

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

v.

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

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

9 IBRAHIM A. EL-GABROWNY,
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.

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S5 93 Cr. 181 (MBM)

21 August 1, 1995
22 9:40 a.m.

23 Before:

24 HON. MICHAEL B. MUKASEY,

25 District Judge

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1 (Trial resumed)

2 (In open court; jury not present)

3 MR. RICCO: Your Honor, I have some matters to
4 take care of this morning. Mr. Hueston will sit in for me.

5 THE COURT: Is that satisfactory with you, Mr.
6 El-Gabrowny?

7 DEFENDANT EL-GABROWNY: That's OK.

8 THE COURT: All right.

9 Mr. Jacobs, did you forget your jacket?

10 MR. JACOBS: I am sorry. I apologize. Your
11 Honor, we did meet with the government last night and we
12 were not able to resolve a number of matters. So we do have
13 an agenda.

14 THE COURT: Why is that not a surprise? Can you
15 make it at 3:00?

16 MR. JACOBS: Your Honor's pleasure.

17 THE COURT: My pleasure, frankly, is not to have
18 to do it at all.

19 MR. JACOBS: We made every effort, your Honor.

20 THE COURT: I know, I know. 3:00. Lawyers.
21 This is counsel. Anything else?

22 Mr. Wasserman, are you going to call somebody?

23 MR. WASSERMAN: Yes, Judge.

24 THE COURT: Why don't you get him or her in.

25 (Jury present)

1 THE COURT: Good morning, ladies and gentlemen.

2 JURORS: Good morning, your Honor.

3 THE COURT: Mr. Wasserman.

4 NAIMULLAH ABDULLAH,

5 called as a witness by the defense,

6 having duly affirmed, testified as follows:

7 THE COURT: Mr. Abdullah, if you could move
8 forward and talk into the microphone, everybody will be able
9 to hear you. Thank you.

10 Go ahead, Mr. Wasserman.

11 MR. WASSERMAN: Thank you.

12 DIRECT EXAMINATION

13 BY MR. WASSERMAN:

14 Q Good morning, sir.

15 A How do you do.

16 Q Where were you born?

17 A St. Louis, Missouri.

18 Q Where are you living now?

19 THE COURT: Excuse me. You have to move forward
20 a little bit because the translators can't hear you and if
21 they can't hear you, the defendants can't.

22 Q Where are you living now?

23 A In New York.

24 Q Where in New York?

25 A In Brooklyn.

1 Q What are you you doing with your time?

2 A The majority of the time I am working.

3 Q What kind of work do you do?

4 A Security.

5 Q What kind of security?

6 A Basically security of buildings, property,
7 uniform security.

8 Q You were born in St. Louis?

9 A Yes.

10 Q Where were you raised?

11 A In St. Louis.

12 Q How far did you get in school?

13 A Till about maybe the ninth grade.

14 Q Are you Muslim?

15 A Yes.

16 Q When did you become Muslim?

17 A In '79, between '79 and '80.

18 Q Approximately how old were you then?

19 A I was about 27, 33, 34.

20 Q That is a large range.

21 A About 27, 28, something like that.

22 Q What prompted you to become Muslim?

23 MR. KHUZAMI: Objection.

24 THE COURT: Sustained.

25 Q Did you become Muslim in St. Louis?

1 A No, I became a Muslim in Cleveland, Ohio.

2 Q After you became Muslim, what did you do?

3 A After I became a Muslim, and the lifestyle that I
4 had before, I had to make adjustment in the lifestyle, in
5 certain eating habits, certain habits that you have to deal
6 with people according to the Islamic standard. At that time
7 before, I used to drink and smoke and did everything. Under
8 Islam itself makes the drinking of alcoholic beverage haram,
9 eating the meat of pork is haram. So I had to adjust my
10 life of Islam in eating the pork and smoking of cigarettes
11 and drinking the wine.

12 Q Were you employed at that time?

13 A Yes, I was employed for one company and after I
14 became a Muslim and I started growing my beard, the man he
15 gave me a hard time and telling me to shave my beard, and I
16 tell him that I am a Muslim and I can't shave my beard.

17 MR. KHUZAMI: Objection.

18 THE COURT: That is sustained and stricken.

19 A He terminate my job --

20 THE COURT: If there is an objection you have to
21 stop, and if I rule on the objection and sustain it, you
22 can't continue.

23 Mr. Wasserman, you can move this faster.

24 MR. WASSERMAN: I am, your Honor.

25 Q What did you do for a living after you became a

1 Muslim?

2 A After I became a Muslim I became what they call a
3 merchant. I was selling incense and perfume in downtown
4 Cleveland Ohio.

5 Q Were you wearing the same kind of outfit that you
6 are wearing now?

7 A No, before I wore the Arabic taqiyya and kutra,
8 what they call a kutra, which is like a head scarf.

9 Q Can you describe what kind of clothing you have
10 now --

11 MR. KHUZAMI: Objection.

12 THE COURT: Sustained. Mr. Wasserman, please
13 move this along.

14 Q Did there come a time when you left the United
15 States?

16 A Yes.

17 Q Where did you go?

18 A In 1986 I left, I went to Pakistan, and I stayed
19 about Pakistan, India, Bangladesh, I stayed a maximum of
20 seven, seven and a half months.

21 Q What were you doing there?

22 A Doing like what they call missionary work for
23 Islam in these countries.

24 Q Then where did you go?

25 A I came back in 1986 and I remember June 20, 1987

1 I went to Pakistan but this time I went to Quetta.

2 Q That is a Pakistan?

3 A Yes.

4 THE COURT: Can you spell that for the reporter.

5 THE WITNESS: It is Q-U-E-T-T-A, Quetta.

6 Q Then what happened?

7 A I met the old guy that I met before in '86 and I
8 was asking about Afghanistan and can he help me go to
9 Afghanistan. So after a few hours I stayed in Quetta, I
10 went in Afghanistan with the Afghan mujahideen.

11 Q Where did you go in Afghanistan, do you recall?

12 A The first time I went to Kandahar.

13 Q Could you spell that for the reporter.

14 A K-A-N-D-E-R, something like this.

15 Q Where is that, Kandahar?

16 A This would be like towards the Iraq area, maybe
17 in the far east or western. I forgot.

18 Q What did you do there?

19 A I went there with the intention to see what the
20 problem was, because I heard that people said it was a
21 jihad, people said it was people fighting against each
22 other. People said it's rebels fighting against the
23 government. And, you know, the blessings of my God that he
24 was able to let me go and see for myself really what it was.

25 Q What did you see?

1 A I saw oppression, I saw Russian soldiers bombing
2 villages, killing women and children without any reason at
3 all, women and children. Women and children who has the
4 right to have freedom, to have the right to liberty and
5 pursuit of happiness.

6 Q What did you do in Afghanistan at that time?

7 A Majority, I helped Afghani making what they call
8 a conduit, trenches. I helped with giving out clothes to
9 Afghanis helped out with medical supplies that some
10 organizations had in Quetta.

11 Q For approximately how long did you do that?

12 A I did it for maybe a month.

13 Q Then what happened?

14 A Then the commandant asked me if I wanted to
15 fight.

16 Q Then what happened?

17 A I told him I don't know anything about fighting.

18 Q You had never been in the army in the United
19 States?

20 A No, I never been in the army but I used to watch
21 Vic Morris in Combat on the television before.

22 Q Did you ever see any fighting?

23 A The first time I saw a Russian tank, just like I
24 saw the tank, and I was trying to learn to speak the
25 language of the Afghani, which is called Puhsto and Farsi.

1 For my adjustment period, because I didn't know any
2 language, only English, and adjusting in the area, we seen a
3 tank, just a distance from the tank was from here against
4 the wall and I just freaked out.

5 Q Did there come a time when you actually saw
6 action?

7 A Yes, I saw action after maybe a year, year and a
8 half.

9 Q Where were you based in Afghanistan?

10 A I was based mostly in the south of Afghanistan,
11 in the Mazar area, close to Russian border.

12 Q How long were you there?

13 A I was approximately almost two years.

14 Q Did you learn to speak the language?

15 A By the time I learned to speak the language and
16 deal with the Afghanis and deal with the food of the
17 Afghani, my adjustment period was over, so I was able to
18 walk with the Afghanis because they used to call me black
19 Afghan.

20 Q Were there many black Americans over there?

21 A I heard but I never saw any, except one, but to
22 this day I don't know where he is or what's --

23 Q When you say you had heard of them, did you ever
24 hear of Dr. Rashid?

25 A Yes, I heard of Dr. Rashid in maybe '89 when I

1 became from Mazar-Sharif to Peshawar.

2 Q Peshawar is in Pakistan?

3 A Yes.

4 Q What did you hear?

5 A I heard there was one American, he was a doctor,
6 he was helping the mujahideen Afghani people, if you make a
7 good impression with them, they say good remarks. They said
8 he never raised his voice with people and they said he was
9 dedicated in helping people more than himself.

10 Q Who did you hear this from?

11 A I heard from some Afghani doctors themselves and
12 some from mujahideen.

13 Q You heard this in Peshawar?

14 A Yes, and also in -- yes, Peshawar.

15 Q Did there come a time that you actually met
16 Dr. Rashid?

17 A Yes, I met him when I came back in '89.

18 Q Where did you meet him?

19 A I met him when I went to the hospital to see him
20 in some hospital off Atlantic Avenue.

21 Q What was the reason that you went to see him?

22 A Because I heard about him, and a few times
23 before, maybe two, three times I heard about one American
24 doctor, he was helping Afghani mujahideen. I want to see
25 him. I said when I am in New York I can at least give him

1 my salaams and wish him good luck and to really, to see his
2 reputation, to see what he is all about.

3 Q Where did you go after you came back to the
4 United States?

5 A When I came back to the United States, I stayed a
6 few days and I went back.

7 Q Back where?

8 A To Pakistan.

9 Q Did you stay in Pakistan?

10 A No, my base was Pakistan but my work, majority,
11 was inside Afghanistan.

12 Q Did you at any time hear about Dr. Rashid again
13 in Afghanistan?

14 A Yes, in '90, when I went to Khost.

15 THE COURT: Can you spell that for the reporter.

16 THE WITNESS: K-H-O-S-T.

17 Q What did you hear at that time?

18 A At that time I heard that there was one American
19 doctor and he was in Afghanistan, he helped mujahideen, and
20 they asked me do you know him? I said yes, I know of him
21 and I saw him. They asked me how was, I said he was in good
22 condition, hamdulilah, which it means praise be to God. And
23 we just talked about nonsense after that.

24 MR. WASSERMAN: Thank you so much.

25 THE WITNESS: You are welcome, sir.

1 THE COURT: Any cross?

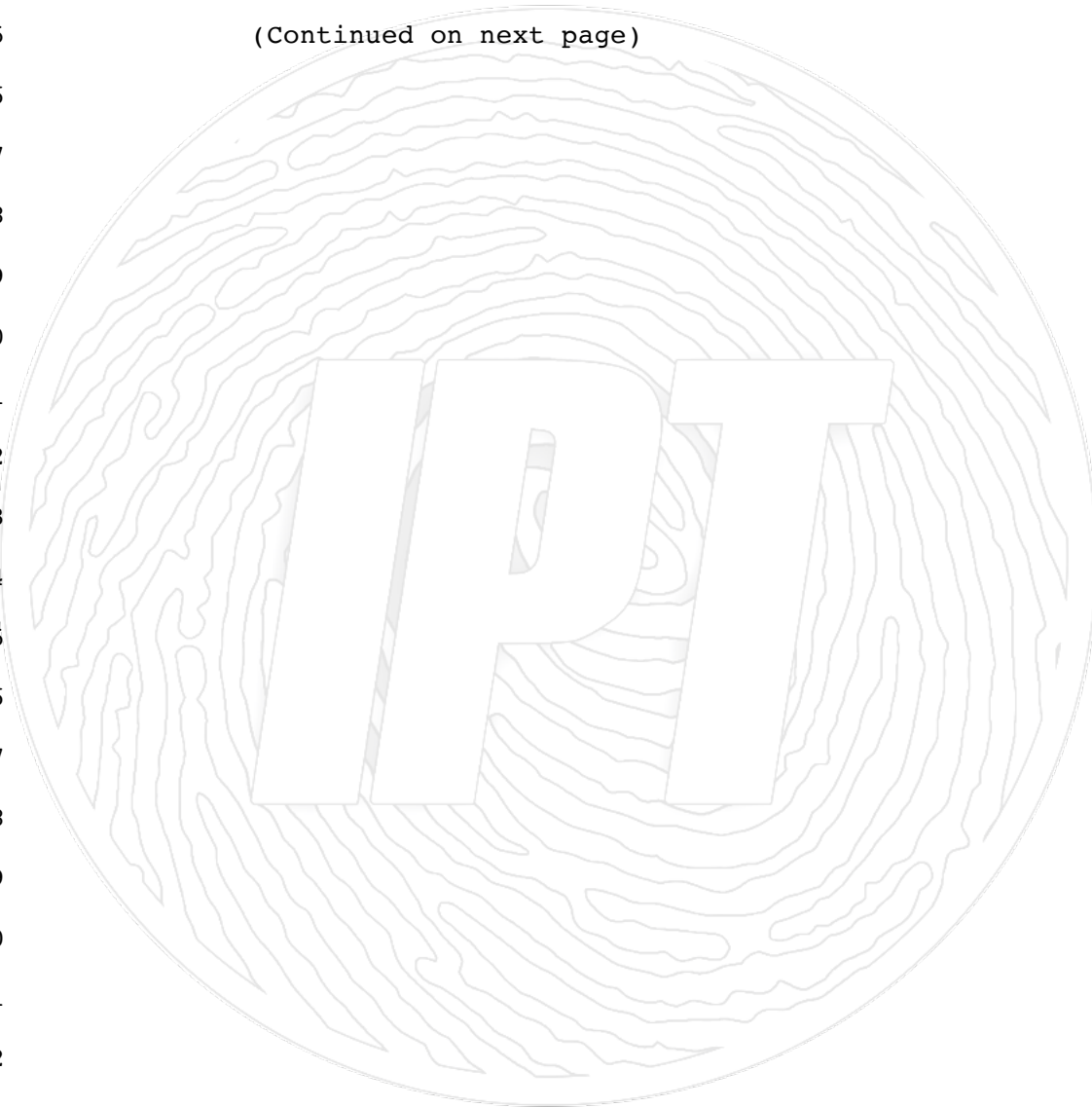
2 MR. KHUZAMI: No, thank you, Judge.

3 THE COURT: Thank you. You are excused.

4 (Witness excused)

5 (Continued on next page)

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1 THE COURT: Mr. Wasserman?

2 MR. WASSERMAN: Yes, your Honor. At this time we
3 are introducing into evidence, without objection from the
4 government, a FISA recorded conversation dated May 9, 1993,
5 between Clement Hampton-El and Asim Mohammad. It takes
6 place at 10:48 p.m. on May 9, 1993. No. U for the tape and
7 U-1 for the transcript, which will be distributed to the
8 jury as an aid.

9 MR. KHUZAMI: No objection.

10 THE COURT: All right. Exhibit U-1 or U-T?

11 MR. WASSERMAN: Your Honor, the way the FISA is
12 noted is U for the tape and U-1 for the transcript.

13 THE COURT: U and U-1 are received without
14 objection.

15 (Defendant Hampton-El Exhibits U and U-1 were
16 received in evidence.)

17 THE COURT: And those are in the jurors' books?

18 MR. WASSERMAN: Yes, your Honor.

19 THE COURT: All right.

20 THE COURT: Are you going to play the tape now,
21 Mr. Wasserman?

22 MR. WASSERMAN: Yes, your Honor.

23 (Tape played)

24 THE COURT: I will see you at the sidebar.

25 (At the sidebar)

1 THE COURT: Is your client next up?

2 MR. WASSERMAN: Yes, your Honor. Come tomorrow
3 morning, I will be able to put in some tapes and
4 transcripts. I discussed this with Mr. Khuzami. That would
5 be, I believe, relatively brief. Those tapes and
6 transcripts relate to CM-25 and 41, which will not be gotten
7 into with my client until tomorrow.

8 THE COURT: I am going to take a short break now.

9 MR. WASSERMAN: When do you intend to take the
10 morning break?

11 THE COURT: 11:05 or 11:10.

12 MR. WASSERMAN: The reason I ask, your Honor, is
13 that I don't want to keep him on for anything longer than an
14 hour, an hour fifteen, at any stretch.

15 THE COURT: I will arrange that.

16 MR. WASSERMAN: Good.

17 THE COURT: Is it physical discomfort?

18 MR. WASSERMAN: Between the age and the stress
19 and the diabetes, I would like to keep him --

20 THE COURT: We can talk about this.

21 MR. WASSERMAN: I just raise it for your Honor's
22 consideration.

23 THE COURT: All right.

24 (In open court)

25 THE COURT: Ladies and gentlemen, we are going to

1 take a very short break. Please leave your notes behind.
2 Please don't discuss the case. We will resume in a few
3 minutes.

4 (Recess)

5 (Jury present)

6 THE COURT: Mr. Wasserman?

7 MR. WASSERMAN: Thank you, your Honor. At this
8 time the defense calls Clement Hampton-El.

9 THE CLERK: Do you affirm or swear?

10 THE WITNESS: I'll swear.

11
12 CLEMENT HAMPTON-EL,
13 called as a witness by the defense, having been duly
14 sworn, testified as follows:

15 THE COURT: Go ahead, Mr. Wasserman.

16 MR. WASSERMAN: Thank you, Judge.

17 DIRECT EXAMINATION

18 BY MR. WASSERMAN:

19 Q Good morning.

20 A Good morning.

21 Q I have a lot of questions. First, your name.

22 Clement Hampton-El is your legal name?

23 A Yes, it is.

24 Q Sometimes you use the name Robert Hampton-El?

25 A Yes, I do.

1 Q And can you explain that to the jury.

2 THE COURT: Mr. Hampton-El, try to lean into the
3 microphone a little bit so everybody can hear you.

4 A That was my grandfather's first name, so it was
5 given to me as a kid and it carried on over into my
6 adulthood. The name was Bob Robert Clark, so they called me
7 Robert and Bob and it simply hung on with me.

8 Q Do you have an Arabic name?

9 A Abdul Rashid Abdullah.

10 Q Do you use that Arabic name?

11 A All the time.

12 Q Do people sometimes refer to you as Dr. Rashid?

13 Q Yes, I am known as Dr. Rahid also.

14 Q As we continue, if I can call you Dr. Rashid?

15 A That is fine with me.

16 Q Incidentally, the Dr. Rashid came about after
17 Afghanistan or before?

18 A After Afghanistan.

19 Q The most basic question to start with is: Did
20 you ever intend to kill people, like the people in the jury
21 box, at any time, any place, ever?

22 A I have never killed anybody in my life, first of
23 all. And I would have no intentions of killing anybody, in
24 the jury box or any place else.

25 Q Did you ever intend to help anyone at any time in

1 any way bomb the Lincoln Tunnel, the Holland Tunnel, the UN,
2 26 Federal Plaza?

