 with him at nine, and say, look, I mean it. The information
9 I gave them is all the information that I have. And if you
10 want any more information, I have a friend that, you know,
11 you can speak to. But other than that, there is nothing
12 else I can do for right now, I've got to be someplace.

13 A That's what I said.

14 Q And then Mr. Salem said: Uh?

15 And you said: Or get out of it or whatever.

16 Then Mr. Salem said, uh, again.

17 And you said: And I'll be up there, and I'll
18 come, whatever, if John's not there. But the bottom line is
19 you're not going to be able to tell them anything else.

20 A That is what I said.

21 Q After that instruction, did you receive any
22 information within the next week or so, next few days or a
23 week, that Emad Salem was indeed talking with someone else
24 about this particular meeting with Egyptian intelligence?

25 A At this time, I don't remember if, in fact, I

1 did. If you have some documentation or something.

2 Q Do you recall a conversation that you had with
3 Mr. Salem with regard to a party at the Egyptian embassy?

4 A That does sound familiar. But I'm not -- I don't
5 know the exact extent of the conversation.

6 MS. STEWART: 603-11.

7 THE WITNESS: Did you want this back?

8 MS. STEWART: Sure.

9 A Which specific part?

10 Q Starting at the very bottom of page 3 I believe
11 it is. Does that refresh your recollection --

12 A Page 3 or 5?

13 Q Whatever was folded over. I don't have a copy of
14 it in front of me. I'm sorry.

15 Page 5 then.

16 A Salem says that he --

17 Q Well, I don't think you can read from the
18 document, Agent Floyd. Does it refresh your recollection
19 that you had a telephone conversation with Mr. Salem?

20 A Yes, ma'am.

21 Q In the course of this conversation did he relate
22 to you that he had spoken with a friend of his at the
23 embassy about this contact from general intelligence?

24 A I'll have to read it.

25 This part of the conversation has to do with him

1 talking to someone within Rahman's camp about why Emad's
2 there.

3 Q At a party though, is that right?

4 A Right.

5 Q Continue reading, please.

6 A Yes, he tells me of the conversation he had with
7 an individual there where the individual asked Emad if he
8 had any contact with somebody --

9 Q And the person that asked the question said, is
10 there anybody from our side contact you, is that right?

11 A Yes.

12 Q Emad indicated that he wanted the contact to go
13 through official channels, is that right?

14 A Yes.

15 Q Did Emad indicate to you in this conversation
16 that he had all of this conversation on a tape?

17 A That is what he said.

18 Q Did you ever --

19 THE COURT: If you can come to a convenient break
20 point in the next five minutes.

21 MS. STEWART: OK.

22 Q Did you ever listen to this tape?

23 A No, I've never --

24 Q Did you ever report the fact that he said he had
25 a tape to the FBI?

1 A No.

2 Q You had just instructed him not to talk to anyone
3 anymore, isn't that right?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Q In the previous telephone conversation, didn't
7 you tell Emad not to talk to them anymore?

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 MS. STEWART: This is a convenient point, Judge.

11 THE COURT: OK. Ladies and gentlemen, we are
12 going to take a short break. Please leave your notes and
13 other materials behind. Please don't discuss the case and
14 we will resume in a few minutes.

15 (Jury not present)

16 THE COURT: You can step down.

17 THE WITNESS: Do you want me to leave this here?

18 THE COURT: Leave it, yes.

19 (Witness excused)

20 (Recess)

21

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1 (Witness resumed)

2 (Jury present)

3 THE COURT: Miss Stewart.

4 MS. STEWART: Yes.

5 BY MS. STEWART:

6 Q Agent Floyd, you recounted these events that took
7 place in early January with regard to Emad Salem's contact
8 with an intelligence agent in a memo that you sent to FBI
9 SAC, is that correct?

10 A Right. SAC refers to SAC, which is special agent
11 in charge.

12 Q And you authored this memo on February 10, 1992,
13 is that right?

14 A Are you referring to the one I have or did you
15 want to show me the memo?

16 That would be correct, I authored this memo.

17 THE COURT: I think the question concerned the
18 date. Did you write it on February 10? That is what she
19 asked.

20 THE WITNESS: Yes, that is correct also, the date
21 was February 10. Sorry.

22 Q Did you recount in this memo the instructions
23 that you gave to Emad Salem with regard to intelligence,
24 foreign intelligence?

25 A If I could read the memo, I can refresh my

1 memory.

2 Q This is at page 45.

3 A Thank you.

4 (Pause)

5 A Yes, ma'am, I did.

6 Q Did you instruct Emad Salem that in the future he
7 was to provide absolutely no information to any Egyptian
8 officials without direct and specific tasking by the New
9 York FBI office?

10 A That is what I wrote in the memo.

11 Q Is that what you did?

12 A Yes, I informed him he was not to provide any
13 information on this case to anybody in Egypt without our
14 direct authorization or instructions.

15 Q Did you use the word Egyptian officials?

16 A I don't remember if I used that word with him or
17 if I just wrote it up in the report that way.

18 Q Do you remember where and when you gave him this
19 instruction?

20 A Where, no, or the exact time also no, just that
21 it would have been in a meeting that we had.

22 Q Would it have been before this memo was written,
23 though, would it not?

24 A Yes, ma'am.

25 Q Was he also directed that he should notify

1 Special Agent Floyd of any future contacts by any Egyptian
2 intelligence officers?

3 A If it's in the memo, that's what I -- yes.

4 Q Did you also send a telex to the director of the
5 FBI in Washington, D.C. in which you also detailed these
6 instructions that you had given him?

7 A You would have to refresh -- I sent a lot of
8 teletypes. I possibly did send one with that, but I would
9 have to look at it.

10 MS. STEWART: This would be at page 65, Mr.
11 McCarthy.

12 MR. MCCARTHY: Thank you.

13 Q That is the cover sheet, if you look at page 65.

14 A This is a teletype -- normally at the bottom here
15 are initials. I can't say that this is my teletype, or it
16 could have been John Anticev's teletype. Nonetheless, I can
17 answer a question about page 65. It was whether or not he
18 was given instructions --

19 THE COURT: The question was whether you sent a
20 teletype describing --

21 A One was sent. I don't know if this is mine or
22 not. It is not properly marked for me to identify it. At
23 the bottom of the teletypes are our initials and for
24 whatever reason it is not there. I am sorry, I can't say
25 whose it is. But it was sent to the director.

1 Q And the teletype that was sent to the director
2 contained the instructions you had given, is that right?

3 MR. McCARTHY: Objection.

4 THE COURT: I guess it is two parts. A, did it
5 contain instructions, and if it did, did it contain the
6 instructions that you had given?

7 A I didn't get to read the whole teletype, but
8 there was, I am sure there was a teletype sent that had
9 instructions in it, representing what Emad was told by
10 myself.

11 Q These directions or instructions that you gave to
12 Emad Salem, what was the purpose of them?

13 A To direct him to do exactly as I instructed him.

14 Q But what was the underlying reason why you
15 instructed him not to make any future contact with any
16 Egyptian intelligence?

17 A I don't know that there was an underlying reason.
18 That is just the standard procedure that we would take.

19 Q Did you repeat this for him at any time in the
20 years 1992 or 1993, this specific instruction?

21 A I don't remember if I repeated it to him or not.

22 Q Did he ever bring to your attention that he was
23 contacting or had been contacted by Egyptian intelligence?

24 A I know that he had further contact with his
25 friends in Egypt not to do with this case, which he had

1 complete -- he could if he wanted to. But as far as
2 Egyptian intelligence, no. The only time I knew that he had
3 been approached by Egyptian intelligence was the one
4 incident where the picture represents him being met on the
5 street.

6 Q Agent Floyd, would it be your testimony that you
7 who instructed him that in the future he was to provide
8 absolutely no information to any Egyptian officials --

9 MR. MCCARTHY: Objection.

10 A In this case.

11 Q In this case, yes.

12 A True.

13 Q Were you aware whether or not he was providing
14 information to Egyptian officials?

15 A On this case, no.

16 Q You were not aware?

17 A Right.

18 Q So if he was doing it, you didn't know about it?

19 A No.

20 Q With regard to this incident at the party and --
21 strike that.

22 With regard to the incident that took place in
23 the Japanese restaurant, the meeting with general
24 intelligence on January 8, 1992, are you aware as you sit
25 there that he called someone in military intelligence and

1 recounted the incident?

2 A No, I am not aware of that.

3 Q Are you aware that he called another person in
4 Egypt about the contact --

5 MR. McCARTHY: Objection.

6 Q -- and played a tape of that conversation?

7 THE COURT: Are you aware of that?

8 A No, I am not.

9 Q Did Emad Salem ever tell you that when he spoke
10 with this person from general intelligence he gave him
11 flyers, he gave him pictures, and he gave him names?

12 A Can you repeat the question?

13 Q I will break it down, if you like.

14 Did Emad Salem ever tell you that in the course
15 of this meeting on January 8 and 9 with this man from
16 Egyptian general intelligence, that he gave him flyers? Any
17 flyers?

18 A Are you talking that Emad gave the person he met
19 or the person he met gave to Emad?

20 Q Emad gave the person he met.

21 A I am not aware of that at all.

22 Q Are you aware that he gave him pictures?

23 A No.

24 Q Are you aware that he gave him names?

25 A No.

1 Q Are you aware that he told this contact on the
2 phone that he had told the FBI that he was giving
3 information?

4 A What contact?

5 Q The contact -- strike that. I will rephrase the
6 question.

7 Did Emad ever tell you that he had told his
8 friends in Egypt that he was working with the FBI?

9 A I am aware that he told them after the World
10 Trade Center bombing, but during this time that you are
11 specifically asking, no.

12 Q Was there any time that this instruction that you
13 gave in January 1992 was revoked by the FBI?

14 A I would not have any knowledge who revoked it. I
15 only have my own. I did not revoke it.

16 Q In May of 1992, did you believe that this
17 instruction of yours was in force?

18 A That he was following it?

19 Q Yes. Well, that he was still directed not to
20 share any information with them.

21 A From me, yes. From anybody else, I cannot state.

22 Q Did he contact you to tell you that he was in
23 touch with people from Egyptian intelligence?

24 A I was aware that he still had contact with his
25 friends in Egypt, yes.

1 Q Do you remember a contact with his old
2 commandant?

3 A As I said before, I was aware that he had had
4 contact with his friends and family in Egypt.

5 Q In September of 1992, Emad Salem was no longer
6 working for the FBI, is that correct?

7 A Yes, ma'am.

8 Q And you were directed not to have contact with
9 him at that point, is that right?

10 A I don't know if it was at that point, but at some
11 point, yes, I was directed, that I should not have any
12 further contact with him. Actually I can say that at that
13 point that I don't believe in September of 1992 that had
14 been the case. I think that my direction came later.

15 Q Later than September of '92?

16 A Right.

17 Q Were you aware that Emad Salem told an Agent
18 Holliman in September of 1992 that he was providing
19 information to the FBI and also providing information --

20 MR. McCARTHY: Objection to form, objection to
21 relevance.

22 THE COURT: I am sorry. May I hear it.

23 (Record read)

24 THE COURT: Sustained.

25 Q Did you in September of '92 go with Emad Salem to

1 the FBI office in Newark?

2 A No, I have never been to the Newark FBI office
3 with Mr. Salem.

4 Q In 1993, after the World Trade Center, Emad Salem
5 goes back to work for the FBI. Did you know that?

6 A Yes, ma'am.

7 Q Were you aware that in the spring of 1993 he was
8 in contact with Egyptian intelligence officers by phone?

9 A I had nothing to do with that investigation
10 afterwards, so I was not aware.

11 Q Have you ever had occasion to listen to any of
12 those conversations?

13 MR. McCARTHY: Objection to relevance.

14 THE COURT: Sustained.

15 Q Agent Floyd, have you ever had occasion to listen
16 to any of the so-called bootleg tapes, those privately made
17 tapes by Emad Salem in this case?

18 A The ones of myself, yes.

19 Q You have listened to the ones of yourself?

20 A Some of them, yes.

21 Q When was the last time you listened to them?

22 A Yesterday, possibly this morning, I think -- this
23 morning was the last time.

24 Q For how long have you had those?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q Have you been listening to them since June of
3 '93, these bootleg tapes?

4 A No, ma'am.

5 Q Are you aware that Emad Salem spoke to a contact
6 in Egypt --

7 MR. McCARTHY: Objection, relevance.

8 THE COURT: Sustained.

9 Q Is it fair to say, Agent Floyd, that your
10 relationship with Emad was very close?

11 A You would have to define close.

12 Q Let me ask you to define your relationship with
13 Emad Salem.

14 A It was a professional relationship.

15 Q Was it purely professional?

16 A Yes.

17 Q It was never friendlier than just professional?

18 A We were friends, but we were professional. We
19 didn't associate outside the realm of this.

20 Q If I could just backtrack a moment, when was the
21 first time that you listened to the bootleg tapes?

22 A I don't know the exact date, but it would have to
23 have been somewhere, definitely after this trial had
24 started, maybe within the last three months --

25 Q That is any -- I am sorry.

1 A -- that I can recall actually listening to a
2 tape.

3 Q Is it your testimony then that the first time you
4 heard any of the so-called bootleg unauthorized tapings was
5 after January 1995?

6 A Around that time is when I recall first actually
7 hearing a tape, yes. The exact time I don't actually
8 remember, though.

9 Q With regard to your friendship, your professional
10 friendship with Emad, do you remember that in August 1991 --
11 strike that -- in 1991 or 1992, you received from Mr. Salem
12 a business cardholder?

13 A Right, to put my professional business cards in.

14 Q Were you admonished at all with regard to that?

15 A No.

16 Q Do you remember discussing with him on the
17 telephone a baiting suit that you recommended he buy for
18 himself?

19 A I didn't recommend it. He was telling me about a
20 bathing suit that he was going to get for his trip to Puerto
21 Rico that I believe had the American flag logo on it.

22 Q And you didn't tell him where to go and buy that?

23 A No, I think he told me it was down at the South
24 Street Seaport. It wouldn't have been one that I
25 recommended because I don't really like those kind of

1 bathing suits.

2 Q Didn't you say oh wow, great?

3 A You would have to refresh my memory. If I
4 referred to oh wow or great, you would have to show me the
5 transcript.

6 Q Can you put on your headset -- and, Judge, may we
7 play that?

8 MR. McCARTHY: For the witness, your Honor? This
9 is to refresh the witness' recollection?

10 THE COURT: Is this for the witness or do you
11 want everybody else to listen?

12 MS. STEWART: I think evidentiarily speaking it
13 is only to refresh her recollection at this point.

14 (Tape played)

15 A Actually, ma'am, that is him that said wow and
16 great, not me.

17 Q But clearly, you knew what he was referring to on
18 that tape, right?

19 A Yes. He had told me that he was going to be
20 purchasing a bathing suit for his trip.

21 Q I am sorry.

22 A He had told me that he was going to be purchasing
23 a bathing suit for his upcoming trip that he was taking.

24 Q And, Agent Floyd, you gave Mr. Salem a watch for
25 his birthday, did you not?

1 A Yes, I did.

2 Q And he made jewelry for you and your friends?

3 A No, he made jewelry for the general public. I
4 had purchased some after he no longer worked for us.

5 Q Didn't he make a ring a little larger because you
6 couldn't get it over your knuckle?

7 A That was for a girlfriend of mine, that I
8 remember.

9 Q Do you remember going with him to the IRS on one
10 occasion?

11 A Yes, I do.

12 (Continued on next page)

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1 Q He had a problem there, did he not?

2 A Yes, he did.

3 Q You agreed to go in your official capacity to
4 give him a hand, isn't that right?

5 A It was not as an official representative of the
6 FBI, no.

7 Q You were going to let the agent know that you
8 were from the FBI, weren't you?

9 A I don't recall that I even met the agent. I
10 think I just helped him get the forms and get to the right
11 place, and then he met with the person. I don't remember
12 ever meeting with an IRS agent myself.

13 Q But you actually went to the place where the IRS
14 agents are, isn't that right, the office?

15 A Right. I am not even sure if the agents
16 themselves were located there. It might have just been the
17 building where you originally go to get the information and
18 they direct you.

19 Q Do you remember if you gave him advice on how to
20 conduct himself with the agent?

21 A You would have to refer to a transcript.

22 Q Put your headphones on, please.

23 (Audiotape played)

24 Q Does that refresh your recollection at all?

25 A Yes, just as I stated before, it is a place that

1 you just went and got general information. You took a
2 number. IRS agents are a lot like us, you sort of have to
3 have an appointment.

4 THE COURT: The question was whether you told him
5 how to act or behave himself with the agents.

6 THE WITNESS: No, not during that transcripts I
7 didn't hear anything. I just told him, you know, where it
8 was located, and what the hours were, and that we could go
9 and get a number.

10 Q On at least one occasion did Emad Salem loan you
11 his car?

12 A The car that we were paying the rental for?

13 Q His car.

14 A That car was paid for by us, the rental was.

15 Q So --

16 A Yes, I did drive it. I have driven it on
17 numerous occasions. We paid the rental for it. We paid him
18 money to pay the rental on it.

19 Q Can you answer my question.

20 A I drove it several times.

21 Q And it was in his possession, is that right?

22 A Yes, unless I was driving it, then it was in my
23 possession.

24 Q You would call him on the phone and say, "Emad,
25 could I borrow the car?" Isn't that right?

1 A I don't -- you would have to refresh my memory
2 with a transcript.

3 Q Well, did you have a separate set of keys for
4 this car, your own set?

5 A No, I did not.

6 Q He had the keys, isn't that right?

7 A Yes, he did.

8 Q And you had to borrow the car?

9 A If I wanted to drive it, I had to get it from
10 him, yes.

11 Q You booked a flight for him through your travel
12 agent, isn't that right?

13 A I don't recall that, no.

14 Q Do you remember if you made arrangements for him
15 in Arizona to --

16 A That would have been to attend a trip for the
17 Bureau.

18 Q And to meet a friend of yours out there, though,
19 who would show him Phoenix, isn't that right?

20 A An agent.

21 Q An agent, yes.

22 A Right, which is --

23 Q But a friend also, yes?

24 MR. McCARTHY: Objection.

25 THE COURT: The question is: Was the agent a

1 friend. Let her finish her answers.

2 THE WITNESS: Yes.

3 Q Did you discuss his marriage with him?

4 A In what aspect?

5 Q In any aspect.

6 A Yes, he did mention he was married.

7 Q That is all he mentioned?

8 A No. He mentioned -- I don't know. You would
9 have to ask me what it is specifically you want me to, yes
10 or no, what he mentioned about his marriage.

11 Q You got him work at a private detective agency
12 after he was fired by the FBI, didn't you?

13 A No, I did not.

14 Q You did not make arrangements for him?

15 A He did not work in a private detective agency
16 that I am aware of after he left us.

17 Q Didn't you say that you had friends with someone
18 there?

19 A I made arrangements for him to be interviewed for
20 a position.

21 Q You don't know whether he ever got that position,
22 is that your testimony?

23 A It's my understanding he did not, and he went
24 into the jewelry business on his own.

25 Q I'm sorry?

1 A It's my understanding that he did not and he went
2 into the jewelry business on his own.

3 Q But you made the arrangements for him to get the
4 interview at the agency where you had a friend, is that
5 right?

6 A No, he made the -- I just gave him guy's phone
7 number. He contacted him. The guy and him had an oral
8 interview over the phone, and then it was decided that he
9 met the requirements and he could come in and do an
10 additional interview.

11 Q The guy, was he ever called by you?

12 A Yes.

13 Q Do you remember on one occasion you agreed to
14 meet at his house because nobody -- when I say "his,"
15 meaning Emad Salem's home because nobody will be watching?

16 A No, I do not remember that. If I did say it, it
17 would refer to the bad guys.

18 Q Do you remember on numerous occasions saying,
19 "We'll meet at the regular place"?

20 A Yes.

21 Q Do you remember ever saying to Emad, "I'll be
22 there for you, don't worry"?

23 A Yes.

24 Q Do you remember you asked him to come to your
25 home and help you shop for furniture?

1 A Yes.

2 Q And in that conversation did you also say, "When
3 you're driving up here, I'll just take a shower and get
4 ready"?

5 A I probably said, "While you're driving up here,
6 I'll just be taking a shower and getting ready."

7 Q He did come to your home, is that right?

8 A Actually, I think I met him.

9 Q Well, did you ever give him -- I'm sorry.

10 A I think I met him at Bennigan's. He wasn't
11 working for us at this time so I'm not sure, but I believe I
12 met him at Bennigan's for lunch.

13 Q Did he ever even one time go to your home?

14 A I don't recall him ever being in my home, no.

15 Q Did you remember giving him directions to your
16 house?

17 A I gave him directions up to Connecticut, yes.

18 Q Have you ever given any other assets or
19 confidential informants such directions?

20 A He was not an asset nor a confidential informant
21 at that point, ma'am.

22 Q This was after he was no longer --

23 A Yes, ma'am.

24 Q And was this after you had been directed not to
25 have contact with him?

1 A No, ma'am.

2 Q Do you remember that he spoke to your mother over
3 Christmas while you were staying there?

4 A He spoken to my mother on numerous occasions.

5 Q And --

6 A She lives with me.

7 Q Do you remember him calling you just after New
8 Year's of 1992 and leaving a message for you?

9 A I am -- I don't recall it, it could have
10 happened.

11 Q Do you remember at one point Emad calling and he
12 said, or you said that you had a great time, and you told
13 everyone what a great place it was?

14 A I don't recall that. I'm not saying I didn't say
15 it. I just don't recall it.

16 Q Could you just listen.

17 MR. McCARTHY: Can we know -- withdrawn.

18 (Audiotape played)

19 A I'm sorry, that was not on this tape.

20 (Pause)

21 MS. STEWART: Technical difficulties.

22 (Pause)

23 MS. STEWART: We will go forward, Judge. The
24 tape has been rewound and it's not cued up.

25 THE COURT: All right. Go ahead.

1 THE WITNESS: Do you want me to listen now?

2 THE COURT: No. She is going to move on to
3 something else.

4 THE WITNESS: Sorry.

5 Q Is it fair to say that during 1993, although you
6 were not assigned to the case Emad was working on, you still
7 maintained contact with him?

8 A Yes, I still had contact with him.

9 Q Did you ever come to know whether or not Egyptian
10 intelligence was paying Emad Salem?

11 A I have no knowledge of any payment.

12 Q Did he ever tell you that he had demanded that
13 they compensate him as a private investigator would be
14 compensated, by the hour, for his work?

15 A I don't recall any conversation.

16 Q But as you sit there, do you know that the United
17 States paid Emad Salem a million dollars?

18 A I am aware -- I am not aware that he's been paid
19 any money as of yet.

20 Q And Agent Floyd, do you know the meaning of the
21 word "scapegoat"?

22 A Yes, ma'am.

23 Q Do you believe that the Bureau is putting you in
24 that role now?

25 A As a scapegoat for what?

1 Q For anything?

2 A I am not aware of the Bureau's intention to use
3 me as scapegoat, no, ma'am.

4 Q Are they harassing you in any way, certain
5 agents?

6 A It is my perception that there has been some
7 harassment, yes.

8 Q Do you remember a conversation that you had with
9 Mr. Salem after the World Trade Center bombing in which you
10 said, "Emad, it's me and you against everybody, with them
11 trying to make it look like, you know, we were doing
12 something wrong."

13 Do you remember that conversation?

14 A I don't remember the exact conversation, no, but
15 if you have the transcript in front of you.

16 MS. STEWART: 619-5.

17 A Yes. This is a copy of our -- and those are my
18 words.

19 Q You went on to say: "Yeah, when we were the only
20 ones that were doing anything."

21 And Salem replied: "Absolutely not. We was
22 doing everything."

23 And you said: "And they're just trying to cover
24 their butts."

25 Do you remember saying that to Emad Salem?

1 A Yes, I do.

2 MS. STEWART: I have no further questions.

3 THE COURT: Mr. Stavis?

4 MR. MCCARTHY: Your Honor, may we approach,
5 please.

6 THE COURT: Yes.

7 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: My understanding is that Mr.
3 Stavis made an application which involved calling Agent
4 Floyd and the court denied the application.

5 THE COURT: When was that?

6 MR. McCARTHY: At the conference that we had
7 before the defense case started.

8 MR. STAVIS: At the proffer session, your Honor.

9 MR. McCARTHY: Right.

10 MR. STAVIS: I will refresh your Honor's
11 recollection.

12 THE COURT: Would you?

13 MR. STAVIS: At the proffer session, I told your
14 Honor that I intended to question Ms. Floyd concerning a
15 certain bootleg tape after the World Trade Center. The
16 government then agreed to stipulate that into evidence and
17 they did stipulate it into evidence.

18 What I am seeking to go into now is the area that
19 your Honor allowed me to go into with Agent Dunbar, which
20 was the meeting in July of 1992, at which time Salem was
21 told to verify the information.

22 MR. McCARTHY: And your Honor's ruling at that
23 time was that he was going to be permitted to call one agent
24 to inquire about that.

25 THE COURT: I remember you saying you would call

1 one agent, and you did call one agent. You called Dunbar.

2 MR. STAVIS: Your Honor has ruled that that area
3 is relevant, and there is a witness who is now on the stand.
4 And I will also say this, your Honor: I had with Agent
5 Dunbar -- he used a word other than "verify," and I intend
6 to pursue that with this witness, because Agent Dunbar at
7 the time used the word verified the information concerning
8 the Salem investigation, and this witness uses the same
9 word.

10 MR. McCARTHY: This witness was not present at
11 the meeting that we are talking about.

12 THE COURT: Let me cut to this. How long is
13 this?

14 MR. STAVIS: Fifteen minutes, ten minutes.

15 THE COURT: Fine.

16 How is that for principled reasoning.

17 (Continued on next page)

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1 (In open court)

2 CROSS-EXAMINATION

3 BY MR. STAVIS:

4 Q Agent Floyd, is there a special agent in the FBI
5 New York office by the name of Carson Dunbar?

6 A He's in a titled position of ASAC, which is
7 assistant special agent in charge.

8 Q Did you have meetings with Assistant Special
9 Agent in Charge Carson Dunbar concerning Mr. Salem?

10 A Yes, sir, I did.

11 Q The area of the FBI, New York office, that you
12 work out of has a different assistant special agent in
13 charge, is that correct?

14 MR. MCCARTHY: Objection, unless he specifies
15 when.

16 Q In 1991 and 1992, the area of the New York FBI
17 office that you specifically worked in had a different
18 assistant special agent in charge, correct?

19 A My immediately -- my immediate ASAC was different
20 from Mr. Dunbar, but he was still also my administrative
21 one.

22 Q That was Jack Lowe, correct?

23 A Yes.

24 Q And you had a supervising special agent by the
25 name of James Sherman, is that correct?

1 A Yes, sir.

2 Q Drawing your attention to July 1 of 1992, did you
3 attend a meeting --

4 THE COURT: The 1st or 2nd, Mr. Stavis?

5 MR. STAVIS: Excuse me, your Honor?

6 THE COURT: Is that 1st or 2nd?

7 MR. STAVIS: July 1 of 1992.

8 Q Did you attend a meeting with Carson Dunbar,
9 Supervising Special Agent John Crouthamel and Detective
10 Louis Napoli?

11 A I don't remember the exact date of the meeting.
12 If you can refresh my memory --

13 MR. STAVIS: May I approach the witness, your
14 Honor, with --

15 MR. MCCARTHY: I have an objection to relevance.
16 That's not what he said the inquiry was about.

17 THE COURT: If you can establish the meeting, go
18 ahead.

19 MR. MCCARTHY: It is a different meeting, your
20 Honor, if I may.

21 THE COURT: Is this a different meeting?

22 MR. MCCARTHY: Yes your Honor.

23 THE COURT: Then you may not. Move on.

24 May I see you up at the side.

25 (Continued on next page)

1 (At the side bar)

2 THE COURT: Mr. Stavis.

3 MR. STAVIS: In my proffer, there is a meeting on
4 July 1 with all the agents. Then, after that, this witness
5 on July 6 takes Emad Salem into the meeting with Carson
6 Dunbar after which she instructs Emad Salem as to certain
7 things.

8 THE COURT: So what? You said at the side bar a
9 minute ago that you wanted to examine her on a particular
10 point. You are directed to examine on that point. Thank
11 you.

12 (Continued on next page)

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1 (In open court)

2 MR. STAVIS: It might expedite matters if I do
3 give the witness a copy of 3534C 220.

4 THE COURT: Give her whatever will expedite
5 anything. Go ahead.

6 Q Turning your attention to a meeting which
7 occurred on July 6 of 1992 at Agent Dunbar's office, did you
8 escort Mr. Salem to that meeting at about 2 o'clock in the
9 afternoon? I would refer you to page 223 of your memo.

10 A Yes, I did bring him into the office to meet with
11 Carson Dunbar.

12 Q That meeting occurred between -- approximately
13 how long did that meeting take?

14 A I don't recall.

15 Q And after that meeting you spoke to Agent Dunbar,
16 is that correct?

17 A Yes, I would have.

18 Q After that meeting you were directed to tell
19 Mr. Salem --

20 MR. McCARTHY: Objection.

21 MR. STAVIS: I will change the question.

22 Q After that meeting, you instructed Mr. Salem that
23 he had to verify the information provided that it was
24 accurate and truthful, is that correct, ma'am? I refer you
25 to the second paragraph on page 223.

1 A Yes.

2 Q And you were told or instructed to arrange for a
3 polygraph examination, is that correct?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Q Did you talk to Emad Salem about arranging for a
7 polygraph examination following the meeting on July 6 of
8 1992?

9 A Yes.

10 Q Did you tell Emad Salem following the meeting on
11 July 6, 1992 that there were three areas that the polygraph
12 was to verify, information on --

13 MR. McCARTHY: Objection, scope.

14 THE COURT: Sustained.

15 May I see you at the side.

16 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I have ruled in this case repeatedly
3 that the polygraph examination results are not at all
4 relevant here and are not to be dragged in. The only
5 purpose of this examination is to do precisely what I have
6 said may not be done. You are done.

7 MR. STAVIS: That is not the case, your Honor. I
8 am asking for the areas. The areas go toward Salem's state
9 of mind. My point is that the areas are all concerning
10 Mr. Nosair.

11 THE COURT: The areas have already been
12 established. There is testimony. This is duplicative and
13 it's only intended to do what I said it was intended to do.
14 You are done. Please sit down.

15 MR. STAVIS: I have one further question to ask
16 this witness concerning the date that Mr. Salem was no
17 longer involved in the investigation.

18 THE COURT: That you can do.

19 (Continued on next page)

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1 (In open court)

2 Q Ms. Floyd, by July 20 of 1992, isn't it true that
3 Mr. Salem was no longer being involved in any capacity with
4 this investigation?

5 A I don't know the exact date, but it would have
6 been somewhere around that time.

7 MR. STAVIS: I have no further questions, your
8 Honor.

9 THE COURT: Mr. Ricco?

10 MR. RICCO: Your Honor, Mr. Jacobs is going to go
11 out of turn.

12 THE COURT: Fine. Mr. Jacobs?

13 THE WITNESS: Do you want this document back,
14 sir?

15 THE COURT: You can just hold on to it, and he
16 will take it back later.

17 CROSS-EXAMINATION

18 BY MR. JACOBS:

19 Q Agent Floyd, did there come a time on December 1,
20 1994 where you provided a signed sworn statement to the
21 Federal Bureau of Investigation?

22 A I don't know the exact date, but I have provided
23 signed sworn statements, yes.

24 Q Let me show you 35148B for identification.

25 A Thank you.

1 Q Do you see that document, ma'am?

2 A Yes, sir, I do.

3 (Continued on next page)

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1 Q I ask you again, did you provide a signed, sworn
2 statement to the Federal Bureau of Investigation on or about
3 December 1, 1994?

4 A Yes, sir, I did.

5 Q I would like you to take a look at the document,
6 ma'am. Does it bear your signature on the last page?

7 A Yes, sir, it does.

8 Q Did you review the document before you signed it?

9 A Yes, I did review it.

10 Q Did you initial every page?

11 A Yes, sir, I did.

12 Q Did you swear to it under oath?

13 A Yes, sir, I did.

14 Q Is everything that is in that document truthful?
15 Yes or no.

16 MR. McCARTHY: Objection.

17 A At the time that I gave this document --

18 THE COURT: Sustained.

19 Q Is the document truthful? Yes or no.

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 Q Have you read the document, ma'am?

23 A Yes, I have.

24 Q Is the document true, everything that you said?

25 A At the time that I gave it, yes.

1 Q Is it true now as you sit there?

2 A The substance of it, yes.

3 Q What substance isn't true?

4 A The part about, there is a part in here that
5 needs to be clarified on the tapes, of who told the asset to
6 discontinue and who didn't. It was myself and John that
7 told the asset actually to discontinue, and as I remember
8 it, it was just Detective Napoli who mentioned that he was
9 to not tape because if he did tape, they could be used
10 against him.

11 MR. JACOBS: Your Honor, I would offer a portion
12 of 35148B into evidence at this time. I showed Mr. McCarthy
13 the --

14 MR. MCCARTHY: I have seen the document. Just a
15 brief voir dire?

16 THE COURT: Yes.

17 VOIR-DIRE EXAMINATION

18 BY MR. MCCARTHY:

19 Q Agent Floyd, did you sit down and write this out?

20 A No, sir, I did not.

21 Q Were you in a session where people were asking
22 you questions and you were giving answers?

23 A Yes, sir, I was.

24 Q Who wrote out the document?

25 A The two agents that were asking the questions.

1 Q And then you reviewed it and signed it?

2 A Right.

3 MR. McCARTHY: I have no objection.

4 THE COURT: Whatever the segment is that you have
5 agreed on is, I assume, received without objection, right?

6 MR. McCARTHY: Yes. Well, there is no objection.

7 MR. JACOBS: Your Honor, at this time I have
8 copies of 35148B, the redacted copy, and I would ask at this
9 time to be permitted to hand it out to the jury.

10 THE COURT: You may.

11 (Pause)

12 THE WITNESS: Do you want me to continue on any
13 of the parts that are to be redacted?

14 MR. JACOBS: One moment.

15 BY MR. JACOBS:

16 Q Agent Floyd, you provided this statement
17 voluntarily, correct?

18 A That's incorrect. I don't have a choice.

19 Q All right.

20 Q You were advised of certain allegations relative
21 to the handling of information and the handling of the
22 investigation of the World Trade Center case --

23 MR. McCARTHY: Objection to form and relevance.

24 THE COURT: Sustained.

25 Q The document in the first paragraph in evidence

1 states that they have advised me of allegations relative to
2 the handling of information and the handling of the
3 investigation of the World Trade Center bombing on February
4 25, 1993. During the time of the above allegations, I was
5 assigned to the FBI New York Squad 17 investigating foreign
6 counterintelligence. I was advised by asset that he was
7 taping conversations of his family members and bad guys. In
8 November 1991, I told asset to discontinue taping, as it was
9 illegal.

10 Did you tell Emad Salem in November 1991 to
11 discontinue taping as it was illegal? Did you do that,
12 ma'am? Yes or no.

13 A Yes, I did.

14 Q You also state in the affidavit that you signed,
15 Special Agent Anticev and Napoli also told the asset to
16 discontinue taping. Is that statement truthful, ma'am?

17 A As I just said, sir, no, the statement should
18 read Special Agent John Anticev told him to discontinue
19 taping and that Louie Napoli told him that he should not be
20 a part of any taped conversations because it would cause a
21 problem later on down the line of him possibly being used as
22 a witness when he did not want to be.

23 Q So the statement is not correct?

24 A Part of it is.

25 Q In January of 1993, the asset -- asset meaning, I

1 assume, Salem -- advised me he had taped a telephone
2 conversation with Detective Napoli. Is that correct, ma'am?

3 A Right.

4 Q And is that the conversation where Salem offered
5 to play a portion of the conversation he had with Napoli to
6 you?

7 A Yes, but he didn't.

8 Q I understand. He offered to play it to you,
9 correct? Yes or no.

10 A I don't know if he offered it or if I asked him
11 to play it. I can't remember.

12 Q Asset had not previously advised me that he had
13 continued to tape conversations, and he did not say if he
14 had taped anyone else. Is that a truthful statement, ma'am?

15 A As I said before, at the time that is what I
16 believed to be truthful, yes.

17 Q Has something come to your attention that would
18 make it untruthful now?

19 A Yes. Obviously the conversation that was pointed
20 out by the previous attorney where he had mentioned he had
21 taped a conversation between himself and somebody in the
22 embassy.

23 Q The question, ma'am, was, what came to your
24 attention that would make you now come to realize that your
25 statement that Salem had not previously advised me that he

1 had continued to tape conversations and he did not say if he
2 had taped anyone else? What are you referring to, ma'am?

3 A The answer is the same. I am referring to the
4 information that the previous attorney brought forth about
5 where Mr. Salem said, and I have a tape of this. I believe
6 that is where he was at a party at the mission, possibly.

7 THE COURT: Mr. Jacobs, could you come to a
8 convenient break point in the next five minutes.

9 MR. JACOBS: Sure.

10 Q Let me show you a transcript of defendant
11 Khallafalla C for identification. Do you see the document
12 in front of you, ma'am?

13 A Yes, I do.

14 Q Does that purport to be a transcript between you
15 and Salem that is called source tape A, call number 22?

16 A Yes.

17 Q Would I be correct, ma'am, that sometime over the
18 past week you have had an opportunity to listen to the tape
19 and to review the transcript? Is that correct?

20 A Yes.

21 Q And you recognize your voice, you recognize
22 Salem's voice, correct?

23 A Yes, sir.

24 Q Would I be correct in stating that this
25 conversation was recorded sometime in June or July of 1992?

1 Would that be correct, in that period?

2 A I do not know, sir.

3 Q Can you tell the jury, based upon your review of
4 the tape, when do you think it was made, your best, best
5 opinion that you can give us?

6 A Around in summer of '92.

7 Q December of '92?

8 A Summer of.

9 Q Summer. Would I be correct in stating that this
10 tape concerns taping and Emad, correct, ma'am?

11 A Yes.

12 (Continued on next page)

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1 MR. JACOBS: I would offer it into evidence at
2 this time, your Honor. I am not sure if we have the
3 original tape as a government exhibit or -- we are going to
4 ask to play the original one, your Honor.

5 MR. McCARTHY: I have no objection to the tape or
6 the transcript, your Honor.

7 MR. JACOBS: With that in mind, your Honor, I
8 would ask that we break at this time.

9 THE COURT: It is Khallafalla C. What is the
10 number of the exhibit?

11 MR. JACOBS: Your Honor, my apologies. Can we
12 play the tape now -- we will break now.

13 THE COURT: Ladies and gentlemen, we are going to
14 break. Please leave your notes and other materials behind
15 and don't discuss the case, and we will resume this
16 afternoon.

17 THE COURT: You can step down.

18 (Witness excused)

19 MR. McCARTHY: Your Honor, I have had a
20 conversation with Mr. Jacobs, that we are going to call the
21 tape Khallafalla Exhibit C and the transcript will be
22 Khallafalla Exhibit C-T.

23 THE COURT: With that in mind it is received and
24 we will play it.

25 (Defendant Khallafalla Exhibits C and C-T)

1 received in evidence)

2 THE COURT: I would like to see Mr. Fadil
3 Abdelgani and his attorney in the robing room.

4 (Pages 15189 - 15194 sealed)

5 (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 (Jury not present)

4 NANCY FLOYD, resumed.

5 MR. JACOBS: Your Honor, the government had no
6 objection to the redacted copy of the second sworn statement
7 going into evidence, 35148D. That's been distributed to the
8 jury and is in front of the witness as well.

9 THE COURT: Do you want me to advise them of
10 that?

11 MR. JACOBS: Yes, your Honor.

12 THE COURT: The date on that is?

13 MR. JACOBS: January 6, 1995. It's been
14 distributed to the jury, the witness has it, the government
15 has it.

16 THE COURT: I'm sorry. That's D?

17 MR. JACOBS: Yes, your Honor.

18 THE DEPUTY CLERK: 35148D.

19 THE COURT: All right.

20 (Jury present)

21 THE COURT: Good afternoon, ladies and gentlemen.

22 JURORS: Good afternoon, your Honor.

23 THE COURT: You will recall that before lunch an
24 agreed-upon portion of Agent Floyd's December 1, 1994
25 affidavit was received in evidence as 35148B. There has now

1 been distributed to you an exhibit marked 35148D, which is
2 another agreed-upon segment, this time of an affidavit of
3 hers dated January 6, 1995.

4 CROSS-EXAMINATION (Continued)

5 BY MR. JACOBS:

6 Q Agent Floyd --

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

8 THE COURT: Please.

9 Q Agent Floyd, getting back and taking a look at
10 35148D, your December 1 statement, ma'am, and I was asking
11 you about the statement in the middle of the second
12 paragraph when we left: "Asset had not previously advised
13 me that he had continued to tape conversations and he did
14 not say if he had taped anyone else."

15 I think my question to you, ma'am, is: Was that,
16 as you sit there now, today, an accurate statement?

17 A Today, no.

18 Q "Asset was having a dispute with Detective Napoli
19 and wanted to preserve what was said by Detective Napoli.
20 At that point I again told asset to stop taping
21 conversations."

22 Is that accurate, ma'am, as you sit there today?

23 A Yes, I did tell him after that that he needed to
24 stop taping conversations.

25 Q Did you do that, ma'am, during this conversation

1 when Emad told you that he had Louis on tape and he was
2 going to play a little portion for you? Was it at that
3 time?

4 A No, we had a meeting afterwards.

5 Q Afterwards, OK.

6 "I advised Detective Napoli of my conversation
7 with the asset and Detective Napoli seemed unconcerned."

8 As you sit there now, ma'am, is that statement
9 accurate?

10 A Yes, I did advise Detective Napoli.

11 Q "I thought that the asset," and obviously asset
12 is an FBI terminology, Emad, "I thought Emad was not serious
13 about taping conversations."

14 As you sit there now, is that an accurate
15 statement?

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained as to --

18 MR. McCARTHY: To form is my only objection.

19 THE COURT: Sustained as to form.

20 Q This, am I correct, Agent Floyd, is reflecting
21 your state of mind at what point? If you could tell the
22 jury. Do you understand what I mean by that?

23 A Right.

24 Q What point?

25 A At what point? The point that it refers to

1 specifically, when he mentioned that he was taping Detective
2 Napoli. I didn't believe that he actually had because I
3 requested him to play the tape and he did not.

4 Q "At no time did I ever hear taped conversations
5 played to me or see tapes which asset claimed were recorded
6 conversations."