3 A Never it was my intentions of doing any such
4 thing here or any place else.

5 Q How about the urban terrorism that the government
6 charges, were you a part of that?

7 A In no shape, form or fashion.

8 Q Let me go back with you, first to give the jury
9 an extensive --

10 MR. FITZGERALD: I object to the commentary.

11 THE COURT: The commentary?

12 MR. FITZGERALD: Commentary.

13 THE COURT: Yes. Just pose questions.

14 Q Where were you born?

15 A Brooklyn, New York; Greenpoint area.

16 Q When were you born?

17 A 1938, February 18.

18 Q Who was in your family -- who raised you?

19 A My mother and father. I had six sisters, two
20 brothers.

21 Q Did you stay in Greenpoint during your childhood?

22 A For a while, but then we moved to Long Island,
23 Center Moriches, built a home there, stayed there for a
24 while. I attended school for a while in Selden, Long
25 Island, and then we moved back to the city.

1 Q And when you say you moved back to the city,
2 where did you move back to?

3 A Back to Brooklyn.

4 Q Were your parents Muslim?

5 A Yes.

6 Q Any particular branch or kind?

7 A Well, at that time we didn't have the correct
8 aqida, meaning the faith, the faith, you know, as far as
9 what the true religion was. So it was something called the
10 Moorish Science, meaning it was a form of innovation,
11 because it wasn't in its purest sense at the time.

12 Q You said Moorish, M-o-o-r-i-s-h?

13 A Yes. Moorish Science.

14 Q Did you belong to that?

15 A For a number of years.

16 Q Did you go to school in Brooklyn after you went
17 back from Center Moriches?

18 A Yes, I did.

19 Q Where did you go to school?

20 A Quite a few different schools, but I completed up
21 to School Trades.

22 Q School Trades?

23 A School Trades High.

24 Q Where is that?

25 A That is a school in Manhattan, over at 13th

1 Street between Sixth and Seventh Avenue. It is specializing
2 in chef catering, bakery, etc., etc.

3 Q How far did you go in School Trades?

4 A To the 11th grade.

5 Q Did you choose School Trades or --

6 A It was suggested to me it would be a good school
7 to go to.

8 Q For what purpose?

9 A They said you can make a lot of money as a chef.

10 Q Now, you left school in the 11th grade, correct?

11 A Yes, I did.

12 Q What did you do then?

13 A Well, I left school because there was a need for
14 income in the home, so I quit and I worked for a while.

15 Q What did you work at?

16 A Well, during the summer it was an ice truck, and
17 during the winter it was cold and because back in those
18 days, you know, it wasn't gas stoves and natural heat was
19 not too popular, so I worked at numerous other things such
20 as working on fruit trucks and whatever else was available.
21 Jobs were difficult to come by at the time. I worked as
22 clerk, things of that nature.

23 Q About how long did you do those types of jobs?

24 A I did that for just a little while. I figured if
25 I would go in the service, I could advance my education,

1 learn a trade that I could utilize out here in the civilian
2 life.

3 Q When did you go into the service?

4 A I went to the service in '56.

5 Q And what branch?

6 A United States Army.

7 Q Any particular part of the Army that you enlisted
8 in?

9 A Well, I went in and I started off with the
10 infantry, I went to Signal Corps, I did a little in the
11 armored division.

12 Q You said Army division?

13 A Armored division, tanks, etc.

14 Q How old were you when you joined the Army?

15 A 17.

16 Q Where were you trained in the Army?

17 A Fort Dix briefly; then Fort Knox, Kentucky; Camp
18 Gordon, Georgia -- it is Fort Gordon, Georgia, now.

19 Q Had you ever been south before?

20 A No, I hadn't. And that was an encounter that I
21 remembered, you know, the rest of my life. Number one, I
22 went in the Army under the impression that, well, here I am
23 in the Army, you know, a United States soldier. But things
24 weren't exactly what they were put up to be. It was within
25 the Army itself they had specific places, you know, they had

1 a place for everybody, but it was quite obvious that it
2 wasn't really for everybody. I had encounters with officers
3 who addressed you out of your name, you know, nigger and
4 stuff like that. I said, "Hey, you know, what's happening?
5 This is the Army. I thought we are in the same thing." And
6 I think my problems started to develop at that time.

7 So I started seeing who I can speak to about
8 this. And my efforts directed to the officers on the camp,
9 it was just like a joke, you know. "I'll look into it."
10 And "Don't waste my time." This kind of thing. So I start
11 writing people here in New York. I wrote a Senator by the
12 name of Senator Kenneth Keating. I wrote Adam Clayton
13 Powell. I wrote the President. I wrote the Inspector
14 General. And people got a little pissed off with that.

15 So I start getting a petition together and
16 getting people to sign this who had experienced the same
17 encounter. It wasn't only blacks; it was white people too.
18 Because they says they didn't want the blacks and whites to
19 hang out, especially in places like Georgia. People were
20 riding in the back of the bus, and in front of the train too
21 where all of the smoke would come back in the window. And I
22 was a young man who didn't hold his tongue too much, so I
23 suppose these things affected me. I spoke to the Inspector
24 General on the posts and to some of my fellow soldiers.

25 Q What happened then, after you spoke out? What

1 then happened?

2 A Well, I left, I moved on to another place, and we
3 went on maneuver, Fort Polk, Louisiana. And I found out
4 when I came back that the Inspector General had answered my
5 letter in Washington. And he recommended the Inspector
6 General on the post call me, and he told me, "Young soldier,
7 this captain of yours is a great man. Why do you want to
8 put his career in jeopardy?" I says, "You don't even know
9 the man. You are supposed to check out grievances and find
10 out if there is anything to what I am speaking about and
11 check out some of these names."

12 So he said he would do this here. To the best of
13 my knowledge, it was never done, because I start coming
14 under some serious scrutiny and verbal attacks and a lot of
15 innuendo. It was threatening in many cases.

16 Q Then what happened?

17 A Finally, some guys came into the barracks and
18 they said, "You know, you're a dead nigger." I thought they
19 was just saying a lot of crap, you know. I stayed in the
20 barracks myself. This was at Fort Sheridan, Illinois, and I
21 was sitting on the top bunk. I was attacked. And some
22 people got hurt. And they called for reinforcements, and
23 these came, and people came out of nowhere. Somebody
24 finally got behind me, and hit me in the head. So I woke up
25 in the stockade, you know; I was holding my head and things

1 like this.

2 Q Was that the first time you were ever in the
3 stockade?

4 A Yes, first and last.

5 Q Have you ever had any disciplinary problems
6 before this incident?

7 A I had the most minor disciplinary action. That
8 was an Article 15. That meant two hours' extra duty, KP,
9 you know.

10 Q What was that for?

11 A We had an encounter in a place called Highwood,
12 Illinois. Strangely enough, you know, you figure Chicago,
13 the area of Chicago -- first of all, I hadn't encountered
14 too much problems here in New York as far as a black-white
15 issue. And Illinois was just a little different than the
16 South. And we went to a club. We were told, you know, they
17 didn't want us in there. And two other guys, and they were
18 European people, white, so to speak, and dialogue was
19 exchanged, and the guys went in the bathroom and they did
20 some little stupid stuff, you know, urinating on the floor
21 and stuff like this. And it was a big argument. We left.
22 And the people called the police, said the guys did this
23 stuff all over the floor. And they followed us to Fort
24 Sheridan, Illinois, and they questioned us, and that's how
25 the Article 15 came about.

1 Q Now, after the incident of the assault when you
2 woke up in the stockade, what then happened?

3 A They told me that they was going to bring a
4 general court-martial, dishonorable discharge, that I had
5 tried to kill three people, and a lot of garbage, really.
6 And I said nothing like this happened. And then they broke
7 it down to a special court-martial.

8 Q What was the result of that special
9 court-martial?

10 A I did, like, three months. And they let me out,
11 you know, while I was in -- I had problems, and I spoke to
12 some of the people.

13 Q You said you were in the stockade then?

14 A Yes.

15 Q And what kind of discharge did you receive?

16 A After I came out, I didn't get removed from the
17 service, but the same thing continued, so they called me
18 over to an Army Review Board, and they said, "We are going
19 to remove you from the service." I said, "I only have a few
20 months left to go before I am discharged. I would like to
21 complete my duty and get out." They said no. And they
22 removed me with an undesirable discharge.

23 Q Now, was there a reason that you wanted to
24 complete your service and not be removed at that time?

25 A Yes. Well, I went in there with the intentions

1 of doing my time, getting out with an honorable discharge.
2 And to come out with a bad discharge, you know, would be a
3 stain on your record. And it wasn't the way that I wanted
4 to come out.

5 Q Did you eventually apply for a change in your
6 discharge status?

7 A Yes, I applied for a change, and the fact that I
8 had never encountered any problems before going in or after
9 coming out, and I had letters from numerous people, doctors,
10 and attorneys.

11 (continued on next page)

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1 Q When was it? When did you apply for --

2 A I applied for it first in the later, about the
3 end of '59 and maybe mid-sixties, and most people said your
4 efforts are going to be wasted because most surely they will
5 never approve your discharge. I said I can't see the
6 reason. And I stopped for a while and went into many areas
7 of work, and then I pursued it again with a number of
8 letters, recommendations, character references, etc., etc.,
9 and they overturned my discharge and upgraded it to a
10 general discharge under honorable conditions.

11 Q When you got out -- this was in 1958 -- did the
12 fact that you had an undesirable discharge at that time
13 affect in any way your employment possibly?

14 A In every way you can imagine. Any time applying
15 for a job, the minute that people knew that you were removed
16 from the service undesirably, the job was out.

17 Q How did you finally overcome and deal with that
18 problem?

19 A Before I overcame it, I did a whole lot of
20 self-employed work. I went around and I created work for
21 myself. I found people who owned buildings and I told them
22 I would paint the buildings for them, paint the apartments
23 in the building, do plastering, whatever, because I used to
24 do a little construction work, which I learned in there,
25 when they put me in the stockade, jackhammer, building etc.,

1 etc. And I worked on a few construction sites. But the
2 minute the union delegate came around, found out you didn't
3 have a card, you had to leave.

4 Finally, I lied in filling out the application.
5 I said that I had no prior service experience, and I got the
6 job.

7 Q What job was that?

8 A The first one was Goldwater Memorial for the
9 chronic disease. This place consists of polio victims,
10 multiple sclerosis, cerebral palsy, chronic syphilis.
11 Anybody who had a disease that was going to take him away
12 from this world, that's what it was about.

13 Q Is that the first hospital you ever worked at?

14 A Yes.

15 Q What did you do? What did you start out to do?

16 A I worked as a messenger first, but it broadened.
17 I mean, like you have a specific title but you end up doing
18 a whole lot of other things. So I started working with
19 polio patients, mainly moving them about, counseling them,
20 because when death is approaching someone they go through a
21 lot of changes, and people need somebody to talk to, let
22 them know that this is a phase that everybody is going to go
23 through. Everybody is going to die.

24 Q You said that you did more than just a job title
25 of messenger. What exactly in addition to counseling work

1 did you do?

2 A I helped even with the dressings. You know,
3 like, when the people are bedridden, their body breaks down
4 rapidly, and you clean the people up, you know. Some of
5 them laid up in feces for long periods. And sometimes
6 people become hard when they work on a job for a long time,
7 and maybe their sense of caring diminishes to some degree.
8 So you see this person who needs help, you go and help them.

9 So these are some areas that I worked in. If a
10 person is laying up there and calling and calling and nobody
11 is paying attention to them, I would go to the individual
12 and tell them if it was something that I could do. You got
13 to take care of the person.

14 Q Did you ever work with anybody in connection with
15 the iron lung?

16 A Yes, I used to work with the iron lung and a
17 striker frame. A striker frame is -- because the body
18 becomes so sensitive that he can't lay on anything solid.
19 So it's just one straight bar like this, and another one
20 comes like so and another one across the bottom. So this
21 way the body is like this, and this part, abdominal area,
22 femur area, up around the thighs and what not, chest, etc.,
23 it's not making any serious contact with anything solid,
24 because you are trying to keep your body from breaking down.
25 It's very painful. So you work with people on this, moving

1 them, putting them on it, covering them up, because a big,
2 say canopy of some sort would go over them.

3 Q How long did you work at Goldwater Memorial?

4 A For four years.

5 Q During that period of time, did you take any
6 courses or -- let me ask the questions.

7 A You just did things to upgrade yourself somewhat,
8 to have more of a sophisticated understanding of dressing
9 the people, sterile techniques, irrigating certain parts of
10 the body, the wounds, the different, you know, minor
11 medication that you would do.

12 Q After Goldwater Memorial, where did you work?

13 A I went to Long Island College -- before Long
14 Island College -- excuse me -- I went to Manhattan State.
15 They had some school there.

16 Q What is Manhattan state?

17 A That's a place for mentally -- you know -- mental
18 institution.

19 Q What did you do at Manhattan State?

20 A At Manhattan State they had a variety of people
21 who were mentally ill. They had the criminally insane.
22 These were people that they kept there just before they sent
23 them to Matawan. And then they had a geriatrics unit there
24 for the older people. They had a medical unit there for
25 people who were not only mentally disturbed but were

1 physically ill. And they had a school there. So I was
2 going through the school to learn how to deal with people
3 who were mentally disturbed, how to deal with their physical
4 illnesses, electroconvulsive shock therapy. And the
5 different medications they dealt with, and how one would
6 deal with a person who was schizophrenia, because sometimes
7 they would become extremely violent, and to restrain them
8 you would not want to be violent back with them, you would
9 want to restrain them in the best way you could without
10 hurting them and without being hurt. Some people become
11 very rigid when they are fighting, and if you are too
12 forceful with them, then you are losing focus as to the
13 person, their perspective, and you can break the
14 extremities. So these are just things that you have to
15 learn how to discipline yourself. A guy walks up to you and
16 spits in your face, you don't jump on him and beat him up,
17 you know. You might want to, but you shouldn't.

18 Q Did you ever participate in any way in any
19 treatments like electrical therapy?

20 A Yes, bad news. To me it was bad news because
21 after it was done the people were like zombie-like, and I
22 didn't see the real benefits. You know, I mean they would
23 convulse violently, they didn't know what happened after it
24 was over.

25 Q Were lobotomies done at that time?

1 A They didn't have no lobotomy.

2 MR. FITZGERALD: Objection, 401.

3 THE COURT: That is sustained.

4 MR. WASSERMAN: Withdrawn.

5 THE COURT: Go ahead.

6 Q After Manhattan State Psychiatric, where were you
7 then employed?

8 A I left there and went over to Long Island College
9 Hospital.

10 Q What did you start doing there?

11 A I started there as an orderly, and I worked that
12 area for about six months, and then I went to upgrade
13 myself, and I went to central supply. In central supply,
14 that was dealing with supplying the hospital so you can find
15 out the needs, major surgery, minor surgery, bleeding
16 materials, stitch removal, etc., etc. It also covered the
17 area that I advanced myself in, respiratory therapy. So
18 then you start dealing with the respiratory system of the
19 body, when a person is not able to breathe. We just started
20 first with the oxygen, how to handle it, it's usage, the
21 different forms of it, for cystic fibrosis, respirators for
22 a person who is not able to breathe himself. It was
23 numerous theories that you covered. Individuals who had
24 tracheotomies, because this is breathing through the neck
25 almost, you know, so to speak. But it covered the

1 respiratory area.

2 Q Did the issue of your discharge come up at any
3 time?

4 A Yes, it did.

5 Q How?

6 A The head personnel called me downstairs after
7 about a year, year and a half, something like that, and he
8 said Mr. Hampton-El, I'm going to have to let you go. I
9 says why? He said you have an undesirable discharge, and I
10 can't let you work here. Why didn't you tell me? I said
11 would you have hired me if I told you? He said no. I said
12 that's why I didn't tell you. I said, now it appears to me,
13 I have been trying for a long time to get honest employment,
14 and every place I go, I am denied. I said I would think
15 that you are trying to drive me to become a criminal or to
16 do something other than honest work. I said now, all I am
17 asking you is this: You give me the opportunity of working
18 here and making some progress in my work, and you will
19 benefit from it and I will. He said you've got a job. That
20 was 28 years ago.

21 Q You worked at Long Island College Hospital from
22 then on?

23 A Yes.

24 Q Until your arrest in this case?

25 A Correct.

1 Q How long were you in central supply?

2 A I stayed in central supply for maybe a year.

3 Q Then what?

4 A Then I said maybe I can move up a little higher.

5 So I went on the ambulance. I became an emergency medical
6 technologist. First I went and learned just some of the
7 basics of first aid. I went to the American Red Cross
8 before going on, and I did a standard course in first aid.
9 Then I did an advanced course. This consists of dealing
10 with minor fractures, shock, poisonings, minor lacerations.
11 And the advance went into delivering of children, major
12 fractures, gunshot wounds, burns, strokes, etc. It covers a
13 large area that you would deal with when you go out to
14 people's homes and pick them up.

15 Q How long did you work on the ambulance?

16 A I worked on there for like seven years, but it
17 broadened, because first of all when you went out on
18 cardiacs, delivering babies, etc., usually a doctor went
19 with you. But when you elevated yourself to a degree that
20 you were capable of doing all the things that he needed to
21 be there for, this no longer happened. You went by
22 yourself. You made decisions as to what type of treatment
23 people would get, you pronounced people dead if they were
24 dead, after checking vital signs and making sure that they
25 were truly dead and not in a coma, because people may be in

1 a state of unconsciousness that you may think they are dead
2 and they are not. So there are certain techniques that you
3 learn to make sure that they are dead, such as touching of
4 the eyeball, seeing that the pupils are fixed, etc.

5 Q Did you get any commendations or any recognition
6 that was of a special sort for your ambulance work?

7 A The police commissioner, Patrick Murphy, Mayor
8 Lindsay both gave me letters of commendation. Patrick
9 Murphy even gave me a PBA card because there was a couple of
10 cops that got shot up pretty bad, and it was so bad that
11 they did request a physician, and no reflections on
12 physicians but when they run into such trauma, sometimes it
13 shocks them because they are used to dealing with
14 operations, etc., etc. The guy's arm was like shot off, cop
15 by the name of Jimmy Govi, another guy by the name of George
16 Belthunes. And another guy Charlie Valesquez, housing cop.
17 Strangely enough, a transit cop shot him. But anyway, I
18 took care of business and helped him shave his arm without
19 panicking and brought him in, and they were very thankful
20 and so was the police department and the mayor. So I got an
21 award from them, or a letter of commendation.

22 And several of my patients outside ---even a
23 couple of judges gave me a letter of thanks for helping
24 them.

25 Q Did you ever have to deal with any suicides or

1 anything like that?

2 A Plenty of suicides. There was a young lady,
3 first injury I got on the job, she wanted to kill herself,
4 lived up in Brooklyn Heights. So we went up to her house,
5 and we smelled gas coming out. Somebody was talking about
6 shooting the lock off first. I said the whole place will
7 blow up, you know that. And I went upstairs to the above
8 floor. It was an alley between her terrace and the window I
9 was in. And I jumped out the window and I landed on the
10 terrace, and I broke my foot in like five places. And I got
11 up, I pushed the terrace door open and went inside, and let
12 the other officers in. They said how the heck did you get
13 in, I told them. I didn't realize my foot was broken. So
14 we carried her down the stairs, took her to the hospital. I
15 got to the hospital, my foot was blown up pretty big then,
16 and I realized it was broken.

17 Q You stayed there as an EMS technician for seven
18 years, correct?

19 A Yes. And the one thing I forgot to mention. At
20 that time, for jumping out the window, the hospital said
21 that was not part of your job, you should have waited for
22 police emergency. I said it appeared to me that the woman
23 would be dead by the time I got there, that's why I did it.
24 So they said we still can't pay you compensation. But this
25 was a very, very, very well-to-do family and the woman's

1 mother sent like three attorneys down there, and they said,
2 you know, give it up or it's going to be a problem. So I
3 got compensation.

4 Q What did you do after -- this is all at Long
5 Island College Hospital, correct?

6 A All -- not only there, I worked at a place called
7 Unity Hospital also on the the ambulance. During this time
8 working on the ambulance, they sent us to a place like
9 Downstate Medical University. They gave us a brief course
10 also to operate our knowledge of what we was doing in the
11 field.

12 Q What did you do after EMS?

13 A I wanted to try to move up into another area, so
14 going over to a place we had called Prospect Heights
15 Hospital, they used to do a lot of tracheotomies, a lot of
16 neurosurgery there. They had a hemodialysis unit there, so
17 I saw what was going on inside and it appeared to be very
18 interesting, and it appeared to be somewhat stable as
19 opposed to the ambulance, you always had different patients
20 or sometimes very repetitious, the same patients when it was
21 overdoses, if you were dealing with people who were using
22 drugs. So I saw this and I inquired about it and I start
23 doing some training for them, and the training consists of
24 first of all knowing the functioning of the machines. So
25 you had to know how to operate the machines and how to

1 prepare them in the event that they broke down.

2 Q You are talking about dialysis?

3 A Yes. At that time you had to make personal baths
4 of dialysate, consisting of potassium and different
5 chemicals that would work with the body. And learn
6 venipuncture.

7 Q What do you mean work with the body?

8 A Hemodialysis, you have to have this dialysate
9 that is going to go into a coil, which is an artificial
10 kidney. First of all, when I went into it dialysis was new,
11 you know. I mean, people didn't live long. They weren't
12 working mainly to clear some chemistry --

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1 THE COURT: Mr. Wasserman, can you first of all
2 focus your questions. And then can you come to a convenient
3 break point in the next five minutes.

4 MR. WASSERMAN: Yes. They are focused. Your
5 Honor, this is convenient.

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

10 (Jury excused)

11 THE COURT: Mr. Wasserman, may I see you briefly.

12 (At the side bar)

13 THE COURT: If I ask you to focus questions, I
14 don't want an argument.

15 MR. WASSERMAN: I won't give you one.

16 THE COURT: Don't ever do that again.

17 MR. WASSERMAN: If you say that in front of the
18 jury, you make it look like I am not focused, and that is
19 why -- you know, I am asking him what I think are focused
20 questions.

21 THE COURT: You are not getting focused answers.

22 MR. WASSERMAN: This is the first time, I think,
23 he has ever testified.

24 THE COURT: That is not a criticism of him. That
25 is a suggestion to you that when he starts to ramble you

1 stop him. I let it go on and I let it go on and then I made
2 a mild request.

3 MR. WASSERMAN: Judge, I apologize. Your mild
4 request -- I won't respond. I would just ask your Honor if
5 you have a comment or criticism of my handling of the
6 questions that you do it at the side bar.

7 THE COURT: I have continually done things at the
8 side bar when I thought I could get them done at the side
9 bar. As I said, it was a mild request. If I think I have
10 to do it at side bar I will do it at side bar. But please
11 focus things. Thank you.

12 (Recess)

13 (In open court; jury not present)

14 THE COURT: Mr. Wasserman, I think maybe we are
15 going to break at about 10 to 1.

16 MR. WASSERMAN: Thank you.

17 (Jury present)

18 THE COURT: Go ahead, Mr. Wasserman.

19 MR. WASSERMAN: Thank you, your Honor.

20 (Continued on next page)

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1 BY MR. WASSERMAN:

2 Q Rashid, what did you have to learn in order to
3 make the switch from EMS to end-stage renal?

4 A You had to learn what it was about, first of all,
5 and you started off basically with the machines, how they
6 functioned, first of all. Then if they break down, how to
7 fix them, because at that time they didn't call in
8 maintenance men to repair them for you.

9 Q When you refer to machine, what do you refer to,
10 dialysis machines?

11 A Yes.

12 Q Let me stop you a second. For the benefit of the
13 jury, what is dialysis?

14 A Dialysis is when your kidneys cease to function.

15 Q What happens then?

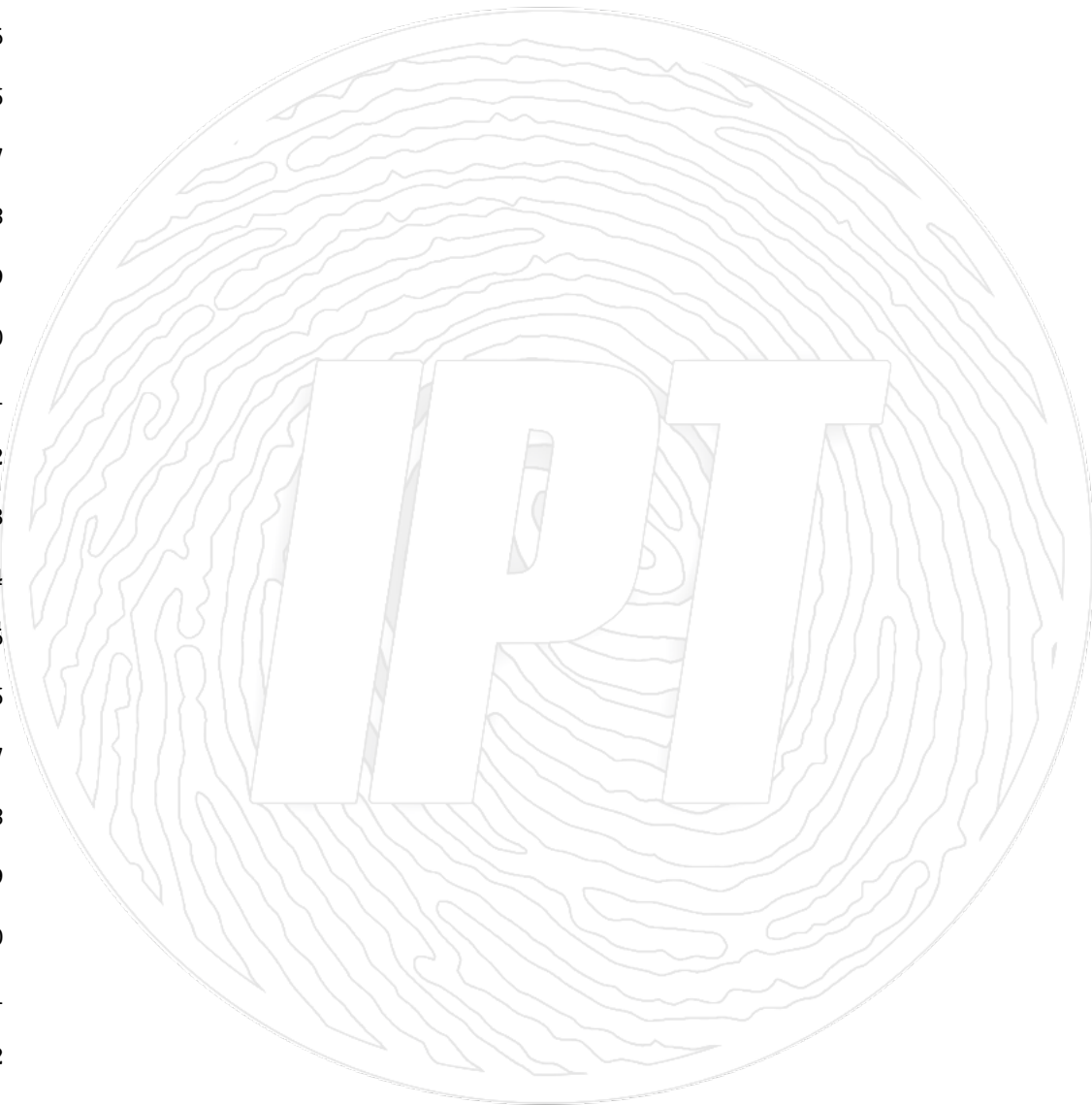
16 A When your kidneys cease to function, a number of
17 things happen. Usually you will stop urinating after a
18 period of time. The kidneys being a cleansing process, all
19 of your chemistries in the body just goes. I mean, I mean,
20 your entire lifestyle changes, what you eat, how you eat,
21 how much fluid you intake. The fact that you can't urinate
22 any more, usually they will give you, and that's stretching
23 it sometimes, maybe 40 ounces of fluid. That's for the day.

24 Most people are very noncompliant. But that
25 should call for your breakfast and what else you are going

1 to have, you know, if it's water, etc., and it eliminates a
2 number of things because of the effects it has on the blood
3 chemistry. So it changes a number of things.

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1 Q What was the life expectancy then of people who
2 had --

3 THE COURT: Sustained. May I see you at the
4 side.

5 (At the side bar)

6 THE COURT: We are not, we are not going to take
7 a magical mystery tour through all of dialysis, what happens
8 to people who don't have dialysis and what their life
9 expectancy is.

10 MR. WASSERMAN: He spent 30 years of his life
11 doing it, and since the defense is who he is and that he had
12 no intent in this case, I need to go into the work that he
13 did.

14 THE COURT: You have gone into the work that he
15 did in excruciating detail. When I asked you to focus
16 things this morning you got all upset. I am now telling you
17 to focus them. Now, focus them.

18 MR. WASSERMAN: I will do my best.

19 THE COURT: Do somebody else's best.

20 (In open court)

21 THE WITNESS: May I continue?

22 (Continued on next page)

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1 BY MR. WASSERMAN:

2 Q I will ask a question. What work did you do
3 after -- well, when you moved from EMS to working with
4 end-stage renal patients, what did your work consist of?
5 What did you do for the patient? What was your job?

6 A A number of things. It's called end-stage renal
7 disease, meaning that is the end, death is inevitable,
8 right. So it wasn't only dealing with the patient's
9 physical illnesses, it was dealing with his mind, because
10 this also affects your brain, physically and mentally, and
11 you had to deal with all levels of it, because to treat the
12 body and not the mind is no good and to treat the mind and
13 not the body is no good. So there should be a balance.

14 So my job was to make sure at that particular
15 time -- because as I said before they were only dealing with
16 removing the fluids from an individual as opposed to dealing
17 with the chemicals on a large level, because they were still
18 on the ground floor, so their knowledge of this was somewhat
19 shallow.

20 Q What exactly did you do?

21 A I, first of all, learned how to deal with the
22 machines, their functionings and repairing them. From that
23 I went to renal function, meaning to draw the bloods and
24 things of that nature. I had to take an arm, artificial arm
25 made of plastic, with veins in it and arteries in it, and

1 they filled these veins and arteries with red ink. So you
2 would puncture this arm until you became very proficient in
3 how to execute venipuncture.

4 Q The patients themselves, you administered to them
5 on machines, would that be fair to say?

6 A Yes.

7 Q What did you do with the patients on them?

8 A First I would cannulate them.

9 MR. FITZGERALD: 401.

10 A I would cannulate them first to get the blood --

11 Q Wait, wait, wait.

12 THE COURT: Would you please move it along, Mr.
13 Wasserman.

14 Q You worked in renology for how many years? From
15 when to when?

16 A From about '72 up to this time, until I was
17 arrested.

18 Q So that's approximately 21 years?

19 A Something like that.

20 Q In those 21 years of your life, you worked in a
21 dialysis clinic, correct?

22 A Yes, for the government also.

23 Q Where was the government?

24 A Yes, I used to do private work for Fort Hampton.

25 So I would go to the patients' homes and treat them also.

1 Q Were you left in charge -- withdrawn.

2 You were a medical technician. Was that your
3 title?

4 A Yes.

5 Q What was the relationship between your job as a
6 medical technician and the doctors who were supervising?

7 A I would monitor the patient, find out his needs,
8 if he became ill to deal with it, check on his chemistries,
9 if they were bad to deal with it. We used to have a family
10 conference, either the patient's wife, mother, father,
11 whoever it was, technician, nurse and the doctor. We would
12 check up on the patient's progress, if he was noncompliant.
13 Some people you put on, you treat them. Some people they
14 come back, take off 10 pounds, 12 pounds.

15 Q When you say 10, 12 pounds what does that mean?

16 A Remove fluid. Like I said, they cease to
17 urinate. So you would have to remove this weight from them
18 and in the process you are clearing the chemistries also.
19 Patients would go out sometimes, they were noncompliant, and
20 put on 10, as much as 20 pounds sometimes, and they would
21 come in -- this is like, if you treat them on Wednesday they
22 come three times a week, four times a week, five times a
23 week if necessary, four, five, six hours a day if it's
24 necessary -- and they put on, from Wednesday to Friday, 15,
25 20 pounds. So they would come in, they couldn't breathe.

1 Some would drown in their fluid.

2 THE COURT: Mr. Wasserman, we are going to have
3 to take a break right now.

4 MR. WASSERMAN: I am about to move on.

5 THE COURT: No, we have to take a break right
6 now. Please leave your notes and other materials behind.
7 Please don't discuss the case, and we will resume in a few
8 moments.

9 (Jury excused)

10 THE COURT: One of the jurors had a problem. We
11 will resume in a few minutes.

12 (Recess)

13 (Jury present)

14 THE COURT: Go ahead, Mr. Wasserman.

15 MR. WASSERMAN: Thank you, your Honor.

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1 BY MR. WASSERMAN:

2 Q Rashid, you mentioned earlier that you had been
3 born Muslim, that the Temple of Moorish Science, I believe,
4 was the branch. Did there come a time that your education
5 or activities as a Muslim began to change from that early
6 beginning at the Temple of Moorish Science?

7 A Yes, it did. There was a masjid on State Street
8 called the Islamic Mission of America, and I used to pass by
9 there quite frequently because, number one, it's not very
10 far from Long Island College, three blocks, to be exact.
11 And I used to see plenty of different people coming out of
12 there of different persuasion, background, and they dressed
13 somewhat strange to me. At that time I used to laugh it and
14 and say what are all those people doing with long dresses
15 on.

16 Q That is what you are wearing now, a long dress?

17 A Hamdi Allah, yes.

18 Q What is it called?

19 A It is called a galabia.

20 Q Please continue.

21 A I went in there and saw all these people. I said
22 Salam alay kum to them. They said what you are practicing
23 is not really true Islam, and they told me what I should do,
24 and to come back the following day, and I could take
25 shahada.

1 Q What is shahada?

2 A It is to acknowledge Allah as the one and only
3 God. (Arabic spoken)

4 Q Could you please --

5 A I am going to, because you have to first say it.
6 He is alone without partners. Mohammed, may his peace and
7 blessings be upon him, as his last messenger and prophet.

8 Q Is that the entirety of taking shahada?

9 A No. The acknowledgement of fasting through the
10 month of Ramadan, Zakat, which is a poor tax that is levied
11 on all Muslims, two and a half percent. This money is given
12 to the needy in Islam, because it is a charity tax. The
13 fasting for the month of Ramadan, which is 30 days of
14 fasting, and to make hajj, which is a pilgrimage to Mecca,
15 once in your lifetime, whenever you are able, if you have
16 the money. To refrain from alcohol, any intoxicants, pork,
17 any food that is unhealthy, food that does not have Allah's
18 name mentioned on it -- this is of the animal kingdom. And
19 not to invoke any other deity other than Allah. To respect
20 all people.

21 Q Let me ask you a question. You mention the
22 galabia. Why do you wear what you are wearing now?

23 A This is a tradition of our prophet. It is a
24 custom that Muslims dress mainly. It is becoming quite
25 popular in America but mainly in Africa, Asia, Saudi Arabia,

1 etc., etc. Women have a traditional dress and men have a
2 traditional dress.

3 Q What about the hat that you are wearing?

4 A The khufi is something that people cover their
5 heads with also.

6 Q Let me ask you, you mentioned fasting for 30
7 days. You don't eat or drink during those 30 days?

8 A You would fast, say from perhaps 2, 3 in the
9 morning, 4:00 in the morning at the latest depending on the
10 time of year that Ramadan comes, because it doesn't come the
11 same time every year. That would be a great burden on other
12 people in different parts of the world, because all Muslims
13 fast in all parts of the world. So you would fast from that
14 time period until sundown. You abstain from any oral
15 intake, any profanity language, any conduct which is bad,
16 which is normally, but you stress more emphasis on that.
17 You try to be extra charitable to people, and that is a
18 regular practice. You go out of your way. This is to
19 condition oneself not to let things turn them into what they
20 are. If you run into someone who is doing bad deeds, that
21 doesn't mean you have to do it.

22 Q Rashid, was there any course that you took for
23 any person that instructed you at State Street mosque?

24 A There was a beloved man by the name of Sheik
25 Daud.

1 Q Could you spell Daud?

2 A D-A-U-D. And he came to this country in 1910.
3 He established the Islamic Mission in, like, the late
4 thirties, and it was recognized in the mid-forties by the
5 State of New York and given a seal of approval, and he is
6 the gentleman who sat with the United Nations for
7 approximately 17, 18 years.

8 Q When you say he sat, what do you mean by that?

9 A He sat with the delegation in many different
10 countries. I sat with him on two occasions, Sudanese
11 delegation and the Iraqi delegation.

12 Q When was this?

13 A In '75, '76. Most of the masjids in America came
14 from this.

15 Q When you say came from this, what do you mean?

16 A Came from State Street. State Street was a
17 masjid that I used to call it the UN masjid so to speak,
18 because it was so many different people. It was Arabs,
19 Americans, Africans, Egyptians, Palestinians -- there was
20 even some Jews there. Guy used to be a rabbi who became
21 Muslim, hamdi Allah, sweet old man. So there was a lot of
22 people from different places.

23 Q Did there come a time that you learned about
24 jihad while you were learning about Islam at the State
25 Street mosque?

1 A Yes. I learned more than about jihad. I learned
2 about my prayers and that it was imperative to say them in
3 Arabic.

4 Q Do you know Arabic?

5 A No. Small words, but I know my prayers in
6 Arabic. But just a few scattered words here and there. And
7 the proper method of prayer and the proper cleansing of
8 prayer. Prayer is five times a day and one has to make an
9 ablution, to cleanse oneself before you can approach the
10 creator.