7 As you sit there now, Agent Floyd, is that
8 accurate?

9 A No, I have heard them today.

10 Q Pardon me?

11 A I have heard them today.

12 Q I don't mean over the last few weeks. Let me --

13 A That is the only time I have heard them.

14 Q Before June 23, 1993, which you would agree with
15 me is the date of the arrests of the defendants in this
16 case, my question to you, ma'am, is: Did you ever hear
17 taped conversations played to you --

18 A Not that I recall.

19 Q I'm sorry, ma'am. Let me just finish.

20 -- or see tapes which Emad claimed were recorded
21 conversations?

22 A Not that I recall, no.

23 Q And the next sentence is: "The asset advised
24 AUSA Andrew McCarthy that he made tapes regarding the
25 subjects in the World Trade Center case as AUSA McCarthy

1 then so advised FBI New York. I did not know of these
2 tapes."

3 Is that, as you sit there now, an accurate
4 statement?

5 A Yes.

6 Q "I discussed with Assistant Special Agent in
7 Charge Carson Dunbar the procedures for attempting to
8 retrieve the tapes."

9 Now, ma'am, if you would take a look at your
10 second portion of it, and I want to be correct --

11 A The amended --

12 Q The portion of your second signed statement,
13 35148D, which is two paragraphs, am I correct that this is a
14 portion of the signed statement you gave on or about January
15 6, 1995? Is that correct?

16 A Yes, sir.

17 Q And, again, this was a sworn statement that you
18 gave the FBI in connection with an inquiry, is that correct,
19 ma'am?

20 A Yes, sir.

21 Q Reading through the second paragraph, it states
22 as follows: "In June 1994 while assigned to SOG, I got a
23 call from Carson Dunbar who advised that a former source of
24 mine named Emad told AUSA Andy McCarthy of the Southern
25 District of New York that he had tapes of terrorist

1 subjects. I told ASAC Dunbar that I had no knowledge that
2 source was taping conversations, and in fact I'd instructed
3 him repeatedly not to tape conversations."

4 Now, ma'am, would I be correct in stating that
5 the conversation you had with Supervisor Dunbar was actually
6 in June of 1993, not '94, is that fair to say?

7 A That is correct.

8 Q OK. And would I be correct in stating that that
9 conversation with Dunbar takes place sometime after June 23
10 but before June 29, is that fair to say?

11 A I don't know.

12 Q There came a point that you participated in the
13 search of Emad's residence to retrieve tapes, is that fair
14 to say?

15 A Yes.

16 Q Was it before that search and the retrieval of
17 tapes that this conversation with Dunbar took place?

18 A Yes.

19 Q Would it be fair to state that it was after the
20 arrests of some of the defendants in this case?

21 A I am not aware of the date that they were
22 arrested.

23 Q In any event, as you sit here today, is your
24 statement that you told Dunbar that you had no knowledge
25 that the source was taping conversations and, in fact, that

1 you told Dunbar you had instructed him repeatedly not to
2 tape conversations accurate?

3 A In reference to the terrorists, yes.

4 Q Well, am I correct, ma'am, that it says, "The
5 source was taping conversations and in fact I had instructed
6 him repeatedly not to tape conversations." The question is:
7 Did you -- let me withdraw it. Did you in June of 1993 make
8 that statement to Dunbar? Yes or no.

9 A Not the way you're saying it, no.

10 Q Did you tell your supervisor in June of 1993, "I,
11 Nancy Floyd, have no knowledge that Emad was taping
12 conversations and in fact, Agent Dunbar, I told him not to
13 tape conversations."

14 Did you tell that to Dunbar in June of 1993?

15 A Those were not my words, no.

16 Q OK. When you signed this statement, did you read
17 it before you signed it, ma'am?

18 A Yes, I did.

19 Q It was under oath, correct, ma'am?

20 A Yes, it was.

21 MR. JACOBS: At this point, your Honor, I believe
22 the jurors have in front of them Khallafalla C, a transcript
23 which I think is probably an aid to the jury since this is
24 an English tape. Mr. McCarthy, is that correct, how we have
25 been doing it?

1 MR. McCARTHY: Yes.

2 MR. JACOBS: At this time, your Honor, I would
3 ask that we play the exhibit which is in evidence, Source
4 Tape A, Call No. 22, which I believe you told us, Agent
5 Floyd, was some time in the summer of 1992.

6 A That's correct.

7 MR. JACOBS: I think we need the headsets.

8 (Audiotape played)

9 MR. JACOBS: I'm sorry, your Honor. I think we
10 have a juror that is having some trouble.

11 (Audiotape played)

12 MR. JACOBS: Thank you.

13 Q Agent Floyd, there are two --

14 THE COURT: Mr. Jacobs, believe it or not, you
15 can't be heard.

16 MR. JACOBS: Wow. Some people would say that is
17 a compliment.

18 Q Agent Floyd, there are two spots in the tape
19 where the government, the transcript that we have agreed
20 upon has the word "pause."

21 Would you agree with me that there is some
22 portion of the tape that has been deleted? Is that fair to
23 say?

24 A I can't answer it, because I don't know what was
25 there first.

1 Q I'm sorry?

2 A I can't answer that because I don't know if
3 there's anything there prior.

4 Q As you sit there now, can you tell the jury if
5 there is anything missing from the tape, as you recall the
6 conversation? If you know. I'm sorry.

7 A I don't know.

8 Q And the two pauses are at a spot where Emad is
9 talking, is that correct, where those two stops are, if you
10 know?

11 A That's the way it appeared to me on the tape.

12 Q Would I be correct in stating, Agent Floyd,
13 that -- let me ask you: When did you learn of the existence
14 of this tape, you, yourself, ma'am?

15 A Of this specific tape?

16 Q Sure, yes.

17 A About a week ago.

18 Q Would I be correct in stating when you -- I'm
19 sorry, did you want to -- a week ago?

20 A About that. I don't know the exact date.

21 Q OK. So that when you signed the two
22 affidavits -- I'm sorry, withdrawn. The sworn statements,
23 you were not aware of the existence of this tape, were you,
24 is that correct?

25 A No, I was not.

1 Q If we look back at the December 1 statement, you
2 report, "I was advised by the asset that he was taping
3 conversations of his family members and bad guys. In
4 November 1991, I told asset to discontinue taping, as it was
5 illegal."

6 Now, when you talked about what you told Emad
7 back in November 1991, you talked about his privately taping
8 conversations without permission of the FBI, is that fair to
9 say?

10 A I think we just didn't want him to be taping,
11 period.

12 Q There is a procedure within the FBI where the
13 FBI, after having a person execute a 473, if my number is
14 correct, can get an individual to consent to making a
15 consensual recording with the permission of the FBI, is that
16 fair to say?

17 A That is correct.

18 Q OK. And it is a procedure that you are familiar
19 with, ma'am, correct?

20 A Yes, I am.

21 Q It is a rather routine procedure within the
22 Bureau when one is making tapes of consensually recorded
23 conversations, correct, ma'am? I will withdraw it.

24 It is a required procedure within the Bureau to
25 make a consensually recorded conversation that a properly

1 executed 473 be done, correct?

2 A If you are directing him to do the taping, yes.

3 Q OK. Now, if a person is doing private taping, it
4 may be illegal, correct?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q Did you tell Emad that his private taping would
8 be illegal? Yes or no.

9 A I just told him taping of conversations was
10 illegal. I didn't explain the procedures to him.

11 Q And you did that in November 1991, correct,
12 ma'am?

13 A Yes.

14 Q OK. Who were the "bad guys" he was taping before
15 November 1991? Can you give us a name?

16 A No, the bad guys in quotations would refer to the
17 subjects.

18 Q Which subjects, ma'am, did he tape before
19 November 1991?

20 A I do not know. I never saw the tapes or heard of
21 them.

22 Q Did you ask him who he was taping before November
23 1991?

24 A No, I did not.

25 Q Did you report that to any supervisor or any

1 other fellow agent at the time?

2 MR. McCARTHY: Objection to form.

3 THE COURT: Sustained as to form.

4 MR. McCARTHY: Report what?

5 Q When Emad told you that he was taping "bad guys,"
6 did you report that to anyone?

7 A No, I did not.

8 Q OK. In January 1993, Emad tells you that he had
9 tape recorded a call with Detective Napoli, correct, ma'am?

10 A Yes.

11 Q You then state in your sworn statement that,
12 "Emad had not previously advised me that he had continued to
13 tape conversations, and he did not say if he had taped
14 anyone else."

15 Do you see that statement you made under oath,
16 ma'am?

17 A Yes.

18 Q In light of the June 1992 conversation which has
19 been played for the jury, is that an accurate statement that
20 you made under oath?

21 A At the time, yes, it was.

22 Q Well, are you saying that that statement under
23 oath today is not accurate, ma'am?

24 A No, I'm not. Because this recorded conversation
25 does not represent what this answer -- the question that was

1 posed to me is not the question that you are posing to me.
2 So this sworn statement only applies to the question that
3 was addressed to me, which is not what you're addressing to
4 me, so in fact it is still accurate. The question that you
5 are now posing to me is a different one, so neither of them
6 are a lie.

7 Q I am stating to you, and I would like you to tell
8 the jury yes or no, is the statement that states, "Asset had
9 not previously advised me that he had continued to tape
10 conversations and he did not say if he had taped anyone
11 else," was that accurate and truthful when you swore to it?
12 Yes or no.

13 A When I swore to it, it was accurate and truthful
14 as I recalled it, yes.

15 Q But it's not truthful, now, right, ma'am, in
16 light of this?

17 MR. McCARTHY: Objection to form.

18 THE COURT: Sustained.

19 Q Is it truthful today, ma'am? Yes or no.

20 MR. McCARTHY: Same objection.

21 A That he would tape conversations afterwards, yes.

22 Q Is your statement that you made truthful as you
23 sit there now?

24 A As I made it --

25 Q Yes or no.

1 A Yes.

2 Q Is that statement truthful as you sit there now?

3 A As I made it at the time with my knowledge, yes.

4 Q I am asking you now, ma'am, is the statement that
5 you made under oath truthful?

6 MR. McCARTHY: Objection.

7 MR. JACOBS: I think I am entitled to the answer.

8 THE COURT: If you pose an unobjectionable
9 question, you are certainly entitled to an answer.

10 MR. JACOBS: I'm sorry.

11 Q I am stating to you, you made a sworn statement,
12 and if I'm correct, that sometime -- I'm asking you --
13 "January 1993 Emad advised me he had taped a telephone
14 conversation with Detective Napoli. Asset had not
15 previously advised me that he had continued to tape
16 conversations, and he did not say if he had taped anyone
17 else."

18 As you sit there now, ma'am, is that truthful?

19 A No.

20 Q When you make a statement further in the
21 affidavit, "At no time did I ever hear taped conversations
22 played to me or see tapes which asset claimed were recorded
23 conversations."

24 As you sit there now, ma'am, is that a truthful
25 statement?

1 MR. McCARTHY: Objection to form.

2 THE COURT: Sustained as to form.

3 (Continued on next page)

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1 Q Before June 23, 1993, Agent Floyd, did Emad give
2 you tapes that you listened to? Yes or no.

3 A In relation to this case --

4 Q Any tapes, ma'am. Did he give you any tapes?

5 A Yes.

6 Q When you told Agent Dunbar in June of 1993 that
7 you had no knowledge that Emad was taping conversations, and
8 in fact you had instructed him repeatedly not to tape
9 conversations, you were lying to Dunbar, weren't you, ma'am?

10 A No, sir, I was not.

11 Q You told Dunbar the truth in June of 1993,
12 correct?

13 A He asked me if I had knowledge of him taping any
14 terrorist and I said no, I did not until this point.

15 Q Tape A doesn't refer to tape terrorist, that we
16 just heard?

17 A I do not know if he had any tapes, sir. I was
18 trying to find out if in fact he did and that is what I was
19 instructed to do by the supervisor, Mr. Crouthamel, who had
20 been told that we knew of some tapes in the beginning, who
21 had no knowledge if they existed. I had neither seen nor
22 heard them. He asked me to contact him and find out if
23 there were tapes. This conversation was trying to find out
24 if there were any tapes. I never saw any tapes or heard
25 them until now.

1 Q Never saw any?

2 A That is right, except the ones that he gave me on
3 a different case, which has already been addressed.

4 Q Addressed by whom, you or your attorney?

5 A By the --

6 THE COURT: Mr. Jacobs, do you want to come to
7 the side, swagger up here a little bit?

8 MR. JACOBS: No.

9 THE COURT: Then stop it.

10 MR. JACOBS: Then I move to strike her comment
11 about it being addressed.

12 Q Let's go over to tape number 8, if we can, Agent.
13 You spoke to an FBI supervisor in the summer of 1992,
14 correct?

15 MR. MCCARTHY: Is this C we are talking about,
16 Khallafalla C?

17 MR. JACOBS: I am sorry, C, thank you, Mr.
18 McCarthy. The transcript.

19 A I don't know what date this conversation took
20 place. I think it is around the summer, but if you are
21 asking for a specific date, I don't know.

22 Q I understand. Before you had this conversation
23 with Emad, you spoke to Supervisor Crouthamel, correct?

24 A That is correct, sir.

25 Q After speaking with Crouthamel, you then met with

1 Salem -- I am sorry, withdraw that. You spoke with Salem on
2 the phone, correct, ma'am?

3 A That is correct, sir.

4 Q You begin the conversation by asking him that the
5 supervisor is interested in tapes, correct, ma'am?

6 A That is correct.

7 Q And you tell Emad that I explained to him,
8 meaning Crouthamel, that John and Louie, I assume Anticev
9 and Napoli, had not done that, secured tapes, I assume, that
10 you were not going to be testifying, they didn't want the
11 tapes to become part of evidence. Do you see that
12 statement, ma'am?

13 A Yes, I see the statement.

14 Q What tapes were you referring to?

15 A The tapes that I referred to in my sworn
16 affidavit, the one in the very beginning of November 1991.

17 Q Napoli, Anticev knew about tapes, didn't they,
18 ma'am?

19 A No. As I stated before, at the time that I made
20 this, it was three years after the fact. I had seen no
21 documents and I did this, and it is true and accurate to the
22 best of my knowledge at this time specifically. Afterwards,
23 I was given access to both the file as well as the tapes,
24 and after reviewing my thing, I said under oath here that it
25 was John who knew about them, Louie had only advised them to

1 just never make any tapes.

2 Q Did you tell Emad, they didn't want the tapes?
3 Did you say that to Emad Salem on a taped conversation? Yes
4 or no.

5 A Yes.

6 Q And they meant Napoli and Anticev, correct?

7 A No, they as in John and the squad or anybody else
8 that was involved, they didn't want it. He --

9 Q I am sorry, ma'am. Do you see up on top it says
10 I explained to him --

11 MR. MCCARTHY: Objection to the form.

12 MR. JACOBS: I am sorry. Is there an objection?

13 Q You referred to John and Louie had not done that
14 because you were not going to be testifying, they didn't
15 want the tapes. You are saying it is not Louis Napoli,
16 detective, that it is somebody in the squad?

17 A No. I am saying that John is the one who told
18 them, who was aware of the tapes, John and Louie and myself
19 had all three told them not to make tapes and explained to
20 them the reason why they would not want tapes. It was my
21 understanding that you wanted to know who told them and what
22 was said.

23 Q You then go on to say, that kind of stuff, but
24 that you had done some on your own just to verify what you
25 were telling us kind of thing, and he said do I have any of

1 those, copies of those tapes. What tapes did he have that
2 verified what, ma'am?

3 MR. MCCARTHY: Objection to form.

4 MR. JACOBS: I will qualify it.

5 Q What tapes are you referring to here?

6 A Once again, I am referring to the tapes that were
7 done the very beginning of the investigation in November
8 1991.

9 Q And you said to him at the end of that paragraph,
10 but he, meaning Crouthamel, said as long as you tape the
11 conversations when you think it's safe to, on your own, and
12 we don't direct you to do so, you can do that without any
13 problem whatsoever. And they are never entered into, they
14 are your own private property. Did you tell Emad that,
15 ma'am?

16 A Those were my words, yes, sir.

17 Q Were those Crouthamel's instructions to you?

18 A I don't know if they were instructions but he
19 instructed me to find out whether or not there were tapes,
20 and in order to find out since I had previously told him
21 they were illegal and he was very concerned about becoming a
22 witness, I said what I said in order to alleviate his
23 concerns, to see if he would admit that he still had them
24 and then give them to us.

25 Q You said what needed to be said. In other words,

1 you told him to go out and break the law, correct, ma'am?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q When you said you told him what needed to be
5 said, you told him that an FBI supervisor wanted him to tape
6 privately. Did you tell him that?

7 MR. McCARTHY: Objection to form.

8 THE COURT: Sustained.

9 Q Did you tell Emad that an FBI supervisor wanted
10 him to make --

11 MR. McCARTHY: Objection to form.

12 Q Well, let's read it together. But he said -- who
13 is he?

14 A What page are you on now?

15 Q I am sorry, ma'am. Page 1, bottom, last two
16 sentences. But he said as long as you tape the
17 conversations when you think it's safe to. Who is he?

18 A I would have been referring to Mr. Crouthamel.

19 Q On your own, and we don't direct you to do so,
20 you can do that without any problem whatsoever. Do you see
21 that, ma'am? Do you see what I just read to you?

22 A Yes, I do.

23 Q Those are your words, correct?

24 A Yes, they are my words.

25 Q Were you telling Emad to tape private

1 conversations? Yes or no.

2 A No, I was not.

3 Q You were not?

4 A No.

5 Q When you said that he could tape and then they're
6 never entered into, they're your own private property, what
7 did you mean by that?

8 A That he could tape and they were his own private
9 property.

10 Q Meaning judges don't get it, defense lawyers
11 don't get it, juries don't get it, right? That's what you
12 meant, private property.

13 A That is not what I said, nor is it what I meant.

14 Q But you wanted the private tapes, didn't you,
15 Agent Floyd?

16 A No, sir, I did not.

17 Q You didn't want to get a wiretap, did you, Agent
18 Floyd?

19 A Sir, I was not the investigator on the this case.

20 MR. McCARTHY: Objection to form.

21 Q You didn't -- did you hear it?

22 MR. McCARTHY: I don't know if I heard that.

23 MR. JACOBS: I guess I'll go to the mike.

24 A I guess what I'm saying is it's irrelevant. I
25 didn't want one, I didn't need one. I wasn't the case

1 agent.

2 Q Did you tell him on that date that you would have
3 private tapes used by the FBI to get a wiretap? Did you
4 tell him that, ma'am? Yes or no.

5 A Not the way I see this, no.

6 Q Not the way you see it?

7 A That's not the way I hear this, no.

8 Q Not the way you hear it?

9 A And since I said it, I would say no.

10 Q Do you see in the middle of the page where it
11 says that some of them you'd given to me but they were on a
12 different subject matter? What subject matter did you get
13 tapes on?

14 A I don't know how to pronounce the name -- off the
15 top of my head I can't remember it, but it's the one that
16 had to refer to a relative of his that he was providing some
17 information on.

18 Q Were those official tapes from the FBI or private
19 tapes?

20 MR. McCARTHY: Objection to form.

21 THE COURT: Sustained.

22 Q These Hegazi tapes, were they tapes made with a
23 473 or were they private tapes that he gave you?

24 A As soon as -- he made them himself.

25 Q Pardon me.

1 A He made them on his own.

2 Q He gave them to you, you listened to them, and
3 you didn't report it to the FBI, correct, ma'am?

4 A That is false, sir. They were in a 1A envelope
5 and were transcribed and put part of record.

6 Q So you took private tapes, you then made a
7 property envelope and you vouchered them, correct?

8 A I didn't voucher them, no.

9 Q Someone else did?

10 A Maybe I am misunderstanding voucher. They were
11 put into a 1A envelope and made part of the file.

12 Q When was that, Agent Floyd?

13 A I don't have the date right off the top of my
14 head.

15 Q Do you see further down on page 2, and then the
16 other thing was is he said, Crouthamel, that Louie and John
17 had told you wrong, that um, that in a sense they said don't
18 get them any of the tapes because they would, you know, have
19 to take custody of them kind of thing. Do you see that,
20 ma'am?

21 A Yes, I do.

22 Q Were you telling Emad that Louie and John knew
23 about the private taping? Yes or no.

24 A No, I was not. I was referring to the original
25 conversation that is in my sworn affidavit.

1 Q At this point in the conversation when you told
2 him at the top you can do that without any problem
3 whatsoever, you weren't telling him Emad, don't tape at all,
4 were you?

5 A He had already been told that.

6 Q So you were changing the game plan?

7 A No. As I said already, I was just trying to find
8 out whether or not in fact he did have tapes.

9 Q So you were lying to him. Is that what you are
10 saying?

11 A No.

12 Q You were tricking him to see if he had tapes, so
13 you told him to make tapes, to do that. Is that what you
14 are saying?

15 MR. MCCARTHY: Objection to norm.

16 A No, sir.

17 THE COURT: That is overruled.

18 Q Did you tell him at the top you could do that
19 without any problem whatsoever?

20 A What I was referring to was that an individual
21 can tape their own conversations without any problems. That
22 is true. I did not instruct him to do it.

23 Q You told him, right?

24 A No, that is not what I instructed him to do.

25 Q You said to him at the top, we don't direct you

1 to do so, you can do that without any problem whatsoever,
2 and they are never entered, they are your own property. You
3 told him that, correct?

4 A Those were my words.

5 Q You were giving him permission to tape privately.

6 A No, sir, I was not.

7 Q You were telling him don't tape, Emad, it's
8 illegal. Is that what that means?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q At the bottom you stated at that page, right, and
12 he, Crouthamel said that's wrong, he said as long as those
13 tapes that you do are your own you just, you're doing them
14 for your own, for memos or whatever. Floyd. They never
15 become any property for any of the case. The only time
16 tapes become evidentiary is when we get permission from the
17 courts to wire you.

18 Did you make that statement to Emad Salem?

19 A Yes, I did.

20 Q Is that a fair statement of the law, ma'am, to
21 your knowledge?

22 A No, sir, it's not.

23 Q In fact, it's dead bang wrong, isn't it?

24 A I'm not a lawyer, I don't know, sir.

25 Q You are a sworn agent, though, right?

1 MR. McCARTHY: Objection.

2 Q You know the FBI rules and regulations about
3 taping, don't you, ma'am?

4 A Yes, sir, but that was not your question.

5 Q And you know how to advise somebody that tapes
6 are illegal, don't you, ma'am? Yes or no.

7 A I would not advise them as to what was legal or
8 not legal. I would let an attorney in our outfit to do it
9 because I am not an attorney.

10 Q Did you have an understanding that if he made
11 tapes of targets of any investigation privately, that they
12 would never see the light of day except for the FBI? Isn't
13 that what you are telling him?

14 A No, sir.

15 Q Doesn't mean that?

16 A No, sir.

17 Q Floyd, if we can follow down about one third of
18 the way. He would like a chance to listen to the tapes with
19 you interpreting, figuring out who the people are, etc.,
20 because he's a new supervisor, he doesn't know anything. I
21 told him I don't know if you have copies of the tapes or
22 which ones you have left. If you erase some of them,
23 because this has gone on for six months. Obviously you
24 haven't kept them all.

25 Do you see that, ma'am?

1 A Yes, I do.

2 Q What have gone on for six months? Tell the jury.

3 A We had been investigating.

4 Q Illegal taping had been going on for six months,
5 hadn't it, ma'am?

6 A No, sir.

7 Q Isn't that what it says?

8 MR. McCARTHY: Objection.

9 A No, sir.

10 THE COURT: Sustained. Mr. Jacobs, Mr. Jacobs.

11 Q If you erase some of them because this has gone
12 on for six months, obviously you haven't kept them all.
13 What are you referring to, Agent Floyd?

14 A The tapes that were six months ago in my sworn
15 statement that I referred to November, six months later
16 would be approximately June, which is when this conversation
17 took place.

18 Q Did it continue on by your saying, or whatever,
19 and he said fine, he meaning Crouthamel. He said to see if
20 any of them or whatever, so he could figure out who is doing
21 what, who is going where, and he says --

22 MR. McCARTHY: Objection to form. Did it --

23 MR. JACOBS: It is reading.

24 MR. McCARTHY: It is the beginning of the
25 question, did it continue.

1 MR. JACOBS: I will rephrase it.

2 Q Since he is not going to testify, he said,
3 though, he said we need to start getting wires, uh, set up
4 on all those people's homes so we can use those tapes, you
5 know, like for the telephones.

6 Are you saying that the tapes, the private tapes
7 are going to be used for a wiretap?

8 A No, sir.

9 Q Yes or no.

10 A No, sir.

11 Q But, uh, I don't know, 'cause, and like I told
12 him, I never taken any of the tapes except for the ones that
13 you gave me for, I believe it says Hegazi. But that's
14 totally different, and listen to the tapes, that's, uh,
15 well, some of them just like that identified the key
16 players.

17 Did Crouthamel tell you he wanted to listen to
18 the private tapes to identify targets? Yes or no.

19 A No.

20 Q Take a look at the next page, ma'am. Floyd,
21 first full paragraph, and then they're gonna, uh, they're
22 going, I assume FBI, what his goal is then, since we're not
23 gonna, um, since you will not testifying or anything, then
24 his goal that he wants to try to go up on wires on all the
25 main key players. Do you see that, ma'am?

1 A Yes, I do.

2 Q Are you telling Emad Salem to turn over the
3 tapes, and that the Federal Bureau of Investigation is going
4 to use those tapes to get a wiretap? Isn't that what you
5 are saying there, ma'am?

6 A No, that's not what I am saying.

7 Q When you say they tried to go up on wires, what
8 does that mean when you said it to him?

9 A That would be referring to authorized wiretaps
10 that we would get.

11 Q So you were telling Emad, give me the tapes,
12 Crouthamel and the FBI wants them, and we'll use them to get
13 a federal wiretap.

14 MR. MCCARTHY: Objection to form.

15 THE COURT: Sustained.

16 Q Did you say in the middle, Salem says ask you,
17 you will make wires, telephone wires? You say huh? Salem
18 goes, you got to get permission for telephone bugging? You
19 say right. But that's what, that's what he wants to do on
20 the ones that you think are the key players.

21 Do you see where you say that to him, ma'am?

22 A Yes, sir, I do.

23 Q Were you suggesting to Emad Salem that the
24 Federal Bureau of Investigation would like to hear his tapes
25 to get a wiretap signed by a United States District Court

1 judge? Is that what you are suggesting?

2 A No, that's not what I am suggesting there, sir.

3 Q How about we move on down. We don't have, we're
4 not, we haven't wired anybody because we haven't had any,
5 you know, any information or enough information to do so.
6 But, um, anyway, I guess it's no problem for you to tape
7 whatever you want to tape, or whatever. That, that's, those
8 tapes are yours and they never will become part of
9 evidentiary. Do you see where you say that to him, ma'am?

10 A Yes, sir, I do.

11 Q Are those your words?

12 A Yes, sir, I said that.

13 Q But we could have, I mean, I know John and Louie
14 have never listened to any of them because they didn't want
15 them. But that's not the truth. We can listen to anything
16 we want to. Do you hear yourself say that, ma'am?

17 A Yes, sir.

18 Q I ask you again, did Detective Louis Napoli know
19 about the private taping? Yes or no.

20 A No, sir.

21 Q Would you look at the next page. To verify, you
22 know, everything that's going on, and, and give 'em back to
23 you. Now, the tapes I have I'll give back to you, the ones
24 I made copies of, because I'll probably throw away some of
25 them unless they have, uh, so bottom line, you want the

1 tapes. Well, well, not all of them, just the copies of
2 them, I mean, they want the tapes. You will make copies for
3 them, right, but only the ones that have to do with
4 information that we're doing now, like, uh, you know, the
5 guns, the bombs, the ones that they're going to be looking
6 to try to do. Floyd. Set up wires taps on the phones.

7 Do you see yourself saying those things, Agent
8 Floyd? Do you see it? Is that your voice that was on that
9 tape?

10 A Yes.

11 Q You wanted only the tapes involving guns, bombs,
12 right?

13 A I used --

14 Q You didn't want all of them, right? Just the
15 good ones, right?

16 A No, sir, that's not what I said.

17 Q Did you tell them that you would take the tapes
18 and give them back to him? Did you say that to him?

19 A Yes, sir.

20 Q That would be illegal, wouldn't it, ma'am?

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q To your knowledge, Agent Floyd, is the Federal
24 Bureau of Investigation authorized to take private tapes,
25 not authorized, and use them to get a wiretap?

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q On the page 6, ma'am, you are suggesting to him,
4 what we need to do is, uh, exactly what I suggested. I will
5 sit down with you. I told him the scenarios that you had
6 come up with. He felt that they were very good scenarios
7 but he wants to meet you because he has never met you
8 before.

9 Do you see you are talking about scenarios?

10 A Yes, sir.

11 Q And wasn't the scenario you were talking about
12 the safe house plot, which is this case?

13 MR. McCARTHY: Objection.

14 Q That you and Emad were creating?

15 MR. McCARTHY: I have no objection to that
16 question.

17 A No, sir.

18 MR. JACOBS: May I have a moment?

19 THE WITNESS: Excuse me.

20 MR. JACOBS: I just want to have a moment to look
21 at my notes.

22 (Pause)

23 Q The the Hegazi investigation -- I am sorry.

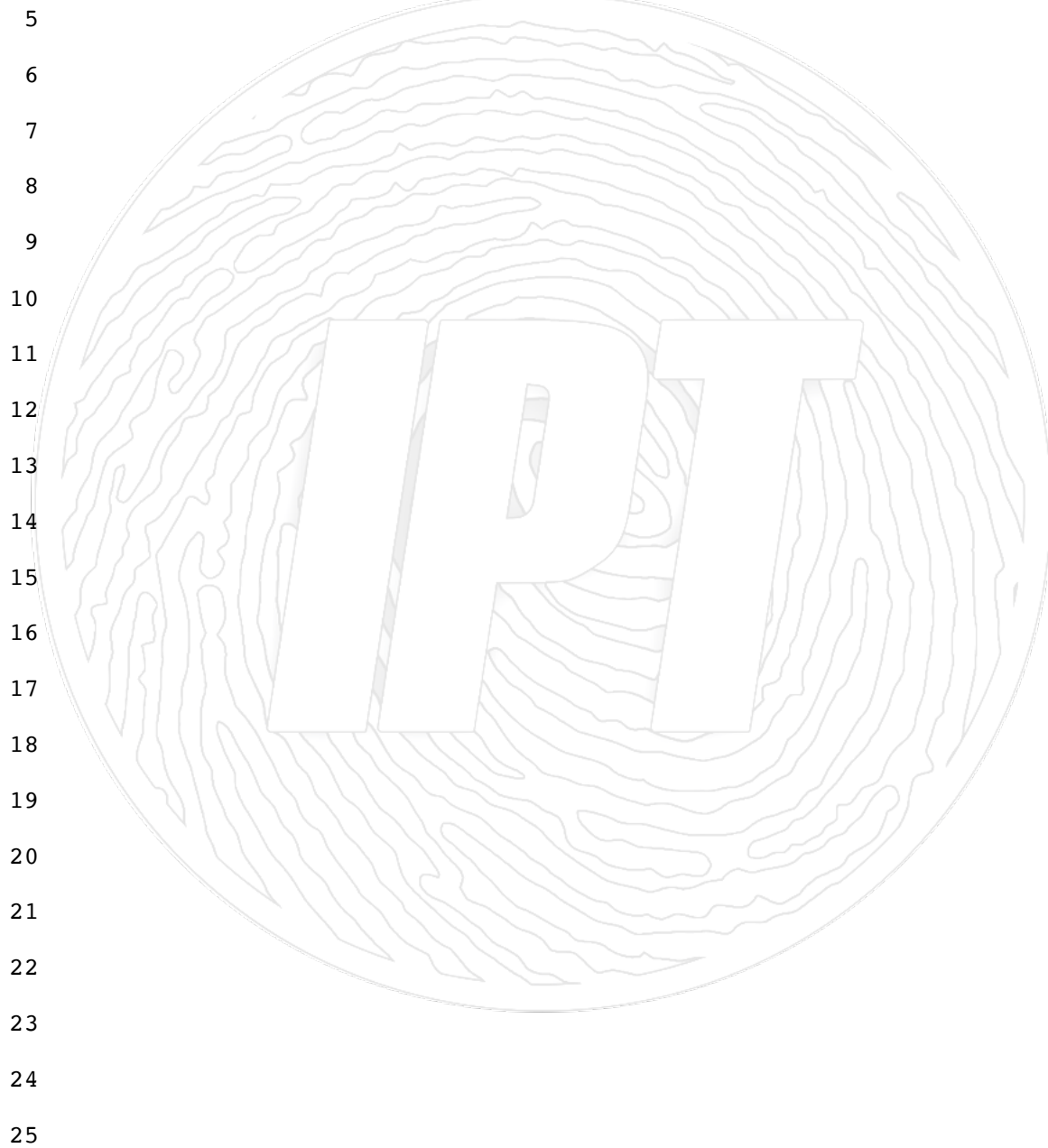
24 THE COURT: Go ahead. I am not on the jury.

25 MR. JACOBS: I hope not.

1 Q The Hegazi investigation where you got these
2 tapes, that didn't involve guns or bombs, did it, ma'am?

3 A No, sir.

4 (Continued on next page)



1 MR. JACOBS: I have nothing further.

2 THE COURT: Is that it?

3 MR. JACOBS: Nothing.

4 THE COURT: Thank you. Ms. Amsterdam.

5 MS. AMSTERDAM: Could I just have a moment, your
6 Honor?

7 MR. JACOBS: I have to move my chair -- perhaps
8 we could take a five-minute recess -- we will move.

9 THE COURT: Why don't I see Ms. Amsterdam briefly
10 at the side.

11 (At the side bar)

12 THE COURT: I am going to break about 3:30. You
13 look -- befuddled is an overstatement. I don't want to
14 interrupt you in the middle.

15 MS. AMSTERDAM: I can get through one section. I
16 have three sections. I can get through one section and let
17 you know.

18 (Continued on next page)

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1 (In open court)

2 CROSS-EXAMINATION

3 BY MS. AMSTERDAM:

4 Q Good afternoon, Agent Floyd.

5 A Good afternoon.

6 Q In anywhere in source tape A, call 22, the
7 transcript that we just went through, is there any point
8 that you can reference us to to where you tell Emad Salem
9 that he should discontinue taping?

10 A Not in that conversation, no.

11 Q There are two pauses in this conversation that
12 you heard as you listened to, correct?

13 A Yes, ma'am.

14 Q Do you know whether or not during those pauses
15 you may have indicated to him that he should discontinue
16 taping?

17 A I can't remember at this time.

18 Q Do you know whether or not those pauses were
19 erased or deleted?

20 A I cannot answer that. I did not make the tape.

21 Q The conversation cuts off at the end, does it
22 not, ma'am?

23 A I thought the last one we just listened to, there
24 is a click and a dial tone.

25 Q But it's in the middle of a sentence, is it not?

1 I can show you the transcript.

2 A I don't remember. Yes, if you can show it to me.

3 Yes.

4 Q It cuts off in the middle of a sentence, correct?

5 A Correct.

6 Q To the best of your recollection, does the
7 conversation go on thereafter?

8 A I cannot remember.

9 Q So you don't know whether or not there is any
10 portion of that conversation which was deleted or erased, do
11 you?

12 A No, ma'am, I do not.

13 Q Have you had an opportunity to review other
14 conversations in which Emad Salem recorded himself speaking
15 with you?

16 A Yes, I have.

17 Q In any conversation that you had with Emad Salem,
18 could you reference the jury to any time at which you told
19 Emad Salem to discontinue taping?

20 A I have not listened to all of them, so I cannot
21 answer that accurately. The only ones I have heard all the
22 way through are the ones you played today and maybe one or
23 two others.

24 Q Of any of the conversations that you have heard
25 or any of the transcripts that you have reviewed, do you

1 know of a single instance in which the conversation reflects
2 the fact that you told him to discontinue taping?

3 A In the limited ones that I have reviewed, no.

4 Q And you stated, did you not, that in the tape in
5 which Mr. Salem says to you that he has a recording of Louie
6 Napoli's voice and asks you whether or not you would like to
7 listen to it, that it is not in that conversation that you
8 tell him he shouldn't be taping, correct?

9 A Right. That conversation happened in November of
10 '91.

11 Q That there was a subsequent meeting, according to
12 your testimony, in which you told him he should discontinue
13 taping, correct?

14 A Right.

15 Q Have you ever heard a tape recording of that
16 subsequent conversation?

17 A That conversation happened in person. No, there
18 are no recordings.

19 Q Do you know whether or not there was a tape
20 recording of that conversation?

21 A Not that I am aware of.

22 Q Do you know whether or not there are tape
23 recordings of conversations in which you told Mr. Salem to
24 discontinue taping which he erased, deleted, edited or sent
25 to Egypt?

1 A You would have to ask Mr. Salem.

2 Q I would like to follow up on just a few questions
3 that Miss Stewart asked you. Regarding your relationship
4 with Mr. Salem, you characterized it as a professional
5 relationship, correct?

6 A A friendly professional relationship, yes.

7 Q However, even when he was no longer working for
8 the FBI, you continued that relationship with him, did you
9 not?

10 A Yes.

11 Q Did there come a time, ma'am, when you actually
12 interceded on his behalf and asked Detective Napoli to pay
13 his exwife Barbara Rogers a visit?

14 A Not that I recall, no.

15 MS. AMSTERDAM: I am approaching the witness with
16 source tape cassette 59, call 26.

17 THE COURT: Is there an exhibit number on it, or
18 letter?

19 MR. MCCARTHY: It should be 659-26.

20 MS. AMSTERDAM: Thank you, Mr. McCarthy.

21 A Yes, ma'am.

22 Q Does that refresh your recollection as to whether
23 or not you had a conversation with Mr. Salem wherein you
24 told him that Detective Napoli had paid a visit at night to
25 his exwife Barbara Rogers, but she was not, there was no

1 answer and he decided not to intrude? Do you recall, does
2 that refresh your recollection?

3 A In this tape it refers to somebody called Louis
4 but I have never referred to Louie Napoli as Louis, so I am
5 not sure if this is Louie Napoli or another Louis.

6 Q Who says Louis? You or Mr. Salem?

7 A I am the one saying Louis.

8 Q Do you know any other Louises?

9 A There are several other people, like lawyers that
10 were friends of his and a doctor or something and friends of
11 Barbara Rogers', so it could have been him. So I don't
12 remember. But I have always called Louie Louie, and this
13 makes me question whether it could be Detective Napoli or a
14 different person altogether.

15 Q Did you ever meet Barbara Rogers?

16 A I never met her personally but I saw him with her
17 leaving a restaurant once perhaps.

18 Q Did you speak with her?

19 A I don't remember. He could have stopped briefly
20 and introduced us.

21 Q Did he speak to you repeatedly about his marital
22 problems with Barbara Rogers?

23 A He talked to me on numerous occasions about
24 problems that they had.

25 Q Did you arrange for any FBI agent to visit

1 Ms. Rogers to intercede on Mr. Salem's behalf?

2 A That I am aware of no.

3 Q And you would continue to maintain that your
4 relationship with him was a strictly professional one?

5 A A friendly professional relationship, yes.

6 Q After the World Trade Center explosion, you were
7 aware that Mr. Salem was hospitalized, are you not?

8 A Yes, ma'am, I am.

9 Q And shortly thereafter, you contacted him, didn't
10 you?

11 A Yes, ma'am, I did.

12 Q In that conversation with Mr. Salem, he was
13 concerned that he might have been considered a suspect in
14 the bombing, correct?

15 A I am not sure about what conversation, but at
16 some point he called me up after going to the office and was
17 upset about an incident there.

18 Q When you first spoke to Mr. Salem upon his
19 release from the hospital, he said to you, did he not, but
20 you don't think that somebody will involve me somehow. Do
21 you recall that?

22 A You are reading it, so I will assume that that is
23 in fact correct.

24 Q After his release from the hospital, would I be
25 correct in saying that you continued speaking with him

1 regularly?

2 A Not regularly, no.

3 Q How often would you say you spoke to him from
4 February of 1993 until the arrest in this case in June of
5 1993?

6 A I can't say exactly how often I spoke with him,
7 but it was not to the level that I did prior to.

8 Q Best guess. Do you think you spoke to him once a
9 day?

10 A No, I would not say once a day. Maybe --

11 Q Several times a week?

12 A Maybe once a week. That's a guess, completely.
13 I have no idea.

14 Q You were not the case agent, were you?

15 A No, I was not.

16 Q And yet you maintained this friendly professional
17 relationship with him, correct?

18 A Yes, out of requests from the agents.

19 Q Isn't it a fact that Mr. Salem called you, asking
20 your advice as to how he should negotiate the terms of
21 returning to work with the FBI?

22 A I don't know that those were his exact words, but
23 he did call me when he was going to come back in and assist
24 the FBI.

25 Q In fact he called you on more than one occasion

1 about that, correct?

2 A As I just said, he has called me numerous times.

3 Q And you consulted with him and advised him as to
4 how to negotiate the terms of returning to the FBI, correct?

5 A No, that would not be an accurate assessment of
6 the conversations.

7 Q Do you recall Mr. Salem telling you that Carson
8 Dunbar was running around like a chicken with his head cut
9 off?

10 A I don't have that conversation in front of me.
11 If you are telling me that it is on a transcript, I am
12 assuming that is true.

13 Q Do you remember that you laughed when he said
14 that, and assured him that you were laughing with him, not
15 at him?

16 A You would have to show me the transcript, ma'am,
17 for me to agree with you. I don't remember it off the top
18 of my head.

19 Q Do you remember having a conversation where you
20 told him good news, Emad, lots of heads are going to roll,
21 but don't tell anyone?

22 A I don't remember the conversation, but if you
23 show me the transcript, I can go over it with you.

24 Q I am approaching you with what is source tape
25 4-8 -- I am sorry, I don't have the exhibit number.

1 MR. McCARTHY: May I have a moment with Miss
2 Amsterdam?

3 THE COURT: Yes.

4 MS. AMSTERDAM: Sure.

5 MR. McCARTHY: It would be 604-8, your Honor.

6 MS. AMSTERDAM: Thank you, Mr. McCarthy.

7 A Thank you.

8 I believe that this conversation that you are --

9 THE COURT: Excuse me. There is no question.

10 Q My question to you, ma'am, is, did you have a
11 conversation with Mr. Salem wherein he was told that heads
12 were going to roll but don't tell anyone? You say don't
13 tell anyone.