11 I learned what jihad was truly. The first
12 experience was when there was a border clash with Morocco
13 and Spain, and King Hassan said he was going to send planes
14 here to get American brothers over there who would
15 participate in the event there was a fight. And my
16 understanding of jihad was that this was not a fight. So I
17 didn't go. There was offers from many people. Muammar
18 Qaddafi, he sent ambassadors, so to speak, said you could go
19 to Malta, Tripoli, Ben Ghazi, and come to school there. But
20 I was skeptical of this man because it wasn't rare that I
21 heard him speak of Allah, I never heard him speak of Allah.
22 If a man doesn't speak about Allah, I am kind of skeptical.
23 But it broadened my scope and gave me an understanding what
24 our prophet did, because he gave da'wa, meaning he
25 propagated Islam for 13 years. He spoke to the people, he

1 advised them and tried to give them guidance, and then after
2 that, when it was forced on him he made jihad. The Koran
3 says attack those who attack you, and that's the only time
4 he attacked.

5 Q You started at Long Island College Hospital in
6 about 1967. Did anything else happen that year, or around
7 that time?

8 A I took shahada, number one, as I said.

9 Q How long were you living where you were living
10 when you were arrested?

11 A Close to 30 years.

12 Q Who were you living with when you got arrested?

13 A My wife. I got married in '67.

14 Q What is your neighborhood in Brooklyn?

15 A Flatbush, East Flatbush.

16 Q What is the avenue?

17 A 1351 New York Avenue, crossing Newkirk.

18 Q That is where you lived since 1967?

19 A Yes.

20 Q What kind of community?

21 A When I moved out there it was basically Irish,
22 Italian and Jewish. Then it kind of opened up. It's a nice
23 neighborhood but you have to work on keeping the community
24 nice. So when you see bad elements, troublemakers coming
25 in, it's your duty to kind of offset this. So I set up

1 patrol, I worked with communities as far as keeping it
2 clean, making sure we don't have drug dealers, muggers. We
3 used to always say no mugging, through hugging. And checked
4 out people who come in your building. They had to sign
5 where they were going, who they were going to see, and they
6 signed out when they came out. So we monitored who was
7 coming into the community. And we worked with the police to
8 a small degree.

9 Q We have heard people talk about your experience
10 in Afghanistan. I would like to ask you some questions
11 about how you got there. When did you first become aware
12 that there was something going on in Afghanistan that was of
13 interest to Muslims and people in general?

14 A I used to read about it in the papers but I
15 didn't really, really focus on it until I was speaking with
16 a brother, and he told me, he says, you know, perhaps it
17 would be helpful that, because really there is no one there
18 with medical experience and there is a lot of life being
19 lost and they are cutting off a lot of extremities and what
20 not, because the people don't know what to do. People were
21 dying because of loss of blood. And I saw some pictures of
22 people that was unbelievable, with their limbs blown off,
23 females young and old being assaulted and murdered.

24 Q You mentioned a brother. Who were you talking
25 about?

1 A A brother by the name of Mohammed Zamam.

2 Q How do you spell his last name?

3 A Z-A-M-A-M.

4 Q How did you know him?

5 A He had a restaurant around the corner from my
6 home, very good man, and he was one of the first people that
7 brought some halal food to the community.

8 Q What is halal food?

9 A This is food that is permissible for Muslims to
10 eat. There was no pork in the place or anything that would
11 go against your diet.

12 Q After you saw those pictures, what happened?

13 A After I saw the pictures, I started trying to
14 make some arrangements to make a move to go there, and I
15 spoke to several people about it, and some recommended that
16 I didn't go, but I said this was a duty that was obligatory
17 because this was a holy war. This was truly agressions,
18 because Russia went inside of Afghanistan, they tried to
19 make the people become communist, they destroyed their
20 masjids and their homes, they raped and killed their women
21 and children. They just destroyed the land, and it was
22 my -- you know, I had to go.

23 Q Why did you have to go?

24 A Because I had the background and I did -- number
25 one, first of all, I am Muslim. So for this type of thing

1 to go on and for me not to have desire to go would mean that
2 my faith is about nothing, and my faith means a lot to me.
3 And seeing what I did, if anybody in this courtroom saw what
4 I did, they would be appalled themselves. It remind me
5 almost of the holocaust, and it had been going on for a long
6 time and nobody had did anything. The Russians went into
7 Afghanistan in 1978, if I am not wrong, and this was '88,
8 and still there was a cry for help and nobody was doing
9 anything.

10 Q How did you arrange to go? You were still
11 working at the time.

12 A First of all what I did was, I went to the
13 office, the Alkifah office on Atlantic Avenue, and I spoke
14 to an imam Fawaz, and I told him my desire. He said you can
15 be used, you would be a great help. So I gave him \$500. I
16 said this is for the orphans and the widows and the women
17 and children.

18 And I left and I went to my job and I made
19 arrangements to get some vacation time. I went to the
20 Pakistani embassy to get a visa several times. I had some
21 difficulty. Finally I got it. I had to get my passport in
22 order because I didn't have one. I ran into some
23 complications, but eventually I got a ticket, I bought my
24 own ticket. All I needed from the office was for them to
25 tell me where I could go there, to go.

1 Q Did you take anything with you?

2 A Yes. I brought plenty of medical supplies. I
3 went to a place over on Flatbush Avenue and I went to a
4 medical outlet place on Linden Street, Spivack, and I bought
5 up from what I mostly understood about the injuries, a lot
6 of serious burns, Spiracyn, special wrapping, a lot of
7 combines, 4 by 4's. I brought a special thing, pediatric
8 cream. It was usually used for children with very, very bad
9 diaper rash but it was amazing how it worked on adults, so I
10 took some of that with me, too.

11 Q How did you get to Pakistan?

12 A I think the first karama -- which means
13 miracles -- I left my home which is on Flatbush Avenue.
14 Most people find it difficult to believe but it's real. And
15 I drove to Kennedy Airport. Brother Mohammed drove me to
16 the airport. From my home I left at 7:30, we arrived at
17 Kennedy Airport at 7:40. He looked at the clock, I looked
18 at the clock. He looked his at his watch, I looked at my
19 watch and we said hamdi Allah, praise be to the Lord,
20 because we had arrived there -- it's unbelievable, 10
21 minutes. That was a sign to me and myself that this was
22 Allah making something manifest for you to see, because I
23 have seen some things in my days but nothing ever like this.
24 This was no imagination, this was real as everybody in this
25 courtroom, believe it or not.

1 Q When you arrived in Pakistan, where did you
2 arrive?

3 A The first thing I did was to go on Pakistani
4 International Airline. Then we arrived at Islamabad, and
5 whoever was supposed to meet me there was not there. And
6 people started looking at me, you know, like whose this guy,
7 because I was very American, you know what I'm saying, and I
8 says -- police start questioning me, who are you, where you
9 going, blah, blah, blah. And I said let me get some
10 different clothing. So I bought some clothing that kind of
11 helped me blend in.

12 And I met another fellow, brother, and we made
13 some calls, to no avail. And we took a prop jet from there
14 to Peshawar. There, nobody was there. And we made some
15 calls and finally someone came and picked us up. And they
16 drove us to the office inside Peshawar, which had
17 affiliation with the office here in Brooklyn.

18 Q Then what happened?

19 A So I met with the emir, and he said it's good to
20 have you, we want to train you, we are going to speak in
21 circles of Islam, you know, speaking about the Koran,
22 speaking about the life of the prophet, etc. And I told him
23 I don't have the time, my time is short and I have to get
24 inside of Afghanistan quickly. I says I have military
25 training already, so I don't need that. But I came here

1 mainly to do medical treatment. He says, well, you can't
2 go. I says, well I'll find a way myself to get there. And
3 the mujahideen came. I went to town first and bought some
4 more medical stuff and changed the American money I had into
5 rupees. The mujahideen came from inside of Afghanistan, and
6 that was eveningtime. He found out who I was. He says we
7 need you. I went above the head of the original emir to the
8 assistant of Abdullah Hassam.

9 Q Who is Abdullah Hassam?

10 A He was a scholar, very well known, beautiful man,
11 who functioned in Afghanistan and established, helped
12 establish the office of Alkifah. They told me you can go
13 inside. And when mujahideen came he knew who I was, we
14 left. So by 5:00 the next day, sunrise, I was at the border
15 and entered into Afghanistan.

16 Q Where did you go then?

17 A I met some more mujahideen in there, and they
18 conversed with the emir who took me there, and they called
19 me in a tent, we spoke, and they had big crocus bags in
20 there, crocus bags or cloth bags, huge, that big.

21 Q Let the record indicate about five feet.

22 A All right. And he said do you want any of this?
23 I opened the bag, it was medicine. Most of the stuff was
24 from England and France. A few American things which
25 usually were a guy selling medicine would give out samples.

1 I took both bags, and we left and we continued further into
2 Afghanistan.

3 Q How were you traveling at this point?

4 A In a van. And there were no roads there, so like
5 it was -- the roads they had, I should say, were very
6 antiquated. There was holes in it. They were not real.
7 You would drop down in the hole -- you would go a hundred
8 yards, drop down in the hole, get out the van, lift it up,
9 out the hole and push it a little further.

10 Finally we got to a camp, and I set up somewhat
11 of a little triage unit up on the hill where they kept the
12 Stinger missiles, and I had trained one kid that was with me
13 to take care of some stuff, because we were expecting, you
14 know, a lot of wounds and things of this nature.

15 Q Just to place for the jury where we are as far as
16 time, what year is this?

17 A 1988.

18 Q And approximately what month, do you recall?

19 A The end of June, June 29, something like that.

20 Q OK.

21 A So I settled down, meet people. What is amazing,
22 that people that you never met in your life, it was every
23 denomination that you could think of over there, young, old,
24 rich and poor. We had some kids that ran away from Kuwait,
25 from Saudi, from Abu Dhabi, who had money to throw out the

1 window, but their desire was to go to jihad. See, what
2 people have to understand is --

3 THE COURT: Mr. Wasserman, may I see you at the
4 side, please.

5 MR. WASSERMAN: Sure.

6 (At the side bar)

7 THE COURT: I am directing you to focus this. He
8 is not simply going to sit up there and free associate about
9 Afghanistan to his heart's content, it's just not going to
10 happen.

11 MR. WASSERMAN: I will try to ask focused
12 questions.

13 THE COURT: It isn't entirely so much the
14 questions as it is the answers which tend to free associate,
15 and you are not doing anything about it. You are just
16 standing there and letting it happen.

17 MR. WASSERMAN: It is not an endless thing. I
18 will try to focus the questions.

19 THE COURT: Thank you.

20 MR. WASSERMAN: Sure.

21 (In open court)

22 (Continued on next page)

23

24

25

1 BY MR. WASSERMAN:

2 Q When you were at is this camp, did you treat
3 anybody for wounds or illnesses?

4 A Yes, I had some people who came with compound
5 fractures.

6 Q Let me ask you a question: How long were you at
7 the camp totally?

8 A I was there 11 days before I went out to go on an
9 action.

10 Q When you say action, what specifically was the
11 action?

12 A To go do some fighting.

13 Q And the action was what?

14 A At the Russians and the Afghan communists.

15 Q What happened?

16 A Before that happened, I got malaria.

17 MR. FITZGERALD: Objection, not responsive.

18 THE COURT: Sustained.

19 Q You were on this action. What happened?

20 A I left that afternoon, and first we met with the
21 Afghan, with Egyptians -- because you had certain houses
22 there. You had Egyptian house, Yemen house, Afghani, etc.,
23 etc. So everybody came together and they met and spoke.
24 Abdul Hassam was there, he said a prayer for us, and we
25 left.

1 Q What was your job on this action?

2 A My job on this action was to treat the ill. They
3 told me I shouldn't go, number one, because I did have
4 malaria, and they said they didn't think I would be able to
5 function.

6 THE COURT: The question was simply what your job
7 was. Go ahead.

8 Q Did anything happen to you in this action?

9 A I climbed up these mountains, which I never
10 climbed before, and I experienced a lot of difficulty but I
11 continued on because it was for the cause of Allah and to
12 help the Afghani people, who were my brothers and sisters.
13 And we stopped just before we went in to fight, and we
14 prayed, not knowing then we were praying in the middle of a
15 minefield. They told us to stop drinking water because all
16 the water was poisoned. I was carrying an RPG.

17 Q What is an RPG?

18 A It is a rocket propelled grenade.

19 Q Go ahead.

20 A And I was carrying an AK47, along with my bag
21 full of medicine. So there was an airport they were
22 supposed to be hitting, and in the process, when I stepped
23 into a clearing I stepped on a land mine. The land mines
24 started going off all over the place. I flew up in the air
25 and I landed quite a distance from where I had stepped on

1 this mine. I saw my leg break in the process, in mid-air.
2 Didn't feel it, though.

3 Q After this mine blew up, what kind of treatment
4 did you receive?

5 A First of all, I had to treat myself. So I kind
6 of tore off the arm of my sleeve, because I was bleeding
7 profusely. Not only had my leg blown up, a shrapnel went
8 into my arm. These were the only two fingers working in my
9 arm. These were paralyzed like that.

10 Q Were you taken to a hospital?

11 A After 18 hours, yes, because it took a long time
12 for the people who were carrying me on their back and we
13 were under very heavy fire, mortar, machine gun, etc.

14 Q Where were you taken?

15 A First to a place when you first entered
16 Afghanistan -- excuse me, Pakistan -- called Sudda. Then I
17 stayed there for like six days.

18 Q Can you spell Sudda?

19 A S-U-D-D-A.

20 Q S-U-D-D-A.

21 A Then I stayed there for six days and they took me
22 to a Saudi hospital inside Peshawar.

23 Q How long were you there?

24 A Three weeks.

25 Q Then where did you go?

1 A They did surgery there four times. Then they
2 said that I should leave because I needed micro-surgery or
3 otherwise I would lose the leg. So just before I left they
4 moved me to another hospital, and that morning at 2:00, the
5 flight I was supposed to take to Islamabad, I couldn't take,
6 so we drove like 300 miles or so, I think, to Karachi, and
7 then I took a plane from there to Kennedy Airport.

8 Q Where did you go from Kennedy?

9 A They said I should go to the hospital, but I
10 needed to see my family because I hadn't told them what
11 happened to me, because I knew they would be upset. So I
12 went home.

13 Q Did you have any contact with anybody from
14 Alkifah office while you were -- after you were wounded?

15 A The next day I left and went to Long Island
16 College Hospital. After I arrived there, about three days
17 after I was there I saw, I met Mustafa Shalabi, by the way,
18 who I met inside of Pakistan before I ever got back to
19 America. He was there with another brother. He said Salam
20 alay kum.

21 Q Who is Moustafa Shalabi?

22 A He is a brother who used to head up the Alkifah
23 office.

24 Q Where?

25 A In Brooklyn on Flatbush Avenue, at the masjid.

1 Q Which mosque?

2 A Farook.

3 Q Where is that located?

4 A 552 Atlantic Avenue.

5 Q So Mustafa Shalabi visited you, you say, in
6 Peshawar, in a hospital?

7 A He visited me in Peshawar, took some pictures,
8 said hamdi Allah, praise be Allah for your efforts, and I
9 saw him when I came back here.

10 Q Did you see anybody else that came from the
11 Alkifah office?

12 A Several people. I saw Imam Fawaz.

13 Q Who was Imam Fawaz?

14 A He is the imam, the one who leads the prayer.

15 Q Of which mosque?

16 A Same mosque, Farook. It was many people I saw.
17 I saw the -- excuse me ---Mahmoud Abouhalima, he came by.
18 He had heard that I went to Afghanistan, he wanted to meet
19 me. He said that he wanted to pray and he wanted me to pray
20 with him and perhaps he would get some blessings because he
21 figured I was blessed, the fact that I had went and strived
22 not only with money but my person, for the cause of Allah,
23 which is the highest form of striving, because you are going
24 out to help people who are being oppressed, who are under
25 attack, and this is what you are supposed to do, any place.

1 Q Let me ask you this question. How long were you
2 in Long Island College Hospital being treated for your
3 injuries?

4 A From October -- excuse me. From the beginning of
5 August to the end of October, I believe, or beginning of
6 November.

7 Q What did you do after you left the hospital?
8 Withdrawn.

9 Did you do any publicity work for Alkifah during
10 your stay in the hospital?

11 A Yes. The first thing I did was make a cassette
12 tape, and I explained to not only to Muslims but to people
13 at large, anyone that wanted to hear it I made a cassette
14 tape and told them about the things going on in Afghanistan,
15 my experience there. I also made a video and showed my
16 injuries and told the people what was happening and gave
17 them a broader view, because included in the video was
18 things that was happening inside of Afghanistan which was
19 never put in the papers here, or on TV. So people had a
20 chance to see this. This video was not only given to
21 Muslims, it was given to non-Muslims.

22 Q When you say given, who sponsored it or who gave
23 it away?

24 A This was done by the Alkifah office. This is a
25 form of propagating your faith.

1 Q After you were released from the hospital, what
2 did you do?

3 A The doctor told me to go home and to remain in
4 bed, to rest my leg, because they did a bone transplant.
5 They took a bone from the ilium out of my back and they put
6 it in my leg, because the tibia and fibula was hanging off.
7 They said in order for this bone graft to work out, you got
8 to stay off your leg. I got out on a Wednesday and the
9 Alkifah office contacted me and said we need you to go to
10 MIT, to go to Wooster in Massachusetts, to go to Quincy, to
11 go to New Hampshire. So I got out on Wednesday, and that
12 Friday I got on the plane and I went to Boston.

13 Q Who told you from the Alkifah office that they
14 needed you?

15 A Mustafa Shalabi.

16 Q Who paid for your transportation?

17 A Mustafa Shalabi.

18 Q Were you paid any fee for making these talks?

19 A No. I wouldn't take any money.

20 Q Were you offered?

21 A They offered on a few occasions. They says use
22 this for expense money. When I started, when I started on
23 this, I said when you are doing something for Allah, you
24 want your reward to be total and you want your efforts to be
25 complete with sincerity.

1 Q This first weekend out, how many talks did you
2 give?

3 A Four. I went there on a Friday and I came back
4 Monday night.

5 Q Briefly, what was the substance of your talks?
6 Was it the same as the cassette and video?

7 A That, and it was broadened somewhat, too, because
8 it went back to speaking of the miracles that is spoken of
9 in the Koran, which is an inspiration for those who
10 understand that this is real, this is not just conjecture,
11 this is something that -- I'm a miracle.

12 Q Were you speaking to Muslim audiences?

13 A To Muslim and non-Muslims, because at MIT there
14 was non-Muslims as well as Muslims.

15 Q When you went up there, where did you stay?

16 A I stayed with one of the people who ran, not an
17 office, it was just a phone -- in Boston, I stayed at his
18 home, with him and his wife and his kids.

19 Q Did you have any other speaking engagements on
20 behalf of Alkifah?

21 A Yes. I have spoken at, I went to Canada,
22 Ontario. I have spoken at NYU, Brooklyn College, Queens
23 College, Bronx Community -- plenty of places.

24 Q At the Alkifah office, did you meet anybody --
25 let me rephrase the question.

1 Did you meet El Sayyid Nosair at the Alkifah
2 office?

3 A Yes, I did. He was a brother who was running the
4 office of Alkifah in Jersey.

5 Q Where in Jersey?

6 A I don't know exactly where, but I know in Jersey.
7 It might have been, where you call it, Jersey City, I am not
8 sure.