14 A I was repeating what was told to me by my
15 supervisor, yes.

16 Q So your supervisor told you something in
17 confidence and you took that confidence and you told Emad
18 Salem. Would that be a correct statement?

19 A That would be an incorrect statement.

20 Q Your supervisor told you that heads were going to
21 roll and he told you that it was OK to tell that to Emad
22 Salem.

23 A He didn't say one way or the other.

24 Q So why do you tell Emad Salem don't tell anyone?

25 A Because at the time that these conversations were

1 taking place, Emad was not convinced of whether or not he
2 wanted to come back in and assist the FBI, and it was my job
3 to try to get him to come back and assist us, because we
4 needed his assistance, and this built confidence between him
5 and me.

6 Q That would build confidence between him and you?

7 A Yes, because he would think that I was giving him
8 information.

9 Q There was a clear amount of confidence between
10 you and him, was there not?

11 A Different degrees at different times.

12 Q I mean, you were the person in the Bureau that he
13 had the closest friendly professional relationship with,
14 would that be a fair statement?

15 A That would be a fair statement.

16 (Continued on next page)

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1 MS. AMSTERDAM: This would be an appropriate
2 time, your Honor.

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

7 (Jury excused)

8 THE COURT: You can step down.

9 (Witness excused)

10 (Recess)

11 (Continued on next page)

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1 (In the robing room)

2 (Ms. Stewart and government counsel present)

3 MS. STEWART: Judge, two things: First of all,
4 in yesterday's testimony by Mr. Hamawy -- Hemawy.

5 THE COURT: It is not Hemawy. It's Hamawy.

6 MS. STEWART: Hamawy.

7 THE COURT: Yes.

8 MS. STEWART: At any rate, at page 15086, Mr.
9 Fitzgerald on cross asked a question: "Do you know any
10 members of the organization?" Referring to Gamaat
11 Al-Islamiya, and Mr. Hamawy answered: "I assume that Sheik
12 Omar was, yes."

13 And then he said: "Do you know any other
14 members?"

15 And he said: "As for the -- I don't know, I
16 could assume that people --"

17 And the court said: "Don't assume."

18 THE COURT: Don't assume anything.

19 MS. STEWART: Right. You asked, "If you know."

20 THE COURT: Right.

21 MS. STEWART: I would move to strike the previous
22 answer where he said, "I assume that Sheik Omar was, yes."

23 I didn't hear it.

24 THE COURT: I did, and that's what he said.

25 MR. FITZGERALD: My position, your Honor, is that

1 had that been stricken yesterday, I could have asked him,
2 "Did you discuss it with Sheik Omar? Did you hear him say
3 the statement that I am the Amir of Gamaat?"

4 If it is stricken now, I am left without trying
5 to fix that.

6 THE COURT: Yes. But did you hear the answer?

7 MR. FITZGERALD: Yes.

8 THE COURT: OK. It seems to me that if you heard
9 the answer, and what you heard was, "I assume that he is,"
10 and you were satisfied with that, then I am not depriving
11 you of anything, and it's stricken. It is pure speculation.

12 MS. STEWART: The other thing I wanted to do is
13 we had --

14 THE COURT: I am not going to --

15 MS. STEWART: I don't want an instruction.

16 THE COURT: The point is if there is a read-back
17 of that, that doesn't get read back.

18 MS. STEWART: Right.

19 THE COURT: Off the record.

20 (Discussion off the record)

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1 (Pages 15243 to 15248 sealed)

2 (In open court)

3 THE COURT: Ms. Amsterdam, may I see you briefly
4 at the side before we start.

5 (At the side bar)

6 THE COURT: A small topic, but one about which we
7 have had occasion to talk before.

8 MS. AMSTERDAM: I go "uh-huh" or "all right," or
9 I go like this. What am I doing this time?

10 THE COURT: No, not that, the knocking, no. The
11 "uh," the "right," the little comment after the testimony.

12 MS. AMSTERDAM: I am definitely going to try this
13 time. I am definitely going to try.

14 THE COURT: It just crept in a little bit.

15 MS. AMSTERDAM: I have to tell you, years ago I
16 used to go like that, and it was --

17 THE COURT: Indicating two sharp raps on the
18 bench.

19 MS. AMSTERDAM: It was just nervousness, but I
20 must say that people were taken aback.

21 MR. McCARTHY: We can get you a drum roll if you
22 want. I think Mr. Khuzami is a musician.

23 THE COURT: Which they do the sound track for
24 this, I promise you there will be dramatic music at those
25 points.

1 MR. McCARTHY: I promise you it will close after
2 a week.

3 (In open court)

4 (Jury present)

5 THE COURT: Go ahead, Ms. Amsterdam.

6 MS. AMSTERDAM: Thank you, your Honor.

7 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MS. AMSTERDAM:

3 Q Agent Floyd, before we broke, we were speaking
4 about your advising Mr. Salem as to whether he should return
5 to the employment of the Bureau, do you recall?

6 A I didn't advise him. I just listened to what he
7 had to say and responded accordingly.

8 Q Well, you actually gave him some specific advice
9 as to how to negotiate the terms of his return, did you not,
10 ma'am?

11 A I don't remember giving him specific advice.

12 Q Did you tell Mr. Salem that he should tell Carson
13 Dunbar that he, meaning Mr. Salem, had two children, that he
14 was not Howard Hughes, and that he wasn't doing this out of
15 the goodness of his heart?

16 A Those have all been facts.

17 Q I'm sorry?

18 A Yes, I told him to tell the truth, the facts.

19 Q So you did tell him, you did give him advice as
20 to how to negotiate with Mr. Dunbar, did you not?

21 A No, I told him to tell Mr. Dunbar the truth about
22 his situation.

23 Q And he came to you for that advice, did he not?

24 A That's not advice, ma'am. I merely told him to
25 tell him the truth about his situation. I don't perceive

1 that as giving him advice on how to negotiate a contract.

2 Q Well, Mr. Salem was trying to negotiate a
3 contract involving money to come back and work with the FBI,
4 am I right?

5 A At that point I was not --

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained.

8 Q You spoke to him, and in your words you told him
9 to say to Mr. Dunbar I have two children and a wife to
10 support, that was your words, you told that to Mr. Salem,
11 that that is what he should tell Carson Dunbar, correct?

12 A Yes, tell him the truth about his situation.

13 THE COURT: The question is: Did you tell him
14 that?

15 THE WITNESS: Yes.

16 MS. AMSTERDAM: Thank you.

17 Q And you told him that he should say that he was
18 not Howard Hughes, which of course is true, correct?

19 A Yes.

20 Q That he should also tell Carson Dunbar that he,
21 meaning Salem, was not doing this out of the goodness of his
22 heart, correct?

23 A If you say it is on the transcript, then that
24 would be correct, yes.

25 Q Now, during this time, it was your testimony

1 before we broke that you were trying to gain his confidence
2 and encourage him to go back to Bureau, would that be a fair
3 statement?

4 A Gain or keep his confidence, yes.

5 Q Keep his confidence, but towards the end of
6 having him go back and work with the Bureau, correct?

7 A Assist the Bureau.

8 Q Assist the Bureau, all right.

9 Now, during those conversations that you had with
10 him, which were to maintain his confidence and to encourage
11 and to assist the Bureau, you called your coworkers gutless,
12 did you not?

13 A You would have to let me have a transcript of
14 the --

15 MS. AMSTERDAM: Sure. I am approaching the
16 witness with what is Government Exhibit 619-5, page 4.

17 Q Does that refresh your recollection?

18 A Yes.

19 Q You said they're gutless, correct?

20 A Right.

21 Q The "they're" were your coworkers, your
22 colleagues and your bosses, correct?

23 A No, ma'am. If you read the sentence right above
24 it, he refers to administrative and bureaucracy that he had
25 had a conversation with.

1 Q In the FBI, right?

2 A I don't --

3 Q That's the administration --

4 A He didn't say in the FBI.

5 Q Excuse me. That is the administration and the
6 bureaucracy of the FBI, is it not?

7 A He did not say the FBI.

8 Q Well, when you said "they're gutless," who were
9 you referring to?

10 A I don't know at the time that I made this
11 conversation. I mean, I would have to read the whole thing
12 here to find out prior to this page number 4 what we were
13 talking about. It might give me indication of what we were
14 referring to.

15 Q Go ahead. Read the whole thing.

16 A Thank you.

17 (Pause)

18 (Continued on next page)

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1 Q Have you read the conversation?

2 A Yes.

3 Q My question to you is, their gutless that you
4 referred to referred to members of the FBI, did it not?

5 A I think it referred to the government in general.

6 Q Was Mr. Salem applying for a job with the
7 government in general or was he seeking employment with the
8 FBI?

9 A Neither, ma'am.

10 Q All right, we will ask it this way.

11 MR. MCCARTHY: Objection.

12 THE COURT: Sustained.

13 Q Were you counseling Mr. Salem on whether or not
14 he should go work for the government in general or were you
15 speaking to Mr. Salem about his options about returning to
16 work with the FBI in specific?

17 A Neither, no, ma'am.

18 Q You were not talking to Mr. Salem about his
19 options in returning to work with the bureau?

20 A He at no time worked for the bureau. They do not
21 work for us. He assisted the government but he did not work
22 for the government.

23 Q The gutless that is in that transcript that you
24 have referred, to whom does that refer? Who did you call
25 gutless?

1 A I don't believe I was calling anybody. The way I
2 read this is that I was finishing Emad's sentence for him
3 that John had said to him.

4 Q John who?

5 A That John Anticev had agreed with Emad about his
6 perception of what had happened, Emad quoting what John
7 says. He stopped and I finished the quote of what John had
8 said. It doesn't look like my words. I am merely finishing
9 Emad's statement for him.

10 Q The John you are talking about is John Anticev,
11 correct?

12 A John Anticev, yes.

13 Q John Anticev works for the FBI, correct?

14 A Yes.

15 Q And you are having a conversation about events in
16 the FBI, correct?

17 A This --

18 Q The sentence before is a reference to John
19 Anticev of the FBI, is it not?

20 A It is my understanding of this that Emad is
21 quoting John, not that Emad is calling anybody gutless, that
22 he is quoting a sentence of John. That is the way I
23 interpret and interpreted it at the time.

24 Q I am not asking you to interpret Mr. Salem's
25 words, I am asking you specifically to interpret your own

1 words. You finish the sentence and you say they're gutless.
2 Who is the they're?

3 A I am finishing the thought for Mr. Salem, who is
4 quoting John Anticev. I am assuming they are talking about
5 the government in general.

6 Q You would assume that Mr. Salem is talking to
7 Special Agent John Anticev about the government in general
8 and not the FBI?

9 A The FBI is part of the government, but he had
10 many problems with not only the FBI but with other parts of
11 the government.

12 Q After the World Trade Center, would I be correct
13 in saying that the majority of conversations that Mr. Salem
14 had with you involved at least in part his consideration of
15 returning to work or assist the FBI?

16 A They never had anything to do with him working,
17 only assisting.

18 Q Assist, that's what I said, assisting the FBI.

19 A Right.

20 Q Did Mr. Salem ever speak to you about the
21 possibility of being employed or assisting any other
22 government agency?

23 A Yes, we had numerous conversations of him
24 assisting other agencies.

25 Q Who?

1 A He assisted the Internal Revenue Service -- not
2 the Internal Revenue Service but Immigrations, I am sorry.

3 Q This is post World Trade Center, post 1993.

4 A We talked about that he had helped them. It was
5 past tense but we still talked about it.

6 Q Post 1993, after the World Trade Center
7 exploded -- are you with me in terms of timing?

8 A Right.

9 Q Mr. Salem, was Mr. Salem, to the best of your
10 knowledge, in any way recruited by any agency other than the
11 FBI?

12 A I am not aware of him being recruited by any
13 agency.

14 Q Would you say that there were efforts made to
15 bring Mr. Salem back into the FBI?

16 A There were efforts made for him to resist us,
17 yes.

18 Q In fact, you stated that you were having
19 conversations with him in part to encourage him to return
20 and assist the FBI, correct?

21 A That is correct.

22 Q You were not having conversations with him about
23 his assisting Immigration and Naturalization or Internal
24 Revenue Service or any other government agency, were you?

25 A That would be not correct.

1 Q You did have conversations about him assisting
2 after the World Trade Center other government agencies?

3 A Yes, ma'am, I did.

4 Q Which agencies?

5 A I just stated, he had mentioned finishing up or
6 assisting the Internal -- I mean, excuse me, the INS.

7 Q Are there any tape recordings of those
8 conversations that you have heard?

9 A No, there is only tape recordings of maybe an
10 eighth of all the conversations.

11 Q Further down on the page -- and I apologize to
12 the court -- you refer to somebody being chicken shits. To
13 whom are you referring there?

14 THE COURT: There is no need to apologize to the
15 court unless it was a reference to the court.

16 MS. AMSTERDAM: Thank you, sir. It's not my
17 normal language and I --

18 A It says here the administrative people. Those
19 were my words, administrative people.

20 Q Which administrative people?

21 A This reference would be the administrative people
22 within the FBI.

23 Q So you called your colleagues, your bosses, your
24 coworkers chicken shits, would that be a fair statement?

25 A The administrative.

1 Q Would it also be a fair statement that you told
2 Mr. Salem that the FBI was trying to cover their butts
3 because they had been caught with their pants down after the
4 World Trade Center explosion?

5 A That would be true.

6 Q That would be true, and these were statements
7 that you made to Mr. Salem to encourage him to return and
8 assist the FBI, correct?

9 A They were statements that were made because
10 Mr. Salem felt them and the fact that I went along with them
11 made him have confidence in me, yes.

12 Q So you were inclined to tell him what he wanted
13 to hear?

14 A I was inclined to reiterate what he had already
15 said.

16 Q My question to you was, if you knew he believed
17 that, were you inclined to say what you wanted him to hear?

18 A The way you are phrasing it, no.

19 Q Were you motivated to misrepresent your feelings
20 or the truth to get him to take certain actions?

21 A The way you are stating it, no.

22 Q When the stakes are high, do you misrepresent
23 statements?

24 A No.

25 Q Were you aware that after the World Trade Center

1 explosion, that Mr. Salem made threats about turning over
2 his personal tapings to CNN?

3 MR. McCARTHY: Objection to form and to
4 relevance.

5 MS. AMSTERDAM: It's a foundation question.

6 THE COURT: Can I hear it read back? I am sorry.

7 Q The question was, were you aware after the World
8 Trade Center explosion that Mr. Salem made statements about
9 his intentions to turn over his personal tapings to CNN?

10 A I don't recall a conversation at this point, no.

11 Q Did he ever threaten you to make public his
12 conversations that he had with you?

13 A Mr. Salem never threatened me, no.

14 Q Were you aware that Mr. Salem -- this is all post
15 World Trade Center -- that Mr. Salem was demanding \$200,000
16 for information that he thought he had supplied the bureau
17 regarding Mahmoud Abouhalima?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 Q Did you know that Mr. Salem was taking credit for
21 the arrest of Mahmoud Abouhalima in Egypt?

22 MR. McCARTHY: Objection, relevance.

23 THE COURT: Sustained.

24 Q In your conversations with Mr. Salem regarding
25 his negotiations with the FBI, did you tell Mr. Salem to say

1 to the bureau, quote, that Mr. Salem should say to the
2 bureau, but just remember, you know, the next one that goes
3 off, meaning a bomb, the only people that are going to get
4 wealthy off of this is me, when I write my book and explain
5 to everybody, name names about what you all knew and what
6 you could have done, and the reason why nothing was done was
7 because you all screwed up.

8 Did you give Mr. Salem that advice as to how he
9 should negotiate his contract with the bureau?

10 A I do not remember ever giving him any advice.

11 Q I am approaching the witness with Government's
12 Exhibit 628-1A, page 7.

13 A Thank you.

14 A Is the SA on here supposed to be myself?

15 Q Special agent.

16 A But that is supposed to be me?

17 Q You can turn to the front page, where it has the
18 names delineated.

19 MR. McCARTHY: Your Honor, may I just have a
20 moment with Miss Amsterdam?

21 THE COURT: Yes.

22 (Pause)

23 Q Does that refresh your recollection?

24 A To the conversation, yes.

25 Q You told Mr. Salem that he should go to the

1 bureau, or whoever he was negotiating with in the bureau,
2 and tell them that the next bomb that goes off, the only
3 people that are gonna get wealthy is me, meaning Salem, when
4 I write my book and explain to everybody, name names about
5 all you knew and what you could have done and the reasons
6 why nothing was done because you all screwed up. Do you
7 consider that giving him advice as to how to negotiate?

8 A No, none of this paragraph at all was directed as
9 advice.

10 Q Would you think that that was describing
11 blackmailing?

12 A No, it didn't have anything to do with that
13 whatsoever.

14 Q What does that have to do with?

15 A The way I see this conversation is Emad going
16 over with me what happened and what he is possibly going to
17 say if he is asked any questions. At this point it doesn't
18 even seem like he has been asked any questions or anybody
19 has come to him. It is just playing out options in his mind
20 and I am going along with whatever options he would say that
21 would have him reiterate the actual facts.

22 Q It is you that is suggesting that he go in and
23 say that if they don't work with him, the next bomb that
24 goes off, the only person that is going to get wealthy is
25 Emad Salem because Emad Salem is going to write a book and

1 name names. Those are not his words, those are your words,
2 are they not?

3 A But I am not directing him to tell this to
4 anybody. We are having a conversation between the two of us
5 about what happened, but I am not saying to go to any one
6 person in the bureau and say this to anyone.

7 Q So it wasn't a direction, correct?

8 A Correct.

9 Q And it wasn't advice, correct?

10 A Correct.

11 Q And it wasn't negotiation skills, correct?

12 A Correct.

13 Q And it wasn't a method for blackmail, correct?

14 A Correct.

15 Q It was just words, correct?

16 A It was just synopsis of what had happened.

17 Q Agent Floyd, do you think that words have
18 meaning?

19 A Yes, ma'am, I do.

20 Q And when you speak to an informant, do you choose
21 your words carefully?

22 A Yes, ma'am, I do.

23 Q When you are working with an informant and you
24 say to the informant that you could do X, Y and Z, don't you
25 think it's possible that the informant is going to think

1 that you want him to do X, Y or Z?

2 A That's not what I have said, though.

3 Q This morning Miss Stewart asked you whether or
4 not you had said to Emad, Emad, it's me and you against
5 everybody, with them trying to make it look like, you know,
6 we were doing something wrong. Do you recall her asking you
7 that question?

8 A Yes, ma'am, I do.

9 Q What is the something wrong that you were
10 referring to?

11 A That something wrong referred to the implication
12 that Emad and I had had more than a professional
13 relationship.

14 Q Did it have anything to do with the implication
15 that you and Emad were involved in illegal and unauthorized
16 taping?

17 A No, ma'am, it did not.

18 Q Did it have anything to do with any allegations
19 that you and Emad were involved in the destruction of tape
20 recordings?

21 A No, ma'am, it did not.

22 Q You stated to us that there came a time that
23 Mr. Salem, in a conversation, told you that he had a tape
24 recording of Detective Louie Napoli, correct?

25 A Yes.

1 Q Who did you tell?

2 A Louie Napoli.

3 Q Anyone else in the bureau?

4 A No, ma'am.

5 Q The next day you indicated that you met with Emad
6 Salem, correct?

7 A I don't know if it was the same day or the next
8 day, but I did have a meeting with him after that
9 conversation.

10 Q Did you ask to take custody of that tape?

11 A No, ma'am, as I have said before I requested for
12 him to play back the tape, and when he didn't, I assume
13 there was no tape because there was no reason to play it
14 back.

15 Q You knew in the past that he had made tapes,
16 correct?

17 A Only that I heard. I hadn't seen any or heard
18 any.

19 Q Did you have occasion to think that Emad Salem
20 had lied to you?

21 A No.

22 Q So when Emad Salem said he had a tape of Louie
23 Napoli, was there any reason that you should have
24 disbelieved that?

25 A Yes.

1 Q Why?

2 A Because Emad was very angry and when people are
3 angry, sometimes they have a tendency to say that they might
4 have more than what they really have.

5 Q Had he ever said anything else in anger that was
6 a lie?

7 A No, but he had exaggerated some things that he
8 had told me later that in fact he had exaggerated on.

9 Q So you did have reason to believe that he might
10 be lying?

11 A I don't say, think that exaggerating and lying
12 are necessarily the same thing, no.

13 Q The next day or the day after when you met him,
14 did you ask him to give you the tape?

15 A I answered that -- no.

16 Q Did you ask him whether or not he had any other
17 tapes of any other agents?

18 A No.

19 Q Did you ask him if he had tapes of you?

20 A No.

21 Q You did state, however, that in that conversation
22 you told him not to take part in illegal taping, correct?

23 A Correct.

24 Q If you thought that he was just exaggerating out
25 of anger, why bother to tell him not to take part in illegal

1 taping?

2 A Because in case there was a chance that he had,
3 to make sure that he knew my position on it.

4 Q So there was a chance in your mind that he was
5 participating in illegal taping, correct?

6 A No, ma'am. You asked me specifically about the
7 tape of Louie Napoli. I am answering specifically on that
8 tape.

9 Q In the conversation, the recorded conversation
10 when Mr. Salem tells you, and between me and you I'll let
11 you listen to a little tape with Louie's voice, you say to
12 him, I thought you were going to play it now, and he says
13 no, it's not going to be clear now on the phones, correct?

14 A That's correct.

15 Q All right. I got to keep playing because it's
16 like 10 minutes of conversation, correct?

17 A Correct.

18 Q So he had an explanation as to why he was not
19 playing it at that particular moment, correct?

20 A Not one that I bought.

21 Q You didn't buy that explanation?

22 A No.

23 Q Were there other explanations that Mr. Salem gave
24 you about events in this case that you didn't buy?

25 A No, ma'am.

1 Q This is the only one?

2 A The only one that I am aware of at this moment.

3 Q Did the fact that you didn't buy this explanation
4 have anything to do with the fact that you had a vested
5 interest in whether or not his statement was true or false?

6 MR. McCARTHY: Objection to form.

7 THE COURT: Sustained as to form.

8 Q In that same conversation on the phone when he
9 tells you that he has a little bit of Louie's voice, do you
10 recall saying to him thereafter, I mean, I think, I mean,
11 you know, I think that the people I work with are going to
12 do everything in their power to make your, to make your
13 wishes come true? Do you recall saying that to him?

14 A If it's on the paper, I did say it, yes.

15 Q Well, I want to make sure, so I will approach you
16 with Government's Exhibit 629, call 3, page 6.

17 A Yes, those are my words.

18 Q So after Mr. Salem tells you that he has a
19 private recording of Detective Napoli's voice, you say to
20 him -- not immediately thereafter but in the same
21 conversation, the next page, you say to him, I think that
22 the people I work with are going to do everything in their
23 power to make your wishes come true. That is correct,
24 right?

25 A Those are my words, yes.

1 Q Was your statement about the people I'm working
2 with are going to do everything in their power to make your
3 wishes come true in any way a reflection of the fact that
4 you knew that he had personal taping of the agents?

5 A No, ma'am, I did not have personal knowledge that
6 he had tapings of the agents.

7 Q When you said that, did you know that he was
8 going to blackmail the FBI with tape recordings?

9 A I have no knowledge that he ever blackmailed the
10 FBI.

11 Q Do you recall an occasion when Mr. Salem called
12 you at your office but you then had him call you back on a
13 different extension, not your own extension?

14 A That would be false. That is my extension also.

15 Q Did you have occasion to tell him to call you
16 back on a different extension because you didn't want to
17 take a chance on mine, meaning my extension?

18 A They are both my extensions, ma'am.

19 Q I show you Government's Exhibit 629-8. Isn't it
20 a fact, ma'am, that you told him to call you back on a
21 different extension, and in your words you say to him I had
22 you call me back on this extension because I didn't want to
23 take a chance on mine?

24 A I state that I had him call me back on this one
25 because I didn't want to take a chance on mine, yes.

1 Q Mine, meaning my phone, correct, my line?

2 A It was not just my line, they are both my lines.
3 They belong to my squad, the squad that I worked on.

4 Q Were you concerned that people in the bureau were
5 monitoring your phone calls?

6 A On these lines, no. They are secure lines.

7 Q Then what was the reason for having him call you
8 back on a different extension, one that wasn't mine?

9 A At this time I don't remember, but there could
10 have been numerous reasons. Somebody could have been on it
11 or needed to use it or I was expecting another phone call.
12 There is a hundred different reasons but I don't recall at
13 this time what it was.

14 Q Among the hundred different reasons was the fact
15 that you yourself said that people suspected that there was
16 something wrong going on between you and Salem, correct?

17 A No, that would not be the case at this point.

18 Q You were not concerned at all that your personal
19 conversations were being monitored by members of the bureau?

20 A No, ma'am, I would not be concerned.

21 Q Did there come a time that you gave Mr. Salem
22 information about the World Trade Center case which he then
23 used to give to Detective Napoli?

24 A I never gave Mr. Salem any information.

25 Q Was there an occasion, ma'am, when Mr. Salem

1 asked you whether or not Mohammad Salameh had been to visit
2 Sayyid Nosair in jail before the World Trade Center bombing,
3 and you said to him yes, two weeks before the bombing, but
4 that's, that's completely between you and me, keep it under
5 your hat? Do you recall that conversation?

6 A Yes, ma'am, I do recall it.

7 Q And you have reviewed that tape, correct?

8 A I don't know that I have heard the tape but I am
9 aware of the transcript.

10 Q All right, and you are aware, are you not, that
11 Mr. Salem then -- I am sorry -- I got it. I got it.

12 And you are aware, are you not, that Mr. Salem
13 then went to your colleagues, Detectives Napoli and John
14 Anticev, and told them that information.

15 A No, I am not aware that that is what he did.

16 Q All right. Are you aware of whether or not
17 Mr. Salem was paid for that information?

18 MR. McCARTHY: Objection.

19 A I am not aware that he was paid for any
20 information, for that information.

21 THE COURT: Sustained.

22 MR. McCARTHY: Move to strike.

23 THE COURT: It is stricken.

24 MS. AMSTERDAM: One moment, your Honor.

25 Q I would like to turn your attention now, Agent

1 Floyd, to June 29, 1993. That would be five days after the
2 arrest in this case. OK?

3 A I don't remember the date but --

4 MR. McCARTHY: Stipulated, six days after the
5 arrest.

6 Q Did there come a time that Carson Dunbar
7 contacted you on that day?

8 A I don't know if it's that day, but yes,
9 Mr. Dunbar did contact me.

10 Q What did you believe Carson Dunbar had contacted
11 you for?

12 A I don't know. You would have to show me
13 something that would refresh the date so I would know
14 exactly which instance you are talking about.

15 Q Do you recall a time that you participated in the
16 search of Mr. Salem's apartment?

17 A Yes, I do.

18 Q Assume at this point, and I think the government
19 would stipulate, that that occurred on June 29, 1993.

20 MR. McCARTHY: Stipulated, 1993.

21 MS. AMSTERDAM: 1993?

22 MR. McCARTHY: Right.

23 Q 1993. On that day prior to the search did Carson
24 Dunbar contact you?

25 A Yes, he did.

1 Q Did Carson Dunbar advise you that Mr. Salem had
2 told the bureau that he had additional tapes in his
3 apartment?

4 MR. McCARTHY: Objection to form.

5 THE COURT: I am sorry. Can I hear it back.

6 (Record read)

7 THE COURT: Why don't you take out the word
8 additional.

9 Q -- that Mr. Salem had tapes in his apartment.

10 A Yes, I was informed that he did.

11 Q Were you also advised that Mr. McCarthy, the
12 prosecutor in this case, had refused to authorize a search
13 warrant of Mr. Salem's apartment?

14 A I believe I learned that after this meeting.

15 MR. McCARTHY: Objection, hearsay.

16 THE COURT: Sustained.

17 Q What did you do upon receiving the call from
18 Carson Dunbar? What did you do on June 29, 1993?

19 A I came to the FBI office. There was a meeting,
20 and after the meeting I drove up to Mr. Salem's place of
21 residence and went inside the place of residence to the
22 place that I was told to retrieve the tapes from, and
23 retrieved them and then left.

24 Q Where was the meeting?

25 A At the FBI headquarters, 26 Federal Plaza.

1 Q Who was present at the meeting?

2 A Mr. Roth, Mr. Dunbar, myself, that I can remember
3 at this time. That's all I can remember.

4 Q Was Mr. Salem at that meeting?

5 A No, ma'am, he was not.

6 Q Was it requested of you that you obtain
7 Mr. Salem's consent for the search of his apartment?

8 A I was under the impression that the consent had
9 already been given at that time.

10 Q To whom were you under the impression that the
11 consent had been given?

12 A To myself.

13 MS. AMSTERDAM: At this point, your Honor, I
14 offer, with the government's consent, Defendant's Exhibit
15 Khallafalla D.

16 MR. McCARTHY: There is no objection. I would
17 just like to take a look at it for just a second.

18 THE COURT: All right.

19 MR. McCARTHY: I have seen it before.

20 THE COURT: What is it?

21 MS. AMSTERDAM: For the record, this is a
22 two-page document which includes a handwritten statement by
23 Emad Salem.

24 THE COURT: That is received without objection.
25 Go ahead.

1 (Defendant Khallafalla Exhibit D received in
2 evidence)

3 Q What I have placed before you is a handwritten
4 statement by Mr. Salem given to you personally to search his
5 apartment, correct?

6 A That is correct.

7 Q And it is signed by Mr. Salem and witnessed by
8 two agents of the FBI.

9 A That is correct.

10 Q Would you read that statement to the jury,
11 please, in its entirety.

12 A I Emad Salem give Special Agent Nancy Floyd, FBI,
13 permission to enter my residence number 525, 2350 Broadway,
14 New York, New York, to retrieve tape recordings currently
15 located there.

16 Q Did you speak with Mr. Salem before he signed
17 that consent?

18 A I was not there when he signed it, so I don't
19 know when he signed it versus what I talked to him.

20 Q Did you speak with him that day?

21 A Yes, ma'am, I did.

22 Q When you spoke to him, where were you?

23 A I was at 26 Federal Plaza.

24 Q And had the consent already been authorized at
25 that time, if you know?

1 A I do not know.

2 Q Would you tell us what your conversation was with
3 Mr. Salem.

4 A My conversation with Mr. Salem was him going over
5 exactly what he was giving me permission to do and where the
6 tapes were located and etc., and some personal items that he
7 wanted me to retrieve, and where they would be located.

8 Q Had you ever been to his apartment before that
9 day of June 29, 1993?

10 A Yes, ma'am, I had.

11 Q Had you ever seen tape recordings in his
12 apartment before that day?

13 A No, ma'am, I had not.

14 Q Did you know where he kept tape recordings in his
15 apartment?

16 A No, ma'am, I did not.

17 Q Had he ever discussed where tape recordings were
18 in his apartment prior to that day with you?

19 A No, ma'am, he did not.

20 Q The consent to search was given to you and you
21 alone, correct?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Q The document that is before you authorizes Nancy
25 Floyd to search the premises belonging to Mr. Salem, does it

1 not?

2 A This document authorizes me just to retrieve tape
3 recordings.

4 Q Does it authorize any other agent to go to his
5 apartment?

6 A Not on this document, no, it does not.

7 Q But on that day you were not permitted to go to
8 Mr. Salem's apartment alone, were you?

9 A No, ma'am, I was not.

10 Q And who if anyone accompanied you?

11 A Mr. Roth accompanied me and another female agent,
12 whose name I do not know.

13 (Continued on next page)

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1 Q Do you know whose decision it was that prohibited
2 you from going along to Mr. Salem's apartment?

3 MR. McCARTHY: Objection.

4 MR. JACOBS: Could we have a side bar on this,
5 your Honor?

6 THE COURT: Yes.

7 (At the side bar)

8 THE COURT: I am giving you a side bar on the
9 assumption that this is in essence a two-lawyer cross.

10 MR. JACOBS: Yes.

11 THE COURT: And I assume one lawyer is doing it.

12 MR. McCARTHY: Your Honor, I don't have any
13 objection to her going into the area but the assumption of
14 the questions is that she wanted to go alone --

15 THE COURT: And that she was denied permission to
16 go alone.

17 MR. McCARTHY: Right.

18 MS. AMSTERDAM: The question before was you were
19 not permitted to go alone and she said yes. That was her
20 answer. She said she was not permitted to go alone. Then I
21 asked her whose decision was it that you couldn't go alone.

22 MR. JACOBS: While Mr. McCarthy was probably
23 technically correct on the hearsay objection --

24 THE COURT: That is not his objection.

25 MS. AMSTERDAM: That is not his objection.

1 MR. JACOBS: I just want to put on the record, we
2 would prefer not to get into too many details of what Mr.
3 McCarthy's role was in this, because he was involved in some
4 of the decision making -- if I could just finish, your
5 Honor -- and rather than be forced into a situation, which
6 we would not want to do, of having to call Mr. McCarthy as a
7 witness, we would prefer to do it to some extent with some
8 hearsay and things like that.

9 THE COURT: His objection was not to hearsay. I
10 think it was entirely to the question, entirely to the
11 question of whether she wanted to go alone as opposed to
12 wanting other people wanting to go along, as opposed to not
13 particularly caring or whatever.

14 MS. AMSTERDAM: I would say that is the subject
15 of redirect, that she had already stated previously that she
16 was prohibited from going.

17 THE COURT: She did in substance.

18 (In open court)

19 THE COURT: Objection overruled.

20 (Continued on next page)

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1 BY MS. AMSTERDAM:

2 Q Whose decision was it that you were not to be
3 permitted to go along alone to Mr. Salem's apartment?

4 A I don't know who made the decision.

5 Q One of the agents that went with you was Special
6 Agent James Roth?

7 A Yes, ma'am.

8 Q And the unidentified female, was she an employee
9 of the FBI?

10 A She was a special agent also.

11 Q But you don't know her name?

12 A No, I had never met her prior to or since that
13 one time.

14 Q When you got to Mr. Salem's apartment, what if
15 anything happened?

16 A That I did personally?

17 Q That you did personally.

18 A I entered into the apartment, went to the
19 designated place that I was told to retrieve the tapes, and
20 did so.

21 Q Which was what?

22 A Where they were located?

23 Q Which was the designated place that you were told
24 to retrieve the tapes?

25 A A chair that was located in his bedroom. I was

1 to pull out the sofas and would find some tapes underneath
2 there.

3 Q That designated place, was that designated by
4 Mr. Salem?

5 A Yes, he is the one who told me where to go.

6 Q He told you to search a chair and a sofa in his
7 bedroom?

8 A No.

9 Q Or was it the same piece of furniture?

10 A Right. It was just a chair, sort of. It was an
11 unusual kind of chair but it was just a chair in his
12 bedroom.

13 Q And you searched that chair?

14 A Yes.

15 Q And how many tapes, approximately, did you
16 recover from there?

17 A Approximately 15 to 20.

18 Q At that time, what if anything did Special Agent
19 Roth do?

20 A At the time that I was retrieving them I was in
21 the bedroom, so I can't say what he was exactly doing at
22 that point.

23 Q Did there come a time that you became aware of
24 the fact that Special Agent Roth had recovered other tapes?

25 A Yes, there was.

1 Q Were they recovered from the bedroom?

2 A No, they were not.

3 Q How many tapes, approximately, did Agent Roth
4 recover?

5 A I would say somewhere between 30 and 40.

6 Q Did the female agent recover any tapes?

7 A No, she recovered nothing.

8 Q What if anything did you say to Agent Roth about
9 the taking of the 30 to 40 other tapes that he recovered?

10 A I told him that we weren't supposed to take
11 those.

12 Q And you based the decision that you weren't
13 supposed to take them on what?

14 A On the fact that I was told by Mr. Dunbar to only
15 do what Mr. Salem had instructed me to do, and that was for
16 me to retrieve the tapes that were in the chair in his
17 master bedroom.

18 Q You took steps, did you not, to try to convince
19 Agent Roth not to take the 30 or 40 other tapes, didn't you?

20 A I just merely voiced my opinion.

21 Q Voiced it loudly?

22 A No, I don't remember raising my voice. I just
23 voiced it.

24 Q There was some disagreement about the tapes,
25 correct?

1 A Yes.

2 Q And you tried to convince the female agent that
3 you shouldn't take the tapes, correct?

4 A No, she didn't have any tapes.

5 Q No, that the three of you shouldn't take the
6 other 30 to 40 tapes.

7 A No, my conversation and comments were directed
8 just to Mr. Roth.

9 Q Isn't it a fact that the female agent said that
10 these things had happened before and that she was told she
11 was there only for security reasons?

12 A That conversation that you are referring to
13 happened afterwards, several hours after we had actually
14 even left the apartment.

15 Q All right. You actually called Carson Dunbar
16 from the apartment?

17 A No, ma'am, I did not call him, Mr. Roth did.

18 Q Mr. Roth called him, all right. You had a
19 written, signed consent form from Emad Salem, authorizing
20 you to retrieve tapes from his apartment.

21 A At the time I did not see this form. This was
22 presented to me afterwards. I didn't know what the form
23 said, I just knew we had consent because he verbally told
24 me.

25 Q You had not seen the form?

1 A This form, no, I had not seen.

2 Q Did Agent Roth show you the form?

3 A No, I did not see this. Mr. Salem told me that I
4 had permission to go into his apartment and retrieve the
5 tapes.

6 Q And Mr. Salem told you to retrieve the tapes only
7 from his chair, correct?

8 A That is correct.

9 Q And when Agent Roth recovered 30 to 40 other
10 tapes, you argued with Agent Roth that you shouldn't take
11 those tapes, correct?

12 A That is correct.

13 Q In fact you questioned Agent Roth as to whether
14 or not you should even retain an attorney for yourself
15 because you were concerned that the search was illegal,
16 correct?

17 A Yes, I mentioned to him about that, obtaining an
18 attorney.

19 THE COURT: Ms. Amsterdam, could you come to a
20 convenient break point in the next five minutes.

21 Q Did you know at that time that there were other
22 tapes in the apartment?

23 A I didn't know that there was any tapes in the
24 apartment.

25 Q On June 29 when you went to the apartment, you

1 knew there were tapes in the chair, correct?

2 A Yes.

3 Q Did Mr. Salem tell you anything to the effect of
4 make sure they take only the tapes in the chair?

5 A He did not state to only take the tapes, he was
6 just adamant that nobody else go into his apartment and take
7 anything else out, that he didn't mention specific tape,
8 just tapes.

9 Q He was adamant that only you do the search,
10 correct?

11 A Yes, ma'am.

12 Q But it is your testimony that he was not adamant
13 as to whether all of the tapes were taken.

14 A No, ma'am, that is not what I said. I said he
15 was adamant that only I do the search and only the tapes
16 that he gave us permission to take were retrieved, but he
17 did not say, as you asked me, whether or not there were
18 other tapes in the apartment and to not take them.

19 Q To your knowledge, he was telling you to take
20 only the tapes in the chair, correct?

21 A That is correct.

22 Q Did he tell you that there were other tapes in
23 the apartment?

24 A No, he did not.

25 Q Did he tell you to make sure that the agents

1 didn't take the other tapes?

2 A He didn't mention anything about other tapes.

3 Q He didn't know other agents were going, correct?

4 A That's wrong.

5 Q That's wrong?

6 A Yes, ma'am, that is wrong.

7 Q I thought it was your testimony that he was
8 adamant that only you went to the apartment.

9 MR. MCCARTHY: Objection.

10 Q Is it your testimony that Mr. Salem was adamant
11 that only you went to the apartment and only you retrieve
12 the tapes?

13 A That is correct, he was adamant about that.
14 However, he was told that Mr. Roth would be accompanying me
15 to preserve the integrity of the apartment, i.e., to protect
16 me, say something had happened in the apartment, that we
17 would be able to say that it was already there when we got
18 there. In other words, I wasn't the only person in the
19 apartment and be left with no witnesses as to what
20 transpired once I went into the apartment.

21 Q So he knew Roth was going?

22 A Yes, ma'am.

23 Q And there is a written consent to search the
24 entire apartment, correct?

25 A The consent that I have here states for me to

1 retrieve tapes.

2 Q Let me ask you this. What was the problem in
3 your mind about taking the other 30 to 40 tapes that were
4 found by Agent Roth in Mr. Salem's apartment?

5 A The problem in my mind is that Mr. Salem had told
6 me that I could only obtain those tapes in that certain
7 location, and I was told by Mr. Dunbar to assure Mr. Salem
8 that that's all that would be taken from his apartment, were
9 those tapes in that particular location, that nothing else
10 would be taken and nothing else --

11 Q Did Mr. Salem confide in you the contents of the
12 other tapes?

13 A I never knew there was other tapes.

14 Q Did you ask to call Mr. Salem from the apartment
15 to see if it was OK for you to take the other tapes?

16 A I had no way of contacting him, no, so I would
17 not have done that.

18 (Continued on next page)

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1 MS. AMSTERDAM: This is a convenient time.

2 THE COURT: Ladies and gentlemen, we are going to
3 break for the day. Please leave your notes and other
4 materials behind. Please don't see or read or hear anything
5 about either the case or a related matter. We will resume
6 tomorrow. Good night.

7 (Jury excused)

8 THE COURT: You can step down.

9 (Witness excused)

10 (Proceedings adjourned until Thursday, July 27,
11 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.

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July 27, 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

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Attorneys for Defendant Matarawy Mohammed Said Saleh
10 BY: THOMAS H. NOOTER

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1 (In the robing room)

2 (Mr. Bernstein and government counsel present)

3 MR. BERNSTEIN: I gather you brought me in
4 because you have been informed that my client is ill and
5 does not want to proceed today. That is the status, point
6 blank.

7 THE COURT: What is the nature of the illness?

8 MR. BERNSTEIN: It is sore throat, it's fever, it
9 is sinus, and it's dizziness in his head. I can tell you to
10 my knowledge of what's been going on, he has been getting
11 progressively ill the last two days in terms of the sore
12 throat aspects of this because he had been asking me to
13 bring in Hall's drops and --

14 THE COURT: So it's not a sudden phenomenon and
15 it doesn't suggest malingering?

16 MR. BERNSTEIN: No. It's been going on, as I
17 say, for two days. I assumed it was, you know, the
18 traditional travails we have between air conditioning and
19 non-air conditioning, and how that impacts and sometimes
20 catches you with what we call a summer cold. But apparently
21 it has reached the stage where sometime I guess last night
22 he must have reached out to a doctor. I felt his head. He
23 is feverish from my lay, fatherly hands.

24 My client clearly has in the seven months made a
25 track record in this case that I think is well established.

1 THE COURT: He has indeed, which is to say he's
2 been here, and he's basically pulled his socks up and
3 proceeded, as he should. The not waiving part gives me a
4 little bit of pause. I can't force him obviously, but the
5 question becomes whether anything that's happening here
6 directly impacts him.

7 MR. BERNSTEIN: We have been through enough of
8 this in other segments of other defendants' illnesses, and
9 there are times I think even my client may have left for not
10 feeling well.

11 THE COURT: I don't recall that if it happened.

12 MR. BERNSTEIN: I think maybe once or twice.
13 He's gone back probably less than any other defendant. He
14 seems really concerned that the Floyd testimony is having a
15 major impact in this case. He wants to be here for it.

16 After Nancy Floyd finishes is the beginning of
17 Mr. Wasserman's case, and my client is directly impacted by
18 that because of the Pennsylvania aspects of the case, and I
19 think there are some FISA's that are being played that are
20 my client's.

21 I would suggest one thing, because maybe it will
22 solve at least some piece of this: Ms. Floyd has been on
23 the stand, I assume, I can check with my colleagues that her
24 testimony is not that lengthy to finish, unless the
25 government is going to have lengthy re -- I don't want to

1 open up the box that now has my client sitting here all
2 morning, but I thought maybe I could prevail upon him to
3 stay long enough to complete the Floyd matter and break for
4 the day and that would at least resolve that.

5 THE COURT: If you can --

6 MR. BERNSTEIN: If I can.

7 THE COURT: -- I would be grateful, and I think
8 everybody else would be.

9 MR. BERNSTEIN: I do, too. I guess I'm somewhat
10 looking at the government and trying to get a sense of
11 whether or not they have --

12 (Mr. Jacobs entered the robing room)

13 MR. JACOBS: Could I talk to Mr. Bernstein? I'm
14 sorry, your Honor.

15 MR. BERNSTEIN: We might as well stay on the
16 record. Mr. Jacobs has --

17 THE COURT: The record should reflect that Mr.
18 Jacobs has just joined us.

19 MR. BERNSTEIN: And has indicated that the
20 defense generally would like to finish Ms. Floyd today, and
21 I gather he is a bearer of my client's word that my client
22 will bear it out until we finish with Ms. Floyd.

23 MR. JACOBS: We spoke with him and we told him
24 that it was our request that we proceed. And I asked him
25 could he hang in. He said he would. So we can proceed.

1 THE COURT: I appreciate that. I still want to
2 make a record out there. Again, I very much appreciate it.

3 I think this is Mr. McCarthy's responsibility.

4 MR. FITZGERALD: Yes. I don't believe that he is
5 going to be spending a terribly long time on redirect.

6 THE COURT: Let's make it a minimalist sculpture.

7 MR. BERNSTEIN: Well then let's resume. The less
8 time we spend here, the quicker we can get my client back.

9 THE COURT: Fine.

10 (In open court)

11 THE COURT: OK. Ms. Stewart?

12 MS. STEWART: Yes, Judge. I wanted to make an
13 application to revisit the proffers that were put forward
14 with regard to various agents.

15 THE COURT: I don't want to revisit that now.

16 MS. STEWART: OK. Can I be heard at some point
17 because I think the --

18 THE COURT: Yes.

19 MS. STEWART: -- testimony of Agent Floyd raised
20 questions as to whether or not I might be entitled to call
21 Agent Anticev as well. I am not going to the questions of
22 the OPR --

23 THE COURT: I will revisit that later.

24 MS. STEWART: OK.

25 THE COURT: Mr. Bernstein?

1 MR. BERNSTEIN: Yes, Judge. As the court is
2 aware, we have had a robing room conference my client is
3 sick. I would just add to this that I just found out that
4 in working with my paralegal last night he broke off the
5 session because of the illness sometime around 8 o'clock.
6 They had planned to work later.

7 Mr. Abdelgani has indicated he is willing to sit
8 through Ms. Floyd's testimony, and then he really wants to
9 be able to go back to the MCC because he is ill, and he will
10 not waive the trial's going forward in his absence, given
11 the fact that there may be evidence that directly impacts my
12 client.

13 THE COURT: We talked about that, and I
14 understand his position, and obviously it will prevail. I
15 just want to ask Mr. Abdelgani whether it is OK for us to go
16 ahead today with you not feeling well at least for the
17 limited time that Mr. Bernstein discussed. Is that all
18 right?

19 DEFENDANT AMIR ABDLEGANI: And proceed without --

20 THE COURT: Not without you.

21 DEFENDANT AMIR ABDLEGANI: With Agent Floyd?

22 (Defendant conferred with counsel)

23 THE COURT: Pardon?

24 MR. BERNSTEIN: He is saying "yes" in various
25 ways, Judge. He said he will stay for Floyd.

1 THE COURT: Good, thank you very much.

2 NANCY RENE FLOYD, resumed.

3 (Jury present)

4 THE COURT: Good morning ladies and gentlemen.

5 JURORS: Good morning.

6 THE COURT: Good morning, Agent Floyd.

7 You are still under oath.

8 THE WITNESS: Good morning, sir. Yes, sir.

9 MS. AMSTERDAM: Good morning, your Honor.

10 THE COURT: Ms. Amsterdam, go ahead.

11 CROSS-EXAMINATION (Continued)

12 BY MS. AMSTERDAM:

13 Q Good morning, Agent Floyd.

14 A Good morning.

15 Q When we closed yesterday, we were discussing the
16 search of Emad Salem's apartment on June 29, 1993, correct?

17 A Yes, ma'am.

18 Q I would be correct in stating that yesterday you
19 testified that Mr. Salem had been insistent that he would
20 only permit you to retrieve the tape, but that your
21 supervisor Carson Dunbar did tell Mr. Salem that Agent Roth
22 was going to accompany you, would that be correct?

23 A Yes, ma'am.

24 Q It was also your testimony that Carson Dunbar
25 told you to do whatever Emad Salem wanted you to do,

1 instructed you to do?

2 A Mr. Dunbar said that to assure Emad that we would
3 only do as he instructed us to do.

4 Q I'm sorry?

5 A Mr. Dunbar told me to assure Mr. Salem that we
6 would do only what he had instructed us to do.

7 Q Now, the instructions, the verbal instructions
8 that were given to you were given by Mr. Salem to you, in
9 terms of the limitations to the search in his apartment,
10 correct?

11 A Yes, ma'am.

12 Q They were not reflected in the written consent
13 agreement, correct, those limitations were not reflected in
14 the written consent agreement that he signed, correct?

15 A I didn't know what he had signed. I just knew
16 what he had told me.

17 Q I understand that you didn't know it at the time.

18 THE COURT: Ms. Amsterdam.

19 MR. MCCARTHY: Stipulated.

20 MS. AMSTERDAM: Thank you.

21 THE COURT: Please proceed.

22 Q You stated that you entered the apartment and
23 that you went directly to the chair where you retrieved some
24 tapes, correct?

25 A Yes, ma'am.

1 Q Now, would I be fair in saying that during this
2 time Agent Roth was going through the apartment, moving
3 items and opening and closing drawers?

4 A Well, I was in the bedroom. I am not sure what
5 Mr. Roth was doing.

6 Q Did you give a sworn signed statement on January
7 6, 1995?

8 A Yes, I did.

9 Q That has been previously marked as Government
10 Exhibit 35148-D. Did you review that statement?

11 A Yes, ma'am.

12 Q Isn't it a fact that you signed a sworn statement
13 indicating that, "I noticed Roth going through the apartment
14 moving items and opening and closing drawers"?

15 A Yes.

16 Q Was that correct?

17 A That is correct. That is what I saw. But while
18 I was in the bedroom, I don't know what he did, but when I
19 came out of the bedroom, what I saw him do is what I have in
20 my statement.

21 MR. McCARTHY: Your Honor, I don't mean to
22 interrupt, but can I have just a brief moment with Ms.
23 Amsterdam to clarify?

24 THE COURT: Yes.

25 (Counsel conferred)

1 MS. AMSTERDAM: I thank Mr. McCarthy.

2 For the jury's information Mr. Jacobs yesterday
3 gave you a redacted version of 35148-D. Don't move to get
4 it because the redacted version does not refer to the parts
5 of the sworn statement that I am asking Agent Floyd about
6 now. However, the entire sworn statement is Government
7 Exhibit 35148-D.

8 MR. McCARTHY: The redacted statement is
9 35148B-D, but the government stipulates that Ms.
10 Amsterdam --

11 THE COURT: It is in fact part of the statement
12 even though it is not included in the part that was
13 distributed to the jury.

14 MS. AMSTERDAM: Just so there is no confusion.

15 THE COURT: Now that that is clear, let's
16 proceed.

17 MS. AMSTERDAM: Thank you, your Honor.

18 Thank you, Mr. McCarthy.

19 Q In addition, in your sworn statement would I be
20 correct in saying that you wrote that Roth was -- withdrawn.

21 You signed a sworn statement in which it was
22 indicated that Roth was actually taking control of certain
23 items?

24 A That was correct.

25 Q And that in your sworn statement that you signed

1 you indicated that -- I'm sorry. I lost my place -- that in
2 some cases the items were in drawers or concealed by other
3 items. Did you indicate that?

4 A Yes, ma'am.

5 Q So there were items that Agent Roth took that
6 were in drawers, and there were items that Agent Roth took
7 that were actually hidden in other items, correct?

8 A Well, they were like under stuff inside the
9 drawers.

10 Q Your word was that they were concealed within
11 other items, that is in your sworn statement, correct?

12 A Right, concealed within the drawers.

13 Q Now, was there an entire search of Mr. Salem's
14 apartment done at that time?

15 A No.

16 Q Now, after Agent Roth recovered what you stated
17 was approximately 30 to 40 tapes, you indicated yesterday
18 that there was some discussion about whether or not to take
19 those tapes, correct?

20 A Yes, ma'am.

21 Q Did you actually physically examine the tapes at
22 that time?

23 A No, ma'am.

24 Q Did they appear to you to be cassette tapes?

25 A Yes, ma'am.

1 Q Did they appear to be cassette tapes not
2 dissimilar to the cassette tapes that you had retrieved from
3 the drawer in the bedroom?

4 A The biggest difference that I noticed between
5 them was that they were the small ones versus the bigger
6 ones, which -- the normal size tapes versus the tinier ones.

7 Q Which ones were in the drawer? Withdrawn.

8 Which ones were in the chair in the bedroom?

9 A The ones that I retrieved, most of them were the
10 normal sized tapes. That is what I remember.

11 Q And the ones that Agent Roth retrieved were what
12 size?

13 A I think both, but there was a lot of the littler
14 ones.

15 Q But there was also a large assortment of large
16 cassettes that looked very similar to the ones that you had
17 retrieved from the chair in the bedroom --

18 A Right.

19 Q -- would that be a fair statement?

20 Thank you.

21 Now, it was your testimony that you wanted to
22 leave those tapes behind, correct?

23 A It is my testimony that I only wanted to take out
24 of the apartment the tapes that I was authorized to get.

25 Q So it was your testimony that you made a decision

1 to adhere to Mr. Salem's verbal instructions to you,
2 correct?

3 A That's correct. I only took possession of the
4 tapes that I was authorized to.

5 Q Now, was Mr. Salem's apartment under any police
6 guard?

7 A No, ma'am.

8 Q Were there marshals or detectives stationed
9 outside the apartment?

10 A No, ma'am.

11 Q Were there any taping of the front door similar
12 to what you would have at a crime scene?

13 THE COURT: You mean on an ongoing basis?

14 MS. AMSTERDAM: No, on June 29, 1993.

15 A No, ma'am.

16 Q Was there any measures taken to secure
17 Mr. Salem's apartment?

18 A The secure -- the apartment was secured after we
19 left by the instructions of Mr. Salem.

20 Q Secured in the sense that the door was closed and
21 locked, correct?

22 A Right, and the key was given back to the manager.

23 Q But no law enforcement person remained behind to
24 insure that no one else entered that apartment, that would
25 be correct?

1 A Correct.

2 Q It is your testimony that, knowing that the
3 apartment was unsecured in the context of that there was no
4 police protection there, that you made a decision that you
5 wanted to leave behind 30 to 40 tapes which might have been
6 evidence in this case, is that your testimony?

7 A My testimony is that I was only going to take
8 possession of the tapes that I was authorized by Mr. Salem
9 to take possession of.

10 Q Was your priority at that time to follow the
11 instructions of Mr. Salem or to insure the integrity of the
12 criminal investigation and prosecution in this case?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q Who were your loyalties to at that time --

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 Q -- Mr. Salem or the Bureau?

19 THE COURT: Ms. Amsterdam, this is an argument
20 you can make at the end of the case.

21 Q Mr. Salem on June 29, 1993 was not under house
22 arrest, was he?

23 A No, ma'am.

24 Q He had free access to a telephone, I presume?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q Did you consider the possibility that any other
3 foreign intelligence agency might have had access to that
4 apartment after you left?

5 A It was a thought that I -- never entered my mind.

6 Q Did Mr. Salem at any time tell you that he had
7 separate tapes, tapes that were not to be turned over to the
8 FBI?

9 A I do not recall Mr. Salem telling me that.

10 Q When you say you do not recall that, does that
11 mean that there is a possibility that he indeed told you
12 that?

13 A What I'm saying is, as best as I remember it as
14 of today's date, I had no conversation where he told me that
15 he had additional tapes that he was withholding from the
16 FBI.

17 Q Did Mr. Salem on June 29, 1993 tell you that
18 there were any other tapes in his apartment other than the
19 tapes in the chair?

20 A No, ma'am. It was my understanding that he had
21 informed Mr. McCarthy of tapes and that he was giving him
22 access to those tapes through me. I cannot remember if he
23 mentioned if there was any other tapes, but all I knew is
24 that it had been told to Emad that the only tapes that would
25 be taken from the apartment were the ones that he was

1 authorizing or giving to Mr. McCarthy.

2 Q Those tapes, the tapes that you believed that
3 were authorized to be turned over, were the tapes that were
4 designated to be found in the chair, correct?

5 A Yes, ma'am.

6 Q Now, in addition to tapes, Agent, Special Agent
7 Roth also recovered photographs from the apartment that were
8 taken?

9 A Yes, ma'am.

10 Q He also recovered a book that Mr. Salem was
11 writing, is that correct?

12 A I don't recall a book. I think he took some
13 notes.

14 Q In your sworn statement of January 6, 1995, did
15 you swear to the fact that, "Agent Roth took additional
16 tapes, photographs and papers that I later found out Emad
17 was using for a book he was writing"?

18 A Yes, ma'am. As I said, there was notes, there
19 were papers, notes, but it was not a book itself.

20 Q Those papers, those notes were contained on
21 paper?

22 A Yes, ma'am.

23 Q And you later found out that those notes were for
24 a book that he was writing?

25 A That is what I was told.

1 Q And that was in connection with the investigation
2 of this case, correct?

3 MR. McCARTHY: Objection to form.

4 THE COURT: Sustained.

5 Q You opposed taking the photographs and the papers
6 also, correct?

7 A The only thing I was willing to take out of the
8 apartment were the tapes I was authorized to take.

9 Q So the answer is you opposed taking the
10 photographs and the papers, correct?

11 A Yes.

12 Q Would you explain to the jury what an inventory
13 is.

14 A As in the Bureau's use of it?

15 Q Yes.

16 A If we do a search with a search warrant, normally
17 what we do when we go in is we leave behind a piece of paper
18 that inventories everything that was taken out along with a
19 copy of the search warrant at the premise for the people.

20 Q So an inventory is a list of the items that were
21 taken from the place that was searched?

22 MR. McCARTHY: Objection.

23 Q Would that be a fair statement?

24 MR. McCARTHY: Pursuant to warrant.

25 MS. AMSTERDAM: Pursuant to what?

1 THE COURT: Warrant was her testimony.

2 Go ahead.

3 Q Well, if a search is made of an apartment on an
4 emergency basis, so that there is not time to get a warrant,
5 but it is a duly -- but it is a legal search, you would make
6 an inventory of the contents that you took from that
7 apartment, would you not?

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q Is it your testimony that inventories are made
11 only when there is a search warrant?

12 A That is the only time I have ever done it.

13 Q Is it your testimony that it is Bureau procedure
14 that inventories or made --

15 MR. McCARTHY: Objection, relevance.

16 Q -- only when a search is conducted pursuant to a
17 warrant?

18 THE COURT: That objection is overruled. Go
19 ahead. Do you know whether there is any policy --

20 THE WITNESS: I can't tell you if there is a
21 policy or not. I can only tell you what I have only done.
22 I have never left an inventory unless in fact it's been
23 attached to a search warrant. In this case Emad was later
24 given an accounting of everything that was taken from his
25 apartment, but it was done in his presence.

1 Q Was an inventory made at the premises of the
2 items taken out of the apartment?

3 A No, there was not one.

4 Q Did you physically take possession of any of the
5 items that were removed from the apartment?

6 A I took possession of the tapes from the chair.

7 Q Did all of those tapes that you took from the
8 chair get to the Bureau?

9 A Yes, ma'am, they did.

10 Q Did you personally retain possession of any of
11 those tapes?

12 A No, ma'am, I did not.

13 Q After the search of the apartment, you and Agent
14 Roth and the unidentified female agent went to a location
15 where Mr. Salem was staying, correct?

16 A Yes, ma'am.

17 Q And at that time would I be correct in saying
18 that Mr. Salem was furious that the search had extended past
19 the chair?

20 A Yes, ma'am, you would be correct.

21 Q And that Agent Roth at that time told Mr. Salem
22 to sit down and shut up, would that be correct?

23 A That would be correct.

24 Q What was Mr. Salem saying in terms of -- describe
25 what Mr. Salem was saying at that time.

1 A I can't give you exact words, but he was just
2 very upset that anything else had been taken from his
3 apartment or gone through besides what he had authorized for
4 us to take.

5 Q Did he indicate at that time why he was concerned
6 that the other tapes were taken from the apartment?

7 A Because he felt like he had been lied or misled
8 to or -- is what I recall because he had been told that only
9 the tapes -- that the chair and the tapes inside the chair
10 were the only thing that was going to be taken, and he had
11 no indication that anybody, nor did he give authorization to
12 go through the rest of his apartment. He was upset that
13 they had done so.

14 Q So Mr. Salem was very angry that tapes other than
15 the tapes from his chair had been removed, would that be a
16 fair statement?

17 A I think his anger was -- he was angry more at the
18 fact that they had gone in there and one this search to
19 begin with. The items he was also angry about, but he was
20 more angry that it had happened to begin with.

21 Q All right. In your sworn statement you
22 indicated, did you not, "We all went to Emad's location and
23 spoke to Emad, who was furious"?

24 A Yes, ma'am.

25 Q At that time there came a time that a prosecutor

1 actually came into the room, correct?

2 A Yes, ma'am.

3 Q And at that point there was some discussion about
4 the tapes that had been recovered that were not from the
5 chair, do you recall?

6 A There was a conversation -- it is my recollection
7 that they -- it was more focused on the photographs, etc.,
8 but I am sure the tapes were also talked about.

9 Q Well, the photographs were returned to Mr. Salem,
10 were they not?

11 A It is my understanding they were.

12 Q And the papers that you later learned were going
13 to be part of a book were returned to Mr. Salem, were they
14 not?

15 A I never heard anything about the papers, but I do
16 believe the photographs were given back.

17 Q Do you know what happened to the papers that were
18 part of the book?

19 A I don't know.

20 MR. McCARTHY: Objection.

21 A I wasn't there, I left.

22 THE COURT: Sustained.

23 Q Let me rephrase it.

24 Have you ever seen those papers again after that
25 day?

1 A No.

2 Q All right. And a number of tape recordings were
3 given back to Mr. Salem at his insistence, were they not?

4 A It is my recollection that all the tapes were
5 logged and the FBI obtained custody of them at that point,
6 and they were not given back. I don't believe -- the only
7 thing that I thought, thought was given back to him was the
8 photographs.

9 Q On your sworn statement of January 6, 1995, you
10 swore to the following, did you not:

11 "We all went to Emad's location and spoke to
12 Emad, who was furious. PLA Roth told him to sit down and
13 shut up. At that time AUSA McCarthy appeared, who advised
14 PLA Roth to give back the property due to the fact that
15 there was a lack of authorization. PLA Roth argued and as a
16 result Roth gave back certain photos and tapes."

17 Did you swear to that?

18 A Yes, but the tapes were then given back to Roth.

19 Q That's not my question. On June 29, 1993,
20 Mr. Salem was given back tapes that were recovered from a
21 location other than from his chair, was he not?

22 A They were given to him, and he returned them at
23 the same time.

24 Q Same day, is that your testimony?

25 A Right. During the same exact meeting.

1 Q All right. Those tapes, before those tapes
2 were -- withdrawn.

3 Before those tapes were given to Mr. Salem, did
4 you or any other agent, to your knowledge, listen to those
5 tapes?

6 A No one listened to any of the tapes.

7 Q Before those tapes were given to Mr. Salem, did
8 you or any other agent, to your knowledge, make copies of
9 those tapes?

10 A No copies were made.

11 Q Before those tapes were returned to Mr. Salem did
12 you or any other agent cause an interpreter to review any of
13 the Arabic tapes?

14 MR. MCCARTHY: Objection. Rule 602.

15 MS. AMSTERDAM: I don't know what that is.

16 MR. MCCARTHY: The competence.

17 THE COURT: Overruled.

18 To your knowledge.

19 MS. AMSTERDAM: You may answer.

20 A Did anybody interpret the tapes prior? No.

21 Q To your knowledge, before the tapes were returned
22 to Mr. Salem, did you or any other agent make summaries of
23 the tapes?

24 A No, ma'am.

25 Q All right. To your knowledge, before the tapes

1 were returned -- withdrawn.

2 The black cassette tapes -- you have seen a
3 normal eight-track cassette tape?

4 A Eight-track, or just the regular tapes?

5 Q Regular cassette tape.

6 A Yes.

7 Q Like --

8 A Yes, ma'am, I know what they are.

9 MS. AMSTERDAM: Mr. McCarthy, may I just have any
10 tape.

11 I am approaching the witness with what is marked
12 as -- and this is for demonstration purposes -- Government
13 Exhibits 657A and 658A.

14 Q Government Exhibit 657A, the tape that is
15 directly in front of you, is similar to the type of tapes
16 that you recovered from Mr. Salem's apartment, correct?

17 A Yes, ma'am.

18 Q All right. Now, at the top of that tape -- could
19 you physically take possession of it and look at the top of
20 the tape.

21 There are little squares at the top of the tape,
22 are there not?

23 A Yes.

24 Q All right. Now, put that tape down for a second.
25 Pick up the other tape, 658. On the top of that tape those

1 squares are pushed in, are they not?

2 A Yes, ma'am.

3 Q And do you know that when you push those things
4 in it prevents the tape from being rerecorded?

5 A I will take your word for it.

6 Q All right. Before the tapes were returned to
7 Mr. Salem, were any of the tapes that were given back to
8 him, did they have the indentations pushed in to prevent
9 rerecording, erasures or editing?

10 A I can't tell you. I did not physically examine
11 the tapes. I took them and put them in a bag and that was
12 all that I looked at them.

13 Q Let me ask you: Did you physically do anything
14 to the tapes that would prevent the tapes from being erased,
15 edited, deleted?

16 A No, ma'am.

17 Q Did you know the contents of the tapes before
18 they were returned to Mr. Salem?

19 A I believe I had been told by Mr. Salem that he
20 had told Mr. McCarthy that he had some tapes that he had
21 taped concerning some of the subjects in the investigation.
22 I didn't know who they were or what they contained, no.

23 Q So you did know, based on what Mr. Salem had
24 said, that some of those tapes concerned conversations with
25 suspects in a case?

1 MR. McCARTHY: Objection to form.

2 THE COURT: Sustained.

3 Q Other than the tape with -- withdrawn.

4 Did you personally ever listen to any tape
5 recordings made by Emad Salem prior to June 29, 1993?

6 THE COURT: Wait a second. Do you mean did she
7 listen prior to June 29, or did she listen to any recordings
8 that were made prior to June 29?

9 MS. AMSTERDAM: Both.

10 THE COURT: Do you understand the difference?

11 MS. AMSTERDAM: Yes, I do.

12 THE COURT: Good.

13 Q Prior to June 29, 1993, did you ever listen to
14 any tapes that were made by Mr. Salem that were also made
15 prior to June 29, 1993? Do you understand the question?

16 A Yes, ma'am. I listened to a portion of a tape
17 that he had made concerning another matter. I believe the
18 man's name is Mr. Hegazi. It was a relative of his. I
19 didn't listen to the whole tape. I had just listened to
20 portions of it.

21 Q That's one single tape?

22 A No. There was a couple of tapes I believe he
23 gave me concerning that matter.

24 Q You were aware, were you not, that Mr. Salem had
25 a sister who lived in Egypt, correct?

1 A Yes, ma'am.

2 Q Had you ever met her?

3 A No, ma'am.

4 Q Had you personally ever been to Egypt?

5 A No, ma'am.

6 Q Did you in any way assist Mr. Salem in having his
7 sister come to the United States?

8 A I don't know until this moment that his sister is
9 in the United States.

10 Q At any time -- for vacation, visit, trip -- at
11 any time did you assist Mr. Salem in having his sister come
12 to this country?

13 A No, ma'am.

14 Q Did you know from your own personal observations
15 or knowledge as to whether or not Mr. Salem ever gave his
16 sister tapes that were to be taken back to Egypt?

17 A No, ma'am.

18 Q Do you, from your own personal knowledge, know of
19 the existence of any tapes of my client that were not turned
20 over to the Bureau?

21 A I am not sure --

22 THE COURT: Her client is Mr. Khallafalla.

23 MS. AMSTERDAM: Yes. Thank you, your Honor.

24 Q Do you know of the existence of any tapes between
25 Emad Salem and my client, Fares Khallafalla, which were not

1 turned over to the Bureau?

2 A No, ma'am.

3 Q Do you know if any tapes made by Mr. Salem of
4 conversations with my client, Mr. Khallafalla, and Mr. Salem
5 were destroyed, erased, edited or sent to Egypt?

6 A No, ma'am.

7 Q In your sworn statement of January 6, 1995, you
8 made certain allegations of harassment by individual members
9 of the Bureau, did you not?

10 A Yes, ma'am.

11 Q You stated in your sworn statement that Agent
12 Crouthamel had called you a "bitch"?

13 A Yes, ma'am.

14 MR. MCCARTHY: Objection, relevance.

15 THE COURT: Sustained.

16 MR. JACOBS: May we be heard on that, your Honor?

17 THE COURT: I will allow it. Go ahead.

18 MS. AMSTERDAM: All right.

19 Q You indicated that other members of the Bureau
20 had similarly referred to you in that fashion, correct?

21 A Yes, ma'am.

22 Q You complained that there had been a newspaper
23 story leaked about you and you believed the source to be
24 Agent Roth, right?

25 A No. I believe what I said is that there had been

1 stories leaked to me, and that I was aware that Mr. Roth did
2 not like me at all.

3 Q You also indicated, did you not, in your report,
4 that your supervise -- withdrawn. That Assistant Special
5 Agent in Charge Carson Dunbar had told Special Agent
6 Williams in front of you that he, Carson Dunbar, did not
7 trust you. You put that in your sworn statement, did you
8 not?

9 A Yes, ma'am, that is true.

10 Q Were any disciplinary actions taken against you
11 in connection with the handling or the relationship with
12 Mr. Salem?

13 A As of this date, no.

14 Q Are there any actions pending?

15 A There's still an ongoing OPR investigation is my
16 understanding.

17 Q What does "OPR" stand for?

18 A Office of Professional Responsibility.

19 Q There is an ongoing investigation still pending?

20 A Yes, ma'am.

21 Q Have you consulted, spoken to, met, contacted, or
22 sought any advice from legal counsel?

23 MR. MCCARTHY: Objection, relevance.

24 THE COURT: Sustained.

25 Q In your statement when you indicated that Carson

1 Dunbar had said in front of another agent that he didn't
2 trust you, was there any discussion with you at that time
3 about concealment or destruction of tapes?

4 A No, ma'am.

5 Q At the time that Mr. Dunbar made those remarks to
6 Mr. Williams in front of you, was there any discussion at
7 that time regarding your loyalties to protect Emad Salem
8 versus your duty to protect the integrity of the criminal
9 investigation?

10 A No, ma'am.

11 Q At Mr. Salem's request, did you hide any tapes?

12 A No, ma'am.

13 Q Destroy any tapes?

14 A No, ma'am.

15 Q Alter any tapes?

16 A No, ma'am.

17 Q Erase any tapes?

18 A No, ma'am.

19 Q Have you maintained contact with Mr. Salem since
20 he went into the Witness Protection Program?

21 A No, ma'am.

22 Q None?

23 A The last time I had any contact with Mr. Salem
24 was noted --

25 Q I'm sorry?

1 A Was noted. I made a memo to the Bureau. I don't
2 know what the exact date was, but if he's already -- he
3 was -- it's already on the record the last time I had
4 conversations with him. I don't remember the exact date.

5 Q Well, could you --

6 A But it's been months, and well before the trial
7 started.

8 Q All right. But after the arrests in this case,
9 correct?

10 A Yes, I did have contact with him after the
11 arrests in this case.

12 Q Mr. Salem did, did he not, call you from the
13 hospital on the day that the arrests in this case happened?

14 A I'm not sure of the date of the arrests.

15 Q Did you have any intentions of leaving the Bureau
16 to begin a personal relationship with Mr. Salem?

17 A Absolutely not.

18 MS. AMSTERDAM: Just one moment, your Honor.

19 (Pause)

20 (Continued on next page)

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1 Q I want to change topics for a moment, Agent
2 Floyd. In the conversation that we heard in court
3 yesterday, A22 --

4 A Is that one of the ones I have been provided?

5 Q That is the one that we listened to in court.

6 A OK.

7 Q Do you still have a transcript of that?

8 In the conversation that we listened to that was
9 played in court yesterday, there came a time in that
10 conversation, did there not, when you told Mr. Salem that
11 there was going to be a meeting to discuss some very good
12 scenarios with supervisors?

13 A Yes, ma'am, I did.

14 Q All right, and among the scenarios -- withdrawn.
15 And you stated to Mr. Salem that your supervisor wanted to
16 hear what Mr. Salem's ideas were, correct?

17 A Yes, ma'am.

18 Q And that you would talk to a supervisor and you
19 had told the supervisor what Mr. Salem had thought about the
20 safe house.

21 A Yes, ma'am.

22 Q All right. Now, the conversation in A22, to the
23 best of your recollection occurred in the summer of 1992,
24 did it not?

25 A Yes, ma'am.

1 Q And indeed in terms of dating this, the last
2 reference in this transcript is a reference to the fact that
3 another agent is going to have to be assigned since John's
4 not. Would I be correct in saying that John Anticev --

5 A Anticev.

6 Q Anticev -- thank you -- took a medical leave in
7 June 1992?

8 A Yes, ma'am.

9 Q And in helping you date this conversation would I
10 be correct in saying that that statement suggested to you
11 that another agent was going to have to be assigned because
12 John was not going to be available, correct?

13 A Yes, ma'am.

14 Q So it would appear that the time frame is June,
15 July of 1992.

16 A Yes, ma'am.

17 Q And that is approximately 10, 11 months prior to
18 the arrest in this case, correct?

19 A I am not sure of the exact date on this arrest,
20 but if you give me the date --

21 Q The arrests in this case were June of '93, this
22 conversation is June or July of 1992, so it is in excess of
23 10 months prior to the arrests in this case.

24 A That is correct, ma'am.

25 Q At that time in this conversation, you are

1 referring to the fact that Mr. Salem has an idea, the idea
2 being an idea about creating a safe house, are you not?

3 A Yes, ma'am.

4 Q You were present, were you not, on a meeting, and
5 I will hand up the form to refresh your recollection, on
6 June 22, 1991, with Emad Salem, Carson Dunbar, John
7 Crouthamel and Detective Napoli, about whether or not
8 Mr. Salem should be given permission to purchase a gun. Do
9 you recall such a meeting?

10 A Yes, ma'am.

11 MR. MCCARTHY: Objection to form, only the date.

12 MS. AMSTERDAM: I am sorry, thank you.

13 Q -- in 1992, about whether or not Mr. Salem should
14 be given permission to purchase a gun.

15 A Yes, ma'am.

16 Q Would I be correct in saying that there is a
17 fairly elaborate procedure necessary to be undergone before
18 an informant is allowed to purchase a weapon?

19 A There are certain steps that have to be taken,
20 yes, ma'am.

21 Q Indeed, in this particular instance the deputy
22 chief of the criminal division of the United States
23 Attorney's Office, a Mr. William Pollard, was called in to
24 the meeting to discuss whether or not Mr. Salem should be
25 permitted to purchase this gun.

1 A I don't recall that he actually physically came
2 to the meeting. I think he was possibly contacted
3 concerning legalities and information that needed to be
4 provided for this.

5 Q Mr. Salem was indeed given permission to purchase
6 a gun, was he not?

7 A That is my understanding, yes.

8 Q In addition to that, Mr. Salem was told, was he
9 not, that he was to not participate in the building or
10 obtaining of materials used and/or needed for explosive
11 devices.

12 A If he was told that, it wasn't by me, so I
13 can't --

14 (Continued on next page)

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1 Q I am approaching you with what is marked 3534C,
2 which is a two-page letter to Mr. William Pollard.

3 MR. McCARTHY: Objection.

4 MS. AMSTERDAM: I am going to ask the witness if
5 this refreshes her recollection.

6 MR. McCARTHY: Your Honor, may we approach on
7 this?

8 THE COURT: Yes.

9 (At the side bar)

10 THE COURT: Does anyone have the letter?

11 MS. AMSTERDAM: Can I tell you where I am going?

12 THE COURT: I think I know where you are going.

13 MR. McCARTHY: Can I voice my objection? First
14 of all, she is reading and identifying for the jury a
15 document that is not in evidence that involves an internal
16 communication between, as I understand it, the U.S.
17 Attorney's Office and the FBI, with respect to discussions
18 between those agencies about what safeguards would be
19 appropriate in terms of running an investigation like this.
20 The agent has testified that she never gave such
21 instructions to Salem. There is no evidence that anybody
22 ever gave such instructions to Salem because at the time
23 these negotiations took place it is precisely the same time
24 that the investigation came to a halt, because there was
25 dispute over whether he was going to testify or not. I

1 object to, especially when this witness has given all the
2 testimony about this area that she is competent to give,
3 Miss Amsterdam not only pursuing it when there is no good
4 faith basis for thinking it is fruitful to go further, but
5 also reading from a document that is not in evidence.

6 MS. AMSTERDAM: Two things. One, I thought
7 Pollard was at this meeting, to put your mind at rest.
8 Second of all, I was showing her the letter for purposes of
9 refreshing her recollection, for purposes of refreshing
10 whether in the meeting he was instructed to take certain
11 action. If he wasn't instructed, so be it, but I have a
12 right to put that in front of the jury, that he wasn't
13 instructed.

14 THE COURT: Not in front of the jury, in front of
15 the witness.

16 MS. AMSTERDAM: In front of the witness.

17 MR. MCCARTHY: Without trying to bolster the
18 implication of the fact that it is a letter by the United
19 States Attorney, which has now been testified to by Miss
20 Amsterdam.

21 THE COURT: First of all, it was written to the
22 United States Attorney, which with all due respect to the
23 exalted status of the United States Attorney, I don't think
24 it amounts to a hill of beans. I don't think my status
25 amounts to a hill of beans either, so don't take offense.

1 MR. MCCARTHY: I wasn't taking offense, your
2 Honor. I am saying this is a credibility issue between the
3 witness and the informant which is being raised to a
4 level --

5 THE COURT: No, it's not.

6 MR. JACOBS: It's a different subject.

7 THE COURT: You can put the letter in front of
8 her without embroidery. Do you want me to pose the
9 question?

10 MS. AMSTERDAM: When I didn't identify the
11 document yesterday, I got yelled at for not identifying the
12 document. Now I identify the document --

13 THE COURT: You are not being yelled at.

14 MR. PATEL: We have an objection to this entire
15 line. It appears that this witness is not competent to
16 testify about this letter.

17 THE COURT: She is not testifying about the
18 letter. She is being asked whether looking at the letter
19 refreshes her recollection whether instruction was given to
20 Salem at the meeting.

21 MR. PATEL: Which she never attended

22 MS. AMSTERDAM: She was at the meeting.

23 THE COURT: She could do a dance and be asked
24 whether or not it refreshes her recollection.

25 MR. PATEL: That is true.

1 (In open court)

2 BY MS. AMSTERDAM:

3 Q Let me ask you the question and I will give you a
4 moment to review that document. Does that document refresh
5 your recollection as to whether or not Mr. Salem was told in
6 a meeting that you attended on June 22, 1992, that he,
7 Mr. Salem, was not to participate in the building or
8 obtaining of materials used and/or needed for explosive
9 devices, and that Mr. Salem was further instructed to take
10 no action to facilitate the building or buying of any kind
11 of explosive device? My specific question to you is, does
12 this letter refresh your recollection as to whether or not
13 he was told that at the meeting --

14 MR. MCCARTHY: Objection to form, he was told
15 that.

16 Q -- that Mr. Salem was told that in your presence
17 at the meeting.

18 THE COURT: Take a look at the letter -- would
19 you please focus on a particular paragraph. Point to a
20 paragraph. Thank you.

21 MS. AMSTERDAM: I think it is marked.

22 THE COURT: Read that to yourself. The question
23 is, after you read that, does it make you recall anything
24 about Mr. Salem being told that at the meeting?

25 A No, it does not.

1 Q Did you personally ever instruct Mr. Salem that
2 he was to take no action to facilitate the building or
3 buying of any type of explosive device?

4 A I do not recall giving him, telling him that, no,
5 ma'am.

6 Q During any time prior to the arrests in this
7 case, were you aware that Mr. Salem was constructing his own
8 timers? Did you ever physically see a timer that Mr. Salem
9 had himself constructed?

10 A No, ma'am, I did not.

11 Q Prior to the arrests in this case, did you ever
12 physically see any M80's that Mr. Salem had himself
13 personally purchased?

14 A What's an M80?

15 Q An M80.

16 THE COURT: She asks the questions, you give the
17 answers.

18 A Oh, is that a grenade?

19 MR. McCARTHY: Objection.

20 Q It's some type of explosive device. Did you ever
21 see any explosive or hand device?

22 A I don't know what an M80 is. I can't answer your
23 question.

24 THE COURT: That is the answer.

25 Q Before the arrests in this case, did you ever see

1 any explosive devices of any nature that Mr. Salem had
2 himself personally purchased?

3 A No, ma'am.

4 Q In A22, the conversation that we heard yesterday,
5 you refer Mr. Salem to the fact that there is going to be a
6 meeting on Tuesday with the supervisor in a hotel room. Do
7 you recall that? That is on page 1.

8 A Yes, ma'am.

9 Q And indeed there was a meeting, was there not, on
10 June 23, 1992, at the, and I don't know how to pronounce it,
11 R-I-H-G-A Hotel?

12 A The Rihga Hotel.

13 Q Rihga?

14 A Rihga.

15 Q Rihga on 54th Street in New York City, correct?

16 A Yes yes, ma'am.

17 Q At that meeting you were present, Special Agent
18 Crouthamel was present and Detective Louie Napoli was
19 present and Mr. Salem was present, correct?

20 A That is what I recall, yes.

21 Q To save time, I am approaching the witness with
22 what is marked as Government's Exhibit 3534C, dated 7/9/92,
23 Bates stamped number 000220.

24 Such a meeting did occur on June 23, 1992, at
25 approximately 1 p.m. in the afternoon, correct?

1 A Yes, ma'am.

2 Q And at that meeting Special Agent Crouthamel
3 explained to Mr. Salem various options that were available
4 to him in connection with continuing to work on the
5 investigation, right?

6 A Yes, ma'am.

7 Q And the options that were presented to Mr. Salem,
8 one of them were for Mr. Salem to continue as he was doing,
9 and if and when the New York office brought the
10 investigation to a conclusion, Mr. Salem could become a
11 cooperating witness and move into the Witness Protection
12 Program. That was one option that was discussed with
13 Mr. Salem, correct?

14 A Yes, ma'am.

15 Q And another option that was discussed with
16 Mr. Salem was that Mr. Salem could pull out immediately from
17 the investigation in a way that would not jeopardize his
18 safety or any ongoing investigations. That was a second
19 option that was discussed, correct?

20 A Yes, ma'am.

21 Q The last option that was discussed at that
22 meeting at that time was that Mr. Salem could remain
23 undercover if the New York office could execute a scenario
24 where any and all bombs and/or guns made, planted or
25 purchased could be neutralized without blowing Mr. Salem's

1 cover. Do you see that?

2 A Yes, ma'am.

3 Q That was a third option that was discussed,
4 correct?

5 A Yes, ma'am.

6 Q On that third option, let me ask you a couple
7 questions. Undercover means that Mr. Salem would remain
8 working for the bureau but without anybody knowing, correct?

9 A Yes, ma'am.

10 Q When you refer to the New York office, the New
11 York office is the New York office of the Federal Bureau of
12 Investigation, correct?

13 A Yes, ma'am.

14 Q When you refer to execute a scenario, you are
15 talking about coming up with some course of action, an
16 option, a plan, correct?

17 A Yes, ma'am.

18 Q And when you talk about guns or bombs being
19 neutralized, you mean by neutralized that they can be taken
20 out of public domain and in effect be rendered not dangerous
21 to the general public, correct?

22 A That was one area that the neutralization could
23 be done and/or the fact that the materials used were
24 neutralized while the bomb was being built.

25 Q But the point of neutralization, the word

1 neutralization means to render not dangerous, whether it is
2 done before or after, correct?

3 A Right.

4 Q And when you say without blowing Mr. Salem's
5 cover, you mean without him being detected as working with
6 the bureau, so that you could maintain his safety, correct?

7 A Yes, ma'am.

8 Q When you wrote that the last option discussed was
9 that Mr. Salem could remain undercover if the New York
10 office could execute a scenario where any and all bombs and
11 guns were made that could be neutralized without blowing
12 Mr. Salem's cover, you meant that if there was a way that he
13 could continue working and bombs could be made and
14 neutralized without him being detected as being an
15 informant, that would be an acceptable option to work with,
16 correct?

17 MR. McCARTHY: Objection to form unless she
18 clarifies acceptable to whom.

19 Q That was an option that was discussed with
20 Mr. Salem, correct?

21 A I don't think we actually got into options. It
22 was just the fact that we talked about if we could come up
23 with some scenario where he could remain undercover and
24 neutralize what happened, that would be a scenario that we
25 could work within.