9 Q Did you meet Ibrahim El-Gabrownny at the Alkifah
10 office?

11 A Yes. Also when I met brother Sayyid Nosair, I
12 met his kids, both of his sons --

13 Q This is at the Alkifah office?

14 A Yes. I met Mr. El-Gabrownny. He was a
15 construction man. He did work in the office. All beautiful
16 people.

17 Q Did you have any further contact with Sheik
18 Hassam?

19 A Yes. He came by the office, and I had traveled
20 with him -- not with him. I went to Oklahoma. They had a
21 convention there at, I think it was the Marriott Hotel. I
22 went there, I spoke with him, I ate with him, I listened to
23 his lectures. He spoke with me, as a matter of fact, when
24 he was addressing the audience, and he spoke of the same
25 thing that I was speaking of, as far as karama. He says

1 look at this man here, this is a miracle, because like I
2 said, this was paralyzed. It's not any more. They said I
3 would never walk, and I'm walking.

4 Q Did there come a time when you stopped -- how
5 long did your speaking engagements continue, approximately?

6 A I did the speaking engagements for close to a
7 career year or so, and maybe it became little scattered
8 things after, because I'm always talking. So, you know, I
9 would speak at the masjids, people in the street, you know.
10 I told my neighbors about it, you know.

11 Q Were you ever asked to go out to Calverton, the
12 rifle range out there?

13 A Yes, I went to Calverton range. We used to put a
14 notice outside the masjid to encourage people to learn how
15 to shoot so they could go -- to be proficient in shooting so
16 they could go to began Afghanistan. My reasoning for going
17 to the range, one, was I could shoot, and the word had
18 spread pretty far and wide, who I was and what my experience
19 was, because the videotape went throughout the world. I
20 used to hear from people in Egypt and Yemen, and people
21 coming from Saudi Arabia I never even met would tell me we
22 saw your film. And people were not Muslims would say we saw
23 your films. They started selling films in video stores. So
24 I went to the range, I showed some people how to shoot, I
25 encouraged them to go to Afghanistan. I told them that they

1 should go.

2 Q Were you aware of any surveillance at the time by
3 the FBI?

4 A I was aware of the surveillance of the FBI from
5 1988, because I was standing outside the office of the
6 mujahideen and they were filming me and another brother, and
7 Mustafa Shalabi himself came to me. He says Abdel Rashid, I
8 got to tell you something, he says have a seat. I says have
9 a seat for what? He says you may get upset. I said talk
10 about it, man. And he told me, he said the FBI asked me
11 about you. They want to know who you are, what you were
12 doing in Afghanistan. I said did you tell them? He said
13 yeah. I said good, I have nothing to hide from these people
14 because I'm not doing anything wrong.

15 Q Was there any surveillance to your knowledge of
16 Calverton?

17 A Yes. At Calverton, we got two cars. Going out
18 to the range, you had the people who come in two cars or
19 sometimes they would come in a van, and they would never
20 leave the van. They were just there scrutinizing you, and
21 what happened in the final analysis was, there was a police
22 officer who was there with us, they called him up, told him
23 this is the FBI --

24 Q Who is this person?

25 A Brother by the name of Abdul Hakim.

1 THE COURT: Mr. Wasserman, would you come to a
2 convenient break point.

3 MR. WASSERMAN: This is fine.

4 THE COURT: Ladies and gentlemen, we are going to
5 break for the day. Please leave your notes and other
6 materials behind. Please don't discuss the case. And we
7 will see you tomorrow morning.

8 (Jury excused)

9 THE COURT: I am going to see the lawyers at
10 3:00, correct?

11 MR. WASSERMAN: I can assume there is nothing
12 pertaining to my client.

13 THE COURT: I don't know what is on the agenda.
14 You have better reason to know than I do. I am not going to
15 make a recommendation. You can either be there or not.

16 MR. WASSERMAN: I understand.

17 (Luncheon recess)

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1 AFTERNOON SESSION

2 3:05 p.m.

3 (Trial resumed; jury not present)

4 THE COURT: Mr. Jacobs?

5 MR. JACOBS: Your Honor, we have a number of
6 applications in somewhat the following order:

7 The first application of the defense is to see
8 the entire OPR report under certain conditions that I will
9 outline in a minute. That is the first area.

10 The second area that we need to discuss is the
11 World Trade Center bomb experts, which is still outstanding.

12 The third area is the two documents and one, I
13 guess, phone book, involving Ramzi Yousef. I would like to
14 explore with your Honor some of the problems, as we see it,
15 involving the June 29, I will call it, search and seizure,
16 in some matters that are sort of left open that we don't
17 have either discovery on or we don't have answers to. That
18 is the last item.

19 Siddig 806, that is Ms. Amsterdam's issue.

20 If your Honor permits me, I will begin with the
21 OPR. Last night we met with the government, and I made, I
22 guess, a presentation to them as to why we thought we should
23 see the OPR report on the following issues. We offered to
24 see it in their office -- counsel -- with no copies being
25 made, no notes being taken. We wanted to see the entire

1 report -- under, I guess, certain similar conditions that we
2 saw the Yousef material.

3 I do it on the following basis: We have been
4 arguing for some time about the conduct of the agents. And,
5 to say the least, the government has vigorously attacked
6 that point, to put it mildly. And the government is allowed
7 to make their statements as they do. In their July 5 memo
8 attacking Ms. Amsterdam, I don't mean personally attacking,
9 but the argument is on the record -- Mr. McCarthy made a a
10 lot of very strong statements about it on theories of
11 tampering with the tapes, a lot of strong allegations
12 against us, making up the allegations with no basis
13 whatsoever, things like that.

14 All along he had the OPR report where the FBI was
15 conducting an official investigation into at least the
16 manner in which the private tapes were handled and the FBI's
17 conduct with respect to the tapes in the case, circular
18 reporting and other matters that were being done.

19 It disturbs me that the government can put us
20 through the hoops that they did that Friday afternoon
21 here -- I call it a torture session that we had with your
22 Honor. And your Honor didn't have the OPR reports either.
23 We sat here and I had to go through hoops and I had to dance
24 and I had to scramble as best I could to make arguments that
25 I considered to be valid to those problems with the tapes.

1 And all along the government sat there with the Anticev
2 affidavit, the Floyd affidavit, knowing that there was an
3 official inquiry into this matter. We get Anticev finally
4 on the stand, but we don't get the disclosure. We don't get
5 the fact, when Anticev is on the stand, that under oath he
6 states, "I wasn't aware that the source had taped any
7 conversations." I asked Anticev a lot of questions. He
8 admitted on the stand that he was fully aware of the private
9 tapes. Did the government come to the sidebar and say to
10 your Honor, "You know, we've got a sworn affidavit, your
11 Honor, that he is contradicting himself and we think we
12 ought to disclose it to the Court and to defense counsel"?
13 We didn't get that.

14 The government sat on this while Anticev took the
15 stand, and whether one statement is true, one statement is
16 not true, I don't know, but I have a sworn statement that I
17 didn't have when he took the stand, that was in the
18 possession of the government. I don't think your Honor was
19 aware of it at the time.

20 Napoli? He took the stand during the
21 government's part of the case, denied under oath that he was
22 aware of the private taping. They had Floyd's affidavit
23 saying he knew about it. They didn't disclose that to
24 anybody when Napoli took the stand and testified. They sat
25 on that. They didn't tell your Honor, they didn't tell us.

1 At some point, obviously, Judge Freeh down in
2 Washington thought it was enough to order formal interviews
3 to be conducted and a formal inquiry to be made concerning
4 the conduct of the agents.

5 We don't know what is in that OPR file. Maybe it
6 is nothing. Maybe Mr. McCarthy's representation to me that
7 it is a bunch of CMs, two affidavits, and that's it, that's
8 all it is -- but I'd like to see it. I want to state on the
9 record I don't care what they tell me. I want to look at
10 it, under certain restrictive conditions. I think we have
11 earned that right to do that.

12 Now, I may look at it, it may be nothing, and the
13 matter will be closed. But I must tell you: How many more
14 witnesses have to take the stand in this case with the
15 government sitting on things for us to get the proper
16 disclosure? And it is not your Honor's fault. Your Honor
17 didn't have a lot -- didn't have any of these things at the
18 time these statements were being made. But I must tell you,
19 I don't understand how Anticev could have taken the stand
20 and made those statements and the government not turn over
21 that affidavit. It disappoints me, to say the least, that
22 that kind of conduct occurred.

23 I want to know what is there and what is not
24 there. And I make that in all good faith.

25 I read Mr. McCarthy's affidavit of July 5, and he

1 made a lot of statements that obviously he knew had
2 problems. I mean, if I read some of them, it is like -- he
3 made a request. He said, if we get into this frame business
4 on the tapes, tampering with the tapes, he wanted three
5 things done. I will read what he wanted in his affidavit.
6 He says: The jury should understand -- page 3 -- that it is
7 because they have represented they can prove the defendants,
8 who have hours of tape discussing the commission of the
9 crimes charged in the indictment, have been framed.

10 I said we will meet the challenge, and I think to
11 some extent we have what has been tampered with and what
12 hasn't.

13 Two, he said, the record regarding which
14 defendants are associating themselves with this defense
15 should be crystal-clear. Anybody wants to join it can join
16 it.

17 And third, the most interesting point
18 Mr. McCarthy requested was the following: The Court should
19 instruct the jury regarding what it means to tamper with
20 tapes, plant evidence, and destroy evidence, so that the
21 jury is not left with counsel's descriptions, which change
22 from black to white as expedience seems to demand.

23 You know what? I agree with Mr. McCarthy. Let's
24 tell the jury what Title 18 --

25 THE COURT: Mr. Jacobs, I have been listening to

1 you now for five minutes, and it has been less and less of a
2 legal argument with every tick of the clock. You told me
3 what you wanted. Do you have any reasons to offer me that
4 are legal reasons, or do you want to have a rhetorical
5 exercise here?

6 MR. JACOBS: I don't, your Honor. I think I have
7 stated enough of a good faith --

8 THE COURT: I would also like to know whether you
9 talked to Mr. McCarthy about any of this before you just got
10 up.

11 MR. JACOBS: I did, sir.

12 THE COURT: You did?

13 MR. JACOBS: I did. Mr. McCarthy's statement
14 was: he declined to show us any of the OPR files.

15 THE COURT: No, no, that is not what I mean.

16 MR. JACOBS: Everything I said I told him last
17 night. I put this presentation to the government almost
18 word for word last night.

19 THE COURT: I suppose if you put it to them
20 almost word for word the way you put it to me, it is not
21 surprising that they turned it down.

22 Is there anything else you want to tell me about
23 what you wanted?

24 MR. JACOBS: On this point, no.

25 MS. STEWART: Judge, I want to --

1 MR. JACOBS: Oh, yes, I am sorry, your Honor. We
2 cc'd to Director Freeh on 3/31/95 directing additional
3 interviews to be conducted. We don't know what first
4 interviews were done, we don't know what documentation was
5 given to the Bureau in this initial inquiry, and we don't
6 know what further took place, and we would like to see it.
7 Obviously, your Honor has directed whether Napoli has been
8 interviewed to be disclosed or at least attempt to find out
9 whether Napoli was interviewed or not.

10 THE COURT: I did that in your presence.

11 MR. JACOBS: Pardon me?

12 THE COURT: I did that in your presence.

13 MR. JACOBS: I know, sir. We think we have made
14 enough of a showing at this point for us to review the file
15 under the conditions that we proposed.

16 MS. STEWART: Judge, I only rise to elaborate on
17 what I said at the time that we were questioning
18 Mr. McCarthy's not ability but whether or not he was a
19 proper person to cross-examine Nancy Floyd. I would hope
20 that he and his office would be concerned somewhat with the
21 appearance at least of a conflict of interest here, because
22 he was involved in the seizure of those tapes from Mr.
23 Salem's apartment. Whether or not he was just a straw man
24 standing there who had certain duties and obligations,
25 whatever it was, it gives the appearance that if the FBI

1 agents needed to be investigated, that he perhaps was
2 sympathetic with them to the degree that he too would bend
3 things a little bit in order to aid them.

4 We, as defense counsel, have, as you are well
5 aware, a very different obligation. I think our obligation
6 is to challenge this, as Mr. Jacobs has done, perhaps too
7 much ad hominem for the comfort of everyone here, since we
8 have all worked so long together on this, but I just would
9 add that there is that appearance, and I think that that is
10 the core of the problem for the prosecution, but it also is
11 the core of our problem as well.

12 THE COURT: I should tell you that if Mr. Jacobs
13 is uncomfortable, it is not evident to me. He sounded
14 perfectly comfortable.

15 MS. STEWART: I would say, your Honor, not to
16 speak for Mr. Jacobs, but I will say that he has not put
17 this forward, this argument, even though the material has
18 been there for quite a while now, he has talked about it
19 every day, everyone who listened --

20 THE COURT: Talked about it to me too, including
21 telling me on several occasions what he wasn't accusing
22 people of. I also have to tell you that I find it high
23 irony, at the very least, that people are casting aspersions
24 in Mr. McCarthy's direction when, from what I can tell --
25 and, again, I don't know perhaps as much as you do -- the

1 likelihood is that, were it not for him, the tapes probably
2 wouldn't be here. That is just the way I see it. But going
3 through the dramatis personae, I would think that is
4 probably the case. I would think that even you would see
5 that.

6 MS. STEWART: I would just echo the words of a
7 jurist far better than I who said: The law does not reward
8 a volunteer.

9 THE COURT: But let's at least recognize what we
10 are dealing with. That having been said, I want to hear
11 from the government to find out what the objection is to
12 having him look at the file under the circumstances that
13 Mr. Jacobs described.

14 MR. JACOBS: Judge, with just one qualification.
15 It is not a personal attack on Mr. McCarthy --

16 THE COURT: Mr. Jacobs, I really heard quite
17 enough.

18 MR. JACOBS: It is what it is. Documents are
19 given when they are given, and they are not given when they
20 are not given.

21 THE COURT: Thank you for that insight. I
22 appreciate it. Thank you. Mr. McCarthy?

23 MR. MCCARTHY: Yes. Your Honor, I am going to
24 confine my remarks to answering your question.

25 THE COURT: And the question as posed was: What

1 is the problem with their looking at it under the
2 circumstances described by Mr. Jacobs, understanding that we
3 are going to be back here after he looks at it and he will
4 tell me that he wants to disclose it, and so on, but that is
5 what will happen. Go ahead.

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7 (Continued on next page)

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1 MR. McCARTHY: What Mr. Jacobs advises the court
2 of, most of it was mentioned in his inimitable way last
3 evening but leaves out my counter proposal, which was that I
4 would go through the file, I would make certain that counsel
5 knew precisely what the allegations were, because I am not
6 satisfied that there is exactly a clear record of that, and
7 that if others besides Floyd and Napoli were interviewed, I
8 would undertake, whether it was in the file or to the extent
9 I can or not, I would undertake to find out who got
10 interviewed and visit with the court whether those
11 interviews ought to be turned over. I told Mr. Jacobs that
12 it was my --

13 MS. AMSTERDAM: I just didn't understand your
14 offer to undertake in terms of finding out who had been
15 interviewed to be that far reaching. In fact I really
16 thought you had said there was no one else and that's it,
17 fait accompli and closed case.

18 MR. McCARTHY: It is my understanding that there
19 was no one else, but under circumstances where I am being
20 accused of the kind of things I am being accused of --

21 THE COURT: That is my understanding from looking
22 at the file but it's been awhile since I looked at it.

23 MR. McCARTHY: I don't want to do anything off
24 the top of my head under circumstances where I am being
25 accused of misconduct. I would like an opportunity to take

1 a look through the file again, and also to find out by
2 talking to the people who did the investigation whether
3 anybody else got interviewed and it didn't make its way into
4 the file. What Miss Amsterdam asked me to do last night,
5 which I said I would not do, was to find out who was slated
6 to be interviewed, because I think that's a bit much.

7 THE COURT: I don't want to hear about the
8 negotiations last night because I assume that there were
9 probably a lot of high flying theories back and forth, and I
10 don't particularly want to hear about that. I still haven't
11 heard an answer to my question, which is what is wrong with
12 them looking at the file under the conditions that he
13 described?

14 MR. McCARTHY: I guess in the main, your Honor,
15 the problem with them looking at the file is that they are
16 really not entitled to look at the file. They are entitled
17 to get what they have gotten. At best they are entitled to
18 get what they have gotten, which is the unredacted
19 statements of the agents.

20 THE COURT: No offense to you, but I thought I
21 was here to decide that.

22 MR. McCARTHY: I thought you were asking me for a
23 legal --

24 THE COURT: If you are telling me that there is
25 no source of entitlement to look at the file, then that is

1 probably right as a literal matter, but one way or another,
2 if I say they get to look at the file, I think the bottom
3 line is that they get to look at the file. The question is
4 why should I not do that?

5 MR. McCARTHY: I guess the main reason is because
6 every single time in this case that we have been asked to
7 show files of a sensitive nature to the defense under
8 circumstances where they were not necessarily entitled,
9 usually within 48 hours they made their ways into the
10 newspaper and they made their ways into the newspaper with
11 the inevitable spin that one would expect under those kinds
12 of circumstances.

13 In this particular set of circumstances, they
14 have already gotten what would be the most valuable
15 information. The rest of what is in those files, if memory
16 serves me correctly, as I told Mr. Jacobs last night, was
17 mostly the exhibits that the investigators looked at in
18 order to determine --

19 THE COURT: Which were CM's, correct?

20 MR. McCARTHY: That is correct. I told Mr.
21 Jacobs, characterizing remarks earlier as making
22 representations that was all of what was in the file -- I
23 told him my recollection was that that was mostly what was
24 in the file and I thought there was also some correspondence
25 about what the allegations are. But I do think that under

1 circumstances where uniformly in this case every single time
2 this kind of proposal has been adopted it has been handled
3 in an utterly irresponsible fashion --

4 THE COURT: This kind of proposal hasn't been
5 adopted --

6 MR. JACOBS: Your Honor, I would ask that
7 Supervisor Agents Craig and Delgrasso who seem to be
8 conducting this somehow represent to the court that these
9 are all the interviews that have been done. I agree with
10 Mr. McCarthy, there may be some other stuff that for some
11 reason hasn't gotten to the file. I assume it looks like
12 these two supervisor agents have been conducting this.
13 Perhaps if we could get some additional representation,
14 either by affidavit or the agents --

15 THE COURT: The person who you mentioned is going
16 to look at the file is you, correct?

17 MR. JACOBS: Correct.

18 MS. AMSTERDAM: Us.

19 MR. JACOBS: And Miss Amsterdam.

20 THE COURT: This is what in another setting would
21 be a stabilizing influence, no offense.

22 MR. MCCARTHY: Your Honor, if I could make a
23 proposal, I would like to have the opportunity -- and I will
24 not belabor it long, to go through the file and at least
25 have an opportunity, if your Honor is going to order us to

1 make this available, to be able to argue to the court if
2 there are things in the file --

3 THE COURT: If there is some particular item in
4 the file that you think should not be disclosed or some
5 particular reason going to a uniquely personal nature, I
6 will hear you on that. But otherwise I want two things
7 done. I would like the file disclosed to Mr. Jacobs and Ms.
8 Amsterdam under the conditions described, and I would like a
9 representation from the person or persons conducting the
10 investigation about interviews other than those that are in
11 the file, if there are any such, and I want that to me.

12 MR. MCCARTHY: Yes, Judge.

13 MS. AMSTERDAM: The interviews, I just want to
14 make sure that the interviews aren't narrowly interpreted by
15 these agents to mean formal interviews or sworn statements.
16 There could very well have been informal interviews of
17 agents leading up to the investigation which were not
18 reduced in some formal form to a sworn statement. I will
19 take the representation from those people to your Honor to
20 us but I would like to just --

21 THE COURT: If they were reduced to writing in
22 any form, I want to know that.

23 MR. MCCARTHY: Yes, Judge.

24 MS. AMSTERDAM: Thank you.

25 THE COURT: I am not going to ask who they talked

1 to and didn't make reports on. Who they talked to, that is
2 very far afield. That is very far afield.

3 MS. AMSTERDAM: I must say, Mr. Jacobs, I think,
4 does not necessarily agree with me on this point but I am
5 somewhat troubled by the fact that the OPR investigation,
6 from what I understand, has come to a halt pending the
7 outcome of this trial.

8 THE COURT: I don't understand that to be the
9 case at all.

10 MS. AMSTERDAM: Last night when I met with Mr.
11 McCarthy and Mr. Fitzgerald and Mr. Khuzami, representations
12 made to us were that once it was determined that there were
13 not criminal charges to be levied and once the more serious
14 administrative issues were resolved or at least
15 investigated, that the basic administrative --

16 THE COURT: And resolved in the agents' favor.

17 MS. AMSTERDAM: -- that the basic administrative
18 continuing of the investigation I understood to be put on
19 hold pending the outcome of this.

20 THE COURT: That is something very different from
21 the OPR investigation.

22 MS. AMSTERDAM: No. For example, it indicates in
23 the Airtel that Detective Napoli was to be interviewed. It
24 is my understanding that that is on hold pending the
25 resolution of this case.

1 THE COURT: And? You want me to compel them to
2 interview him? The answer to that is no. As I understand
3 it, the procedure is that OPR makes its determination to
4 either proceed or not proceed, and it has made a
5 determination not to proceed in this case. It then gets
6 bucked back to the agency to do whatever administrative step
7 it chooses to do, and if the agency has decided to wait
8 until the case is over, that is the agency's business and
9 that is as far as it goes. We are not going to have a trial
10 within a trial about that. There has already been testimony
11 about the pendency of an investigation and there has already
12 been testimony about the facts, period. That is as far as
13 it is going.

14 MS. AMSTERDAM: For the record, I would maintain
15 to the court that if Detective Napoli is not being
16 interviewed because there is a decision being made that they
17 will not interview him until after this case is completed so
18 that there will be no paper trail, then I submit to the
19 court that that is part and parcel to the same coverup that
20 we have been arguing in our defense. I want the record to
21 be clear, when these agents are subsequently investigated
22 and the files come back at some point somebody ought to be
23 required to look at what those statements are, after the
24 verdict in this case.

25 THE COURT: You have your record.

1 Mr. McCarthy.

2 MR. McCARTHY: And I suppose I have mine, which
3 is the last one that I wanted to make. I am not going to
4 stand here and try to defend what I have done in this case.
5 There is a record; it is what it is. I am not ashamed of
6 it. I don't back off from anything that we argued on July
7 5. There is no evidence in this case that agents planted
8 evidence on defendants. There is no evidence in this case
9 that there was a frame-up by the FBI or anybody else on the
10 defendants at trial.

11 What has come out for all the ballyhoo last week
12 was basically testimony with respect to a conversation that
13 largely because of arrangements that I made, for better or
14 worse, a couple of years ago, a tape recording that Mr.
15 Jacobs had months before this trial started, that he had his
16 investigator examine during the trial, that he had during
17 Salem's testimony, that he had during Anticev's testimony
18 and again during Floyd's testimony, was examined upon. He
19 can run with that, I suppose, as far as he wants to --

20 THE COURT: I am going to let him. You are
21 right, he can run with it, and he has and will.

22 MR. JACOBS: I am sorry. Just so --

23 THE COURT: No.

24 MR. JACOBS: We also have two sworn affidavits of
25 FBI agents that were not disclosed until your Honor ordered

1 them to be disclosed. So we are clarified on that, that
2 when I said a coverup, those are the two sworn affidavits I
3 am talking about, post the arrests in this case, and let it
4 be clear what my position is on that. Those affidavits
5 speak for themselves, are before the jury. I charged a
6 coverup, they speak for themselves.

7 THE COURT: Would you mind not speaking.

8 MS. AMSTERDAM: What's next?

9 THE COURT: What's next?

10 MR. JACOBS: World Trade Center experts.

11 THE COURT: World Trade Center experts. Does the
12 government want to be heard on that?

13 MR. FITZGERALD: Yes, Judge. It is the
14 government's view that recalling Burmeister or, as the
15 defense seeks, recalling Burmeister, recalling Williams and
16 calling Mr. Whitehurst should be precluded under Rule 403.

17 THE COURT: Your position is no harm no foul,
18 right?

19 MR. FITZGERALD: Primarily, but the second part
20 is, I don't see the relevance of their states of mind as to
21 what they claim is in the states of mind of Detective Napoli
22 or John Anticev in 1995.

23 THE COURT: I am inclined to let them do it for
24 the following reason. In part it was a reason referred to
25 in I forget which letter. It may have been Ms. London's.

1 Did you write a letter?

2 MS. LONDON: Yes, your Honor, I did.

3 THE COURT: That is, you proved up the World
4 Trade Center, albeit in miniature, and that was permitted
5 over some protest, in substantial part because there were
6 connections between the evidence in that case and the
7 evidence in this case. I thought at the time and still
8 think that you should have been permitted to prove up not
9 just naked, "take my word for it" kinds of facts but rather
10 the reality behind facts. If part of the reality behind
11 facts was that somebody was arguing that he was being asked
12 to come to firmer conclusions than he was inclined to do,
13 let them show that reality too, and if nothing came of it,
14 nothing came of it. But I am going to let them do it.

15 What's next?

16 MR. JACOBS: Yousef.

17 MR. FITZGERALD: Judge, just to clarify on the
18 last one, they, I think, wrote asking about Burmeister, but
19 in yesterday's conference we were asked about all three
20 witnesses, and my question would be how many witnesses it
21 takes to make a point?

22 THE COURT: I don't know. Mr. Jacobs, for all
23 the occasional excesses that I have said he engages in, does
24 not waste a lot of time in court.

25 MR. JACOBS: It's going to be short.

1 MS. AMSTERDAM: I am doing it also. It will be
2 short.

3 Ramzi Yousef.

4 MR. JACOBS: Your Honor, we have battled back and
5 forth on this for months.

6 THE COURT: Yes, make it short, because I am not
7 inclined to let you do this.

8 MR. JACOBS: Let me, for the record, say what it
9 is.

10 THE COURT: Are you aware of the latest letter?

11 MR. JACOBS: Yes. You mean the stipulation they
12 proposed?

13 THE COURT: No, the latest letter from
14 Mr. Yousef.

15 MR. PATEL: No.

16 MR. JACOBS: Let me step back.

17 THE COURT: No, first go ahead and then you can
18 step back.

19 MR. JACOBS: This is not his statement I am
20 talking about. That is another matter. I am talking about
21 the Fifth Liberation Army documents, your Honor. Somebody
22 else, Mr. Stavis and Mr. Patel will be working on -- is it
23 804(b)(3)?

24 MR. STAVIS: Yes.

25 MR. JACOBS: The government put in 78E and 196,

1 one being the letter to the New York Times, the other being
2 from the computer of Ayyad. They are in evidence over our
3 objection. Over in the Philippines a couple of months ago,
4 the government found, I will call it a similar letter, in
5 Yousef's computer, and then a handwritten letter by Yousef,
6 Liberation Army documents. I for months outlined our
7 position on this. The government has charged a jihad
8 organization. We say there isn't one. Your Honor has heard
9 this argument back and forth.

10 Our position is this: If they can put in these
11 two documents, Fifth Liberation Army documents, we think we
12 are entitled to put in any other Fifth Liberation Army
13 documents. It is from a computer, a coconspirator, Ayyad.
14 Yousef's handwritten Fifth Liberation Army document is on
15 the World Trade Center, authored by him. It is no more
16 relevant than 78E found in Ayyad's computer.

17 THE COURT: What does the Fifth Liberation Army
18 document found on Mr. Yousef's computer prove?

19 MR. JACOBS: Well, it proves the following, that
20 somebody out there other than the defendants in this case
21 seems to be still operating, calling themselves the Fifth
22 Liberation Army. Our position has been and will always be
23 that we -- there may be, there probably is a Fifth
24 Liberation Army who were responsible for the World Trade
25 Center, and possibly responsible for other terrorist acts.

1 We are not that group. We didn't author this -- I am saying
2 the defendants in this case -- and to the extent that Yousef
3 in the Philippines is authoring further Fifth Liberation
4 Army documents and still generating this thing is no more
5 than Ayyad doing it.

6 All we are offering is two documents found in the
7 Philippines. If the government can put in their Liberation
8 Army documents with Ayyad's fingerprints on, then why can't
9 I put in Yousef's documents under the exact same theory that
10 the government did? They did over my objection, because I
11 don't think the Liberation Army is us. Your Honor has ruled
12 that they can do it. If they can put it in --

13 THE COURT: This is the third time you have asked
14 that rhetorical question.

15 MR. JACOBS: Those are the two points.

16 MR. FITZGERALD: There are three points in
17 response, your Honor. The first, the evidentiary reason,
18 coconspirator statements offered by the government. The
19 second is relevance. We are talking about somebody
20 committing a terrorist act two years after the conspiracy
21 ending. In a drug case I don't think you could say a
22 defendant could come in and say two years later there is
23 crack being sold in the South Bronx and therefore it is the
24 same conspiracy.

25 THE COURT: Under the same trademark, I suppose,

1 Skull and Crossbones brand crack.

2 MR. FITZGERALD: I would be shocked if they still
3 weren't selling it.

4 THE COURT: Me, too.

5 MR. FITZGERALD: The third point is, if we head
6 down that road we oughtn't give the jury a sliver of what is
7 happening in the Philippines, they ought to know exactly --

8 THE COURT: They are not going to know that
9 sliver. We are not going down that road. That's out.
10 What else?

11 MR. JACOBS: Documents are out, your Honor?

12 THE COURT: Yes, the Fifth Liberation Army
13 documents.

14 MS. AMSTERDAM: The only thing left on the agenda
15 is 806 issues, which is mostly being resolved with the
16 government. The only area in which I know that your Honor
17 has to have some input, or which I would request that your
18 Honor make some input, is the application on the motion I
19 had made to disclose any psychiatric examination of Siddig
20 Ali. Where we left it last time was that I would contact
21 Howard Leader, Mr. Ali's lawyer, and ask whether or not he
22 opposed that. I would say half the lawyers at this table
23 have attempted to contact Mr. Leader and he has
24 systematically refused to get back to us on that issue. I
25 know that he spoke to Mr. Fitzgerald and said that he was

1 going to make inquiry but I know that there is no statement
2 from Mr. Leader --

3 MR. PATEL: May I have a moment with Miss
4 Amsterdam?

5 (Pause)

6 MS. AMSTERDAM: Apparently Mr. Patel advises --

7 MR. PATEL: Your Honor, I spoke with Mr. Leader
8 about the availability of the psychiatric reports, and he
9 declined.

10 MS. AMSTERDAM: This is what I would propose.
11 Without getting into an argument about Siddig Ali being a
12 cooperating witness and whether or not his lawyer is in any
13 way affected by a belief that perhaps the government
14 wouldn't want this evidence before the jury, what I would
15 propose to the court is, the expert for Mr. Ali was
16 appointed pursuant to the CJA act and I believe that your
17 Honor has the power when you appointed him to order a
18 report. I am asking your Honor to take such a report, be it
19 oral or written, in camera, and if your Honor thinks it
20 should be disclosed we will go to the further level of
21 whether or not Mr. Ali can assert some privilege there, but
22 before we have a knockdown, drag-out fight about privilege,
23 I would at least like to know whether or not there is
24 anything there that we should be having the discussion
25 about. Dr. Teisch is willing to accommodate your Honor in

1 any way that your Honor thinks appropriate.

2 I just want to make sure that a psychiatrist or
3 psychologist looked at Mr. Ali and didn't say, himself,
4 being the psychologist, this man is absolutely delusional,
5 crazy, doesn't know truth from reality, and then the
6 government relies on his coconspirator statements which are
7 in every single solitary CM without the other side coming
8 before the jury. If the psychiatrist says we have talked
9 about it, thought about it and really didn't find much in
10 the way of anything, I don't have to go the next step in --

11 THE COURT: It is clear that he has delusions of
12 grandeur, isn't it? That you can argue from evidence that
13 is already in.

14 MS. AMSTERDAM: That is correct, but I don't know
15 if he has a genuine psychiatric condition that the jury
16 should have. I am willing to handle it any way that your
17 Honor thinks appropriate but I do think somebody should know
18 that before the government goes in front of the jury and
19 rests solely on the issue of looking at the one million
20 coconspirator statements Siddig Ali has made.

21 THE COURT: I don't think that is all they have
22 got. Anybody want to be heard?

23 MR. FITZGERALD: As I told Ms. Amsterdam, I don't
24 think the government has standing between her and Mr. Leader
25 and your Honor on what gets inspected.

1 THE COURT: Let me scratch my head a little bit
2 on this one.

3 MS. AMSTERDAM: The other 806 issues that were
4 outstanding, Mr. McCarthy has some CM's, portions of CM's
5 that I want to read into evidence, and there is an interview
6 of Siddig Ali that was done by New York One that they have a
7 copy of the video and the transcript that I want to offer
8 under 806. We will try to make some accommodation. If it
9 becomes apparent that we have some difference, I am just
10 going to hand it up to your Honor and let your Honor make
11 the final call on it.

12 THE COURT: Say something like "here."

13 MR. MCCARTHY: The "here" won't happen until the
14 beginning of next week. I hope you won't have to review
15 anything --

16 THE COURT: If I do, I do, and I don't want
17 anybody saying on either side that something comes in or
18 doesn't come in because my goodness, we don't want to
19 trouble the judge about it.

20 MR. MCCARTHY: I don't think we would do that.
21 We have been able to work out about 80 percent of it
22 without --

23 THE COURT: No, I understand, and I appreciate
24 it.

25 Mr. Jacobs.

1 MR. JACOBS: Another item, your Honor. On June
2 29, as your Honor heard the other day from Floyd, they went
3 and searched Salem's apartment. At the time that they
4 searched, I think there were 66 tapes found, 50 in one spot
5 and 19 in another spot. There were obviously some problems
6 with Salem, the agents. There was something seized, notes
7 in a book or something like that. We learned about some of
8 the facts for the first time from Floyd's affidavit. Mr.
9 McCarthy had disclosed during Salem's testimony the sequence
10 of what happened with the tapes, that 50 tapes were returned
11 to him and then later after Kuby complained, on July 15 the
12 tapes came back.

13 If you recall, I questioned Salem on it. Salem
14 said the tapes were all personal tapes, but they were
15 spot-checked, and the answer is that they were not personal
16 tapes, there were tapes of at least one of the defendants in
17 this case, El-Gabrownny, tape 58 and 59. So whoever returned
18 the tapes were giving back tapes of the defendants, or at
19 least one defendant.

20 The book business we knew nothing about until we
21 see Floyd's affidavit. We have Roth scheduled to be a
22 witness coming up. Mr. McCarthy indicates to us last night
23 that there were two people present during a lot of this
24 activity, I guess himself and other people. Maybe I am
25 misunderstanding. We don't have a handle on what happened.

1 I don't know anything -- she said at one point there was an
2 inventory done. We have gotten no such inventory. It is in
3 her affidavit, she says there was an inventory. I don't
4 know anything about it. I assume nothing was copied,
5 whatever documents were there. I am not sure.

6 We are blind on this and I will do a blind
7 examination. I prefer not to.

8 I think at this point that we ought to get the
9 record clarified of what happened. Mr. McCarthy has made
10 certain disclosures during Salem's testimony about the
11 tapes. There has been some examination of it. Obviously
12 Floyd and Roth had a problem that day that the U.S.
13 Attorney's Office had to get in the middle of and straighten
14 out with Salem. Things were returned, things were given
15 back. I don't know if there are any reports on this. I am
16 not sure why things were given back.

17 THE COURT: Mr. Jacobs --

18 MS. AMSTERDAM: The long and the short of it --

19 THE COURT: Thank you. I have had the long of
20 it.

21 MS. AMSTERDAM: The short of it is, we are
22 calling Agent Roth. If there is an inventory or if there
23 are any 302's regarding this search and the facts
24 surrounding return of the book and the tape, we would like
25 that disclosed.

1 THE COURT: Who is on this one? Mr. McCarthy?

2 MR. McCARTHY: No objection to that.

3 MS. LONDON: Your Honor, briefly, I have the
4 court's ruling that Special Agents Burmeister and Williams
5 are being recalled. We have had access to their, what I
6 have called the Whitehurst materials, the memos submitted by
7 Agent Whitehurst and the minutes that Judge Duffy unsealed.
8 We have not been given copies of those.

9 MR. FITZGERALD: Can I suggest I try and work
10 that out with her.

11 THE COURT: I would suggest that you work that
12 out to your mutual satisfaction, if you can.

13 MS. LONDON: Thank you.

14 MR. PATEL: Your Honor, I rise as a footnote.
15 Your Honor mentioned another letter from Mr. Yousef. Did I
16 misunderstand you in the beginning?

17 THE COURT: No, you did not.

18 MR. PATEL: I have not seen that letter, and
19 since I have been getting ready to deal with some of those
20 other issues, if that is available to be seen, I would like
21 to see it. May I?

22 THE COURT: Do you want me to read you the good
23 parts?

24 MS. AMSTERDAM: Yes.

25 MR. JACOBS: Does he say he is Jewish?

1 THE COURT: That's the only the beginning. He
2 denies any involvement in the World Trade Center bombing and
3 would like to be retried along with the four others
4 innocently convicted, because he thinks he and they have a
5 lot of information to disclose about who really did it, and
6 that any statements that he and they made before were made
7 under false representations, and so on and so forth.

8 MS. AMSTERDAM: I guess the government is working
9 on that cooperation agreement now.

10 THE COURT: Do we have any other business?

11 MS. AMSTERDAM: No, your Honor.

12 THE COURT: Have a nice day.

13 MR. PATEL: Your Honor, a point of clarification.
14 The other materials are under very strict order.

15 THE COURT: So is this.

16 MR. PATEL: Thank you.

17 (Adjourned until Wednesday, August 2, 1995, at
18 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

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

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

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

18 a/k/a "John Medley,"

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

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

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

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

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

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

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

Defendants.