1 Q The various things that could happen were that
2 bombs or guns could be made. That was one of the things
3 that you considered, correct?

4 A Right.

5 Q And that bombs or guns could be purchased,
6 correct?

7 A Right.

8 Q The third area that you discussed with Mr. Salem
9 was whether or not Mr. Salem could remain undercover if the
10 New York office could execute a scenario --

11 MR. McCARTHY: Objection to form.

12 Q -- where any and all bombs or guns planted could
13 be neutralized --

14 THE COURT: The objection to form is sustained.

15 Q Did you discuss with Mr. Salem a scenario in
16 which any bombs made planted could be neutralized without
17 blowing his cover?

18 A No, we never did discuss any scenarios.

19 Q Tell the jury what planted means.

20 MR. McCARTHY: Objection.

21 THE COURT: Overruled.

22 A As I am referring to this thing, planted would
23 mean that they were put in some area to blow up something.

24 Q Who plants, who plants -- withdrawn.

25 When you said that guns or bombs could be

1 planted, when you used that word planted, planted to a law
2 enforcement official has a specific meaning, does it not?

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q Doesn't planted mean that you place incriminatory
6 evidence on a defendant to make a defendant look as if he is
7 doing something guilty and then you arrest him?

8 MR. McCARTHY: Objection.

9 THE COURT: I will allow it. Answer it.

10 A No, it is not.

11 Q That is not what planted means to you?

12 A No, ma'am, that is not what it means to me.

13 Q Mr. Salem talked to you at various times, did he
14 not, about the difference between doing things the Egyptian
15 way and the American way?

16 A Yes, ma'am, he did.

17 Q And Mr. Salem told you, did he not, that there
18 was a very fine line in breaking the Constitution, correct?

19 A In reference to --

20 MR. McCARTHY: Objection.

21 MS. AMSTERDAM: Sorry. What is the objection?

22 MR. McCARTHY: Reference.

23 MS. AMSTERDAM: 625-7, page 3.

24 A Is that one of the ones I have?

25 Q You had a conversation, did you not, Agent Floyd,

1 where Mr. Salem talked about the fact that there was a very
2 fine line in breaking the American Constitution in working
3 with criminal people, correct?

4 A Yes.

5 Q And Mr. Salem said you should know about the
6 Middle Eastern mentality, did he not?

7 A Yes, ma'am.

8 Q And Mr. Salem went on to say this shouldn't be
9 played the American way, didn't he?

10 A Yes, he says that.

11 MS. AMSTERDAM: I have no further questions.

12 THE COURT: Mr. Ricco.

13 MR. RICCO: Thank you.

14 CROSS-EXAMINATION

15 BY MR. RICCO:

16 Q Good morning.

17 A Good morning.

18 Q Agent Floyd, yesterday Mr. Jacobs asked you some
19 questions about a conversation that you had with Mr. Salem
20 in June of 1992, concerning the request that he produce his
21 personal tapes. Do you recall that testimony?

22 A Yes.

23 Q You indicated to Mr. Jacobs and the jury that the
24 tapes that you were referring to were his personal tapes
25 that Emad Salem had in his possession from conversations

1 recorded in November of 1991.

2 A I was trying to determine whether or not he had
3 any tapes at all, but if he did have any tapes they would
4 have been the tapes done in the early part of November of
5 '91.

6 Q And you further testified that you were not aware
7 of any other tapes that he would have recorded between
8 December of 1991 and June of 1992.

9 A Yes, that was my testimony.

10 Q And your testimony, was it not an explanation of
11 your remarks that were made during the course of the
12 telephone conversation with Mr. Salem?

13 MR. McCARTHY: Objection to form.

14 Q You were explaining, were you not, the
15 conversation that the jury listened to, isn't that right?

16 A I answered questions regarding the conversation,
17 yes, sir.

18 Q Was your testimony that these tapes that you were
19 referring to were from November 1991, was that the truth?

20 A At the time that I had the conversation with
21 Mr. Salem, yes, those were the tapes that I was referring
22 to.

23 Q Is that testimony the truth?

24 A Yes, sir.

25 Q You also explained that your comments on this

1 tape and one other conversation was for the purpose of
2 gaining Mr. Salem's confidence to come back and assist the
3 FBI, isn't that correct?

4 MR. MCCARTHY: Objection unless it is clarified
5 when.

6 MR. RICCO: OK.

7 Q There was some questions by Miss Amsterdam where
8 she used the words, I think one word was chicken shit and
9 another word, some other words like that, and I think that
10 you explained that you were talking in a particular kind of
11 way to gain his confidence, or regain his confidence. That
12 was your testimony, right?

13 A Yes.

14 Q To speak to a person in that kind of manner,
15 that's a tactic or a skill, isn't it?

16 A No. That's -- I guess it's the way I talk.

17 Q When you were speaking to him that way it wasn't
18 the truth, was it?

19 A What wasn't the truth?

20 Q The things that you said about the supervisors
21 and your brother agents, that wasn't the truth, was it?

22 A You would have to tell me which specific comment
23 you are talking about.

24 Q When you said that the administrators in some
25 government agency were chicken shit, that wasn't the truth,

1 was it?

2 A Well, some of them could be.

3 Q When you told Emad Salem about the Mohammad
4 Salameh information, you weren't telling him information
5 that came from the bureau, right?

6 A Which information are you talking about, sir?

7 Q Yesterday you told the jury in response to
8 questions that the information about Mohammad Salameh
9 visiting Nosair in prison was not something that you had
10 gotten from the FBI. Do you remember that testimony?

11 A That is correct.

12 Q And when you were talking to Emad Salem, giving
13 him this information, telling him to keep it on the QT --

14 MR. MCCARTHY: Objection.

15 THE COURT: Sustained.

16 Q During that conversation, didn't you tell us that
17 you were trying to gain his confidence?

18 A I don't remember if I was asked that question
19 specifically to that conversation, but every time I spoke
20 with Emad I spoke with him in a manner that, you know, would
21 have kept his confidence level in us at a high level.

22 Q Emad complained to you that he had given
23 information about Mohammad Salameh to the agents and that he
24 didn't write it down. Do you remember that?

25 A I remember Emad telling me that he thought that

1 he had provided some information to a particular agent and
2 that it was not written down.

3 Q And you told Emad Salem, tell the agents about
4 Mohammad Salameh visiting Nosair, they'll probably deny it,
5 but you will know. Do you recall telling him that?

6 A I don't think those were my exact words, no.

7 Q Do you have 4-8 in front of you?

8 A Which one is it?

9 Q It would be 4-8, would be Government's Exhibit
10 648 --

11 MR. MCCARTHY: 604-8.

12 A Yes I have that one. I have the 4-8, yes, sir.

13 Q I am going to refer you to page 7, near the
14 bottom of the page. During this conversation Emad says to
15 you, I want to ask you one question only, just to ease up my
16 mind. Did Mohammad Salameh ever on record -- I am giving it
17 to you exactly the way it is written.

18 MR. MCCARTHY: Objection.

19 MR. MCCARTHY: May I just have a moment with Mr.
20 Ricco, your Honor?

21 THE COURT: Yes.

22 (Pause)

23 MR. RICCO: Your Honor, I will start again.

24 Q Same line. I want to ask one question only, just
25 to ease up my mind. Did Mohammad Salameh ever, on record,

1 and Sayyid Nosair in jail visited him before? And you say
2 two weeks before the bombing,. And he says thank you, thank
3 you very much. You are great. That's exactly. And then
4 you say, that's, that's completely between you and me. And
5 Mr. Salem says, well, I, I of course, of course, but I am
6 telling you thank you very much, because that's what I
7 guessed. The guy just because I get this piece of
8 information today from Mohammed Abouhalima --
9 phonetically -- he told. Then you respond, well, you know,
10 the best thing is to just keep that under your hat, but just
11 tell them exactly that. You know, tell them, say look, you
12 know, when I was visiting and this is what he wanted me to
13 do and, and, you know, it's my guess. I don't know, but I
14 mean, I bet you 20 bucks if you look back on your records
15 you'll find that he was there, you know, whatever, and --
16 those are your words, correct?

17 A Yes, sir.

18 Q And he says, right. And then you say and of
19 course that I will probably won't say anything, but you'll
20 know that I, you know. And he says yeah, yeah, yeah. And
21 then you say on the QT, exactly. And Emad Salem says that's
22 right. And then you say, it will be interesting what they
23 say to you. But then you can say you know. I know that
24 from what I heard today at 11. But I'm sure that you are,
25 but I mean let me, I'll probably be calling you tomorrow,

1 and then we'll just, you know.

2 Do you recall saying that to him?

3 A Yes, sir.

4 Q And you told him to go to the agents and tell the
5 agents, I bet you 20 bucks if you check your records you'll
6 find that Mohammad Salameh visited Nosair in jail two weeks
7 before the World Trade bombing. That was you telling him to
8 do that, right?

9 A I told him to tell him exactly what I said, plus
10 what you just read already, yes.

11 Q You were telling him that to regain his
12 confidence.

13 A I was telling him to tell the agents what he had
14 told me, which was that he had heard from this person
15 phonetically that I can't pronounce the name either, and
16 that he also guessed that he had probably gone there to
17 visit him, and the reason why he guessed it was later
18 verified by this person, and to also tell him what I had
19 said.

20 Q What did the 20 bucks have to do with it?

21 A It's just a saying that we use in the south, bet
22 you 20 bucks that's what is going to happen tonight.

23 Q You were giving him information to give to the
24 agents, isn't that right?

25 MR. MCCARTHY: Objection.

1 A No, sir.

2 Q Didn't you give him a scenario to act out with
3 the agents?

4 A Yes, sir.

5 Q And the purpose of giving him this scenario was
6 so that Emad Salem would have confidence in you.

7 A Yes, sir.

8 Q This is a tactic that you were doing with Emad
9 Salem, isn't that right?

10 A Yes, sir.

11 Q It's a skill, isn't it?

12 A I guess that would be a matter of opinion.

13 Q Pardon?

14 A I guess that would be a matter of opinion.

15 Q It's something that you do as a agent in handling
16 a confidential informant, isn't that right?

17 A Yes, sir.

18 Q It's to get him to do things, isn't that right?

19 A To get him to do things or to gain confidence.

20 Q By the way, do you know whether or not Emad Salem
21 has any training in that skill?

22 A I don't. I don't have any record of any of his
23 training.

24 Q The explanations that you gave for the
25 conversation that the jury heard, was that a story that was

1 cooked up to protect you --

2 MR. McCARTHY: Objection to form.

3 MR. RICCO: I will rephrase it, your Honor. I am
4 sorry.

5 Q The explanation that was given to --

6 MR. McCARTHY: Objection to explanation.

7 MR. RICCO: I will rephrase it, your Honor.

8 Q Your testimony about the tape that everybody
9 heard, was that testimony cooked up to protect you and the
10 bureau from the comments in the recording?

11 A No, sir.

12 Q You never sat down with the bureau or Mr.
13 McCarthy to discuss what your testimony was going to be
14 about that call that the jury heard yesterday?

15 MR. McCARTHY: Objection to form.

16 THE COURT: Sustained as to form.

17 Q Did you ever meet with the bureau or the
18 government and ask for an explanation --

19 THE COURT: Sustained.

20 MR. McCARTHY: I only object to the form, your
21 Honor. I don't object to the area.

22 THE COURT: I know.

23 MR. RICCO: I am sorry, Judge. I can't
24 understand the handwriting.

25 Q Did you ever meet with the bureau, the FBI, and

1 you were told that you were going to have to give an
2 explanation for your comments on this tape?

3 A No, sir.

4 Q Did you ever meet with the government, and the
5 government meaning the prosecutors in this case, where they
6 asked you for an explanation of your comments on this tape?

7 A The government gave me a copy of this transcript
8 and informed me that I would be questioned about it.

9 Q Again, the tapes that we are talking about in
10 this case -- withdrawn.

11 The tapes that were discussed that Emad Salem had
12 to turn over were from November of 1991, correct?

13 A Yes, sir.

14 (Continued on next page)

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1 Q I want to discuss with you the status of the
2 investigation in June of 1992 when this call was made.

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

5 MR. RICCO: Yes.

6 (At the side bar)

7 THE COURT: Do you know how much longer you will
8 be?

9 MR. RICCO: Maybe 15, 20 minutes.

10 THE COURT: I want to take a short break now. Is
11 that --

12 MR. RICCO: Sure.

13 THE COURT: Do you know how long you have?

14 MR. MCCARTHY: Probably 20 minutes.

15 THE COURT: Is anybody else going to question?

16 MR. RICCO: I don't think so.

17 MR. JACOBS: Your Honor, I am going to bring up a
18 rather, I consider a rather delicate subject. I certainly
19 have no problem with Mr. McCarthy examining the witness. I
20 do have some problems about him examining her on the June 29
21 search since he is in the middle of it. We have tried our
22 best. We are not looking to have Mr. McCarthy as a witness
23 or involved in the proceedings. It is what it is and the
24 record is what it is. But there is testimony and there is
25 evidence in the record of his conduct on that date. I am

1 not implying anything wrong at the moment. What I am saying
2 is, I don't want to be in a position in front of the jury of
3 making objections about him vouching for his conduct --

4 MR. MCCARTHY: Your Honor, are we about to take a
5 break?

6 THE COURT: Yes.

7 MR. MCCARTHY: Can we discuss it --

8 MR. JACOBS: Sure.

9 THE COURT: Yes.

10 (In open court)

11 THE COURT: Ladies and gentlemen, we are going to
12 take a short break. Please leave your notes and other
13 materials behind, please don't discuss the case, and we will
14 resume shortly.

15 (Jury excused)

16 (Witness excused)

17 MR. MCCARTHY: Your Honor, I was planning to do a
18 brief redirect on the area that Mr. Jacobs raised --

19 THE COURT: It is actually cross.

20 MR. MCCARTHY: Thank you -- a brief cross on the
21 area that Mr. Jacobs raised at the side bar. I was not
22 planning to inject myself into the questions, nor raise the
23 topic in such a way as to convey to the jury that I was
24 aware of some particular special information that would put
25 me in a position of testifying in front of the jury. Even

1 though I have the option of asking leading questions
2 generally speaking on cross-examination, I was going to opt
3 to ask her open-ended questions --

4 THE COURT: With regard to that?

5 MR. MCCARTHY: -- for want of a better term,
6 nonleading questions so that she would testify about the
7 areas that I seek to inquire about, without injecting myself
8 into it. I think that although yesterday it seemed that an
9 effort was made to refer to a prosecutor rather than to me
10 and in fact the documents were redacted for that reason,
11 today for whatever reason when Miss Amsterdam read from the
12 statement she read my name into the record and thus, I
13 think, put in front of the jury, in a way that perhaps was
14 not in front of the jury before, the fact that I was present
15 at the time.

16 I don't intend to ask any questions that will
17 indicate to the jury in any way that I am testifying to
18 things or to suggest that I have some special knowledge
19 about these events that they are getting without the oath
20 and without cross-examination.

21 MR. JACOBS: Your Honor, two days ago we were
22 given the agent's sworn statement. For the first time
23 defense counsel learned in this case of Mr. McCarthy's
24 personal involvement in the events of June 29. We had never
25 been informed that he personally made the decisions to turn

1 back tapes, reviewed material on June 29, looked at it, the
2 book, the papers, gave it back to him and apparently made no
3 copies.

4 I am not here to make a speech, but that's the
5 facts, and we weren't given that beforehand. The issues of
6 what took place on the 29th are important to defense counsel
7 in this case and the claims that we have made. We had
8 testimony from Salem that he has no notes on the book, as I
9 recall my examination, I think Roger's examination.
10 Apparently that was something on the book.

11 I think there is an issue. It wasn't by our
12 choice that this comes to light. I certainly have no
13 problem with Mr. McCarthy conducting examination on other
14 events, but it may be in this case, I am not sure where it
15 is going to wind up, that his credibility, what he did, what
16 he saw, what he turned over may be an issue. It certainly
17 looks like that is the direction we are headed, and I
18 certainly at this point, I am not certain about other
19 counsel because we haven't discussed it, I object to
20 open-ended questions of this witness about the events of
21 June 29. I am not implying that the government has done
22 anything wrong at the moment, because I don't know. All I
23 know is, we don't have the copies of the notes and we made
24 allegations about tapes, and I am not saying that Mr.
25 McCarthy destroyed the tapes or threw the tapes out --

1 THE COURT: Do you want to tell us what else you
2 are not accusing him of?

3 MR. JACOBS: All I know is that we don't have
4 certain records. Maybe this can be resolved without his
5 testifying, I don't know. Right now we would like an
6 explanation of what happened to those notes.

7 THE COURT: Mr. Jacobs, you started to raise a
8 point at the side about whether he can conduct redirect
9 examination --

10 MS. STEWART: Cross-examination, Judge.

11 THE COURT: -- cross-examination.

12 MR. JACOBS: I have an objection to June 29, Mr.
13 McCarthy conducting an examination.

14 THE COURT: There have been lawyers in this case
15 conducting examination on matters in which they were
16 involved, of various witnesses, many times. Number one.
17 Number two, I didn't put his name in, counsel did. Let the
18 record reflect that Mr. Jacobs crossed his hands --

19 MR. JACOBS: I am not denying that we didn't
20 interject his name. We also got the document a few days
21 ago.

22 THE COURT: Understood. I am not going to bar
23 him from asking questions about June 29.

24 MR. JACOBS: It is not a question of barring,
25 your Honor. I don't want this witness and I am going to

1 object if she gets up there and starts vouching for Mr.
2 McCarthy's conduct when he is the U.S. Attorney conducting
3 the trial in this case.

4 THE COURT: She is not vouching for any conduct.
5 She is describing under questioning by your colleague what
6 happened.

7 MS. AMSTERDAM: I want to say on that point, I
8 used prosecutor yesterday, I used prosecutor today. The
9 reason Mr. McCarthy's name came up was the witness denied an
10 event. I had to read from the signed document and I thought
11 it prudent to read exactly what was said. There must have
12 been 50 other times that I said prosecutor. The reason the
13 name came up was that the witness denied the sworn
14 statement.

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1 MR. McCARTHY: I don't really think that is quite
2 how it happened. And I also don't think you had to read it
3 reading my name in it.

4 THE COURT: The name could easily have been left
5 out. The document could have been shown to the witness.
6 There is a variety of ways of doing that, and you know it.
7 I am not saying you purposely chose to mention the name.
8 However, you did mention the name. I am not going to bar
9 him from asking about June 29.

10 MR. JACOBS: My position is this: I caution the
11 government that they are opening the door, and I am just
12 telling you ahead of time, if the witness vouches for the
13 assistant's conduct and he is the trial assistant, I will
14 move for a mistrial. I want the government to understand if
15 they want to talk to their witness, they can talk to their
16 witness.

17 THE COURT: I don't understand what you mean by
18 "vouching" for his conduct. She described under questioning
19 by a defense lawyer what happened.

20 MR. JACOBS: I understand.

21 THE COURT: What is to "vouch"?

22 MR. JACOBS: Your Honor, I am just --

23 THE COURT: She can't testify as to what he did
24 or didn't do outside that room.

25 MR. JACOBS: I don't know what she is going to

1 say, your Honor. I just, out of an abundance of caution
2 want to alert the government to reconsider a potential
3 problem. That is all I am trying to do at this point. I do
4 it because I don't want to be accused in the middle of it,
5 have them saying, "Why didn't you alert us to it?" I think
6 there is a potential problem here, and I want to alert your
7 Honor and the government to it ahead of time. If they want
8 to talk to their witness and make sure that she's answering
9 the questions in certain ways, I have no problem.

10 MS. STEWART: I have a problem with that.

11 I think it is inappropriate and perhaps
12 unethical, to say nothing about the rules of evidence, for a
13 person who is a party to a certain event, who is a witness,
14 who is there, has been named, whether it is advertently or
15 inadvertently, to be questioning another person about that.

16 The appearance is one where the government is
17 talking to a witness, and they were both witnesses there.
18 It is not about vouching on either side. It is about the
19 inappropriateness of a lawyer asking -- it is as if I said:
20 And I asked you such and such, didn't I? And you answered
21 so and so. That is not permissible. I think this is
22 exactly the same thing --

23 THE COURT: It's been done numerous times in this
24 case.

25 MS. STEWART: I would ask the court when. I

1 don't recall it.

2 THE COURT: When?

3 MS. STEWART: Yes. When?

4 THE COURT: The most recent example I can think
5 of occurred two days ago when Mr. Patel questioned Mr. Haque
6 about conversations that they had had. I can work backwards
7 from there.

8 MR. McCARTHY: And Ms. Stewart and Dr. Mehdi
9 reminisced with all of us about their relationship of 30
10 years ago.

11 THE COURT: Look --

12 MS. STEWART: That is not about facts in issue at
13 this case. That may or may not have been appropriate. It
14 had a whole different flavor to it.

15 THE COURT: There have been numerous examinations
16 of that kind, but be that as it may, obviously two wrongs
17 don't make a right or the sixth wrong isn't right because
18 the other five exist. I understand that. But let's not
19 suggest that there's anything terribly novel about it in
20 this trial. There isn't.

21 MR. McCARTHY: Your Honor, if I may.

22 THE COURT: Yes.

23 MR. McCARTHY: We would like, if the court
24 please, to take a couple of minutes to talk about this.

25 THE COURT: Fine.

1 MR. McCARTHY: But I would like to know
2 beforehand --

3 THE COURT: Yes.

4 MR. McCARTHY: -- is the objection to me asking
5 the questions or is the objection to the subject matter? I
6 would like to know.

7 THE COURT: The objection, as I understand it, is
8 to you asking the questions. There can't be objection to
9 the subject matter since defense counsel raised it. It may
10 be that we will have somebody pinch hit, if that is
11 feasible, for that part of the examination.

12 MR. McCARTHY: All right. Yes, your Honor. If
13 you would just let us talk for a couple of minutes.

14 THE COURT: Fine.

15 MR. McCARTHY: I don't want to raise proposals
16 off the top of my head without thinking them through.

17 THE COURT: Fine. OK.

18 We will take a few minutes.

19 (Recess)

20 THE COURT: Before we get started, Mr. Bernstein?

21 MR. BERNSTEIN: Yes, Judge. Mr. Abdelgani is
22 still not feeling well, as we expected. He's indicated that
23 he is willing to waive his presence for the purpose of the
24 balance of Agent Floyd's testimony and not waive thereafter.

25 THE COURT: OK. On the explicit understanding

1 that we are going to break today at the end of Agent Floyd's
2 testimony.

3 MR. BERNSTEIN: Yes.

4 THE COURT: You understand that, Mr. Abdelgani?

5 DEFENDANT AMIR ABDELGANI: Yes.

6 THE COURT: On that basis, are you willing to let
7 us go ahead?

8 DEFENDANT AMIR ABDELGANI: Yes.

9 THE COURT: Thank you very much.

10 I hope you feel better. You are excused.

11 MR. MCCARTHY: Your Honor, I have advised other
12 counsel that Mr. Fitzgerald will do the redirect. I am
13 going to continue to the extent it is necessary to make
14 objections, but he will do the redirect.

15 THE COURT: Fine. It is called cross, I think.

16 MR. FITZGERALD: Cross. We will catch on to that
17 by next week sometime.

18 (Witness resumed)

19 (Jury present)

20 THE COURT: Mr. Ricco, go ahead.

21 MR. RICCO: Thank you, your Honor.

22 CROSS-EXAMINATION (Continued)

23 BY MR. RICCO:

24 Q Agent Floyd, just before the break I asked you
25 questions about the tapes, and your testimony was that the

1 personal tapes that were subject to this conversation were
2 from November of 1991?

3 A Yes, sir.

4 Q OK. Now, when Emad got involved in the case, he
5 provided information to the agents, isn't that correct?

6 A Yes, sir.

7 Q And he met with yourself, correct?

8 A Yes, sir.

9 Q Agent Anticev?

10 A Anticev, yes, sir.

11 Q And Agent Napoli, isn't that correct?

12 A Detective Napoli, yes, sir.

13 Q And he gave you information, right?

14 A Yes, sir.

15 Q He gave you information in December 1991,
16 correct?

17 A Yes, sir.

18 Q January of 1992?

19 A Yes, sir.

20 Q Through June of 1992, isn't that right?

21 A As well as after, yes, sir.

22 Q When Carson Dunbar got involved in this case, he
23 was new and he didn't know anything about the case, isn't
24 that correct?

25 MR. MCCARTHY: Objection to form.

1 MR. RICCO: I will rephrase it.

2 Q When Carson Dunbar became involved in this case,
3 he wanted to meet with you to be debriefed about the
4 information that Emad Salem was providing, isn't that
5 correct?

6 A Yes, sir.

7 Q That was in the late spring of 1992?

8 A As best I can recall, yes, sir.

9 Q Not only did he want to meet with you to be
10 debriefed, he also wanted to meet with Emad Salem himself,
11 isn't that correct?

12 A Yes, sir.

13 Q You reported to Dunbar that the information Emad
14 Salem provided to the Bureau related to an escape plot,
15 correct?

16 MR. McCARTHY: Objection to relevance.

17 MR. RICCO: Your Honor, I am trying to tie it in
18 and I am not going over the same area.

19 THE COURT: I will allow it.

20 Q Related to an escape plot?

21 A I don't remember my exact conversation with
22 Mr. Salem. If you have a memo or something that you want me
23 to look at to refresh what was stated, I can do so.

24 Q Did Emad Salem ever report to you an escape plot?

25 A I believe the information was given to us, but I

1 believe it was after the spring of '92.

2 Q When would that have been?

3 A I mean, I can't give you the exact date, but my
4 recollection now, it seems like it was more in the summer of
5 '92, but without looking at records and/or --

6 Q OK.

7 A -- information contained in the file, I can't
8 give you a better date.

9 Q I am going to show you what has been previously
10 marked at government's 3534C, Bates stamped page 165.

11 MR. RICCO: May I approach the witness, your
12 Honor?

13 THE COURT: Yes.

14 MR. RICCO: I am going to bring the witness's
15 attention to page 125.

16 MR. McCARTHY: That is also on 3534C?

17 MR. RICCO: The same exhibit.

18 MR. McCARTHY: Thank you.

19 Q As we sit here now, you don't have any
20 recollection --

21 THE COURT: Excuse me, Mr. Ricco.

22 MR. RICCO: I'm sorry.

23 Q As we sit here now, you don't have any
24 recollection as to when Emad reported an escape plot to you,
25 that's your testimony?

1 A Right. I do not know the exact time.

2 Q OK. Would that have been in November of 1991?

3 A As I just said, sir, I do not know the time that
4 it was provided to us, the information.

5 Q Was this an escape plot from the Attica
6 Correctional Facility?

7 A Sir, I do not know what time it was. I know that
8 there was an escape plot. I don't know which -- which it
9 was, if it was the jail or if it was from a prison.

10 Q OK. Now, he also reported to you that Mr. Nosair
11 was planting bombs --

12 MR. McCARTHY: Objection. I would ask to direct
13 the witness's attention to page 123 and the initials at the
14 bottom.

15 MR. RICCO: We are not on that exhibit anymore.

16 MR. McCARTHY: I'm sorry.

17 MR. RICCO: I am off of that exhibit.

18 MR. McCARTHY: I thought you were reading from --

19 MR. RICCO: No, no, no.

20 THE COURT: If you are not reading from the
21 exhibit, do you want --

22 MR. RICCO: I will go back. But, your Honor, the
23 page I want to ask about is right here, but I can do it.

24 Q Why don't you keep the book open.

25 Emad Salem reported to you that he had traveled

1 to Attica with Ali Shinawy --

2 MR. McCARTHY: Objection to form, "you" --

3 MR. RICCO: I'm sorry.

4 MR. McCARTHY: -- unless he specifies who.

5 Q Did Emad Salem report to you, Agent Floyd, that
6 he had traveled to Attica Correctional Facility with Ali
7 Shinawy where they discussed bombs with Nosair?

8 A I know that Emad reported to me bombs. The exact
9 time and when that was done, I would have to look at --

10 Q OK.

11 A -- a document.

12 MR. RICCO: If I could approach the witness.

13 The same Exhibit 3534C, this time Bates stamped
14 page 135 and Bates stamp 136.

15 Then I would ask the witness to look at Bates
16 stamped page 162.

17 Q Did Emad Salem report to you in May of 1992 that
18 he was going to visit the Attica Correctional Facility with
19 Ali Shinawy?

20 A He informed me that he was going to go visit
21 Nosair in prison.

22 Q With Ali Shinawy?

23 A Yes, that's correct.

24 Q That wasn't in November of 1991, that's May 1992,
25 correct?

1 A That is correct.

2 Q Emad Salem also reported to you an assassination
3 and kidnaping plot against Judge Schlesinger, the state
4 court judge, isn't that correct?

5 A He reported a kidnaping plot against the judge.
6 I wasn't sure of his name.

7 Q That was in May of 1992, wasn't it?

8 A I don't know the date that he reported that,
9 unless you can point it out to me.

10 Q OK. I would take the witness's attention to
11 Bates stamp first 124 and 125.

12 Well, we'll skip that one because the witness
13 says that's not it. We will move to Bates stamp 140. Then
14 I would move the witness's attention to Bates stamp 156, the
15 same exhibit.

16 Did Emad Salem report to you in May of 1992 a
17 plot to kill Judge Schlesinger?

18 A Yes, sir.

19 Q Did he also report to you a plot to kill Dov
20 Hikind in May of 1992, and I bring the witness's attention
21 to Bates stamp No. 170.

22 MR. McCARTHY: 170, Mr. Ricco?

23 MR. RICCO: Yes.

24 A It doesn't have the date, but it does say that he
25 did report that.

1 Q Well, that's page 6. Isn't this page 1 of that
2 same document?

3 A Yes, but I believe this document is an overview
4 of everything that was provided during the whole case. It
5 doesn't give exact dates during the time.

6 Q What is the date of this document that was
7 produced?

8 MR. McCARTHY: Objection to the relevance.

9 THE COURT: That is sustained.

10 Q Was this information provided to you in May or
11 June of 1992?

12 A As I said, this document doesn't give the dates.
13 It is an overview basically of everything that the asset did
14 give. It was written up in June, but it doesn't give the
15 dates of the actual information.

16 Q He also reported to you that there was arms
17 training going on at the black mosque in Brooklyn, isn't
18 that right?

19 A I would have to look at the documentation. I do
20 know that he provided information on arms training.

21 Q I will bring your attention to page 160 on that
22 document.

23 MR. McCARTHY: Object to the relevance.

24 MR. RICCO: Your Honor, I am trying to tie it
25 together.

1 THE COURT: At this point I would like to talk up
2 at the side.

3 MR. RICCO: Sure.

4 THE COURT: Thank you.

5 MR. RICCO: Can you read that paragraph.

6 (Continued on next page)

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1 (At the side bar)

2 THE COURT: You said once "I am trying to tie it
3 together." I don't see what the package is going to look
4 like.

5 MR. RICCO: The point I am trying to tie
6 together, your Honor, is in the tape recording when she
7 says, the tape says "the reporting of information that we're
8 doing now" that the "now" that's referred to is the
9 information that was being provided in June of 1992 and not
10 November of 1991, that the information that was being
11 provided in 1991 had nothing to do with the subjects of guns
12 and bombings that were discussed in the conversation.

13 MR. MCCARTHY: I don't get it.

14 MR. STAVIS: A straight impeachment,
15 Mr. McCarthy.

16 THE COURT: Look, move out of here. There is one
17 lawyer examining. I will hear from one lawyer. Now move
18 aside.

19 I don't understand how it impeaches to say that
20 what was happening in June of '92 --

21 MR. RICCO: Judge, I started by asking this
22 witness was her testimony in explanation of this call
23 something that she concocted for the purposes of explaining
24 it.

25 THE COURT: That I remember.

1 MR. RICCO: What I am attempting to demonstrate
2 through affirmative proof is that is what was going on at
3 that time, and the words that she used in that call, the
4 "now" that was referred to was the reporting of the things
5 in the mosque, the escape, the kidnaping. It is like five
6 questions. The only problem, why it's taking so long is
7 that she's making me go through each page of the report to
8 get it.

9 THE COURT: Let me articulate it another way.
10 What you are saying is that in the conversation with Salem
11 she used the word "now," something about "things going on
12 now."

13 MR. RICCO: Right. And these are the things. I
14 am just trying to establish the five different things that
15 were "going on now" and leave it alone.

16 THE COURT: What you propose to show is that
17 because there were other things going on at the time of that
18 conversation, that when she used the word "now" in that
19 conversation, she was referring to those things and not to
20 anything that had happened in November of 1991?

21 MR. RICCO: Exactly.

22 THE COURT: OK. Now I understand.

23 MR. RICCO: OK.

24 (In open court)

25 MR. RICCO: Judge?

1 THE COURT: Go ahead.

2 MR. RICCO: OK. Thank you.

3 Q Now, in June 1992, Emad Salem reported to you
4 information about firearms and martial arts training at the
5 black mosque headed by imam Siraj Wahaj, didn't he?

6 A The paragraph that I read here is in reference to
7 Emad recruiting two black gentlemen to become Muslim.

8 Q No. Didn't Emad say to you that he recruited two
9 black men to infiltrate the Al Taqwa mosque, the black
10 mosque?

11 A No, sir. That's not what it says.

12 Q Next, asset informed Floyd that he recruited two
13 black males to become Muslim. Then told Sheik Ali about the
14 two recruits. And Ali heard this information, Ali contacted
15 Siraj, head of the black Brooklyn mosque, who requested that
16 Emad Salem meet with Siraj at Eed Amin. Also, Mohammed in
17 mosque in Brooklyn and introduced everyone --

18 MR. MCCARTHY: Objection to form.

19 MR. JACOBS: Your Honor, the interpreter is
20 having a problem.

21 MR. RICCO: I'm sorry, your Honor.

22 THE COURT: The interpreter can't hear you and
23 there is an objection as to form. The objection as to form
24 is sustained.

25 Q Didn't Emad Salem tell you that Siraj wants these

1 two black males to belong to what is known as the criminal
2 mosque where the Black Muslims belong to the mosque who have
3 been in prison and they were still involved in illegal
4 activities to get money for the mosque? Didn't he end up
5 that conference by saying to you, that these two black --

6 MR. McCARTHY: Objection to form.

7 THE COURT: Well --

8 Q Did he say that?

9 A Yes, he told me that the man that was the head of
10 the mosque wanted these two males to belong to a certain
11 mosque, yes.

12 Q So that they could go out and steal money for the
13 mosque, isn't that what he said?

14 A No, sir, that's not what's said there.

15 Q He didn't call it a criminal mosque?

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 Q Did Emad Salem call it a criminal mosque?

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 Q Did he use a disparaging term --

22 MR. McCARTHY: Objection, Rule 613(b).

23 THE COURT: Sustained.

24 Q What kind of mosque did he say --

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 May I see you at the side again.

3 MR. RICCO: Judge, I'll go on to something else.

4 THE COURT: Please do.

5 Q Didn't he end this up by saying that these two
6 males will be an "in" into the black mosque, and allow --

7 MR. McCARTHY: Same objection.

8 THE COURT: Same ruling.

9 Q Did he provide information about the black mosque
10 in June of 1992?

11 A As in reference to the fact that he had recruited
12 two black gentlemen to become Muslim, yes.

13 Q And to be an "in," to infiltrate that mosque?

14 A No, sir, those are not his exact words.

15 Q Did he say --

16 MR. McCARTHY: Objection.

17 MR. RICCO: Your Honor --

18 THE COURT: Please move on.

19 MR. RICCO: Your Honor, I would like to be heard,
20 because it's half a loaf.

21 THE COURT: I would like to talk to you.

22 MR. RICCO: OK.

23 THE COURT: I want to talk to Mr. Ricco. I don't
24 want to talk to anybody else. He is examining.

25 (Continued on next page)

1 (At the side bar)

2 MR. McCARTHY: These are not Salem's statements
3 and he is reading them to the jury.

4 MR. RICCO: If they are not, I won't ask, Judge.

5 THE COURT: The point is this is being used to
6 impeach Salem in a way that's totally improper. You told me
7 at the side bar --

8 MR. RICCO: First of all, Judge, I confronted
9 Emad Salem on the black mosque issue.

10 THE COURT: You told me at the side bar that you
11 wanted to examine for a particular purpose, and I said,
12 fine, go ahead and do it. This is not the purpose.

13 MR. RICCO: Judge, the only reason why I went
14 into the issue of the infiltration was only because what
15 this witness is trying to do is give the jury the impression
16 that Emad's total contact with this issue to bring in two
17 men to make them Muslims. That is half of the truth. The
18 other part of it is that Emad was going to use them to
19 infiltrate the mosque, and that's the only reason why I
20 asked it, because it is based on her answer.

21 MR. McCARTHY: You are jumping from document to
22 document.

23 MR. RICCO: I am not.

24 THE COURT: Move on to something else.

25 MR. RICCO: Can I please have the other answer to

1 the question?

2 THE COURT: No.

3 MR. RICCO: Why?

4 THE COURT: The loaf here is supposed to be the
5 topics that are under discussion.

6 MR. RICCO: OK.

7 THE COURT: This is a waste of time.

8 MR. RICCO: It is not a waste of time.

9 THE COURT: It is.

10 (Continued on next page)

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1 (In open court)

2 MR. RICCO: Your Honor, I would like to have the
3 witness's last answer to my question being stricken as not
4 responsive.

5 MR. McCARTHY: No objection.

6 THE COURT: We will deal with it --

7 MR. McCARTHY: No objection.

8 THE COURT: Fine. It's stricken.

9 Q The question is, did Emad provide information --

10 MR. McCARTHY: Objection.

11 THE COURT: Move on to something else. The
12 answer has been stricken. Please move on to something else.

13 Q On June 15, 1992, did Emad Salem contact you?

14 A Yes, sir.

15 Q Did he tell you that he met at the Attica
16 Correctional Facility with Nosair and Nosair directed
17 Shinawy and him to assist in making 12 bombs? Did he tell
18 you that on June 15, 1992? I'm referring the witness's
19 attention to Bates stamp 177.

20 MR. McCARTHY: Mr. Ricco, I heard you say June 13
21 and June 15. I just want to --

22 MR. RICCO: It should be June 15.

23 MR. McCARTHY: Thank you.

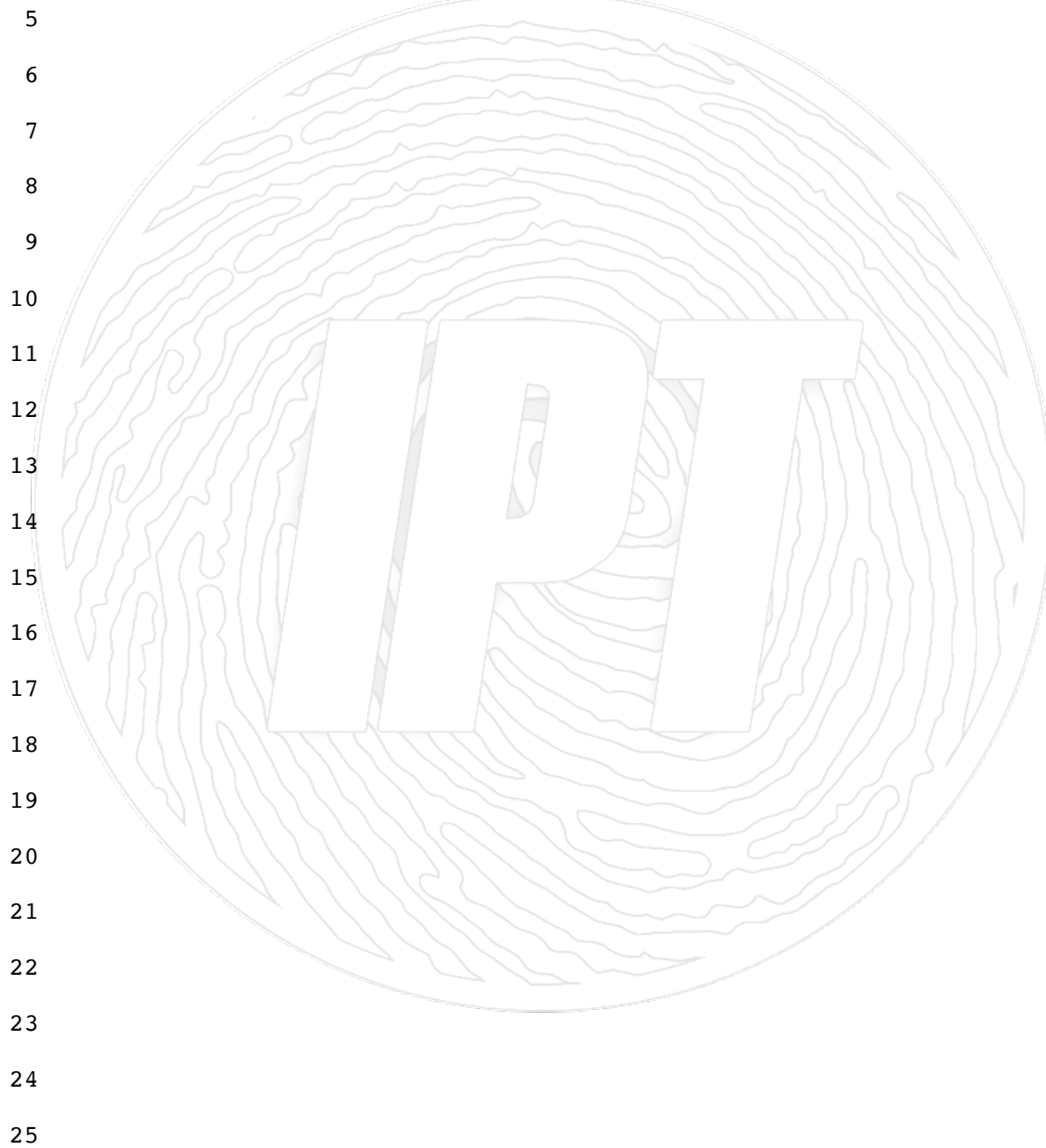
24 MR. RICCO: I'm sorry, Mr. McCarthy.

25 A Yes, sir.

1 Q Now, that's June 15, 1992, not November 1991,
2 right?

3 A That he advised this information? Yes, sir.

4 (Continued on next page)



1 Q The meetings that you had with Dunbar in June of
2 1992, he wanted to verify this information, the information
3 that Emad Salem was providing --

4 MR. MCCARTHY: Objection, relevance.

5 THE COURT: Sustained. No.

6 Q The government exhibit is in evidence as
7 Khallafalla C. I direct you to the first page of the
8 document that is in evidence.

9 A Which one is that, sir?

10 MR. RICCO: The jury can look at it also, with
11 the permission of the court.

12 THE COURT: Go ahead. It is Khallafalla Exhibit
13 C.

14 MS. AMSTERDAM: It is actually the transcript
15 C-T.

16 THE COURT: C-T is the transcript. The tape
17 itself is C. Go ahead.

18 Q And I will refer you to your remarks on the first
19 page, last paragraph, first sentence. You start the
20 sentence off saying that kind of stuff, but that you had
21 done some kind of your own just to verify what you were
22 telling us kind of thing.

23 Do you remember telling him that?

24 A Yes, sir.

25 Q I take you now to the bottom of page 4, last

1 sentence on the page. You say, we can listen to anything we
2 want to. Top of the page 5, Salem says, uh huh. And you
3 say to verify, you know, everything that's going on. Do you
4 see that?

5 A Yes, sir.

6 Q Dunbar wanted those tapes, isn't that right?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 Q In this exhibit that is in evidence, on page 1
10 you say that you met with the supervisor and the supervisor
11 wanted the tapes, isn't that right?

12 A Yes, sir.

13 Q Are we talking about the tapes that Emad had that
14 was used to verify the information that he was providing the
15 agents, isn't that right?

16 A The ones of November 1991, yes.

17 MR. McCARTHY: Your Honor, could I have just one
18 moment with Mr. Ricco?

19 THE COURT: Yes.

20 Q You just said November '91, correct?

21 A Yes, sir.

22 Q I bring your attention and the jury's attention
23 to page 5 again. Do you see the sentence where you start,
24 um, well, not all of them? Do you see that sentence? Top
25 quarter of the page, six attributions by you from the top of

1 the page, page 5.

2 A Yes.

3 Q OK. You say to Emad Salem, well, not all of
4 them, just copies of them, I mean cop. And he says yeah,
5 they want the tapes, you will make copies from them? And
6 you say right, but only the ones that have to do with the
7 information that, uh, on the, that we're doing now. Do you
8 see that?

9 A Yes.

10 Q That word now is your word?

11 A Yes, sir.

12 Q And then you says, you uh. And then you say
13 like, 'eh, 'eh, you know, the guns, the bombs, the ones that
14 they gonna to be looking to to try to do, um -- do you see
15 that?

16 A Yes, sir.

17 Q Do you see the word --

18 MR. McCARTHY: Objection unless he continues the
19 next attribution.

20 Q I will continue. To set up wires on the phone.
21 Do you see that?

22 A Yes.

23 MR. RICCO: Do you want me to continue, Mr.
24 McCarthy?

25 MR. McCARTHY: No, that is OK.

1 Q Where you see the words the ones that we are
2 doing now, does the word now mean November or does it mean
3 now, like in present, June 1992?

4 A It refers to two different objectives of this
5 conversation.

6 Q The November tapes, you said that you had never
7 had them in your possession before, correct?

8 A That is true.

9 Q They were never given to the bureau, correct?

10 A That is true.

11 Q I want to bring your attention to page 3, jury
12 page 3. The fifth attribution from the top of the page
13 says, do you see where it says he would like a chance to
14 listen to the tapes? Do you see that?

15 A Yes.

16 Q You say he would like a chance to listen to the
17 tapes with you interpreting, to figure out who the people
18 are, etc. He's a new supervisor, he doesn't know anything.
19 Do you see that?

20 A Yes, sir.

21 Q If you never listened to the tapes and the tapes
22 were never turned over to the bureau, can you explain to the
23 jury how it is that he would have to know that an
24 interpreter would be required to go over those tapes?

25 A That who would have to know?

1 Q Do you see where you say he wants to listen to
2 the tapes with you interpreting? Do you see that?

3 A Yes, sir.

4 Q Those are your words, right?

5 A Yes, sir.

6 Q And you are talking about the tapes that you
7 never heard before, isn't that right?

8 A Yes, sir.

9 Q How is it that an interpreter would be required
10 for tapes that no one ever heard before?

11 A My term of interpreting does not refer to the use
12 of an interpreter. It means Emad interpreting the tapes,
13 i.e., telling who the people are, what is being said, what
14 is going on and referencing, but it does not refer to the
15 use of an interpreter.

16 Q Let's go to the bottom of the page, the third
17 attribution from the bottom of the page -- the fifth
18 attribution from the bottom of the page, where you say well,
19 some of them just about, uh, like, that like, and identify
20 the key players. Do you see that?

21 A Yes, sir.

22 Q And he says uh-huh. And you say because the guy
23 that's gonna come and trans, to do the translation of,
24 'em -- who is the guy who is going to do the translation of
25 'em?

1 A Would be if there was any tapes that Emad had and
2 they were turned over, they are listened to, and then a
3 transcript, this is done on them.

4 Q How do you know you are going to need a
5 translator for tapes that no one ever heard before?

6 A It does not say it needs a translator, it says a
7 translation. This is a translation, sir, of a tape.

8 Q Translation, what does that word mean to you,
9 ma'am?

10 A It means they are listened to and then printed
11 out in form as you see here.

12 Q And it is still your testimony that the
13 explanation that you gave for these tapes is not a story
14 that was given to protect yourself?

15 A No, sir.

16 Q Do you know what the word transcription means?

17 A Yes, sir.

18 Q What is a transcription?

19 A It would be the actual document.

20 Q Incidentally, yesterday when you testified, you
21 said that the calls that you listened to only represented
22 one eighth of your calls. Do you recall that?

23 A I think my testimony was that these calls
24 probably represent maybe an eighth.

25 Q How would you know that they represented an

1 eighth when you have never heard them all?

2 A It was an estimation, and I was given a booklet
3 of all the calls.

4 Q You were given that book last night.

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q Is the book that you are referring to a book that
8 you were given just yesterday?

9 A No, sir.

10 Q So your testimony that the call represents an
11 eighth of your calls is based on a guess?

12 A It's an approximation.

13 Q So what you are telling us is, there are seven
14 times as many calls that you have with Emad Salem that don't
15 appear in any transcripts or tape recorded conversations.

16 MR. McCARTHY: Objection to form -- withdraw the
17 objection.

18 THE COURT: Overruled. Go ahead.

19 A What I am saying is, there are numerous
20 conversations both on the phone as well as in person that do
21 not appear on any tapes.

22 Q I would like to turn your attention to another
23 subject. I would like to direct your attention to the
24 exhibit that you have in front of you, Government's Exhibit
25 604.

1 MR. McCARTHY: 604-8, Mr. Ricco, is that what you
2 are saying?

3 MR. RICCO: Yes.

4 A Can you give me the number that it is --

5 MR. McCARTHY: 4-8.

6 THE WITNESS: Thank you.

7 Q This was the telephone conversation in which you
8 gave Emad Salem this information about Mohammad Salameh
9 visiting Nosair at the Attica Correctional Facility --

10 MR. McCARTHY: Objection to form.

11 THE COURT: Do you want to rephrase it.

12 Q Is this the telephone conversation wherein
13 amongst other things you discussed with Emad Salem the
14 information regarding Mohammad Salameh visiting Nosair one
15 week before the World Trade Center?

16 A Yes, this is the conversation.

17 Q Emad Salem, and if I can approach the witness,
18 your Honor --

19 THE COURT: Go ahead.

20 Q Emad Salem had reported to you, did he not, that
21 Mohammad Salameh and Ibrahim El-Gabrownny was at Nosair one
22 week before the explosion, both of them together, isn't that
23 correct?

24 A Yes, that's what he said.

25 Q And he was claiming that if the FBI had done

1 their job right, they would have had pictures of them.

2 A He is reporting here that -- his words are if we
3 had done our job we would have had pictures for El-Gabrowny,
4 Ibrahim El-Gabrowny, the surveillance on him.

5 Q With?

6 A Or with him with Mohammed -- I can't pronounce
7 it.

8 Q It's Mohammed, right?

9 A I believe that is Mohammed.

10 Q Him and Mohammad Salameh going to visit Nosair
11 one week before the explosion, correct?

12 MR. McCARTHY: Objection, hearsay.

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

14 MR. RICCO: Your Honor, I will move on.

15 THE COURT: All right.

16 Q On the date that Mr. El-Gabrowny was arrested,
17 you had a conversation with Emad Salem, and Emad had
18 reported to you that he was on the telephone with Mr.
19 El-Gabrowny moments before he was arrested, isn't that
20 correct?

21 A I believe that is correct.

22 Q He said to you that during that conversation Mr.
23 El-Gabrowny said he was going down to his car --

24 MR. McCARTHY: Objection. Can I have a
25 reference?

1 MR. RICCO: Yes, I will give you a reference.

2 Page 3.

3 A Do I have that phone conversation?

4 THE COURT: No.

5 Q It would be that same document, page 3. Do you
6 see that?

7 MR. McCARTHY: Mr. Ricco, I am sorry. You are
8 talking about 604-8?

9 Q He says to you during the conversation that
10 Ibrahim was talking to him five minutes before his arrest,
11 isn't that right?

12 A Yes, sir.

13 Q And he said that Ibrahim is going downstairs to
14 pick up something from the car and coming back to call him
15 when they grab him and they arrested him.

16 A That is what Mr. Salem said, yes.

17 Q Mr. Salem didn't say that Mr. El-Gabrownny was
18 going to put something in his car, did he?

19 A No, sir, he did not say that.

20 Q He said he was going to get something from his
21 car and come back, isn't that correct?

22 A Those were Mr. Salem's words, yes.

23 Q But that Mr. El-Gabrownny had been arrested in the
24 process -- had been arrested. I am sorry.

25 MR. McCARTHY: Objection. Hearsay.

1 THE COURT: Sustained.

2 MR. RICCO: Your Honor, I have about two minutes
3 and I will be through.

4 THE COURT: Go ahead.

5 Q Do you have 6-11 in your book?

6 A Yes, sir, I do.

7 Q I would like you to take a look at the bottom of
8 page --

9 MR. McCARTHY: 606-11 for identification. Mr.
10 Ricco, could you tell me the page?

11 MR. RICCO: It would be the bottom of page 1.

12 Q In this conversation, Mr. Salem is telling you
13 about a conversation that he had with other agents, isn't
14 that correct?

15 A Yes, sir.

16 (Continued on next page)
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1 Q And he is telling you his understanding of that
2 conversation, isn't that correct?

3 MR. MCCARTHY: Objection, relevance.

4 MR. RICCO: Your Honor, I think I can show the
5 relevance.

6 THE COURT: May I see counsel at the side,
7 please.

8 MR. RICCO: Yes.

9 (At the side bar)

10 THE COURT: I am at a bit of a disadvantage. I
11 don't know -- why don't you tell me where it is going.

12 MR. RICCO: There is a lot of testimony about
13 what Agent Anticev described to Emad Salem as being a
14 Chinese wall, to keep exculpatory information, to protect
15 the defendants, etc., etc. In this call Emad Salem reports
16 to Agent Floyd right after this conversation what it is he
17 understood that to be and what he said was that he was going
18 to be in touch with only one agent, that this agent will be
19 somebody, not John, not Louie, because they are not known,
20 this information should be supplied, it's not going to be
21 through me because it is going through an agent so if God
22 forbid something wrong happened, the bureau got to make
23 something, they will say this information is coming through
24 this agent and not coming through me. That's it. It is
25 state of mind.

1 THE COURT: I don't understand the relevance of
2 that.

3 MR. RICCO: It is relevant because the government
4 solicited testimony from Agent Anticev about this subject of
5 his instructions with respect to how he was going to be
6 operating and conducting himself in the case, and Agent
7 Anticev told the jury that the purpose of this was to
8 protect the defendants. Emad Salem's understanding of that,
9 his state of mind was not to protect the defendants, his
10 state of mind was in the event something goes wrong, the
11 bureau will be able to say that this information is coming
12 through an agent and not coming through me.

13 MR. McCARTHY: The only relevant state of mind
14 with respect to that line was Anticev's.

15 THE COURT: The objection is sustained. Let's
16 go.

17 MR. RICCO: We can do it with Emad when he comes
18 back.

19 (In open court)

20 (Continued on next page)

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1 BY MR. RICCO:

2 Q Agent Floyd, during the course of the meetings
3 that you had with Agent Dunbar and Emad Salem, Agent Dunbar
4 accused Emad Salem of lying and not telling the truth, isn't
5 that right?

6 A I have no knowledge that Mr. Dunbar actually
7 accused Mr. Salem of lying or not telling the truth.

8 (Continued on next page)

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1 Q I direct you to the same Exhibit --

2 MR. McCARTHY: Objection, competence, foundation.

3 THE COURT: Sustained.

4 MR. RICCO: On competence, your Honor? I would
5 like to be heard.

6 (At the side bar)

7 MR. McCARTHY: She has testified that she was not
8 present when Dunbar and Salem spoke. Salem has been
9 examined, Dunbar has been examined. They are the only
10 witnesses with competent knowledge as to this. Everything
11 else is hearsay.

12 MR. RICCO: And now I am trying to impeach her
13 because in her conversation that she has with Emad Salem she
14 said she was there and she said Dunbar accused him of not
15 telling the truth.

16 MR. McCARTHY: Where does she say that?

17 MR. RICCO: Page 6.

18 THE COURT: May I see it?

19 MR. RICCO: I will get you the transcript. These
20 are my notes. It is right there, takes two seconds.

21 MR. McCARTHY: What is the transcript on?

22 MR. RICCO: 611, page 6.

23 MR. McCARTHY: There is no statement in there
24 that she was present for the meeting.

25 MR. RICCO: According to the transcript I see

1 here, he has been undercover for nine months and here comes,
2 you know, Dunbar telling him why, how do you know you're
3 telling me the truth.

4 THE COURT: She doesn't say she heard that
5 statement.

6 MR. RICCO: She does say she heard that
7 statement. He says, and he said oh, Nancy, I can't believe,
8 he being Dunbar said to Nancy, oh, Nancy, I can't believe,
9 and then he, Dunbar, said well, why hasn't something,
10 whatever. And I said well, what do you mean why hasn't --

11 MR. MCCARTHY: That's a conversation between her
12 and Dunbar. He objected on competency.

13 THE COURT: Now this is a conversation between
14 her and Dunbar about whether Dunbar believes --

15 MR. RICCO: No, Judge. We started off with a
16 question by me as to whether or not Dunbar accused Emad
17 Salem of lying. Mr. McCarthy objected on competency
18 grounds. I am showing you this conversation now to show you
19 that she is competent to testify because she discussed it
20 with Dunbar. The competency objection is inappropriate.
21 There is a basis of knowledge.

22 THE COURT: The basis of knowledge is Dunbar
23 talking to her about what he accused Salem of? The proper
24 objection is relevance, and that is sustained. Let's move.

25 (In open court)

1 BY MR. RICCO:

2 Q Were you present at any meetings with Emad Salem
3 and supervisors?

4 A Yes, sir, I was.

5 Q Was one of those supervisors Carson Dunbar?

6 A Mr. Dunbar is technically an ASAC, but yes, sir.

7 Q Were you present at meetings between Emad Salem
8 and John Crouthamel?

9 A I don't know -- we had several meetings. I don't
10 know which one specifically you are referring to.

11 Q I am asking, did you ever attend any meetings
12 with Emad Salem and John Crouthamel?

13 A Yes, I did.

14 Q At any of those meetings were either Crouthamel
15 while you were present, or Dunbar while you were present,
16 did either one of those men accuse Emad of not telling the
17 truth?

18 A In none of the meetings that I attended ever did
19 anybody to Mr. Salem's face tell him that they thought he
20 was not telling the truth.

21 Q One last question. I am going to show you an
22 exhibit -- can you tell us whether or not of the many items
23 that were taken from Emad Salem's apartment on June 29,
24 1993, were two of those items two razor blades?

25 A I don't remember two razor blades were picked up.

1 These are my notes of some stuff that he wanted me to get
2 but I ended up not bringing what he actually wanted.

3 MR. RICCO: I have no further questions. Thank
4 you.

5 THE COURT: Anyone else? Any cross?

6 MR. FITZGERALD: Yes, Judge.

7 THE COURT: Mr. Fitzgerald.

8 CROSS-EXAMINATION

9 BY MR. FITZGERALD:

10 Q Good afternoon, Agent Floyd.

11 A Good afternoon.

12 Q Now, is it fair to say that you first met Emad
13 Salem in April of 1991?

14 A Yes, sir, it would be.

15 Q At that time you were assigned to foreign
16 counterintelligence?

17 A Yes, sir, I was.

18 Q Without telling us the specifics of what you were
19 working on, did it involve Soviet counterintelligence?

20 A Yes, sir, it did.

21 Q Who approached whom?

22 MS. STEWART: Objection, Judge.

23 THE COURT: I will allow it. Go ahead.

24 A I approached Mr. Salem.

25 Q Briefly tell us how that happened.

1 A I was given --

2 MR. STAVIS: Objection, scope, your Honor.

3 THE COURT: Overruled. Go ahead.

4 A I was given a lead by my supervisor that required
5 for me to go to a hotel in Manhattan and obtain some
6 information about a Soviet individual who had visited this
7 country.

8 Q And then you found Emad Salem at that hotel?

9 A Yes, sir.

10 Q Between April of '91 and November of '91, did you
11 continue to obtain information from Emad Salem?

12 A Yes, sir, I did.

13 Q In November of '91, did you then introduce Emad
14 Salem to John Anticev?

15 A Yes, sir, I did.

16 Q At the time that you were getting information
17 from Emad Salem, did you make clear to him that he would not
18 be called to testify as to the information he was providing
19 you with?

20 MS. STEWART: Objection, Judge.

21 THE COURT: Overruled.

22 A Yes, sir, we assured Mr. Salem that he would not
23 be used to testify, since it was his wishes not to testify.

24 MS. STEWART: Object to the "we."

25 THE COURT: That is sustained.

1 Q Did you make clear to him that his assistance to
2 you during that time would not be made public?

3 A Yes, sir.

4 THE COURT: That would be, did you tell him that.

5 Q Did you tell him that?

6 A Yes, sir.

7 Q During the time that Mr. Salem was working with
8 you, did you have a number of discussions during which he
9 indicated that he did not want his help to become known?

10 A Yes, sir, I did.

11 Q Did you discuss with him one way to prevent his
12 help from becoming publicly known, was for him not to make
13 tapes?

14 A Yes, sir, I did.

15 Q There came a time in November '91 when you
16 learned that he had made tapes, is that correct?

17 A Yes, sir.

18 Q What was your understanding at that time of how
19 many tapes he had made?

20 A It was my understanding that there was one or two
21 tapes that he had made.

22 Q Did you tell him at that time not to make any
23 more tapes?

24 A Yes, sir, I did.

25 Q Did you make any efforts at that time to get

1 those one or two tapes?

2 A No, sir. As I said before, I don't even know if
3 those tapes existed. He just said that he had taped some
4 conversations.

5 MS. STEWART: Objection and move to strike.

6 THE COURT: That is responsive. It is overruled.
7 Go ahead.

8 Q Did you tell Mr. Salem that his making tape
9 recordings was illegal?

10 A Yes, sir, I did.

11 Q And at the time you said that, did you in fact
12 know that it was not illegal for him to make tapes on his
13 own?

14 MS. STEWART: Objection.

15 THE COURT: That is sustained.

16 Q What was your understanding at that time as to
17 whether or not it was legal for Mr. Salem to record a
18 conversation to which he was a party?

19 MS. STEWART: Objection.

20 THE COURT: Overruled.

21 A I knew it was legal for him to tape conversations
22 of himself with another person.

23 Q Just so we are clear, did you say legal or
24 illegal?

25 A I knew it was legal.

1 Q Legal. Now, were there FBI rules as to whether
2 or not you could direct people to make conversations?

3 A Yes, sir, there are rules.

4 Q Did you find it easier just to tell Emad Salem
5 making tapes is illegal?

6 A Yes, sir, I did.

7 Q You were asked a number of questions about the
8 conversation the jury heard on the tape known as Khallafalla
9 Exhibit C. That is the tape that was played yesterday and
10 you have been asked a number of questions. You have
11 indicated that that tape recording was made sometime in the
12 summer of 1992.

13 A Yes.

14 Q At that time Mr. Crouthamel was a new supervisor,
15 correct?

16 A Yes, sir.

17 Q And you indicated that Crouthamel wanted to know
18 whether or not Salem had tapes, correct?

19 A Yes, sir.

20 Q As of that point in time, prior to your picking
21 up the telephone and having the conversation that became
22 Khallafalla Exhibit C, you had been telling Emad Salem that
23 if he made tapes he could become a witness, correct?

24 A Yes, sir.

25 Q And he did not want to become a witness at that

1 time, correct?

2 A Yes, sir.

3 Q You had also been telling Emad Salem that if he
4 makes tape recordings, that would be illegal, correct?

5 A Yes, sir.

6 Q And now you are going to have to call up Emad
7 Salem and try and learn whether or not he made tapes,
8 correct?

9 A Yes, sir.

10 Q Did that influence the way you approached Emad
11 Salem in that conversation?

12 A Completely.

13 Q Yesterday you were asked questions by Mr. Jacobs
14 as to whether or not you were trying to do certain things in
15 the conversation, and you said no. Why don't you just tell
16 this jury what you were trying to accomplish in that
17 conversation.

18 MS. STEWART: Objection. Form, Judge.

19 MR. FITZGERALD: I will rephrase it.

20 Q Please tell the jury what you were trying to do
21 in a conversation which was recorded as Khallafalla Exhibit
22 C.

23 A I was trying to do several things. One, to
24 determine if any tapes existed, was the first objective.
25 Two, if in fact they did exist, I was going to have to undo

1 the fact that I had told him it was illegal to tape them,
2 and he was paranoid that if he was on any tapes he was going
3 to have to become a witness, so I was going to have to
4 insure him that this was in fact not the case now and that
5 it was completely legal what he had done, so he would feel
6 comfortable enough to admit, one, that he had the tapes and,
7 two, to produce the tapes. The final thing was that if in
8 fact he did have some tapes, we were going to have to
9 retrieve them from him to listen to them to verify
10 information, etc.

11 Q Was your focus in this conversation to find out
12 whether tapes had already been made or were you trying to
13 encourage him in the future to make more tapes?

14 A No, I didn't want him to make any tapes in the
15 future, I just wanted to find out if any tapes existed.

16 Q Did anyone from the FBI tell you prior to that
17 conversation that if you obtained the tapes from him they
18 would not be treated as evidence?

19 A No, sir, they did not.

20 Q In fact, you had obtained tapes, you mentioned
21 earlier, the Hegazi tapes from Emad Salem, isn't that
22 correct?

23 A Yes, sir.

24 Q And they were treated the way the FBI treats
25 tapes that are evidentiary?

1 A Yes, sir, they were taken into our possession.

2 Q You discussed with Emad Salem that your
3 supervisor was thinking about wiretaps in the future, is
4 that correct?

5 A Mr. Crouthamel, yes, sir.

6 Q Mr. Crouthamel, yes. And a wiretap is an
7 alternative method of getting evidence that would not
8 require Emad Salem to testify, is that --

9 MR. JACOBS: Objection.

10 THE COURT: Sustained as to form.

11 Q A wiretap is a method that might avoid having
12 Mr. Salem testify, is that correct?

13 MS. AMSTERDAM: Calls for speculation.

14 THE COURT: You can ask her what her
15 understanding was at the time. Other than that, you can't.

16 Q Let me ask, were you talking to Mr. Salem about
17 methods that might be used to go forward with the
18 investigation without having to have him testify?

19 A Yes, sir.

20 Q You were asked questions about a scenario
21 involving a safe house that came up during the conversations
22 that you had during the spring of 1992. Do you recall that?

23 A Yes, sir.

24 Q Were you told, were you aware that prior to those
25 conversations with Mr. Dunbar and yourself, that Emad Salem

1 had reported that the idea of a safe house came up in
2 meetings he had with Sayyid Nosair, Ibrahim El-Gabrownny and
3 Ali El Shinawy?

4 A Yes, I am.

5 Q You were asked questions yesterday by Ms. Stewart
6 about a conversation designated 614-39, and let me approach
7 you with that.

8 A Thank you.

9 Q You can just take a moment and review that so
10 that you know what I am talking about.

11 Is that the conversation where you discuss with
12 Emad Salem the fact that a man, apparently from Egyptian
13 intelligence, had contacted him and wanted to meet with him?

14 A Yes, sir, it is.

15 (Continued on next page)
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1 MR. FITZGERALD: Your Honor, I would offer
2 Government's Exhibit 614-39.

3 MS. STEWART: Objection, Judge. May we have a
4 side bar?

5 THE COURT: Yes, you may.

6 (At the side bar)

7 THE COURT: Miss Stewart.

8 MS. STEWART: Judge, clearly Miss Floyd was a
9 hostile witness to us.

10 THE COURT: She doesn't have to be hostile,
11 merely identified with another side, and you are allowed to
12 cross-examine.

13 MS. STEWART: For that reason this material was
14 used purely as impeachment material. It is not appropriate
15 for the government to offer something into evidence without
16 even consulting with me, to do it in front of the jury. I
17 think it is totally inappropriate and I think it was
18 inappropriate --

19 THE COURT: Let me do this. I haven't looked at
20 this transcript.

21 MR. FITZGERALD: I can move on to other areas and
22 we can deal with it later.

23 THE COURT: Would you.

24 (In open court)

25 BY MR. FITZGERALD:

1 Q Let me direct your attention, Agent Floyd, to the
2 events of June 29, 1993, which I believe it has been
3 stipulated was the day that you went to Emad Salem's
4 apartment with Agent Roth and another unidentified agent.

5 A Yes, sir.

6 Q Is it fair to say that as an FBI agent you know
7 that you can obtain the legal authority to search an
8 apartment either by a warrant, a search warrant, or other
9 methods, including the consent of the person who lives
10 there?

11 A That is correct, sir.

12 Q Was it your understanding on that day that you
13 were searching Emad Salem's apartment because he had
14 consented or agreed to let the FBI do it?

15 A That is correct, sir.

16 Q Was it your understanding that when someone
17 agrees to let you search their property, you are allowed to
18 search what they tell you you can search, and no more?

19 A That is correct, sir.

20 Q You were asked questions about -- and the consent
21 that you were aware of at the time you made the search was
22 to search the chair or sofa area where the tapes were
23 located.

24 A Right, the chair.

25 Q And as far as you were aware at that time, you

1 did not know of a consent to search other areas.

2 A That is correct, sir.

3 Q You were asked questions about the fact that Emad
4 Salem was very upset at Agent Roth later on when you brought
5 the materials that were taken from his apartment to a place
6 where Emad Salem was. Do you recall that testimony?

7 A Yes, sir, I do.

8 Q Is it fair to say that the reason Emad Salem was
9 upset --

10 MS. AMSTERDAM: Objection, your Honor.

11 THE COURT: Sustained.

12 Q Did Emad Salem indicate that there was a
13 particular item in the apartment that he did not want
14 someone to see, other than tapes?

15 A No, sir.

16 Q Were you aware of any personal photographs of a
17 highly personal nature inside Mr. Salem's apartment that
18 day?

19 A No, sir.

20 Q Did there come a time during this argument --
21 strike that.

22 When you left the location where Emad Salem was,
23 was Agent Roth still left in a room with Emad Salem?

24 A As best I can remember at this time, yes.

25 Q When you left, do you know from your personal

1 knowledge whether or not an interpreter later came into the
2 room?

3 A I believe one did, but at this time I can't say.

4 MS. AMSTERDAM: Objection, your Honor.

5 THE COURT: Sustained. You say you left -- at
6 the time that you left had an interpreter come into the
7 room?

8 THE WITNESS: I cannot recall at this time
9 whether or not one did or didn't.

10 Q When you left, did you come back or did you just
11 leave and stay out of there?

12 A I never came back.

13 Q Do you know when everyone left the room that day
14 which tapes stayed with Emad Salem and which ones left?

15 A No, sir, I do not.

16 MR. FITZGERALD: May I have one second, your
17 Honor?

18 THE COURT: Yes.

19 MR. FITZGERALD: Nothing further, Judge.

20 THE COURT: Mr. Jacobs?

21 CROSS-EXAMINATION

22 BY MR. JACOBS:

23 Q Agent Floyd, before you had the conversation with
24 Emad Salem in June of '92 that this jury heard, did you
25 discuss what you were going to do with your supervisor

1 Crouthamel? Yes or no.

2 A He wasn't my supervisor, but no, I did not
3 discuss with him.

4 Q Did Agent Crouthamel instruct you to have the
5 conversation that you did and the strategy that you
6 explained to the jury on cross-examination?

7 THE COURT: She already said she didn't talk to
8 Crouthamel.

9 Q You didn't talk to him at all before?

10 A No, sir.

11 Q Your idea alone, correct?

12 A Yes, sir.

13 Q Can you tell this jury as you sit here now, to
14 your knowledge does the Department of Justice have all the
15 tapes that Emad Salem made from '91, '92 and '93? Did it
16 have all of them?

17 A To my knowledge, they do.

18 Q They do?

19 A To my knowledge.

20 MR. JACOBS: Thank you. No further questions.

21 CROSS-EXAMINATION

22 BY MS. AMSTERDAM:

23 Q Do they have, to your knowledge, the tape
24 recording of the conversations in which you say discontinue
25 taping?

1 A I have no recollection --

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q One last question. Mr. McCarthy asked you about
5 consent to search just now. Mr. Salem only wanted his chair
6 searched, that was it, right?

7 A That is all I was given permission to search,
8 yes.

9 THE COURT: Miss Stewart.

10 REDIRECT EXAMINATION

11 BY MS. STEWART:

12 Q With regard to the apartment search on June 29,
13 1993, you were asked to retrieve razor blades, is that
14 correct?

15 A Yes, for shaving.

16 Q And they were in the desk, is that correct?

17 A No, they would have been in the medicine cabinet.

18 Q You were asked to retrieve razor blades from the
19 medicine cabinet?

20 A To shave with, yes.

21 Q May I see -- one moment.

22 You made a note for yourself on a little Post-It,
23 didn't you, Agent Floyd?

24 A Yes, I did, I made several notes.

25 Q And right under two razor blades, you wrote, did

1 you not, middle drawer of desk, sizes, or something like
2 that?

3 A You would have to let me see it.

4 Q Sure.

5 A That is rings, ma'am. He had a box of rings he
6 wanted me to bring. He was in the jewelry business.

7 Q Agent Floyd, Mr. Fitzgerald asked you if you knew
8 of any personal pictures that Emad asked you to retrieve, is
9 that right?

10 MR. FITZGERALD: Objection to form.

11 MS. STEWART: Strike that.

12 Q Mr. Fitzgerald asked you about personal pictures,
13 whether you were aware of personal pictures in Emad Salem's
14 apartment. Do you remember that question?

15 A Yes, ma'am.

16 Q If I were to say to you were you asked to
17 retrieve torture pictures, would that refresh your
18 recollection?

19 A I am still not aware of any of those kind of
20 pictures.

21 MS. STEWART: Nothing further, Judge.

22 THE COURT: Anything else?

23 MR. FITZGERALD: No, Judge.

24 THE COURT: Thank you very much. You are
25 excused.

1 (Witness excused)

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

8 (Jury excused)

9 THE COURT: Do you want to deal with the tape
10 this afternoon or do you want to deal with it now -- I am
11 sorry, the transcript that the government sought to offer
12 during its cross-examination of the witness.

13 MS. STEWART: I guess we better do it this
14 afternoon. I would.

15 THE COURT: Fine. How about 2:30?

16 MS. STEWART: Fine.

17 THE COURT: There is one other thing and it was
18 almost an offhand comment that was made at the side by Mr.
19 Ricco about the scope of the examination of this witness and
20 I think the comment was made to the effect OK, I'll ask him
21 about it when he comes. I think it was a reference to
22 asking Mr. Salem about something when he comes back. I
23 don't like to start disagreements before they mature, but as
24 far as I am concerned there have been reserved with respect
25 to Mr. Salem some particular inquiries from Mr. Jacobs

1 relating to matters that were not really proper
2 cross-examination but rather go to matters that he wanted to
3 pursue for purposes of his own -- not of his own, obviously,
4 but the case. If Mr. Salem is to be recalled, and I gather
5 he is, he is not to be recalled so that -- I am sorry. Do
6 you want to say something?

7 MR. JACOBS: Your Honor, finish.

8 THE COURT: -- simply so that folks can ask him
9 all the questions that they would like to ask him at the
10 time or now in the nature of cross-examination, and I am not
11 going to allow it.

12 MR. RICCO: The questions that I intend to ask
13 Mr. Emad Salem, the government has charged Mr. El-Gabrownny
14 with possession of passports, and what I intend to do in my
15 case with respect to that count is ask specific questions
16 that I believe directly relevant to that issue, and there
17 are five or six questions. If the court determines at that
18 time that those questions should not be asked at that time,
19 I won't ask them.

20 THE COURT: That wasn't what was referenced to at
21 the side.

22 MR. RICCO: Exactly.

23 MR. SERRA: There was one other issue with
24 respect to Mr. Salem and that is, either Ms. London or I
25 intend to ask about exhibits that were introduced by the

1 government and us as well, after his testimony.

2 MR. McCARTHY: I don't know about that. I didn't
3 mean to preempt Mr. Jacobs, but I wanted to clarify that our
4 understanding is that Mr. Jacobs reserved on conversations
5 involving his client which were not in evidence at the time
6 that Salem testified.

7 THE COURT: Right, what he called transcript
8 issues, I think.

9 MR. SERRA: Similarly, exhibits which were not in
10 evidence at the time he testified.

11 MR. NOOTER: Your Honor, I have had a similar
12 thing which I had reserved. I don't know if your Honor
13 recalls, during my cross your Honor had limited my time of
14 cross. I have exhibits prepared that the government has
15 seen that relate to the same thing, in other words, objects
16 on the table, which I will make him my witnesses for
17 purposes of examining.

18 MR. McCARTHY: Mr. Nooter did do that.

19 MR. RICCO: With respect to the --

20 THE COURT: Only that one comment.

21 MR. RICCO: I think I will make an ex parte
22 application to the court and the court will be satisfied as
23 to the good faith basis for asking Mr. Salem questions about
24 what happened on the date of the arrests from Mr. Salem.

25 MR. McCARTHY: The government is not asking Mr.

1 Ricco to show a good faith basis.

2 THE COURT: That wasn't my concern. It was not
3 the basis for your question, it was the nature of what it is
4 you were planning to do, and I didn't know --

5 MR. RICCO: I don't disagree with you. If the
6 court is saying is that when Salem comes back you don't want
7 a rerun of his cross, I don't want to sit with him for
8 another four weeks either.

9 THE COURT: I don't want a rerun or what somebody
10 wishes were a rerun.

11 MR. JACOBS: Your Honor, I reserve the right to
12 cross-examine him on some CM's. That is one thing. In
13 defense of the case, the defense is entitled to call
14 witnesses that they feel have relevant and competent
15 evidence. In light of certain disclosures that have been
16 made recently, if the defense chooses to make an application
17 to your Honor based upon new evidence that has come to light
18 and we indicate exactly what it is, we might make an
19 application. I am not saying we are, but I want to say that
20 it may come to pass in light of disclosures made by the
21 government and your Honor that we did not have at the time
22 he was on the stand, there might be a few questions relative
23 to those issues --

24 THE COURT: There might be.

25 MS. AMSTERDAM: The example of that, I guess,

1 would be the book, your Honor, that we found out subsequent
2 that there was a book.

3 THE COURT: That is one example of something that
4 I don't think we are going to get into, but we can talk
5 about that at another time. See you this afternoon at 2:30.
6 These are legal issues only, so it is only lawyers.

7 MR. JACOBS: Your Honor, everybody back at 2:30?

8 THE COURT: No, please. I am not taking
9 attendance. Everybody who wants to be there at 2:30, may.
10 Everybody who doesn't want to be there may leave.

11 (Luncheon recess)

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

2 Time noted: 2:45.

3 (In open court; jury not present)

4 THE COURT: Good afternoon. I'm sorry I am late.
5 Yes?

6 MS. STEWART: We all convened, Judge, for you to
7 hear that we are not objecting to the tape. But we thought
8 of some other things to --

9 THE COURT: Can I leave now?

10 MS. STEWART: Only if we can.

11 THE COURT: All right.

12 MS. STEWART: We had a couple of open questions.
13 I know we didn't plan this, but as long as we are all here.
14 One thing concerned the photographs that we attempted to put
15 in during Emad Salem's testimony. There are a series of
16 Dr. Abdel Rahman on trial in Egypt during the Sadat
17 assassination trial. We believe they were relevant to this
18 trial because of Emad Salem's remarks to his counterpart in
19 Egypt or to someone in Egyptian intelligence or to a friend
20 of his, whatever we want to characterize this, "Do you want
21 him in a cage here, or do you want him in a cage there?"

22 These photographs, I don't need all of them in, I
23 will be happy to get one of them in, show that trial and the
24 way trials are conducted in Egypt, which is that the
25 defendants are kept in a cell in the courtroom known as a

1 cage. For that reason it seems to me it is relevant to
2 show --

3 THE COURT: I believe he was questioned about
4 that, was he not?

5 MS. STEWART: Yes. And he identified the picture
6 as being what he meant by "the cage."

7 THE COURT: OK.

8 MR. McCARTHY: I mean, this is extrinsic evidence
9 of a consistent statement. There is no dispute about what
10 he meant about that.

11 THE COURT: He testified that people are in cells
12 and --

13 MS. STEWART: It is just illustrative of what he
14 meant. It is graphically showing how people are in cells,
15 in cages in courtrooms.

16 THE COURT: I think the jury can master the idea
17 of what it is for people to be in cells without seeing the
18 picture.

19 MS. STEWART: OK.

20 Second thing: Judge, on the Friday after the 4th
21 of July, which I think was the 7th, when we met to discuss
22 proffers and witnesses, etc., and having made proffers, you
23 ruled that in my case, for example, on Egyptian intelligence
24 I could call one agent, but I couldn't call all three of
25 them. The one that I was limited to was Nancy Floyd.

1 I would just put out, Judge, that when I tried to
2 get some information from John Anticev, we had a side bar
3 and at that point you said on the record, you know, if you
4 want to ask him about intelligence, you may ask him about
5 intelligence and then not call Nancy Floyd. I said, no, I
6 won't. I want to call Nancy Floyd.

7 At that time I did not know, of course, first of
8 all, that Nancy Floyd really had no contact with Emad Salem
9 after, or that she was ordered not to have any contact with
10 Emad Salem after the fall of '92. She really had very
11 little information to give about the events of spring 1993,
12 when Salem is in contact to the tune of about 20 tapes with
13 Egyptian intelligence.

14 Secondly, I did not expect answers from Nancy
15 Floyd such as, "You'll have to ask John about that. I was
16 at the meeting, but I can't comment on that."

17 That was in yesterday's testimony.

18 THE COURT: I don't recall her saying that you
19 would you would have to ask somebody else about a meeting at
20 which she was in attendance.

21 MS. STEWART: That was at page 15129 of
22 yesterday's transcript.

23 THE COURT: Hold it.

24 MS. STEWART: This was about a meeting that she
25 attended that Anticev attended and that Salem attended. It

1 had to do with searching the luggage of a lawyer in Egypt as
2 opposed to the United States.

3 THE COURT: Your question was: What was the
4 reason Emad Salem was asked to make contact in Egypt? In
5 other words, what reason did John Anticev have for asking
6 him to do that.

7 MS. STEWART: Right.

8 THE COURT: And his testimony at the trial was
9 that who had asked him to do it?

10 MS. STEWART: Say that again?

11 THE COURT: Did he testify at the trial as to who
12 had asked to reach out for somebody in Egypt to open the
13 man's bags?

14 MS. STEWART: I don't recall, Judge.

15 MR. MCCARTHY: My recollection is that he did,
16 your Honor, and he said it was Anticev.

17 MS. STEWART: My problem is, Judge, I guess it's
18 sort of replete throughout a lot of the testimony, is
19 that -- and it also has to do with the photograph which she
20 cannot say she knows anything about, this photograph which I
21 just would like to revisit also maybe on separate grounds,
22 but where she said, oh, yeah, she had seen the photograph,
23 she knew about the photograph, but she wasn't there when the
24 photograph was taken. She couldn't lay the proper
25 foundation for it. It's one thing to say you can call one

1 agent and that agent is going to basically be a spokesperson
2 for the events that took place. If that agent is going to
3 say, "You'll have to ask John about it," then I'm placed in
4 the position before the jury of the jury saying, "Yeah, but
5 why didn't she ask John about it? John was there, and Ms.
6 Stewart didn't ask him about that." It looks like I'm
7 trying to keep things away from them, which is the last
8 position I want to be in.

9 THE COURT: I understand that. I think it is a
10 little bit fanciful to suggest that the jury is going to sit
11 there with all that's going on in this case and condemn you
12 for not having asked John Anticev about that.

13 MS. STEWART: I wake up at 3 o'clock in the
14 morning, and I think of everything that can go wrong and,
15 you know, maybe --

16 THE COURT: If you are onto things like --

17 MS. STEWART: As you said to John Jacobs one
18 time, try decaf.

19 THE COURT: If you are onto things like that,
20 you're in very good shape.

21 MS. STEWART: That is not the only thing I think
22 about, Judge.

23 THE COURT: Given everything we have in the
24 record and the significance of the issue overall, I can't
25 justify recalling a witness then to start to ask about why

1 did you want him to reach out for somebody in Egypt. It was
2 obviously because they wanted to have the man's bags opened
3 to see what it is that, as I recall it, Dr. Abdel Rahman was
4 alleged to have given him during the meeting. That is what
5 we are talking about, right?

6 MS. STEWART: Right.

7 THE COURT: The person he supposedly gave the
8 package to. It's like: Why did the chicken cross the road?
9 Because he wanted to get on the other side. Obviously, the
10 reason he wanted him to call somebody in Egypt was he wanted
11 to find out what was in the package. Was that a sporting
12 thing to do? I tend to think not. But I would assume they
13 think not, too. I just don't -- I can't justify the
14 expenditure of time to start setting the framework for that
15 entire set of events simply to find out things like why did
16 you ask him to reach out to somebody in Egypt.

17 MR. STAVIS: Your Honor, I think there may be
18 other reasons why Mr. Anticev might be called. Your Honor
19 has reviewed now the OPR file, which we didn't have when we
20 in the Nosair defense called John Anticev. There is one
21 inconsistency. I'm not particularly interested in recalling
22 him. I think Mr. Jacobs has said that he wanted to call him
23 to pursue the OPR issue.