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S5 93 Cr. 181 (MBM)

August 2, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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1 (Pages 15615 - 15621 sealed)

2 (Recess)

3 (In open court; jury not present)

4 THE COURT: Mr. Jacobs, I know we have been at
5 this for a long time and I know what familiarity breeds, but
6 let's tighten it up. OK? Thank you.

7 Can we get Mr. Hampton-El up here, please.

8 CLEMENT HAMPTON-EL, resumed.

9 (Jury present)

10 THE COURT: Good morning, ladies and gentlemen.

11 JURORS: Good morning, your Honor.

12 THE COURT: Once again I am sorry for the late
13 start. This one was not avoidable. Nonetheless, I regret
14 it.

15 Mr. Hampton-El, you are still under oath. Mr.
16 Wasserman, go ahead.

17 MR. WASSERMAN: Thank you, your Honor.

18 (Continued on next page)

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1 DIRECT EXAMINATION continued

2 BY MR. WASSERMAN:

3 Q Good morning, Rashid.

4 A Good morning.

5 Q We left off yesterday talking about Abdul Hakim,
6 and the surveillance by the FBI at Calverton. Could you
7 tell the jury what relationship Abdul Hakim had to the
8 surveillance by the FBI? First of all, who is Abdul Hakim?

9 A Abdul-Hakim is a police officer.

10 Q Please speak up.

11 A Abdul-Hakim is a police officer who happens to be
12 a Muslim and was at the range, training, and had nothing to
13 do with the Alkifah office or anything else.

14 Q What happened?

15 A The FBI came there, and they were in a van and a
16 vehicle, car, and they were taking pictures and observing
17 the going ons at the range.

18 Q How was Abdul-Hakim involved with that?

19 A They took pictures of him, myself and everybody
20 else at the range, and they called him down to the office to
21 ask him what was he doing there with a group of Muslims that
22 happened to be of --

23 MR. FITZGERALD: Objection, your Honor,
24 competence and 401.

25 THE COURT: Were you present at that interview?

1 THE WITNESS: No, I wasn't. I am going by what
2 the man told me.

3 THE COURT: That is stricken. You can't testify
4 to what he told you. Go ahead, Mr. Wasserman.

5 Q Did Abdul-Hakim come back to Calverton?

6 A Not that I know of. He never came back with me.

7 Q Was there any other FBI surveillance that you
8 were aware of personally?

9 A Yes. At my home, at the dojo that I had over on
10 Rogers Avenue they would park outside my home --

11 Q Let me stop you for a minute. I am talking about
12 1989, which is the year of Calverton.

13 A Yes, their presence was constant.

14 Q When you came -- let me go back. Were there any
15 other people besides people you testified yesterday that you
16 met through the Alkifah office -- yesterday you referred to
17 having met Mahmoud Abouhalima when he visited you in the
18 hospital, you met Sayyid Nosair at the Alkifah office in
19 Brooklyn, Ali Shalabi visited you in Peshawar. Any other
20 people that you came in contact with from the Alkifah
21 office?

22 A Yes. I met Omar Abdel Rahman over at Masjid
23 Farook at the time. He was the imam over there at one time.

24 Q Anybody else?

25 A Well, I had seen Ali Shinawy over there on

1 different occasions.

2 Q Is Mohammed Zawam related in any way to Ali
3 Shinawy?

4 A Yes. That's his cousin. Both of them went to
5 Afghanistan.

6 Q And you say that you met the Sheik Omar Abdel
7 Rahman at Farook Mosque?

8 A Yes, he was the imam there.

9 Q When was that, sir?

10 A I think it was in the year, towards '91,
11 something like that.

12 Q How did you meet him?

13 A He used to give the kuhbah there. He was a
14 figure of Islam and he used to pray there. That's how I met
15 him.

16 Q You used the term kuhbah?

17 THE COURT: Could you please spell that.

18 A He used to give the kuhbah there. That is
19 K-U-H-B-A-H.

20 Q What kind of talk is that?

21 A It's a sermon that one gives during Jummah.

22 Q What is Jummah?

23 A Jummah is a religious -- Jummah means Friday and
24 all Muslims come together to pray then, being that it is
25 obligatory. The Koran was revealed during that time.

1 Q You heard Sheik Omar Abdel Rahman speak at Masjid
2 Farook, right?

3 A Yes. I saw him speak there many times.

4 Q Did you have any personal meetings with him?

5 A Yes, I did.

6 Q Do you speak Arabic?

7 A No.

8 Q You spoke through an interpreter?

9 A Yes, I did.

10 Q What were the topics of discussion?

11 A One topic was when he was speaking out against
12 Saddam Hussein and all these that were doing things very
13 unIslamic and was not practicing Islam. He spoke about how
14 wrong he was for entering Kuwait and getting the people in
15 Iraq into the problems they were. And at that time the
16 people at the masjid became very resentful and they told him
17 to stop speaking about it, which he didn't, and then they
18 physically made an attempt to attack him because he spoke
19 out against this man.

20 Q Were you involved in any way with that physical
21 attack?

22 A No.

23 Q Did you ever have any private audience with him?

24 A More than once.

25 Q And the topics of discussion?

1 A Islamic law, what's permissible during prayer,
2 food -- all things that would cover the practice of Islam.

3 Q You mentioned that he was physically attacked
4 when he spoke out against Saddam Hussein. Were there any
5 other things that he spoke about that also created an
6 antagonism among certain parts of the community?

7 A Several things. He told the people that to come
8 to America and not to live properly and to do the right
9 things, example, to come here and sell things such as beer,
10 pork, things that are against our religion, whatever we
11 shouldn't do ourselves we shouldn't prescribe to someone
12 else. If I don't eat pork, I am not going to give you pork
13 to eat. If I don't drink, I am not going to invite you to
14 liquor. To practice charity, to be consistent in your
15 prayer. The best example is to follow the prophet and his
16 actions.

17 Q Why would those kinds of talks create any kind of
18 antagonism among certain members of the Muslim community?

19 THE COURT: Sustained.

20 Q Can you describe who voiced opposition to those
21 talks?

22 A The people who were doing it, the Key Food
23 owners, the Associated owners, the people who were making
24 money off it. People tend to get upset when you tell them
25 the truth.

1 Q When you say Key Food, you are talking about the
2 supermarket chain?

3 A Yes.

4 Q Going back to your personal life at the time, you
5 testified yesterday that you went into the hospital at Long
6 Island College Hospital to have your leg repaired
7 surgically. When did you go back to work?

8 A I went back to work, I think it was around '89 of
9 November.

10 Q '89 of November?

11 A I was out for a year.

12 Q You were out for a year. When did you come back
13 from Afghanistan to the United States?

14 A I came back from Afghanistan in the beginning of
15 August.

16 Q What year?

17 A '88.

18 Q And you then went into the hospital?

19 A Correct.

20 Q How did you support yourself in the year that you
21 were out of work?

22 A After I ran out of the little money that I had
23 saved up and holiday time and sick time, I had to go on
24 welfare.

25 Q Did you receive any money from the Alkifah office

1 to meet your expenses?

2 A On two occasions they gave me money for my rent.

3 Q How much was your rent?

4 A \$450.

5 Q Did they give you any other money?

6 A No. This money was geared for jihad, so it was
7 for the people in Afghanistan, those who were really
8 destitute and were loss of family life, etc., etc.

9 THE COURT: Mr. Wasserman.

10 MR. WASSERMAN: Yes.

11 Q How long were you back at work -- you started
12 back at work in 1989. What happened then?

13 A Then I was working on the job for a while. They
14 gave me light duty for a while, until they thought I could
15 get some stamina. I wasn't prepared to go back to work, but
16 I had to in order to maintain the job. I was poisoned by a
17 cleaning agents called Cidex, which is something we use to
18 sterilize the delivery system that sends the dialysate to
19 the machines.

20 Q How did you know that you had been poisoned?

21 A I started retaining a lot of water, my breathing
22 was impaired, and then my pigmentation started changing. My
23 face started getting big dark marks on it, my back, chest,
24 and I went to the doctor and he put me in the hospital. He
25 said that I had been burned from the inside out.

1 Q How long were you in the hospital?

2 A Close to three months.

3 Q When you got out, what did you do?

4 A My sense of smell, anything I smelled,
5 cigarettes, perfume, cooking food, anything used to mess me
6 up. So I was on comp for a while.

7 Q When you say comp --

8 A Compensation.

9 Q OK.

10 A And I remained home most of the time because just
11 being out ---I still went to the masjid and prayed, there
12 was a little dialogue here and there. But my activities
13 were, you know, turned around quite a bit from there.

14 Q When did you go back to work from that?

15 A At the end of my compensation, which was a year.

16 Q In November 1990, Rabbi Meir Kahane was killed,
17 on November 5, 1990. What was your reaction at the time?

18 A It was another news item. He got killed and, you
19 know, I didn't shed any tears over it. It didn't affect me
20 either way.

21 Q Did you take part in aiding the Sayyid Nosair
22 defense fund or visit him in prison?

23 A I never visited him in prison. I did give \$100
24 towards his defense fund, yes.

25 Q Was there any differences in the level of support

1 between the Arab Muslim community and the American Muslim
2 community for Nosair and the defense?

3 MR. FITZGERALD: Objection, competence.

4 THE COURT: Sustained.

5 Q Were you asked to attend his trial by anyone?

6 A Yes.

7 Q Who?

8 A Many people, they asked me to come to the trial,
9 demonstrations, you know, things of this nature.

10 Q What was your reason for not participating?

11 A Well, the fact that the FBI had been following me
12 since '88, and anybody that went to these things, the man
13 was all over the place taking pictures of people and what
14 not, and I would think that they would try to put people in
15 some kind of jeopardy by attending these things, and I had
16 other things in mind.

17 Q When you say you had other things in mind, what
18 did you have in mind?

19 A I had desire to go ahead and continue my efforts
20 in jihad overseas.

21 Q What was happening in Afghanistan in 1990 and
22 1991, do you recall?

23 A It was toning down a bit. The main thing, people
24 said they needed because to my understanding there was a lot
25 of negotiation going on, and they said they needed people to

1 rebuild Afghanistan, lawyers, doctors, carpenters, people
2 who would help structure an Islamic society.

3 Q Were your activities in, say, the first half of
4 1992 for Alkifah similar to your activities for them in
5 1991?

6 A No. Everything came to somewhat of a standstill
7 because Afghanistan was about squashed at that time, I
8 believe. It was about over. So I focused mainly on Bosnia
9 at that time, because a lot of things was happening there.

10 Q Did you meet Emad Salem in June of '92?

11 A First time I ever laid eyes on him in my life,
12 '92.

13 Q Where did you meet him?

14 A I was at the Masjid Abu Bakr, making prayer, and
15 when I completed my prayer, Ali Shinawy introduced me to
16 him. He says this is Abdel Rashid, mujahid, and this guy
17 said he wanted to introduce me, and he introduced me.

18 Q What happened then?

19 A He left us and Emad started talking a lot of
20 foolishness, such as he wanted to kill people. First he
21 said he did a lot of things and he killed people. He said
22 the Jewish Defense League, the Jewish defense organization,
23 Congressman Dov Hikind and Charles Schumer. He said he
24 wanted to do something to these people, like kill them.

25 Q Did he ask you for any assistance?

1 A He asked me could I get him a gun. I told him I
2 could not help you in any short form fashion.

3 Q About how long did you meet with him?

4 A Talked maybe 15, 20 minutes, I believe.

5 Q Did you get back to him in any way?

6 A Never got back to him and never heard from him
7 until the year of '93.

8 Q The government brought out in its questioning of
9 Ali Shinawy --

10 MR. FITZGERALD: Objection to form.

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

12 Q Did you call Ali Shinawy on June 18 of 1992,
13 twice?

14 A I may have. I don't recall.

15 Q Did you ever call him at any other time, if you
16 recall?

17 A Of course. He's a Muslim brother. I went to
18 Oklahoma with him. I know him from his cousin Mohammed
19 Zawam, I know him from seeing him at the masjid. Brothers
20 always call each other.

21 Q When you say you went to Oklahoma, what was that?

22 A I went to Oklahoma with abdomen sample, Ali
23 Shinawy happened to be heading up the program for people
24 going there. They had a seminar there. I went on the bus
25 with several other brothers, so we were together five days,

1 approximately.

2 Q Did Emad Salem at this meeting with you ask you
3 for detonators?

4 A No, sir.

5 Q Did he tell you he was building a bomb?

6 A No.

7 Q Did there come a time in 1992 that you began to
8 become involved with a project for Bosnia?

9 A Yes.

10 Q When approximately was that?

11 A Around August.

12 Q Could you tell the jury the beginning, from the
13 beginning, who got you involved?

14 A A brother by the name of Taher --

15 Q Who is take here?

16 A He is a brother that was in Afghanistan same time
17 I was there.

18 Q Go ahead.

19 A We met. He told me that he had been to Bosnia,
20 matter of fact, and there was some people over there
21 already, and would I be interested in going. I said without
22 doubt I would be ready to go.

23 Q Let me stop you for a moment. Why would you be
24 ready to go?

25 A Because to my understanding what was going on

1 was, I think it was a disgrace in the sight of humanity that
2 these people was under the heading of ethnic cleansing,
3 setting up rape camps, raping women and killing, killing
4 children, and I looked at it in the same form of genocide
5 that was going on with the germ mans that killed the Jews,
6 that people would kill the Africans that came here, before
7 they came here and any other form of genocide, what happened
8 in Afghanistan and everything else. So I thought it was my
9 duty to try to do something as an individual.

10 Q What did Taher tell you beyond the fact that some
11 people had already gone into Bosnia?

12 A He said that he wanted me first of all to go.
13 After that he says the fact that I had a bad leg injury and
14 that the fighting there was much worse than Afghanistan
15 could ever be considered and the Serbs were well trained, he
16 said that I would have to do some extra training if I was
17 going to go climbing, etc., etc. Then he said why don't you
18 just set up something here, I will give you a name, you will
19 get people, these names that I am going to give you who will
20 be ready to go there and train people.

21 Q Did he give you such a list?

22 A Yes. He gave me a list of about six veterans,
23 previous background Vietnam, etc.

24 Q Did you contact them?

25 A I contacted the people, but everybody kind of

1 reneged on it, except for one, one brother by the name of
2 Abu Ubaidah.

3 Q Did there come a time when you met Abu Ubaidah?

4 A Yes. After some time I met him over at the
5 office of the Alkifah. He showed up.

6 Q Approximately, if you recall, what month was that
7 in 1992?

8 A I think that might have been around October,
9 middle or ending.

10 Q Did you meet anybody else through Taher?

11 A Yes. Bilal Phillips and Abdullah.

12 Q Let's take one at a time. Who is Bilal Phillips?

13 A He is a scholar from Saudi. He lived there for
14 many years.

15 Q Is he Saudi Arabian by birth?

16 A No, he is Jamaican descent, from Jamaica, but he
17 has lived in America, Canada, for most of his life.

18 Q You mentioned the name Abdullah?

19 A Abdullah is a brother who spent quite a bit of
20 time in Afghanistan himself. So he happened to pop into the
21 picture -- when I first saw Bilal.

22 Q When did you first see Bilal, approximately, the
23 month, in 1992?

24 A In December I was invited to the Saudi Embassy in
25 Washington, D.C.

1 Q Let me step back for a moment. Besides Bilal
2 Phillips and Abdullah and Ubaidah, were there any other
3 people whose names Taher gave you or introduced you to?

4 A There were some in Philadelphia, some in
5 Baltimore, some in Ohio.

6 Q Let's go to the meeting with Bilal Phillips in
7 Washington. What happened?

8 A Before I got to Washington, he called me up and
9 he asked me would I come to Washington, that the people
10 wanted to meet me from the Saudi Arabia. So I left.
11 Tickets were supplied for me by a brother by the name of
12 Hanif and Kither.

13 Q Who are Hanif and Kither?

14 THE COURT: Spell those for the reporter.

15 THE WITNESS: H-A-N-I-F, I believe, and
16 K-I-T-H-E-R. Kither spent a lot of time in Saudi Arabia
17 himself. He is also a scholar.

18 Q Where is he from?

19 A These are all Americans.

20 Q Where are they from? Where do they live?

21 A New Jersey.

22 Q What does he do, to the best of your knowledge?

23 A One is a security guard.

24 Q Who is that?

25 A Hanifa. And Kither is either a correction

1 officer or an imam at a prison in Jersey.

2 Q All right, and these people were introduced by
3 Taher?

4 A Yes. These people were the people who handled
5 the funds that was established for project Bosnia.

6 Q What funds are you talking about?

7 A It was moneys given to me to set up training here
8 for the people who were supposed to go to Bosnia, because
9 the first effort, the people, the names that he gave me,
10 they reneged on it so I had to get other people that was not
11 trained, to be trained, and that's where Ubaidah came in,
12 being that he had military background, very proficient in
13 martial arts, to do this training, and you needed money for
14 it, to do this here, set up the training for Bosnia.

15 (Continued on next page)

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1 THE COURT: Excuse me, Mr. Wasserman. Wait for
2 one minute. There is a sound problem.

3 We better take a short break, ladies and
4 gentlemen. Please leave your notes and other materials
5 behind. Please don't discuss the case. We will resume as
6 soon as we can.

7 (Jury excused)

8 MS. STEWART: Judge, I had asked the court if we
9 could take a moment. Since it has been thrust upon us.

10 THE COURT: It was given to us, right.

11 MS. STEWART: Last night on the Discovery Channel
12 was a program, Islam and Democracy. It dealt primarily with
13 Egypt although there was some small mention at the end of
14 Jordan, and basically was very negative toward my client and
15 graphically linked him with the death of Farag Foda, etc.,
16 etc. I don't know whether the jury would have seen it. My
17 understanding is that it is a channel that is part of the
18 cable system, not part of general broadcasting, but it also
19 is the kind of thing that they might have inadvertently
20 looked at. They didn't say there was a trial taking place
21 in federal court, but it is a documentary on that subject.
22 I know they have been given a warning to report anything
23 they have seen advertently or inadvertently, but I would ask
24 your Honor to ask that informally -- I don't ask to be
25 present -- Miss Schwartz can ask the question, if any of

1 them have seen that, and report back.

2 THE COURT: That sounds like informally off the
3 record. I would much prefer to give an enhanced,
4 on-the-record instruction about their obligation to report
5 anything they have seen advertently or inadvertently.

6 MS. STEWART: That would be fine, Judge.

7 THE COURT: Which I will do at the end of the
8 day, which is when I usually give the instruction. Do you
9 want me to do it any other time?

10 MS. STEWART: That is fine, Judge.

11 THE COURT: That is when I usually do it. I will
12 tell them that repetition shouldn't diminish the force of
13 the instruction given in a different way. Thank you.

14 (Recess)

15 (Continued on next page)

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1 (Trial resumed; jury not present)

2 DEFENDANT TARIG ELHASSAN: Excuse me, Judge. I
3 have a letter for you.

4 THE COURT: If you have a letter, you give it to
5 your lawyer. Your lawyer will give it to my deputy. My
6 deputy will give it to me.