24 THE COURT: The OPR issue was apparently what was
25 turned over. The contents of his affidavit I directed be

1 turned over because I was turning over the contents of Nancy
2 Floyd's affidavit, and it was in what I regard as an excess
3 of caution. I don't see that as a basis for recalling him.

4 MR. STAVIS: Even Carson Dunbar --

5 THE COURT: He was questioned about whether there
6 was an OPR investigation, wasn't he?

7 MR. STAVIS: Yes, based upon the excerpt.

8 THE COURT: Right. The FBI communication.

9 MR. STAVIS: The excerpt was from the Airtel, and
10 we were given his affidavit. That is the distinction.

11 THE COURT: Right.

12 MR. PATEL: Just a footnote here, Judge, because
13 I think, as Mr. Stavis said, we're basically fighting
14 something that is not exactly our battle. We are just
15 trying to give the court a heads-up. There was a
16 contradiction not on what I examined Mr. Anticev about, but
17 on what Mr. Jacobs questioned him about. There was in the
18 affidavit a contrary statement.

19 THE COURT: I don't know what it involves. Let
20 me take it at face value. There was a contradiction in the
21 affidavit.

22 MS. STEWART: It directly would have impeached
23 something he testified to, and that is why I think Mr.
24 Jacobs wants to call him.

25 THE COURT: On what subject?

1 MR. PATEL: On tapes.

2 MR. STAVIS: The bootleg tapes and the knowledge
3 of the bootleg tapes and listening to the bootleg tapes.

4 THE COURT: I suppose Mr. Jacobs can fight his
5 own battles.

6 MR. STAVIS: The only reason I rose was because
7 your Honor was viewing Ms. Stewart's application in somewhat
8 of a vacuum, and there are other people affected by it.

9 THE COURT: It is not in a vacuum simply because
10 the topic you are talking about is different from the topic
11 she is talking about. We are not going to get into a
12 situation of, "Well, he's here anyway, so we might as well
13 ask him about a whole range of other things," any more with
14 him than we will with Salem.

15 MR. PATEL: I just want to give your Honor a
16 heads-up that there is was going to be what looks like a
17 meritorious application, a nonfrivolous application to ask
18 him to come back.

19 THE COURT: Whether it is meritorious or
20 meretricious is something you will decide at a later time.

21 MS. STEWART: It's like haram and halal.

22 THE COURT: Right.

23 MS. STEWART: Then, Judge, this picture, Judge,
24 could I know why the government persists in objecting to
25 this picture?

1 THE COURT: I assume they objected on foundation
2 grounds. I mean, now that you have got it, why don't you
3 stipulate that it shows what it shows?

4 MR. MCCARTHY: Stipulated.

5 MS. STEWART: Thank you. I will sit.

6 THE COURT: The picture is in.

7 Ms. Stewart, you asked me to look at 5895 and
8 5896 of the transcript.

9 MS. STEWART: Yes.

10 THE COURT: And to compare it with the agent's
11 report on the polygraph examination with a view toward
12 calling Holliman to testify. I have the pages. Do you have
13 them?

14 MS. STEWART: I remember it. I know it is very
15 short, Judge.

16 THE COURT: It is short.

17 You asked him whether he told Holliman that he
18 had ties with Egyptian intelligence. He said Egyptian
19 military intelligence. You said, military intelligence. He
20 said, yes, ma'am I did. You asked him whether he hadn't in
21 fact said that that very morning he had spoken to somebody
22 from intelligence. And he said, I may said that, which was,
23 I think, his way of saying I may have said that. You asked
24 whether he remembered the conversation at all. He said, no.
25 Then you asked him who he remembered perhaps speaking to.

1 He didn't recall, and you went on.

2 This isn't critical, but he wasn't -- when I say
3 "this isn't critical" I mean I am not being critical of you,
4 but he wasn't shown Holliman's memo even to refresh his
5 recollection, let alone confront him with, isn't it a fact
6 that you told him that you had done such and such and so and
7 so. I don't see that as a basis for now calling Holliman in
8 essence to confirm that to the extent he said he did say
9 that he had met with military intelligence during this
10 period, that he in fact did say that, and if in fact that's
11 what Holliman says he said, that he met with somebody that
12 morning. It is in essence just a reprise of what you
13 brought out on cross.

14 MS. STEWART: I think it goes also, Judge -- and
15 I put this out advisedly because I can't say I have thought
16 it through very clearly -- but to the extent that he didn't
17 want to answer Holliman's questions and Holliman then makes
18 a finding at the bottom, that line that Salem only talks
19 about what he wants to talk about with regard to his foreign
20 intelligence activities, is this an admission by silence the
21 sort of a situation that we could elicit from Agent
22 Holliman.

23 THE COURT: I don't think this agent or any other
24 agent is competent to testify whether Mr. Salem tells people
25 what he wants to tell them or doesn't tell them what he

1 doesn't want to tell them. That is an argument I am sure
2 you are going to make. But I don't think he's competent to
3 make some sort of finding either as an agent or a
4 polygrapher or anything else that that's what he does. I
5 don't see that.

6 What else do we have? Since Mr. Nooter is
7 here -- I'm sorry, Mr. Wasserman?

8 MR. WASSERMAN: Your Honor, I raise it because
9 apparently my case is starting on Monday, your Honor, I
10 understand the government has two objections to evidence I
11 seek to introduce.

12 THE COURT: There is only one thing that I have
13 been shown, and that is the transcript of a videotape.

14 MR. WASSERMAN: Yes, your Honor. That's one.
15 And then there is an objection the government has to
16 translation disputes on two pages of CM50.

17 THE COURT: Let's talk about the videotape first.

18 MR. WASSERMAN: Yes, your Honor.

19 THE COURT: In 25 words or less, why isn't that
20 hearsay?

21 MR. WASSERMAN: Calverton. The government starts
22 its case showing pictures of Mahmud Abouhalima, and my
23 client at a firing range in Calverton. It was in 1989.
24 This video, made by my client, distributed by the Alkifah
25 office states it's jihad for Afghanistan. It explains his

1 association with people like Mahmud Abouhalima, why he is
2 out at the firing range. It explains a host of other
3 things, but in one word it's Calverton and that's where the
4 government starts.

5 THE COURT: It's hearsay.

6 MR. WASSERMAN: I'm sorry?

7 THE COURT: It's hearsay.

8 MR. WASSERMAN: Let me address that, if I may.
9 First of all, the tape doesn't come in until my client is on
10 the stand and he can be crossed about it. Second, I'm not
11 offering it for any truth of the statements in it, but
12 merely to show that he has made a jihad product, if you
13 will, which is sold and distributed by the Alkifah office
14 and explains in the period charged by the government as a
15 period in this conspiracy what he's doing with reference to
16 jihad.

17 THE COURT: That statement could be made about
18 any hearsay statement, not that it's sold obviously, but
19 that it describes what somebody was doing or says he was
20 doing at the time.

21 MR. WASSERMAN: Your Honor, I am not offering it
22 for anything other than the thing itself. He will have to
23 stand or fall on his own in his testimony about whether he
24 was in Afghanistan, but the fact that he talks about
25 Americans going to Afghanistan for jihad, and he urges

1 people to go, and that this was sold and distributed by the
2 Alkifah office, as well, and it's not hearsay because the
3 government -- first of all, it's not offered for the truth.

4 THE COURT: Mr. Stavis.

5 MR. STAVIS: This tape that Mr. Wasserman wants
6 to play was recovered from my client's home. It is
7 videotape No. 31. Your Honor has glossed over something
8 that Mr. Wasserman said that I think is very significant.
9 The tape was distributed, your Honor. The tape is part of
10 an organization that both Mr. Hampton-El and Sayyid Nosair
11 are affiliated with.

12 All the other videotapes that I sought to
13 introduce on the subject of Afghanistan I did introduce.
14 Whatever procedure your Honor wants to use, I suppose I
15 could move in my own exhibit of the Abdul Rashid videotape
16 to show my client's state of mind as well because it goes to
17 my client's interest in Afghanistan. But it is the same
18 argument that Mr. Wasserman is making, the fact that the
19 tape was distributed, not that Abdul Rashid stepped on a
20 land mine or didn't step on a land mine or got shot or
21 didn't get shot or anything like that.

22 THE COURT: "Or anything like that" covers the
23 entire substance of the tape, but you can go on.

24 MR. STAVIS: So your Honor understands the
25 argument, Mr. Hampton-El was used as something of a

1 recruitment poster for Afghanistan and that is what this
2 tape is, it is a recruitment poster for Afghanistan which is
3 what my client was doing during the period of the indictment
4 and what Mr. Hampton-El was doing during the period of
5 indictment. It is not the truth of whether he stepped on a
6 land mine or didn't step on a land mine. The videotape is a
7 recruitment poster for people to join this jihad that they
8 were involved in. For that reason, whether I admitted it as
9 a Nosair exhibit or as a Hampton-El exhibit, I think it
10 should be admitted.

11 MR. WASSERMAN: Your Honor, one of the points
12 that concerns me is that when my clients takes the stand and
13 he makes the statement as to why he was at Calverton, I
14 would rather not be stuck simply with only being permitted
15 to put in his statement, but also to be able to put in that
16 the same reason he is at Calverton is the same reason that
17 goes behind the making and distribution of this video. I
18 have something objective to show the jury that supports my
19 client's testimony.

20 It is not being offered in a void. It is being
21 offered as part of a, you know, the government puts in a
22 picture to show association. I would like to put in a video
23 to also show association, to be able to make explanations.

24 You are concerned about the truth of the matter
25 being asserted. I have no problem with your instructing the

1 jury that they can judge whether he was wounded in
2 Afghanistan or whatever based upon his testimony. The video
3 is not offered for that. It is offered as a jihad product
4 and to support his explanation of how it is that he knows
5 people like Nosair, like Mahmud Abouhalima, people that the
6 government has gone to great pains to establish a connection
7 with.

8 THE COURT: Mr. Khuzami?

9 MR. KHUZAMI: Your Honor, Dr. Rashid can get on
10 the stand and explain that he made a video, and even that it
11 was distributed. It might come in as a prior consistent
12 statement if we were to impeach him in that area. There is
13 nothing in this videotape that shows that it was a
14 recruitment tool. He talks about his exploits in
15 Afghanistan and in general speaks about how jihad is a good
16 thing.

17 If others in turn decided to distribute it,
18 including those at the Alkifah Refugee Center, that's not
19 proven by the statements in the videotape. In addition,
20 unless you take the statements for their truth, it seems to
21 me difficult to argue that this has a nonhearsay purpose,
22 that this was a recruiting device for Afghanistan. In
23 addition, the statement of Dr. Rashid on the witness stand
24 can come in without all of the additional information that's
25 in the videotape that would seem to be subject to a 403

1 objection.

2 THE COURT: I'm sorry. Do you want to tell me
3 something else?

4 MR. STAVIS: What I did want to say is that Mr.
5 Khuzami has just said that it is being offered for the
6 hearsay, whether or not Afghanistan is great or whatever
7 would be the truth of it, or whether or not he stepped on a
8 land mine. The fact that it is recruitment is proven by the
9 fact that it is going to be coming from my client's home.
10 Whether it is a Nosair exhibit or a Hampton-El exhibit --

11 THE COURT: I don't think the fact that it was a
12 recruitment tool, if that is a fact, is proven by its
13 recovery from your client's home. But, in any event, I have
14 tapes of other people in my home that are not recruitment
15 for anything.

16 MR. STAVIS: The foundation for that will await
17 Mr. Wasserman's case, but it was in fact, and we represented
18 to you that it was a recruitment device, and Mr. --

19 THE COURT: I will go this far with this:
20 Obviously if he testifies that he made a tape, I will permit
21 you to mark it and show that there is a tape, and it will be
22 stipulated that it is the tape that he made. I will not
23 permit it to be shown. I will also permit you to prove, if
24 you can, that that tape that he made was found in your
25 client's home.

1 MR. STAVIS: I don't know where his tape comes
2 from. I am sure that the government will stipulate --

3 MR. FITZGERALD: Yes, we will.

4 THE COURT: The government has stipulated that it
5 was found in his home.

6 MR. WASSERMAN: Judge, in the text itself he says
7 that, "I am going to back to fight in Afghanistan. My
8 reason for telling you about my experience is because I want
9 you to feel and perhaps to seek the rewards or endeavor in
10 the common fight for the cause of Allah.

11 The government is accusing him of waging a war of
12 jihad in America. This is clearly statements that are not
13 in accord with that. The video is made for proselytizing,
14 to get Americans to go to Afghanistan.

15 Also, Judge, there are expressions that are used
16 in that video which appear in CM25, and the context that the
17 government wants to argue is a context to set off bombs in
18 the United States. I would like to be able to refer to the
19 fact that these exact cliches, if you will, are used in the
20 context of Afghanistan.

21 (Continued on next page)

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1 THE COURT: That people use cliches in different
2 settings is a commonplace. I don't know which cliches you
3 have in mind or sayings or whatever. Cliches are your word.
4 I don't know what they are.

5 MR. WASSERMAN: At some point in CM 25 he tells
6 Emad and Siddig, as they are discussing some aspect of their
7 plans, I am striving to --

8 THE COURT: I am sorry.

9 MR. WASSERMAN: I am striving to get to Jendra,
10 and he is talking about response to their discussions.
11 J-E-N-D-R-A, I believe. Those are the exact expressions
12 that he is using in this video where he is talking about his
13 fighting in Afghanistan, and that is what he is trying to do
14 in connection with jihad in Afghanistan.

15 The other thing is that I think --

16 THE COURT: I am sorry. They are having
17 difficulty hearing you. It was said before that it would be
18 appreciated if you went to the microphones.

19 MR. WASSERMAN: I am sorry. I was just trying
20 the "25 words or less might be more."

21 THE COURT: I think you are over.

22 MR. WASSERMAN: Your Honor, why can't it come in
23 with an instruction that it is not introduced for the truth
24 but simply that it is what it is and it is what
25 Mr. Hampton-El's testimony and the cross-examination show it

1 to be?

2 THE COURT: Because digging a hole simply so that
3 we can then all jump out of it is not necessary.

4 THE COURT: That is what that would amount to.

5 MR. WASSERMAN: My problem also is that I presume
6 the government can cross him on it, and it is something that
7 he wants to show to the jury and I think that he should have
8 the opportunity to show to the jury this jihad product.

9 THE COURT: I understand that he wants to.

10 MR. WASSERMAN: But the government is free to use
11 the tape to cross-examine?

12 THE COURT: Yes. That's baseball, and if they
13 use enough, I suppose there is a certain amount of risk that
14 it would come in. So live and hope.

15 MR. WASSERMAN: The other issue, as I understand,
16 is something that I would prefer the government to state
17 their reasons as I have no comprehension of their reason for
18 a translation dispute on CM 50.

19 MR. MCCARTHY: The government's problem is the
20 following. There is, I guess, 11 or 12 parties in this case
21 and all of them are playing by the same set of rules with
22 respect to translations, with the exception of one, which
23 would be Hampton-El. We had a process in this case where
24 the government was directed to turn over draft transcripts.
25 The defense submitted their proposals. We convened on the

1 proposals. Some of them that were worth fighting over were
2 underscored, others were abandoned by both sides as an
3 accommodation because it simply wasn't worth fighting over
4 and it would have taken way too much time.

5 What Mr. Hampton-El wants to do, notwithstanding
6 the fact that he participated in that process and in fact
7 had us underscore a number of the translation disputes that
8 he selected, he now has taken the position that everything
9 he ever gave us in the way of a proposal is actually now a
10 dispute, so that even though transcripts went to the jury
11 with the understanding that the version that went to the
12 jury was not in dispute, he now wants to challenge portions
13 of a couple of conversations that were not in dispute, on
14 the basis, as I understand it, of the fact that at some
15 point in time he submitted to us proposed language that we
16 didn't adopt and we therefore were on notice that that was
17 in dispute.

18 As I understand it, there are two conversations
19 in dispute, and if the only problem here was those two
20 conversations, I suppose we would do what we usually do,
21 which is simply roll over and let them do it without
22 objecting to it. The problem is that coming behind
23 Mr. Hampton-El's case are a number of other cases, and if
24 the rules of the game are going to be changed in what is
25 probably about the eighth or ninth inning by now, I just

1 think it could be a disaster coming behind Mr. Hampton-El.

2 MR. WASSERMAN: Your Honor, the translation
3 dispute is centered on CM 50. It is a substantial one.
4 There is a reason behind the government not wanting it
5 coming in. I had several memos to the government concerning
6 our translation disputes, several conversations. It was a
7 position never abandoned. The government is taking the
8 position that because they did not underline it I am
9 precluded now from putting in the accurate translation.

10 THE COURT: Are you telling me you made a mistake
11 when you didn't insist that whatever transcript was in be
12 underlined?

13 MR. WASSERMAN: I am telling you, your Honor,
14 that I told them that it wasn't accurate and it went in
15 ununderlined. The translator who got on the stand -- let me
16 put it this way, Judge. The interpreter testified that what
17 was underlined was the only thing he was giving his opinion
18 about as being a fair and accurate translation. The rest of
19 it was left with no opinion whatsoever.

20 The whole purpose of notifying the government,
21 which I did extensively, time and time again, on this
22 particular CM was that this was an area in dispute. That
23 was the whole purpose, was to focus the disputed area. That
24 area was never abandoned by me and I can't understand how I
25 can be precluded from putting my interpreter on with respect

1 to those two pages when it was a position that I
2 consistently made. It was their mistake not to underline
3 it, it was my mistake not to insist on it. The
4 government is not prejudiced, the jury is not prejudiced,
5 why should I be prejudiced?

6 THE COURT: Are we now going to have everybody
7 who ever came in with a problem have translators come in and
8 put in their version?

9 MR. WASSERMAN: Your Honor, the only issue is
10 that it wasn't underlined. The government can't maintain in
11 good faith that I abandoned the position. I never did.
12 It's an important conversation and it is ridiculous that
13 they should take this position.

14 I am sorry, Mr. McCarthy.

15 THE COURT: The record should reflect that Mr.
16 Wasserman is screaming and banging his fist.

17 MR. WASSERMAN: Your Honor, I am sorry, I can't
18 understand why they are taking that position. They can't
19 say one jot that I abandoned my position. I never did,
20 ever. I have memos to show that I continuously came back on
21 transcript. They know this is an area of dispute. They
22 can't tell you this is not an area of dispute and that they
23 didn't know about it throughout. They don't have to correct
24 anything with the jury.

25 MR. NOOTER: Judge, as one of those coming

1 behind, I don't think it is going to open a floodgate to a
2 lot of changes with respect to CM's. I don't see it. I
3 think most of us did meet, most of us did make every effort
4 to arrive at a unified transcript, and I think all we are
5 talking about are one or two whatever they were, inadvertent
6 or whatever --

7 THE COURT: I appreciate solidarity, but what I
8 want to know is, are you rising because you plan to do
9 likewise?

10 MR. NOOTER: I am rising because I don't plan to
11 do likewise, because I don't think I have anything like that
12 to do.

13 THE COURT: Ms. London.

14 MR. NOOTER: I am rising because my impression
15 from what Mr. McCarthy said was that he would more or less
16 consent to what Mr. Wasserman wants, he is just afraid that
17 all the other people down the line are going to open the
18 floodgate. I don't think that is what is going to happen.

19 THE COURT: Ms. London.

20 MS. LONDON: Your Honor, I rise because I agree
21 with what Mr. Nooter is saying. There were certain
22 transcript changes that may possibly be in contention that
23 were underlined. At this point I don't believe that I will
24 even be doing anything about those. I believe there are one
25 or two that are still underlined but I don't believe that I

1 will be coming forward with massive transcript changes and
2 certainly on anything that the government was not alerted to
3 beforehand.

4 THE COURT: The government was alerted to
5 anything that anybody ever raised. The question is whether
6 anybody else is now going to be going back over transcripts
7 that were not underlined and saying well, I had really
8 disputed this all along and the fact that it wasn't
9 underlined is a fortuity and shouldn't be held against me.
10 That is a different thing.

11 MS. LONDON: That is correct, your Honor. I
12 don't plan to do that. If anything, it would be on the
13 segments that Mr. McCarthy and I --

14 THE COURT: Agreed to disagree. That is all fair
15 game.

16 MS. LONDON: I don't believe there will be
17 floodgates opened for Mr. Elhassan.

18 THE COURT: Mr. Lavine.

19 MR. LAVINE: Judge, to be candid, there is one
20 thing that I am taking up with the government later this
21 afternoon which concerns the translation of a certain
22 portion of one of the videotapes which initially was not in
23 contention, but now having further discussed the matter with
24 my client and interpreters there is a matter of contention,
25 but it is one word that I am concerned about, one single

1 word. Judge, I don't think what we are going to be doing
2 here is going to be a floodgate. I think we are talking
3 about a finite line of references that I think are going to
4 be easily manageable.

5 THE COURT: Finite number. 8,741 is a finite
6 number, too.

7 MR. WASSERMAN: Mr. Lavine's point is that it is
8 a subsequent matter which may have come up. Good for his
9 position that he has that. This is something the government
10 has been aware of consistently. There is no newness to it
11 whatsoever. Their argument is that I should be precluded
12 and they can't take the position that I abandoned the
13 position, I never did.

14 THE COURT: I should have asked for everybody to
15 be here.

16 MS. STEWART: Does the government have a specific
17 concern that a specific counsel approached them a la
18 Wasserman?

19 THE COURT: No, they are worried about --

20 MR. MCCARTHY: Precedent.

21 THE COURT: I am not setting any precedent. We
22 are all lawyers. Let's not get hung up on that. I am
23 serious. If I make an exception for one person, that is an
24 exception for one person, and, you know, everybody else can
25 holler about it. I want to see what we are talking about.

1 May I?

2 MR. WASSERMAN: I will show you the two memos I
3 wrote to the government.

4 THE COURT: I am not interested in your memos, I
5 am interested in the transcripts.

6 MR. McCARTHY: Your Honor, I must tell you, I am
7 not looking to take up your time with something that is not
8 in issue. What we are worried about is a couple of things.
9 One is the floodgate effect. The others are, a transcript
10 has already been given to the jury with respect to this
11 conversation, without indication that it was in dispute. We
12 would ask that, number one, it be made clear to the jury in
13 some fashion that the first transcript was a version that
14 was arrived at by accommodation and that this is not
15 attacking the government version.

16 MR. WASSERMAN: Your Honor, that is simply not
17 true. There was no accommodation on that. Simply the
18 passages weren't underlined.

19 THE COURT: I think that is not what he is
20 talking about.

21 MR. WASSERMAN: I think it is. He is saying --

22 THE COURT: Mr. Wasserman, don't talk yourself
23 into a bad situation.

24 MR. McCARTHY: If I may, let me put the other two
25 concerns I have on the table.

1 Number two, I would assume that we would be
2 permitted in rebuttal to put on our translator with respect
3 to that portion.

4 THE COURT: Absolutely.

5 MR. MCCARTHY: And that our translator would not
6 be able to be impeached with respect to the first transcript
7 that went to the jury that was not in dispute.

8 THE COURT: That is absolutely correct.

9 MR. WASSERMAN: Your Honor --

10 THE COURT: You are not going to have your cake
11 and eat it, too. If you want your dispute you can have your
12 dispute.

13 MR. WASSERMAN: I want the dispute, and if I have
14 to give on that issue, I have to give on that issue.

15 THE COURT: You do. You do. If a deal gets
16 struck, the deal will be that you get your dispute, they get
17 their witness, but you don't get to get up and cross-examine
18 their witness based on a prior version of a transcript. You
19 can cross-examine with dictionaries and anything else you
20 like, but not on the basis of a prior version of the
21 transcript.

22 MR. WASSERMAN: OK. Your Honor, I can hand you
23 up --

24 THE COURT: That is what I asked for originally,
25 the transcript.

1 MR. WASSERMAN: Your Honor, if I may, what is
2 underlined is what is in dispute. What is written in hand,
3 your Honor, is simply what I wrote for my own purposes as to
4 the government transcript. I also have my memos to the
5 government in February and March, outlining word by word
6 disputes, basically reflecting what is underlined.

7 (Pause)

8 MR. McCARTHY: My only other concern, your Honor,
9 I would like to ask Mr. Wasserman whether his version has
10 been circulated to all the other defense lawyers. I don't
11 want to be in a position of being burned, as we have been
12 once before. We had a last minute change close to the end
13 of the government's case which was prompted by an inquiry
14 from one lawyer, when our translator checked it out it
15 turned out that it got worse for another defendant, and then
16 we got objections on that end.

17 MR. WASSERMAN: Yes, it has, your Honor. It has.

18 THE COURT: Mr. Wasserman.

19 Mr. Nooter, you submitted a letter to me
20 yesterday renewing a Rule 29 motion.

21 MR. NOOTER: Yes.

22 THE COURT: And as I understand it, the argument
23 was that even if the effect of what he said was to, that is,
24 of your client saying that he would go get cars was to free
25 up other people to do other things, that that still didn't

1 show that he himself had made an attempt. Is that the
2 argument?

3 MR. NOOTER: Yes, your Honor, because the words,
4 I think, that come from the Peoni and other cases -- I don't
5 have the letter in front of me, but the words "by some
6 action," which I think is the crux of what I am alleging is
7 missing, is an action even if it is a verbal action, the "by
8 some action" is supposed to be evidence of the intent to
9 make the plan succeed, so that even though it is evidentiary
10 speaking it is an action, it goes to the issue of intent.
11 That is what it modifies or that is what it elaborates on.
12 So that you would have to go back and look at how the words
13 are said and in what context they are said, and the
14 conversation as a whole as well as the specifics that I
15 point out in order to analyze whether there is sufficient
16 proof that the verbal act which occurred was indeed a
17 sufficient action to prove the intent or desire to bring the
18 attempted crime to fruition, all the inchoate aspects to
19 this aiding and abetting attempt. There is sort of a
20 subsidiary argument as well, but that is the main thrust.

21 THE COURT: Just as a statement that says I am
22 going to go to Illinois, for example, could be introduced as
23 nonhearsay to tend to show the fact that one did go to
24 Illinois, why can't the statement I am going to get cars be
25 introduced to show that indeed some effort was made to get

1 cars?

2 MR. NOOTER: Because what I am saying is that
3 wasn't the statement. The statement was let me try. There
4 is a 75 percent chance --

5 THE COURT: That is a statement that at least
6 arguably says I am going to try to get cars. If you say let
7 me try, literally translated that means give me permission
8 to try. We all know that in the vernacular what that means
9 is I intend to try.

10 MR. NOOTER: Two things. One is that in the
11 context of the conversation as a whole, I would say that the
12 "let me try" was very equivocal and that it only came up --

13 THE COURT: I think you should say that to a
14 jury.

15 MR. NOOTER: I understand that is arguably a jury
16 question.

17 The other point, I think, of the case that your
18 Honor cited -- Garguilo, I think it is --

19 THE COURT: Garguilo.

20 MR. NOOTER: It seemed that your Honor's
21 interpretation was a bit of a stretch of the words Judge
22 Friendly used, which were stronger words, which are in my
23 letter. Without my letter I can't remember that. But
24 reassured seemed to me a watered down version of what
25 Garguilo said, which were two separate phrases, one of which

1 was stimulated, the other of which, I think -- the other I
2 don't remember, but put together in the quote of the case.
3 But both of them were stronger than what seemed more of a
4 passive reassurance to the others, that they then could
5 relax and not have to press to go out and get cars by
6 themselves.

7 THE COURT: I understand your point. Obviously
8 this situation is slightly different from Garguilo, but I
9 still think that if people are running around in a tizzy
10 trying to get cars and somebody is approached and says OK,
11 I'm your man, 75 percent chance I can do it, it's arguable.
12 I am not saying it's the strongest case in the world but
13 it's a jury --

14 MR. NOOTER: In your Honor's decision you said
15 that a properly instructed jury might be able to find -- we
16 will have to discuss at some points what a properly
17 instructed jury would be.

18 THE COURT: That instruction will be the standard
19 instruction on attempt.

20 MR. NOOTER: I think there may have to be some
21 clarification on this point. There may not. Let me just
22 think about it.

23 THE COURT: I am just going to give the
24 instructions. I am not going to give factual arguments.
25 You folks are going to do that.

1 MR. NOOTER: That is understood.

2 THE COURT: One other thing. Mr. Lavine, your
3 client's note, which these other people haven't seen, one of
4 the parts that it taxed me for, the parts that it didn't tax
5 you, was not responding to a severance motion. Is that
6 true? Did I not respond to a severance motion?

7 MR. LAVINE: I am not a hundred percent sure that
8 you fully finalized a formal written decision, but you have
9 told me at least a couple of times what that decision is
10 going to be, and I think that I come in second on that
11 decision.

12 THE COURT: I think what I said in essence was
13 that if the proof against your client is less than the proof
14 against other people and/or if he played a lesser role than
15 other people, that still doesn't entitle you to a severance
16 so long as he arguably played a role in the same conspiracy
17 that others are charged in, and it was my view that a jury
18 could so find and therefore that a severance was
19 appropriate.

20 MR. LAVINE: I must admit I have heard that
21 language from you before, your Honor, and that is the
22 situation.

23 MR. MCCARTHY: I just want to see if I understand
24 it. I have a recollection that after your Honor ruled on
25 the wave of severance motions for all defendants --

1 THE COURT: Right. That's the problem. His was
2 later.

3 MR. MCCARTHY: I think he made a second one in
4 which the allegation was that without a severance he was
5 going to be deprived of the exculpatory testimony of three
6 of his codefendants. I recall responding to that. Off the
7 top of my head, Judge, I don't remember whether you wrote an
8 opinion on it.

9 THE COURT: Ms. Schwartz, who is the
10 institutional memory here, says that I denied it at a
11 conference and said that I would issue an opinion, but have
12 not issued the opinion.

13 MR. LAVINE: That is correct, your Honor. My
14 client has been advised of that and he is aware of that.

15 THE COURT: I don't mean to make light of it.
16 Whatever he wants is something suitable for framing? Is
17 that the idea?

18 MR. LAVINE: That may very well be his position,
19 your Honor.

20 THE COURT: I understand.

21 MR. LAVINE: Your Honor, just for clarification,
22 the three codefendants who had at one point offered to give
23 him exculpatory testimony were Rashid, Dr. or Mr. Rashid,
24 whoever he is, Clement Hampton-El was prepared to testify
25 that he did not know my client before they got to the MCC,

1 and I am trying to remember but I think that the identical
2 substance went as far as Mr. Nosair as well. Then there was
3 additionally an affidavit which had been executed by Siddig
4 Ibrahim Siddig Ali on, I believe, June 7 of 1994, just a few
5 days before his initial sojourn with the government. Those
6 were the three.

7 THE COURT: I was going to ask which side of the
8 line was he on on that date.

9 MR. LAVINE: I thought he was on my side of the
10 line on June 7. I think it was a matter of hours that he
11 was on the other side of the line.

12 THE COURT: Save the affidavit; it may become a
13 collector's item.

14 MR. LAVINE: Autographed, it may be worth
15 something some day, your Honor.

16 THE COURT: See you Monday.

17 (Proceedings adjourned until Monday, July 31,
18 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.

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)

July 31, 1995
9:45 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 THE COURT: Good morning.

4 MR. WASSERMAN: Good morning, your Honor. Joel
5 Blum will be over in a minute. The projector was set up but
6 it was moved at the suggestion of the marshals to there, and
7 he is just going to set it up. It will take 60 seconds.

8 THE COURT: The jury is on its way in.

9 MR. WASSERMAN: Then he can do it when they are
10 here, I guess, because it is the first order of business
11 that I have. It will just take him a second.

12 (Pause)

13 (Jury present)

14 THE COURT: Good morning, ladies and gentlemen.

15 JURORS: Good morning.

16 THE COURT: We had some technical problems but I
17 think we have got them ironed out now and we are ready to
18 go.

19 Mr. Wasserman.

20 MR. WASSERMAN: Thank you, your Honor. Your
21 Honor, at this time defendant Hampton-El is proposing to
22 introduce into evidence several FISA's, and I will read them
23 into the record, and this is without objection from the
24 government. These FISA's are Hampton-El P1 through 5, and
25 those are a series of conversations between Mr. Hampton-El

1 and a man named Aubyn J. Pusey, P-U-S-E-Y. These
2 conversations take place on April 6, April 28, May 3, May
3 11, and May 11.

4 THE COURT: Those are received without objection.

5 MR. WASSERMAN: Those are the tapes and the
6 transcripts, your Honor, the tapes being the extracts from
7 the FISA recordings made by the government and the
8 transcript as prepared by the defense.

9 (Defendant Hampton-El Exhibits P1 through P5 were
10 received in evidence)

11 MR. WASSERMAN: That will be the first sequence,
12 your Honor, and then there will be Hampton-El 01 through 05.
13 Those are a series of conversations between Mr. Hampton-El
14 and Mr. Amir Abdelgani, and those conversations take place
15 and will be played sequentially, April 24, April 24 -- four
16 on April 24 and one on April 26. Again, it is the tapes and
17 the transcripts reflecting them.

18 THE COURT: Wait a second. How many
19 conversations do you have?

20 MR. WASSERMAN: Five, your Honor. 01 through 05.
21 For the record, it is the letter O.

22 THE COURT: Right. That is 01 to 05, received
23 without objection. Go ahead.

24 (Defendant Hampton-El Exhibits 01 through 05
25 received in evidence)

1 MR. WASSERMAN: Also at the same time we are
2 introducing into evidence a series of checks and receipts,
3 Exhibits S1 through S5, without objection from the
4 government. S1 is a receipt for \$800 dated February 20 from
5 Mr. Hampton-El for security purposes. The second receipt is
6 for \$900 same date, for rent, for 251 Rogers Avenue. The
7 third document, S3, is dated April 4. It is a check made
8 payable to Aubyn Pusey, P-U-S-E-Y for \$900, marked rent, 251
9 Rogers Avenue, signed by Robert Hampton-El. S4 is dated May
10 11, for \$1,600, again made out to Mr. Pusey, and it is
11 denoted or marked on the check rent, 4-20, 5-20, 6-20,
12 signed by Robert Hampton-El. And finally S5 is dated May
13 12, \$500, again made out to Mr. Pusey, signed by
14 Mr. Hampton-El and noted on the front or April and May.

15 THE COURT: This is all for which year?

16 MR. WASSERMAN: This is all 1994, your Honor.

17 MR. KHUZAMI: Your Honor, for the record, the O
18 and P series of conversations are in English, so the
19 transcripts are coming in as aids.

20 THE COURT: Right.

21 (Defendant Hampton-El Exhibits S1 through S5
22 received in evidence)

23 MR. WASSERMAN: Your Honor, at this time we are
24 going to start with the P series.

25 THE COURT: Go ahead.

1 MR. WASSERMAN: Thank you, your Honor. The first
2 conversation is April 6, 1993.

3 THE COURT: These transcripts are contained in
4 the green binders.

5 (Tapes played)

6 MR. WASSERMAN: Your Honor, the next series of
7 FISA's to be played are 01 through 05. Those are
8 conversations between Mr. Hampton-El and Mr. Amir Abdelgani.

9 THE COURT: Go ahead.

10 (Tapes played)

11 MR. WASSERMAN: Your Honor, at this time we are
12 calling Mohamed Yousry to the stand. We need to set up.

13 MOHAMED YOUSRY,

14 called as a witness by the defense,

15 having been duly sworn, testified as follows:

16 THE COURT: Go ahead, Mr. Wasserman.

17 (Continued on next page)

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1 DIRECT EXAMINATION

2 BY MR. WASSERMAN:

3 Q Good morning, Mr. Yousry.

4 A Good morning.

5 Q You have testified here a few times?

6 A Yes.

7 Q I want to show you a series of tape cassettes and
8 transcripts. They have been identified as defendant
9 Hampton-El Q-1 for the tape and Q-1T for the transcript; Q-6
10 for the tape and Q-6T for the transcript; Q-24 tape, Q-24T
11 for the transcript; Q-27 and Q-27T; Q-29 and Q-29T; Q-35 and
12 Q-35T; Q-36 and 36T; Q-37 and 37T; Q-40 and 40T; Q-43 and
13 43T; Q-44 and 44T; Q-47 and 47T; Q-50 and 50T; Q-52 and 52T;
14 Q-60 and 60T; Q-63 and 63T; and Q-64 and 64T.

15 Do you recognize those tapes and transcripts?

16 A Yes, I do.

17 Q The tapes represent copies of certain portions of
18 what are referred to in this case as CM recordings?

19 A Yes, they do.

20 Q And the numbers that I have been reading into the
21 record such as Q-1 or Q-1T refer to the CM number?

22 A CM 1.

23 Q Do you recognize the voices on the tapes?

24 A Yes, I do.

25 Q Are the attributions that you have indicated on

1 the tapes fair and accurate attributions?

2 A Yes, they are.

3 Q The translation, you have translated these tapes
4 from Arabic to English, correct?

5 A Yes, I did.

6 Q Where there are underlinings in the transcripts,
7 is it your opinion that those are fair and accurate
8 translations from Arabic to English?

9 A Yes, they are.

10 MR. WASSERMAN: Your Honor, at this time I would
11 move into evidence the Q series read into the record.

12 MR. BERNSTEIN: Your Honor, may we see certain
13 documents prior to admission?

14 MR. WASSERMAN: I am sorry.

15 THE COURT: He wants to see certain documents
16 before they are received.

17 (Pause)

18 MR. BERNSTEIN: Your Honor, we have no objection
19 at this time subject to my conversation with Mr. Wasserman.
20 If in fact if in fact there are objections we will raise
21 them at side bar when we get to those transcripts. I want
22 Mr. Wasserman to go forward without interruption.

23 THE COURT: Those are received subject to
24 possible objections by Mr. Bernstein. That is the Q series.

25 (Defendant Hampton-El Exhibits Q-1, Q-1T, Q-6,

1 Q-6T, Q-24, Q-24T, Q-27, Q-27T, Q-29, Q-29T, Q-35, Q-35T,
2 Q-36, Q-36T, Q-37, Q-37T, Q-40, Q-40T; Q-43, Q-43T, Q-44,
3 Q-44T, Q-47, Q-47T, Q-50 Q-50T, Q-52, Q-52T, Q-60 Q-60T,
4 Q-63 Q-63T, Q-64 and Q-64T received in evidence)

5 MR. WASSERMAN: Your Honor, may I set up?

6 THE COURT: Go ahead.

7 MR. WASSERMAN: Your Honor, could you inquire
8 whether the jury can see?

9 THE COURT: I trust everyone can see the screen.

10 Mr. Wasserman, you will have to use a microphone
11 to examine.

12 MR. WASSERMAN: I understand. Your Honor, may
13 the witness leave the stand and come to the projector?

14 THE COURT: Yes, he may, as long as he can be
15 heard.

16 (Witness steps down from witness stand)

17 MR. WASSERMAN: Your Honor, at this time we are
18 going to play Q-1, the tape, and Mr. Yousry will point out
19 on the projector the line by line progression of the tape
20 and then the English translation in the transcript.

21 THE COURT: The entire transcript?

22 MR. WASSERMAN: Your Honor, no. It is just the
23 set of lines that appear on the screen.

24 THE COURT: Are you going to be doing that with
25 every transcript that you introduced?

1 MR. WASSERMAN: No.

2 THE COURT: Go ahead.

3 (Tape played)

4 Q Mr. Yousry, you can take your seat.

5 (Witness resumes stand)

6 Q Just a general question about the translation.

7 In the line -- the second attribution to Salem where he says
8 the detonator, and where you have the fifth attribution,
9 Siddig saying does Abdel Rashid know it? Is that a word for
10 word translation from the Arabic?

11 A Siddig Ali spoke in colloquial Arabic.

12 Q Speak a little more slowly.

13 A Sure. Siddig Ali spoke in colloquial Arabic. He
14 did not use the word does. He says Abdel Rashid knows it?
15 However, that means does Abdel Rashid know it, and there is
16 no disagreement about that.

17 Q The reason you know it is a question -- how do
18 you know it is a question and not a statement?

19 A That's the way people speak in colloquial Arabic.

20 Q Do you use the inflection of the speaker's voice
21 to help you determine that?

22 A Yes.

23 Q Do you also use the context of the conversation?

24 A Yes, I did.

25 Q Thank you.

1 MR. WASSERMAN: Your Honor, I am just looking for
2 something in here.

3 Turning your attention to CM 6, which is Q-6, and
4 the transcript is Q-6T -- I am sorry, CM 26, Q-26T --

5 MR. KHUZAMI: Your Honor, I don't believe 26 was
6 offered.

7 THE COURT: That was not on your list.

8 MR. WASSERMAN: Your Honor, that was an error of
9 omission. It should be Q-26 and Q-26T. The government has
10 had that.

11 MR. KHUZAMI: No objection.

12 THE COURT: All right, 26 is offered as well.

13 (Defendant Hampton-El Exhibits Q-26 and Q-26T
14 received in evidence)

15 Q Mr. Yousry, in Q-26, there is a word underlined
16 in the third attribution from the bottom.

17 A Yes, there is.

18 Q The attribution reads Emad Salem saying just let
19 him know that you are persistent, underlined, and that is
20 it.

21 Can you explain to the jury the basis for your
22 translation from the Arabic to the English which resulted in
23 the word persistent.

24 A In Arabic Emad Salem used two words. The first
25 word is twasal, T-W-A-S-A-L, twasal, and the second word is

1 tutlub, T-U-T-L-U-B. That means keep doing, you know, you
2 are adding, you are persistent, you are doing that all the
3 time. So that is why I got the word persistent.

4 Q Turning your attention to Q-27 and Q-27T, where
5 it says at the bottom of the page on Q-27, first page,
6 Siddig says he is like a good brother, he doesn't have
7 anything like that, thanks be to God, but he is a failure
8 when it comes to important matters, can you explain to the
9 jury the basis for your translation from Arabic to English,
10 but he is a failure when it comes to important matters.

11 A This is a word for word translation. It is
12 verbatim. Whatever was on the tape was translated.

13 Q On the following page where Emad says yes, no,
14 but this is not an excuse, I mean, again, can you explain to
15 the jury how you arrived at that translation?

16 A Yes. It is the same exact thing. The words were
17 on the tape, they were transcribed in Arabic, therefore I
18 translated it into English.

19 Q Finally, in that same Q-27 series, the next to
20 last page of that series, which at the top is noted page 77
21 to 78, from Exhibit GX 329T --

22 A Yes, I see that.

23 Q There is an underlining about seven attributions
24 from the bottom. Siddig says there is no meaningful work,
25 underlined.

1 A Still, it is the same thing. It was on the tape.
2 Siddig Ali said it, it was transcribed into Arabic, and it
3 was translated into English.

4 Q At the top there is statement by Emad Salem, may
5 God breathe life into Abdel Rashid's picture and make him
6 join with all his weight.. Can you explain how you arrived
7 at that translation.

8 A It's a proverb in Arabic and it is from the
9 Koran. It means that we need --

10 Q Please talk slower and back from the microphone.

11 A It is a proverb in Arabic that is derived from
12 the Koran and it means that we need a miracle for this thing
13 to happen. Breathing life into somebody's picture, giving
14 the impression that this person is as dead as the picture
15 and therefore we need a miracle --

16 MR. KHUZAMI: Objection, not responsive.

17 THE COURT: Sustained.

18 Q You said that it comes from the Koran?

19 A Yes.

20 Q Is this a word or word translation?

21 A Yes, it is.

22 Q Does this particular proverb appear elsewhere in
23 the CM's, to the best of your knowledge?

24 A Yes, it does.

25 Q Do you know who says it and do you know

1 approximately where it appears?

2 A Emad Salem said all of them and it appeared, I
3 believe, on CM 29, CM 47 and CM 49.

4 Q In all those -- you have actually heard him say
5 that on those tapes?

6 A Yes, I did.

7 Q Is the context the same? In other words, the
8 proverb is being used to cite a miracle?

9 A Yes.

10 Q Or the need for a miracle?

11 A Yes.

12 Q You have noted in your transcript next to may God
13 breathe life into Abdel Rashid's picture, you have noted
14 that it is chanting?

15 A Yes, I did.

16 Q What is the basis for your making that notation
17 on the transcript?

18 A Emad Salem's voice was chanting the words.

19 Q Can you step down.

20 (Witness steps down from the stand)

21 Q At this time we are playing tape Q-27. Can you
22 show the jury as the tape the played the line by line from
23 the Arabic.

24 A Sure.

25 MR. WASSERMAN: Your Honor, could you ask the

1 jury to put their headphones on?

2 THE COURT: Put your headphones on.

3 (Tape played)

4 MR. WASSERMAN: Thank you, Mr. Yousry. No
5 further questions at this time.

6 THE COURT: Cross?

7 MR. KHUZAMI: Thank you, your Honor.

8 THE COURT: Mr. Khuzami.

9 CROSS-EXAMINATION

10 BY MR. KHUZAMI:

11 Q Good morning, Mr. Yousry.

12 A Good morning.

13 Q Do you have a copy of the translation of CM 50
14 that you just entered into evidence?

15 A Yes, I do.

16 Q Could you please turn to that.

17 THE COURT: The jurors have Q-50T.

18 A There are two excerpts. Which one do you want?

19 Q I am sorry, the first excerpt.

20 A Sure.

21 MR. WASSERMAN: Your Honor, may I have a word
22 with Mr. Khuzami for a moment?

23 MR. KHUZAMI: Your Honor, Mr. Wasserman informs
24 me that he plans on recalling Mr. Yousry and questioning him
25 on the remainder of the CM's that he hasn't questioned him

1 about today, so the government would reserve cross on
2 Mr. Yousry until the completion of his testimony.

3 THE COURT: That is fine. Then you can step
4 down.

5 THE WITNESS: Thank you, your Honor.

6 (Witness excused)

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

8 (Continued on next page)

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1 (At the sidebar)

2 THE COURT: I just wanted to know what was coming
3 next, so I could decide whether to call a break.

4 MR. WASSERMAN: Absolutely. Let me just tell you
5 approximately. I have two FISAs to play, which can be
6 broken up. Each is about ten minutes. And then I plan on
7 recalling Mr. Yousry.

8 THE COURT: Why don't you play one of your FISAs
9 and then we will take a break.

10 MR. WASSERMAN: Sure. Thank you, sir.

11 (In open court),

12 MR. WASSERMAN: Your Honor, at this time we will
13 be playing a FISA conversation, FISA recorded conversation,
14 between Garrett Wilson and Clement Hampton-El, May 27, 1993,
15 at 11:04 p.m. I would ask the jury to please put their
16 headphones on.

17 THE COURT: Which exhibit is that?

18 MR. WASSERMAN: Your Honor, that is Exhibit N.

19 THE COURT: N as in Nancy?

20 MR. WASSERMAN: N as in Nancy.

21 MR. KHUZAMI: No objection.

22 THE COURT: That exhibit is received.

23 MR. WASSERMAN: N-1, to be precise.

24 (Defendant Hampton-El Exhibit N-1 was received in
25 evidence.)

1 (Tape played)

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

6 (Recess)

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1 (In open court; jury present)

2 THE COURT: Mr. Wasserman. Go ahead, Mr.
3 Wasserman.

4 MR. WASSERMAN: Thank you, your Honor. At this
5 time I will be calling Mr. Mohamed Yousry to the stand, your
6 Honor.

7 MOHAMED YOUSRY, resumed.

8 THE COURT: Mr. Yousry, you are still under oath.
9 Go ahead.

10 MR. WASSERMAN: Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MR. WASSERMAN:

13 Q Mr. Yousry, Q-24 and Q-24T, you gave your opinion
14 to the jury earlier that the underlined portion in all the Q
15 series were fair and accurate translations from the Arabic
16 to the English, correct?

17 A Yes.

18 Q On Q-24, there is in the last 12 attributions --
19 there are no underlines but this is material which has not
20 been introduced into evidence previously. Is it your
21 opinion that this translation of yours is a fair and
22 accurate translation from the Arabic to the English?

23 A Yes, they are.

24 Q And that where it says, Siddig says yes, a
25 physician of autopsy, bones, and a chiropractor, it actually

1 says that in Arabic?

2 A Yes, it does.

3 MR. WASSERMAN: Your Honor, at this time we would
4 like to have Q-24 played, which is the excerpt reflected in
5 Q-24T.

6 THE COURT: Go ahead.

7 (Witness steps off witness stand)

8 (Tape played)

9 (Witness resumes witness stand)

10 Q Mr. Yousry, earlier this morning you testified
11 that -- I am sorry, withdrawn.

12 If I may point to Q-27T, the first page which in
13 the left-hand corner has a page 17-18.

14 A Yes, I see that.

15 Q Would you tell the jury, in the fourth
16 attribution down and then again in the fifth attribution
17 there is the word dud. Siddig is saying he turned out to be
18 a dud. Can you tell the jurors the Arabic word for dud.

19 A Feshink.

20 Q How do you spell that?

21 A F-E-S-H-I-N-K.

22 Q Turning your attention to Q-29, which is CM 29,
23 dated May 31, 1993.

24 A Yes.

25 Q Would you please step down.

1 A Sure.

2 (Witness steps down from witness stand)

3 MR. WASSERMAN: If the jury would please put on
4 their headphones.

5 (Tape played)

6 (Witness resumes witness stand)

7 Q Mr. Yousry, if you could turn your attention to
8 Q-40.

9 A Yes.

10 Q To repeat for the jury, if you would, what is
11 underlined there, that represents your translation from
12 Arabic to English, is that correct?

13 A Yes, it does.

14 MR. WASSERMAN: If the jury could put their
15 headphones on.

16 (Witness steps down from the witness stand)

17 (Tape played)

18 MR. WASSERMAN: We will last play Q-43. If the
19 jury could put their headphones on. Thank you.

20 (Tape played)

21 (Witness resumes witness stand)

22 MR. WASSERMAN: Mr. Yousry, I have no further
23 questions at this time. I will be recalling you.

24 THE COURT: You can step down.

25 (Witness excused)

1 MR. WASSERMAN: Your Honor, at this time we will
2 play what has been previously admitted into evidence this
3 morning as Hampton-El N-2, your Honor. That is a FISA
4 conversation made between Clement Hampton-El and Garrett
5 Wilson on May 31, 1993.

6 MR. KHUZAMI: No objection.

7 THE COURT: Go ahead.

8 (Tape played)

9 THE COURT: Ladies and gentlemen, we are going to
10 break for lunch. Please leave your notes and other
11 materials behind. Please, again, don't discuss the case,
12 and we will resume this afternoon.

13 (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: Mr. Wasserman.

7 MR. WASSERMAN: Good afternoon, your Honor. At
8 this time, before calling our second witness, the first
9 having been Robert Abdullah on July 20, I would like to
10 introduce into evidence what has been marked as Hampton-El
11 X. The government has no objection. It is a telephone bill
12 addressed to Clement Hampton-El, apartment 3, 251 Rogers
13 Avenue, Brooklyn, New York. It is a phone bill through June
14 14, 1993, with a payment due date of June 22, 1993. I am
15 introducing the bill as well as the envelope it was mailed
16 in.

17 MR. KHUZAMI: No objection.

18 THE COURT: Hampton-El X is received without
19 objection.

20 (Defendant Hampton-El Exhibit X received in
21 evidence)

22 MR. WASSERMAN: Your Honor, the next witness is
23 Nathaniel McBride.

24 (Continued on next page)

25

1 NATHANIEL McBRIDE,
2 called as a witness by the defense,
3 having been duly sworn, testified as follows:

4 THE COURT: Go ahead, Mr. Wasserman.

5 MR. WASSERMAN: Thank you.

6 DIRECT EXAMINATION

7 BY MR. WASSERMAN:

8 Q Good afternoon, Mr. McBride.

9 A Good afternoon, sir.

10 THE COURT: Mr. McBride, if you could try to lean
11 forward and move your chair forward, and stalk into that
12 microphone, please. That way everybody can hear you.

13 THE WITNESS: OK.

14 THE COURT: Thank you.

15 Q Sir, would you tell the jury what kind of work
16 you do.

17 A I am a New York City transit worker. I am a CTA.

18 Q What is a --

19 A I am also in the National Guard. I am in the
20 army band for about 23 years. On New York City Transit, I
21 work for 25 years.

22 Q Could you just keep your voice up a little bit,
23 OK?

24 A OK.

25 Q For Transit, what do you do?

1 A I am a CTA, cleaner.

2 Q In the army band, what do you do?

3 A I am a drummer.

4 Q Have you practiced martial arts during your life?

5 A I have been practicing martial arts for about 38
6 years, maybe 40 years of martial arts.

7 Q Sir, can you keep your voice up?

8 A Can this come up?

9 Q Yes. Just keep it, as I should, about 6 inches
10 away.

11 A All right.

12 Q What kind of martial arts do you practice?

13 A I have practiced many different styles: Jujitsu,
14 aikido, kung fu, tae kwon do, karate. I also practiced
15 bosing.

16 MS. STEWART: The interpreters can't hear you.

17 A I have studied many styles of karate. I have
18 been in karate for about 38 years or 40 years. I have done
19 some boxing. I am pretty good at physical training. Those
20 are my specialties that I usually practice.

21 Q Do you hold any advanced belts in any of these
22 arts?

23 A I am a 9th degree black belt in jujitsu. In
24 karate I am an 8th degree black belt. In all the other
25 styles I have various degrees of rank in all the other

1 styles.

2 Q As a result of the 9th degree of ranking, you are
3 called professor in that particular style, correct?

4 A Yes, I am.

5 Q Is that style called sanuces-ryu jujitsu?

6 A Yes.

7 Q Could you just tell the jury briefly what that
8 style is about, how it came about?

9 A I got the name of the style from my instructor,
10 so I in turn carried on as my form of studying the martial
11 art.

12 Q Who was your instructor?

13 A My instructor is a guy named Professor Moses
14 Powell.

15 Q Where does he come from? Where does he have a
16 school?

17 A He don't have a school right now, not as I know
18 of. He go around to different students and teach their
19 students the martial arts.

20 Q When you studied with him, where did you study?

21 A At first he was at 1 West 125th Street. Then he
22 moved to Atlantic Avenue, and that's where I was continuing
23 with my studies.

24 Q Atlantic Avenue in Brooklyn?

25 A Yes.

1 Q What I would like to do is play a video for you.

2 MR. WASSERMAN: Your Honor, at this time what
3 marked as Hampton-El T, entitled Training Tape, is being
4 offered into evidence and will be played in parts for
5 Mr. McBride to comment and explain to the jury what is going
6 on.

7 MR. KHUZAMI: No objection.

8 THE COURT: Go ahead.

9 MR. WASSERMAN: Thank you.

10 (Defendant Hampton-El Exhibit T received in
11 evidence)

12 Q Mr. McBride, do you want to turn your chair
13 around -- you have a monitor up there.

14 MR. WASSERMAN: I would ask that the jury put on
15 earphones.

16 Your Honor, may I have a moment with government
17 counsel.

18 Your Honor, if I may, the problem is that the
19 sound system --

20 MR. KHUZAMI: We will be able to have it play
21 without the headphones, just out loud.

22 (Videotape played)

23 MR. WASSERMAN: Your Honor, if I may, we will
24 play it with the sound as just demonstrated, so no one needs
25 the headphones.

1 (Videotape played)

2 Q Professor, if you would fill in the jury on some
3 of the things that have happened so far. Let's work
4 backwards. What are you doing right now with your class?

5 A That is a form of exercise. You got to exercise
6 the body before you can train them the proper way how the
7 punches and the kicks and stuff.

8 Q Professor, could you keep your voice up, as if
9 you were talking to a class.

10 Is that you with your back to the rest of the
11 people in the class?

12 A That's me.

13 Q The person who was first speaking, with a mask
14 on, did you recognize who that person was?

15 A I don't know his person. Sayfullah is my
16 student.

17 Q What is his last name, sir?

18 A McNeil.

19 Q How long was he your student?

20 A About 30 years.

21 Q Is he the reason that you were at this training
22 class?

23 A Right, he is the reason why I was there.

24 Q OK, and did you recognize or know anybody else
25 who was participating at that time?

1 A Some of the guys' name I recall in the film
2 there. I don't really know them per se but I know their
3 names.

4 Q Were any of Mr. McNeil's students there?

5 A A couple, maybe.

6 MR. WASSERMAN: Could you continue the tape.

7 (Videotape continued)

8 Q Mr. McBride, could you tell the jury what is
9 going on right now, what kind of exercise or practice is
10 just being performed.

11 A Those type of exercise are the exercise to
12 strengthen the body and to help you be able to maneuver when
13 the time comes to defend yourself, in self-defense.

14 MR. WASSERMAN: Could you fast forward about five
15 minutes, to see what we are into.

16 (Videotape continued)

17 Q Professor, do you recall how long the class was,
18 the session was?

19 A I don't remember.

20 (Videotape continued)

21 Q Professor, I wonder if you could step down off
22 the witness stand, and using your hand to point in that
23 particular frame where it has been stopped, can you describe
24 to the jury where it is on the wall.

25 THE COURT: Mr. Wasserman, he can't be heard by

1 the translator. I say, the witness can't be heard by the
2 translator.

3 A Those are the different types of weapons.
4 Anything else you would like to know, sir?

5 Q Yes. What kind of weapons?

6 A Numchuks and all kinds of weapons. If I could
7 see it more clearly, I could identify the weapons.

8 Q Could you take your seat, and I will show you
9 some pictures.

10 MR. WASSERMAN: Your Honor, may I approach?

11 THE COURT: Yes.

12 MR. WASSERMAN: Your Honor, I am showing the
13 witness what has been marked into evidence as Government's
14 Exhibit 816E, and asking the witness if he could take a look
15 at that.

16 Q If you compare that picture with that frame, do
17 you recognize some of the same weapons?

18 A Yes.

19 Q Could you by looking at the picture describe what
20 weapons that you see?

21 A He has the numchuks, a pistol, a toy pistol. And
22 then he have throwing axe. Then we also have the chain
23 spikes. I has the cross bow sitting on something.

24 Q Do you see any blow guns in that picture?

25 A None.

1 Q If I show you 816H, do you see anything in that?

2 A That look like one right here.

3 Q How about I?

4 A Yes, they have a few blow guns.

5 Q Do you recall, looking now at the video frame,
6 whether the weapons that you have just described from
7 Government's Exhibits 816H and I and E, whether they were
8 similar to the weapons that are on the wall there?

9 A They were similar to the weapons that were on the
10 wall.

11 Q Professor, in training in jujitsu, is it common
12 practice to use certain weapons as part of the training?

13 A In jujitsu, we use a whole lot of weapons. Some
14 of them I can't name right offhand, but we use a whole lot,
15 more than that, what's there.

16 Q More than that?

17 A More weapons than that.

18 Q Would it be fair to say that one of the reasons
19 that you use those weapons --

20 THE COURT: Mr. Wasserman.

21 MR. WASSERMAN: Yes, Judge. Stand up?

22 THE COURT: No. "Would it be fair to say."
23 Let's let him testify.

24 MR. WASSERMAN: All right.

25 Q What is the purpose of training in weapons?

1 A Me myself per se, I do not train with weapons, I
2 train mostly with my hands, because weapons you could get
3 locked up in the street for out there. So those weapons, I
4 do not train with them. I train with my fists or my hands
5 and feet or whatever weapon I can use at the time that I am
6 in some kind of fight or something like that. I can use a
7 set of keys or something, maybe a belt buckle. If a guy got
8 a knife and I don't have a knife, I have to use something to
9 survive.

10 Q In order to train to learn how to fight somebody
11 who has a knife, do you not practice with knives?

12 A Me myself per se, like I said before, I do not
13 practice with weapons, I do not practice with knives, I
14 practice with my hand. Or if I have a belt on or whatever,
15 if I never fought a guy with a knife before, I use my belt
16 as a shield to protect me with a figure 8 type of using it
17 in front of me to keep them from getting into my body to
18 hurt me, and that's the only type of weapon I may use at the
19 time, if someone is trying to hurt me seriously.

20 Q In jujitsu, have you seen those types of weapons
21 in other jujitsu places of practice?

22 A In many of them.

23 Q Thank you.

24 MR. WASSERMAN: If you could continue to play.

25 (Videotape continued)

1 MR. WASSERMAN: If you could run the tape another
2 10 minutes.

3 (Tape continued)

4 Q Do you know who is practicing right there?

5 A That was my student and some other student were
6 practicing.

7 Q What are they practicing? What exactly?

8 A Those are the different self-defense techniques
9 that we use in practice in jujitsu.

10 Q Thank you.

11 MR. WASSERMAN: Fifteen minutes.

12 (Videotape continued)

13 Q Is that your student, Sayfullah?

14 A Yes, Sayfullah is my student.

15 (Videotape continued)

16 MR. WASSERMAN: If you could pass another 10
17 minutes.

18 (Videotape continued)

19 Q Do you know who is demonstrating that technique?

20 A I don't recall.

21 MR. WASSERMAN: You can stop. Thank you.

22 Q Mr. McBride, the techniques that were being
23 practiced, could you tell the jury how long it takes to
24 become proficient in that skill?

25 A It takes a while before you can become skillful.

1 It take five, six years, maybe longer than that, depending
2 on the type of individual, what they want to do and what
3 they want to learn.

4 Q Could you tell the jury, the people in the
5 training who were wearing masks, would it be fair to say
6 that --

7 MR. KHUZAMI: Objection.

8 THE COURT: Sustained.

9 MR. WASSERMAN: I haven't said what I am going to
10 say.

11 THE COURT: Would it be fair to say that the
12 question that begins with "would it be fair to say" is a
13 leading question? I think it would be.

14 MR. WASSERMAN: Your Honor, he is --

15 THE COURT: Ask him a question.

16 Q Could you describe to the jury what a full ninja
17 outfit is.

18 A It is somewhat similar to the way that we were
19 dressed. It's almost like that but you have on shoes and
20 you have on different things on your hand, like to use
21 against different weapons or grab --

22 Q Keep your voice up, sir.

23 A You can have different weapons inside the palm of
24 your hand, like you're grabbing or raking into someone's
25 flesh, with like some of the clothing and shoes that the

1 ninja wear have various type gadgets on it that you can hurt
2 somebody if you use.

3 Q In addition to Sayfullah McNeil, did you know
4 anybody else or recognize anybody else that was training
5 that evening?

6 A There was a few guys that I recognize. I call
7 them by their name.

8 Q Did people arrive with masks or did they put
9 masks on before they began the training?

10 A We put masks on before we began the training.

11 Q When you describe the outfit that a ninja wears,
12 does a ninja wear a mask as part of his outfit?

13 A Can you repeat the question, sir.

14 Q Yes. Can you describe the outfit that a ninja
15 wears -- does a ninja wear a mask as part of his outfit?

16 A Yes.

17 Q Thank you. Did you know what that training
18 session was for?

19 A I really didn't know. He got me out of my bed
20 maybe 12, 1:00 at night to train people and I'm the type of
21 instructor if you say you want to be trained I'll come and
22 train them. That's the way I am.

23 Q Who got you out of bed?

24 A My student.

25 Q Which student?

1 A Sayfullah.

2 MR. WASSERMAN: Thank you. No further questions.

3 THE COURT: Any cross?

4 MR. KHUZAMI: No cross.

5 THE COURT: Thank you very much. You are
6 excused.

7 (Witness excused)

8 (Continued on next page)

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IPT

1 (At the sidebar)

2 MR. WASSERMAN: Just on scheduling, Judge, I
3 don't know if my second witness has arrived. I will have to
4 check. I don't know if he has. If he has not, I can put
5 Mr. Yousry back on the stand or we can take an earlier break
6 and then resume earlier, as your Honor wishes.

7 THE COURT: Part of the problem is that the jury
8 refreshments come at 3:30, so I have to sit until 3:30. You
9 can check on your witness and then we can proceed from
10 there.

11 MR. WASSERMAN: All right.

12 (In open court)

13 MR. WASSERMAN: Your Honor, I will recall
14 Mr. Yousry.

15
16 MOHAMED YOUSRY was recalled and testified further as
17 follows:

18 THE COURT: You are still under oath, Mr. Yousry.

19 THE WITNESS: Yes, sir.

20 DIRECT EXAMINATION (Continued)

21 BY MR. WASSERMAN:

22 Q Good afternoon, Mr. Yousry.

23 A Good afternoon.

24 Q Could you turn to Q-36.

25 Mr. Yousry, Q-36 and Q-36T were first introduced

1 into evidence by the defense. Can you tell the jury whether
2 in your opinion that represents a fair and accurate
3 translation by you from the Arabic to the English?

4 A Yes, it does.

5 Q My colleague indicates I haven't asked you
6 whether it is a fair and accurate translation from Arabic to
7 English.

8 A It is.

9 Q What I would like to do is have that tape played,
10 Q-36, for the jury, and if you could indicate for the jury
11 on the screen, on a line-by-line basis, as the tape is being
12 played, the Arabic.

13 A Yes.

14 MR. WASSERMAN: If the jury will put on their
15 earphones.

16 (Tape played)

17 MR. WASSERMAN: Your Honor, to save time, I can't
18 find the stencil of the second page. I will simply read it
19 in the English.

20 THE COURT: This is which exhibit?

21 MR. WASSERMAN: This is the same exhibit. This
22 is Q-36T. I just don't have the second page of the
23 transcript. I will take it from the bottom of the first
24 page. The second attribution from the bottom.

25 "Salem: I mean, don't leave me in here by

1 myself.

2 "Siddig: No, no, no, Emad. No, God willing, I
3 will leave before I do it.

4 "Salem: God willing.

5 "Siddig: I will not leave, God willing.

6 "Salem: On red, turn right here?

7 "Siddig: Right. Yeah, right, we will not
8 travel, huh?

9 "Salem: Yes, if this is the case, then wait.

10 "Siddig: Now I have a place, I mean, I can go
11 to.

12 "Salem: What do you have?

13 "Siddig: There is a place to go to -- the
14 Philippines is better.

15 "Salem: OK. If that is the case, huh, the Sudan
16 is a better place for me.

17 "Siddig: No. The Sudan us better for you.

18 "Salem: (Negative interjection by tongue)
19 (Unintelligible) the kids, sheik.

20 "Siddig: Because you have kids and so on. The
21 Philippines won't work for you, huh?"

22 Q Mr. Yousry, will you turn to Q-37 and Q-37T. On
23 the second page there are underlined the words "He attends."

24 A Yes, I see.

25 Q Did you translate that from the Arabic?

1 A It was in the Arabic transcription and it was
2 translated to English.

3 Q That is your opinion, that that is a correct
4 translation from Arabic to English?

5 A Yes, it is.

6 Q Will you step down, and we will simply play this
7 tape.

8 THE COURT: Which one is this, Mr. Wasserman?

9 MR. WASSERMAN: Your Honor, this is Q-37T. If
10 the jury can put the earphones on. Thank you.

11 (Tape played)

12 Q Drawing your attention to Q-44T, you have
13 underlined the words "must strengthen his act with us" three
14 times. What was the Arabic, what was the Arabic portion
15 that you made that translation from?

16 A Yes. Yeshed heliah. It is Y-e-s-h-e-d; second
17 one is: H-e-l-i-a-h.

18 Q Is this expression "must strengthen his act with
19 us" the same as "God breathe life into his picture"?

20 A No, it is different. This one is not the same.

21 Q Where is it different?

22 A It's, you know, regular Egyptian colloquial
23 language.

24 Q Moving on to Q-47T.

25 A Yes.

1 Q There is also underlined a number of phrases
2 within that excerpt. Would you tell the jury what the
3 Arabic word for "modest" was that you translated?

4 A Basita, b-a-s-i-t-a.

5 MR. WASSERMAN: Your Honor, we are going to play
6 that short answer.

7 THE COURT: 47-T?

8 MR. WASSERMAN: Yes, your Honor.

9 (Tape played)

10 MR. WASSERMAN: Your Honor, may we take a break?

11 THE COURT: We will break now. Please leave your
12 notes behind. Please don't discuss the case. We will
13 resume in ten minutes.

14 (The jury left the courtroom.)

15 THE COURT: You may step down.

16 THE WITNESS: Thank you.

17 (Recess)

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1 (In open court; jury present)

2 THE COURT: Mr. Wasserman.

3 MR. WASSERMAN: Your Honor, at this time we are
4 offering into evidence several FISA recorded conversations
5 between Clement Hampton-El and Fatima Gibriel,
6 G-I-B-R-I-E-L. The first conversation is Defendant's
7 Exhibit V1A. It is a FISA conversation dated June 3, 1993.
8 Actually, that is the second. The first one would be 1, and
9 that is June 19, 1993. The FISA tapes will be played in
10 time sequence, so the first one that will be played will be
11 V1A. The third is V2, and that is June 20, 1993, and the
12 fourth and final tape is Exhibit V-3, June 22, 1993.

13 MR. KHUZAMI: No objection.

14 THE COURT: V1, V1A, V2 and V3 are received
15 without objection.

16 (Defendant Hampton-El Exhibits V1, V1A, V2 and V3
17 were received in evidence)

18 MR. WASSERMAN: Your Honor, to be precise for the
19 record, the tapes that I described and the V transcripts
20 will be the same but with a T at the end.

21 THE COURT: These are English conversations?

22 MR. WASSERMAN: Yes, your Honor.

23 THE COURT: So they are only an aid.

24 MR. WASSERMAN: Yes, your Honor.

25 (Tapes played)

1 MR. WASSERMAN: Your Honor, at this time we would
2 recall Mohamed Yousry to the stand.

3 MOHAMED YOUSRY, resumed.

4 THE COURT: You are still under oath, Mr. Yousry.

5 THE WITNESS: Yes.

6 DIRECT EXAMINATION

7 BY MR. WASSERMAN:

8 Q Good afternoon, Mr. Yousry.

9 A Hi. Good afternoon.

10 Q Mr. Yousry, would you please turn to what has
11 been marked as Q-50T.

12 A Yes, sir.

13 Q For the benefit of those who are looking in the
14 government exhibit, it is page 19.

15 Q Mr. Yousry, what you have underlined in Q-50T, is
16 that a fair and accurate translation from the Arabic to the
17 English?

18 A Yes, it is.

19 Q Is that based upon the latest tape that you
20 received from -- the enhanced tape, rather, that you
21 received from my office?

22 A Yes.

23 Q What I would like to do is, if you would step
24 down we will have the tape played.

25 A Surely.

1 (Witness steps down from the witness stand)

2 MR. WASSERMAN: If the jury would please put on
3 their earphones. Thank you.

4 (Tape played)

5 (Witness resumes witness stand)

6 Q Mr. Yousry, a few quick questions about that
7 particular CM 50, that excerpt. You have noted on the third
8 page, fifth attribution from the bottom, Salem saying I
9 thought as long as he called you at 4:00 a.m. for fadjia,
10 and for fadjia is underlined. And then you have in
11 parentheses prayer. It continues on, he thinks that's it,
12 he thinks something good.

13 What is fadjia?

14 A It is the first prayer of the day. Muslims pray
15 five times and the fadjia prayer is the first prayer of the
16 day.

17 Q When is the fadjia prayer made?

18 A It is 3:00, 4:00 in the morning. It depends on
19 the months.

20 Q The other question, is tomorrow, tomorrow,
21 tomorrow, which is the expression used by Salem in the fifth
22 attribution from the top on the third page, where he says,
23 because he keeps saying tomorrow, tomorrow, tomorrow, is
24 that a proverb or anything of that sort?

25 A It is a very well known saying in Egypt. When

1 you go to any of the, you know, government offices to get
2 something done, usually the clerk or the person who is in
3 charge asks you to come the next day, so you keep going the
4 next day, the next day, and at the end there is nothing. So
5 that expression means when he tell you to come tomorrow,
6 that nothing will happen.

7 Q Thank you. Would you turn your attention to
8 Q-52 -- rather, pass that for the moment and go to Q-60T.

9 A Yes, sir.

10 Q That is, for those who are looking at the CM it
11 is page 40, and the date of the CM is June 21, 1993. Is
12 that expression at the bottom of the page, tomorrow,
13 tomorrow, related in any way to the other tomorrow,
14 tomorrow, tomorrow from CM 50?

15 A Yes, it's the same expression.

16 (Tape played)

17 MR. WASSERMAN: Your Honor, the last of the CM's
18 is 64. It is Q-64T, and for those who are looking in the
19 government transcript it is page 32 and then page 54.

20 Q-64T.

21 (Tape played)

22 Q Mr. Yousry, one last question. On the second
23 page of Q-64, you have in quotes the word caps.

24 A Yes.

25 Q Could you tell the jury why there are quotes

1 around that word?

2 A Actually, this was kind of Emad Salem trying to
3 make a joke because in Arabic you have different words for
4 the word cap. You have casquette and you have cap. So when
5 he said that Abdel Rashid did not bring the caps, he said he
6 didn't bring the caps, the covers, meaning hats. He was
7 trying to make a joke. He was trying to play on words.

8 MR. WASSERMAN: Thank you. No further questions.

9 THE COURT: Cross, Mr. Khuzami.

10 MR. KHUZAMI: Thank you.

11 CROSS-EXAMINATION

12 BY MR. KHUZAMI:

13 Q Mr. Yousry, referring to Abdel Rashid Exhibit
14 Q-50T, the transcript from CM 50, could you please turn to
15 that.

16 A Yes. First excerpt?

17 Q Q-50T.

18 A The first excerpt?

19 Q Yes, the first excerpt. You made that
20 translation after listening to the tape, is that correct?

21 A Several tapes, that is correct. Several
22 different tapes.

23 Q Do you see in that transcript where you indicate
24 that Siddig Ali says what is the solution?

25 A Yes.

1 Q About 11 lines down from the top?

2 A Yes, I see it.

3 Q After that, Mr. Salem responds we should look
4 around. Do you see that?

5 A Yes, I do.

6 Q Did you hear Mr. Salem say anywhere there the
7 word, Arabic word for condenser?

8 A No, I did not.

9 Q Do you know what the Arabic word for condenser
10 is?

11 A Yes, I do.

12 Q What is that?

13 A Mukathef.

14 THE COURT: Can you get a spelling on that.

15 Q Can you please spell that.

16 A M-U-K-A-T-H-E-F.

17 Q I have placed before you a couple of sheets of
18 paper. I wonder if you might take what has been marked
19 Government's Exhibit 35153D and write the Arabic for the
20 English word condenser.

21 A Sure.

22 I did.

23 Q Where you indicate in the translation, you should
24 look around, what is the Arabic for that phrase?

25 A I can look at my notes.

1 Q Certainly.

2 A Neftesh.

3 Q Could you please write the Arabic.

4 THE COURT: Excuse me. Can we get a spelling on
5 that.

6 THE WITNESS: N-E-F-T-E-S-H.

7 Q If you could please write that on the same
8 Exhibit 35153D, the Arabic for that phrase.

9 A Surely. I did.

10 MR. KHUZAMI: Your Honor, I would move
11 Government's Exhibit 35153D into evidence.

12 MR. WASSERMAN: May I see it.

13 No objection.

14 THE COURT: 35153D is received without objection.
15 (Government's Exhibit 35153D received in
16 evidence)

17 Q On the same exhibit, Mr. Yousry, Q-50, five lines
18 down to the bottom you have Mr. Siddig Ali saying forget
19 about it. Do you see that?

20 A Yes, I do.

21 Q I wonder if you could give us the Arabic
22 expression for forget about it?

23 A Dahah, D-A-H-A-H, I believe. Dahah.

24 Q If you could take another sheet of paper, 35153E,
25 and write the Arabic for that phrase.

1 A Surely.

2 I did.

3 MR. KHUZAMI: Your Honor, I would move
4 Government's Exhibit 35153E into evidence.

5 MR. WASSERMAN: No objection.

6 THE COURT: 35153E is received without objection.
7 (Government's Exhibit 35153E received in
8 evidence)

9 Q Two lines down from that, Mr. Yousry, you have a
10 line, you shouldn't trust him. Do you see that?

11 A Yes, I do.

12 Q If you could tell us what the Arabic for that
13 English phrase is, please.

14 A Ma nathk fi.

15 Q Please spell it.

16 A It is three words. M-A is the first word.
17 N-A-T-H-K. Third word fi. F-I.

18 Should I write it down?

19 Q If you could please write that down on 35153F.

20 A Surely.

21 I did.

22 MR. KHUZAMI: Your Honor, I would move
23 Government's Exhibit 35153F into evidence.

24 MR. WASSERMAN: No objection.

25 THE COURT: It is received without objection.

1 (Government's Exhibit 35153F received in
2 evidence)

3 Q If you could please turn to defendant Abdel
4 Rashid Exhibit Q-26T.

5 A I did.

6 Q And I think you indicated on direct examination
7 you gave us a phonetic pronunciation of the Arabic words
8 that Mr. Salem used which you translated as persistent, is
9 that right?

10 A Two words.

11 Q Two words, correct. Could you please give us
12 those words again and spell them?

13 A Twasal, T-W-A-S-A-L, and tutlub, T-U-T-L-U-B.

14 Q If you would please pick up the last sheet of
15 paper, 35153G, and write down those two Arabic words.

16 A I did.

17 MR. KHUZAMI: I would move 35153G into evidence.

18 MR. WASSERMAN: No objection.

19 THE COURT: 35153G is received without objection.

20 (Government's Exhibit 35153G received in
21 evidence)

22 MR. KHUZAMI: No further questions.

23 THE COURT: Anything else, Mr. Wasserman?

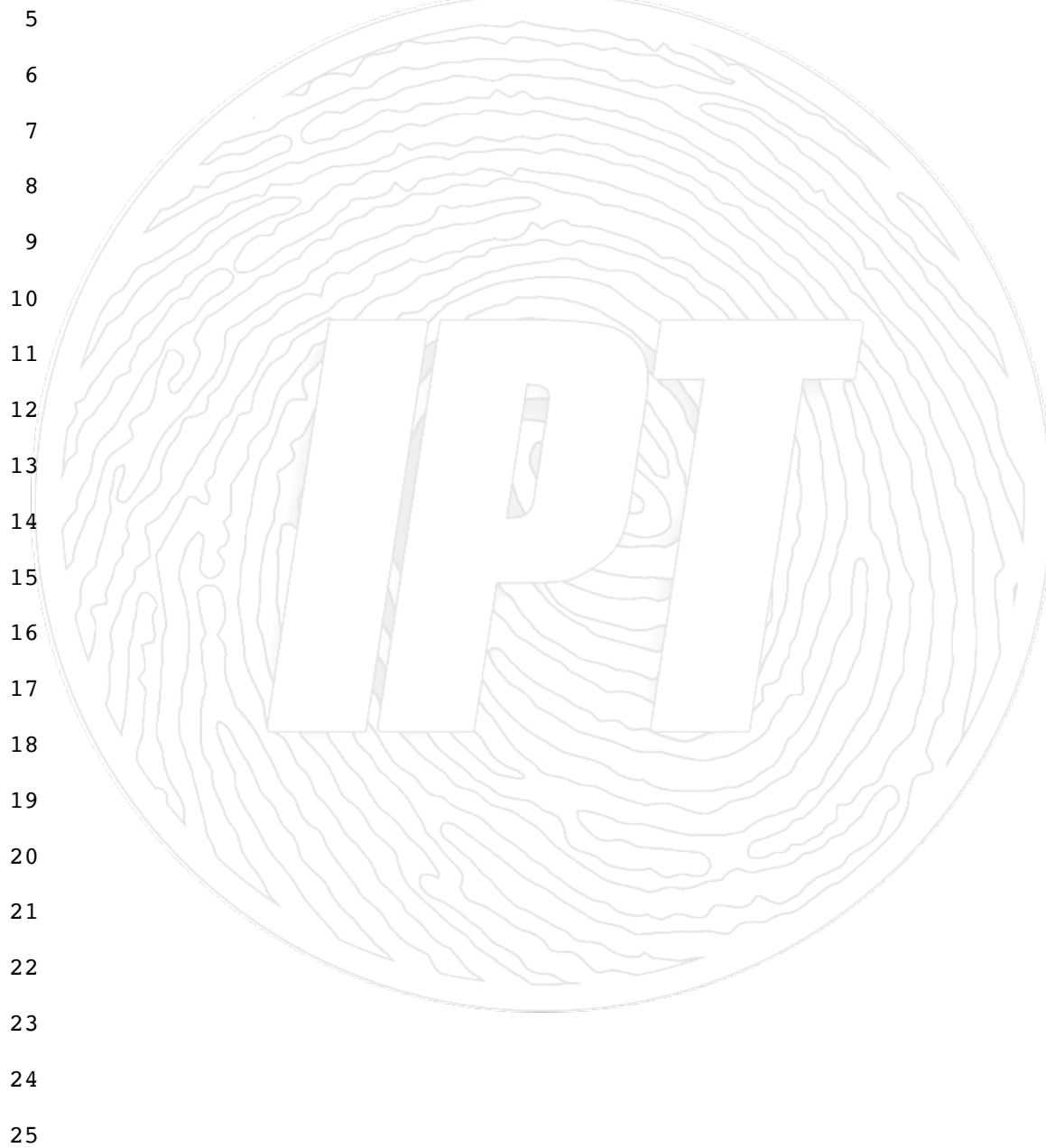
24 MR. WASSERMAN: No, your Honor.

25 THE COURT: Thank you. You are excused.

1 (Witness excused)

2 MR. WASSERMAN: Your Honor, may I approach on the
3 side?

4 (Continued on next page)



1 (At the sidebar)

2 MR. WASSERMAN: Your Honor, I would have been
3 able to fill up the rest of the fifteen minutes remaining,
4 but a witness I expected this afternoon did not come.

5 THE COURT: Is he under subpoena?

6 MR. WASSERMAN: Yes. I expect that he will be
7 here tomorrow morning.

8 THE COURT: He was subpoenaed for this afternoon?

9 MR. WASSERMAN: It was a kind of a rolling
10 contact. He knew he was supposed to be here.

11 THE COURT: I asked a direct question.

12 MR. WASSERMAN: I will give you a direct answer.

13 THE COURT: Was he under subpoena?

14 MR. WASSERMAN: Yes.

15 THE COURT: What is the date?

16 MR. WASSERMAN: It was verbal instructions that
17 he was to come this afternoon, but there was also a phone
18 contact instruction. Someone else was supposed to call --

19 THE COURT: I don't understand. A subpoena is a
20 piece of paper.

21 MR. WASSERMAN: But it was a subpoena for a prior
22 date. I thought he might be starting on July 17. I am not
23 prepared to go forward at this point. I have to put in a
24 couple of transcripts there tomorrow morning, and I haven't
25 prepared. I am done with the CM. I am done with the Arabic

1 to English CM's. The only thing I have to do is to put in,
2 as an aid to the jury, a CM-25 and a two-page excerpt from
3 CM-41. My witness isn't prepared. That is my problem. I
4 haven't had a chance to prepare my witness. I understand
5 the government --

6 THE COURT: Who is the witness?

7 MR. WASSERMAN: Ms. Averill. The direct will be
8 very, very short. It is just that she has been so busy on
9 all the other things, I haven't had a chance to prep her at
10 all.

11 (In open court)

12 THE COURT: We are going to break for the day.
13 Please leave your notes and other materials behind. Please
14 don't discuss the case. Please don't talk to anyone about
15 this case or anything related to it. Tomorrow you should be
16 aware that we are going to sit until 1 o'clock, and we will
17 break, that is, you will break then for the day. We will
18 sit a full day Wednesday and Thursday, but tomorrow we are
19 sitting in the morning until 1 and then breaking for the
20 day.

21 (The jury left the courtroom.)

22 THE COURT: Mr. Wasserman, tomorrow --

23 MR. WASSERMAN: Yes, your Honor.

24 THE COURT: -- more doughnut and less hole.

25 MR. WASSERMAN: If that is a pep talk coming to

1 me from the bench, yes, we will be ready.

2 MR. BERNSTEIN: Your Honor, somebody said
3 something about a half day tomorrow?

4 THE COURT: Yes. I was the someone who indicated
5 that. (Laughter)

6 MR. BERNSTEIN: Now I understand.

7 THE COURT: The reason for it is that one of the
8 jurors has to go for a medical procedure in the afternoon.
9 He made this known last week. If I didn't announce it until
10 now, I apologize.

11 MR. JACOBS: Your Honor, I have been talking with
12 the government in the hope of resolving a lot of outstanding
13 matters. My feeling is that even if we were moderately
14 successful, we still would achieve something.

15 THE COURT: How about tomorrow?

16 MR. JACOBS: That is what I was just about to
17 say. I assume that after lunch we will come back and try to
18 go into some of the outstanding matters that are still open.

19 THE COURT: Sure.

20 MR. JACOBS: So everybody understands that. Ms.
21 Schwartz had indicated last week that that would be a good
22 time to do it.

23 THE COURT: It would. I don't plan to go off and
24 do something else.

25 MR. JACOBS: I understand. I was just saying we

1 will try to resolve as much as we can.

2 THE COURT: Thank you.

3 (Adjourned to August 1, 1995, at 9:30 a.m.)

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