7 (Letter handed to the Court)

8

9 CLEMENT HAMPTON-EL, resumed.

10 (Jury present)

11 THE COURT: You may proceed, Mr. Wasserman.

12 MR. WASSERMAN: Thank you.

13 DIRECT EXAMINATION (continued)

14 BY MR. WASSERMAN:

15 Q I think you left off at your visit in the Saudi
16 embassy in Washington. Can you tell the jury who you
17 visited at the embassy with?

18 A Well, I went to the embassy by myself. I was
19 picked up at the Washington station in D.C. by a Marine
20 sergeant by the name of Carson. He drove me over to the
21 embassy. I was searched first by whoever the personnel was
22 outside in military, and then by the Saudi police.

23 Q Who did you see?

24 Q I was taken upstairs and introduced to Prince
25 Abdullah Faisal. And we spoke for a while. He said he had

1 heard about me from Afghanistan, he was looking forward to
2 meeting me, it was a great pleasure. Then Bilal came into
3 the room.

4 Q Bilal?

5 A Bilal Phillips.

6 Q Yes?

7 A And he introduced himself. He said almost the
8 same thing. He says, you know, I heard about you from
9 Afghanistan, you were with the mujahideen, and I was looking
10 forward to meeting you. And we sat and we start talking.

11 Q What was the subject matter of the discussion?

12 A The subject matter was Bosnia.

13 Q Specifically was there anything specific about
14 Bosnia?

15 A Yes. He said there were many rich Saudi sheiks
16 that didn't have the opportunity to go to Bosnia, so they
17 wanted to spend some of their money to help the people in
18 Bosnia by setting up a training program which would send
19 people to Bosnia to train people in Bosnia, because they
20 said they didn't want us to fight there, they wanted us to
21 train people.

22 Q Was there any explanation given why they didn't
23 want you to fight?

24 A They said, if you fight there, the Bosnian people
25 wouldn't fight themselves, because they -- he said that when

1 they were fighting there, what they did was, they would go
2 out on a mission or whatever, you know, was going out to
3 fight. After they finished the fight, they would go back
4 home to their families.

5 Q Was there any amount of money mentioned by
6 anybody?

7 A Yes. They said that it would be a budget of
8 \$150,000. These moneys, a small portion would be given to
9 me to establish a training program. The remaining would be
10 given to people who went to Bosnia to help the people to
11 support their families, to pay their bills, etc., here in
12 America.

13 Q At this point in time, this is December of '92,
14 correct, that you testified to?

15 A Yes.

16 Q Had you received any money prior to visiting the
17 Saudi embassy?

18 A Yes. I was given \$8,000 from the man who handled
19 the money here whose name is Hanif. He gave me \$8,000. He
20 said this would be a start to establish something.

21 Q When did you receive that money?

22 A That was the later part of November.

23 Q As long as we are on money, did you give any
24 money to Abu Ubaidah at any time in November of 1992?

25 A Several times. I had given him this stuff for

1 himself, because he said, you know, he didn't have a job, he
2 left a family and whatnot, and he was doing this so he
3 didn't have an income. So he needed a little money. So I
4 would give him some personal money myself. But after I got
5 the \$8,000, he asked me to send him some money one time.

6 Q Where?

7 A To Virginia.

8 Q And did you?

9 A I wired him \$500.

10 Q Do you know what it was for at the time?

11 A No. He was my trainer and I trusted his
12 judgment, you know.

13 Q Were you keeping books and records at the time?

14 A Not at that time. I wasn't keeping close records
15 then.

16 Q Did you also find out what the money was spent
17 for?

18 A Eventually he told me he had purchased some
19 weapons, and at that point I told him, you know, I told you
20 we don't need weapons, the people are training or will be
21 training, the man has all the weapons you need. I said,
22 when you come there, bring no weapons, bring your body,
23 \$35 a head for the individuals. I have all the weapons
24 you need to train.

25 Q Who are you referring to?

1 A Mohammed.

2 Q Mohammed is?

3 A He is a brother that owns some property in
4 Pennsylvania.

5 Q Did he go by another name?

6 A His name is Kevin Smith.

7 Q When did you first have the session with
8 Mohammed, Kevin Smith?

9 A I think I start speaking to him the last part of
10 November of the middle of December.

11 Q Who introduced you to him?

12 A Abdul Karim.

13 Q Who is Abdul Karim?

14 A A brother I have known for twenty years, a very
15 good man, and he used to go up there to do some, you know,
16 training himself, martial arts. A security man too. The
17 family -- this place is for many things, you know.

18 Q You are talking of Kevin Smith?

19 A Yes.

20 Q Have you ever been out there?

21 A No.

22 Q Did Abdul Karim introduce you to anybody else
23 during this period of time?

24 A I met, through him, Garrett Wilson.

25 Q What was the basis of the introduction, do you

1 recall?

2 A This man was supposed to provide me with supplies
3 to give me some type of a program that would make this here
4 training more sophisticated for Bosnia.

5 Q Did you ultimately meet Garrett?

6 A Yes, I met with him. He suggested I meet him in
7 Jersey, over by the Holland Tunnel, and that's where I met
8 him.

9 Q And did you meet him?

10 A Yes, I met him.

11 Q What then did you do when you met him?

12 A Well, he said, you know, let's go some place
13 where we can talk, so I went over to a brother I know by the
14 name of Asim. This is the same brother who does a lot of
15 training himself, but some people hit him in the head and he
16 called me up. I was talking to him on the phone, I believe.
17 People heard it on tape already. And I went over to his
18 house.

19 Q And Asim Mohammed, is that the person you are
20 talking about?

21 A Asim Mohammed, yes.

22 Q Where does he live?

23 A Jersey City.

24 Q How long have you known him?

25 A I have known him for about six years.

1 Q What was the relationship that you had with him?

2 A Well, he claimed that he wanted to go to Bosnia
3 himself. He was a very good friend of Asim, and I met him
4 through him.

5 Q Met who through who?

6 A Asim Mohammad. He said he wanted to go to
7 Afghanistan but it never developed. So we went over there
8 at that house, and we talked, and he said what he wanted to
9 do and what he wanted to provide, some of the things, the
10 program.

11 Q Who are you talking about?

12 A Garrett Wilson at this time.

13 Q All right. As long as we are on Garrett Wilson,
14 what did he want to provide, what would he sell, etc. etc.?

15 A He said he would sell crossbows and -- I have a
16 list that was given to me.

17 Q OK.

18 A The equipment came to, like, \$2,400.

19 Q Did you discuss any specific kind of training
20 with Garrett Wilson?

21 A Well, he brought out some things he wanted to
22 institute himself. He recommended we do repelling.

23 Q What is repelling?

24 A This is to repel from buildings or you can repel
25 from a mountain or wherever, to get to one point, from one

1 point to another point. And the fact that -- he said what
2 we would do mainly is use buildings.

3 Q What is that, climbing or going down?

4 A Going down, swinging from one place to another.
5 He said we could do this here in Jersey. He said there was
6 a place -- and he had several guns himself. He said we
7 could use his weapons, which were pistols, he said,
8 shotguns, assault weapons, and things of this nature.

9 Q What was the relevance of repelling for what you
10 wanted to do vis-a-vis Bosnia?

11 A Well, that was his suggestion. He said we could
12 use it in Bosnia; that Bosnia is supposedly a mountain area,
13 and if you are fighting, the fighting there, to my
14 understanding, was from city to city, so from building to
15 building. So this would be useful for the people to learn
16 how to move from building to building and to repel.

17 Q Did you discuss purchasing any explosives from
18 Garrett Wilson?

19 A Never ever.

20 Q Is there any reason that you took him to Asim
21 Mohammed's apartment in Jersey City?

22 A As I said, he said he wanted some place to talk,
23 so I was over there. I said I would use this here, and by
24 the same token there was a brother there by the name of
25 Kither. So moneys was discussed because they wanted me to

1 set up the program in Jersey. I said I couldn't set it up
2 in Jersey, I don't know anybody in Jersey, and if I am going
3 to deal with this here project of Bosnia, I need to be where
4 I can have a place in Brooklyn, where I know people, to see
5 if the people would be interested, because moving back and
6 forth, not knowing these people, you know, like I wouldn't
7 have been interested.

8 Q Was Kither at the meeting with you and Garrett
9 Wilson and Asim Mohammad?

10 A Yes, Kither was there, and he suggested, he said,
11 well, if this is what I wanted to do, to set it up in
12 Brooklyn, this was permissible. He was a man that would be
13 a decisionmaker, because, as I said before, he was an aalem,
14 so regarding what was correct, he was there to say this is
15 legitimate, allowed.

16 Q Aalem is what?

17 A A knowledgeable person, a person who is, like the
18 sheik, he is very knowledgeable about the specific things
19 covering the law, the principles, ethics, etc.

20 Q Now, where in Jersey City did you have this
21 meeting with Kither and Asim Mohammad and Garrett Wilson; do
22 you recall the address?

23 A No, I don't recall the address.

24 Q Do you recall what kind of building you had it
25 in?

1 A Yes, it was a very large apartment complex with
2 several sides on it, I think about four, maybe consisting of
3 more than a hundred families. And he was the super there.

4 Q Do you recall the particular place within this
5 building that the meeting was held?

6 A It was a lot of vacant apartments there in the
7 building, so we went into a vacant apartment that had some
8 furniture in it because they store stuff in these places
9 too, because he was living in the basement, I mean his
10 family, and so he took mattresses and all the rest of his
11 stuff and furniture that was out there, upstairs to
12 different apartments, and this happened to be one of the
13 apartments with some of the stuff in it.

14 Q He was living there with his family?

15 A Yes.

16 Q Did you know his family?

17 A No. I knew his son but that's it.

18 Q This meeting was held in what month in '92, do
19 you recall?

20 A Maybe it was around December sometime, I am not
21 sure.

22 Q Going back to the meeting at the Saudi embassy,
23 did anything occur after that meeting in Washington?

24 A Well, after we had this discussion, we went over
25 to the sergeant's home, Sergeant Carson. Before we arrived

1 at his home, he stopped and showed me a masjid that they
2 were using on one of the military facilities there, for
3 Muslims to pray. I didn't know what the place was because
4 it was dark. We went to his home and we continued the
5 discussion about Bosnia.

6 Q What was the subject matter of that discussion as
7 specifically as you can recall it?

8 A Well, we were talking about the type of training,
9 and he said he would like to suggest some things. So he
10 gave me some manuals on different techniques, sniping,
11 camouflage, a number of other things.

12 Q What did you do with those manuals?

13 A I took the manuals with me.

14 Q Let me show you what has been --

15 MR. WASSERMAN: May I approach, your Honor?

16 THE COURT: Yes.

17 Q -- what has been introduced as Government Exhibit
18 823, which is boobytraps; 829 is combat skills of the
19 soldier; 831A is field firing techniques; 831B, sniping; and
20 831C, machine guns and machine gunnery. Do you recall
21 whether these are the manuals which he gave to you?

22 A All of these are the manuals I received from him.

23 Q When you say you took the manuals, where did you
24 take them?

25 A Well, before I brought them home, because we went

1 some place else after that, then I brought them home with
2 me.

3 Q After meeting at Sergeant Carson's home, did
4 anything else occur in Washington?

5 A Yes. The following morning there was a gathering
6 at Fort Belvoir, in Virginia.

7 Q Fort Belvoir?

8 A Fort Belvoir.

9 Q How do you spell that?

10 THE COURT: B-e-l-v-o-i-r.

11 MR. WASSERMAN: Thank you.

12 A It was an Islamic conference there for all
13 military personnel, Navy, Army, Air Force, Marines, and
14 whatever. We went to the meeting, pictures were taken, they
15 asked me to give a lecture there. Pictures were taken. You
16 signed in.

17 Q Did you give a lecture?

18 A No. I listened to a lecture.

19 Q Did anything occur after this gathering relating
20 to the Bosnian matter?

21 A At the meeting I was given several names of
22 individuals who would be leaving the military in the very
23 near future, those who would be getting out in a week or
24 two; different states that would provide training also or
25 themselves was interested in going to Bosnia.

1 Q Who gave you these names?

2 A Bilal Phillips.

3 Q Do you know where he got them from?

4 A Sergeant Carson.

5 Q When you say Sergeant Carson, he introduced
6 himself as Sergeant Carson?

7 A Yes, he did.

8 Q Do you know that to be his true name today?

9 A No, I found out, later on, his name is not
10 Sergeant Carson.

11 Q Was there anything else that occurred in
12 Washington?

13 A He himself said he had the highest clearance and
14 that he was going to come to Brooklyn and he was going to
15 participate in training, in training the people. He said
16 his mother lived there, in the Brownsville or East New York
17 area along Belmont, and he was familiar with Brooklyn so he
18 would be looking forward to coming here and visiting.

19 But --

20 Q Did you follow -- I am sorry?

21 A What happened was, because I spoke to his family
22 and he asked me to speak to his son because his son was
23 encountering some problems, and I told him you should not be
24 fearful. Try to be strong. And if you run into anything,
25 try to deal with it the best way you can. He said he had

1 received orders to go to Somali, and he would have to leave
2 for California, so he wasn't sure if he was going to come,
3 but in all probability he would.

4 Q Did you contact the people on the list that you
5 got from Bilal Phillips?

6 A I contacted a few of them but it was the same
7 results. It was negative, except --

8 Q And -- I am sorry?

9 A Except for one medic in Harlem. He said he would
10 come and train with me, himself, but he never showed up
11 either.

12 Q Did there come a time that you met Siddig Ali in
13 1992?

14 A Yes.

15 Q Who introduced you and what were the
16 circumstances?

17 A Well, after shopping around for people, a brother
18 by the name of Dr. Osman --

19 Q Spell it.

20 A O-s-m-a-n. He said that he had a brother who
21 knew several Muslims who would be very glad to participate
22 in Bosnia.

23 Q Did he tell you who that brother was?

24 A Siddig Ibrahim Siddig Ali.

25 Q Did there come a time when you met Siddig Ali?

1 A He called my home, introduced himself, asked me
2 would I come over in Jersey and meet him.

3 Q And when is this, when in '92, approximately?

4 A Somewheres around November, middle part, or
5 towards the end.

6 Q Did you go to New Jersey to meet with him?

7 A I went to Jersey City to meet with him. After
8 arriving, he told me I should call him. I called him and he
9 directed me a little further.

10 Q What did you do with him, if anything, that day?

11 A I went to his home and picked him up, never going
12 upstairs. And he said, before we spoke about Bosnia, he
13 said he was very much interested; would I go to a prison
14 with him and give a lecture. So we went to the prison. He
15 spoke to the first group of people -- this was on a Friday,
16 prayer time -- and I spoke to the second group.

17 Q Do you recall which prison?

18 A No, I don't.

19 Q What happened after that?

20 A Then we left there. He said he wanted to go and
21 pick up another brother. I drove him and he picked up Abdel
22 Mohammad Rahman Haggag.

23 Q Was this the first time you met that person?

24 A First time.

25 Q What if anything did you and Siddig Ali and Abdel

1 Haggag do?

2 A Well, he came downstairs and he says to me,
3 well, -- well, we were introduced. And he said, "Do you
4 want to come upstairs and meet someone, a sheik?" I said
5 no. And I left -- we left.

6 Q Do you know who he was referring to?

7 A I had no idea. I was concentrating on getting
8 this Bosnian thing together.

9 Q Is there any other contact with Siddig Ali after
10 that day?

11 A Yes. Him and Haggag came over to Brooklyn. I
12 took them to a place at Sixth Avenue and 62nd Street, which
13 sells a lot of military surplus, and I purchased -- me and
14 Ubaidah also went, I went in my car and they went in their
15 car -- I purchased a lot of stuff, blankets, canteens,
16 knives, I think we might have even gotten some binoculars,
17 boots, ponchos -- things that you would use for outdoors and
18 for training.

19 Q What was Siddig's involvement, if any?

20 A Well, Siddig, when I first met him, he showed a
21 whole lot of enthusiasm and he said to me, "I'm ready to go
22 right now." I said, "Wait." He said, "I am ready to go to
23 Bosnia right now." I said, "You can't go because you have
24 to have training. We can't send you there if you are not
25 trained." And he seemed a little disenchanted, but he said

1 all right.

2 Q How about Abdel Haggag?

3 A Haggag, from my understanding, was a complainer,
4 and he was soft.

5 Q What are you basing this opinion on?

6 A What my training told me. Ubaidah, he said while
7 training these people --

8 THE COURT: Are you offering that for the truth?

9 MR. WASSERMAN: No.

10 A While training these people, this man cried all
11 the time. He couldn't run --

12 MR. FITZGERALD: Objection.

13 THE COURT: Sustained. Move on to something
14 else.

15 Q Did Siddig have anybody in training?

16 A Siddig said he had 40 men if I needed it. He
17 said, all Sudanese and they are ready.

18 Q Where did the training take place?

19 A Well, first they started just doing outdoor
20 calisthenics because there was no place at that particular
21 time set up.

22 Q What time are we talking about?

23 A Mid -- beginning November and mid-November,
24 something like that.

25 Q Where was this training given?

1 A They used to do running in Lincoln Park.

2 Q Where is Lincoln Park?

3 A In Jersey.

4 Q Who was doing this training, do you know?

5 A Brother Ubaidah was doing the training, Siddig
6 was doing the training. The rest of the people I hadn't met
7 because Ubaidah I trust him as to his judgment, and he was a
8 trainer, so the men he chose was satisfactory to me.

9 Q Do you know how many people Siddig brought, if
10 any, to the training?

11 A He said he had brought a dozen or so, but they
12 start falling to the wayside, they start leaving out,
13 because he is a serious trainer and there was some physical
14 contact, so when people got struck, some of them start
15 crying, you know, couldn't deal with the blows.

16 Q Are you talking about the Lincoln Park training?

17 A Yes.

18 Q Did there come a time that the training took
19 place in any place else?

20 A After that, the calls that I had initiated to
21 brother Mohammad, they start going up to Pennsylvania. The
22 idea was to go to Pennsylvania from Thursday night till
23 Sunday evening and train. And when I would establish a
24 place for them to train, because I didn't have it yet, that
25 day, of the four days, would be done here in the city,

1 indoors.

2 Q Can you recall approximately when this training
3 at Mohammad's began?

4 A I think it was the latter part of December or the
5 beginning, very beginning of January.

6 Q Do you recall how long it lasted?

7 A It lasted until the end of January, I believe,
8 when the FBI start taking pictures of the brothers up there,
9 and they approached Mohammad and questioned him and
10 suggested --

11 MR. FITZGERALD: Objection; competence.

12 THE COURT: Sustained.

13 Q Going back for a moment to your meeting with
14 Bilal Phillips in December at the Saudi embassy, did you,
15 after that meeting, see Bilal Phillips again?

16 A Yes. After the meeting of him and Prince
17 Abdullah Faisal, he said that he wanted me to go to Europe
18 with him, Austria, to meet the people who would be providing
19 the money that was being sent from Saudi Arabia for the
20 training here.

21 Q Did you know at the time what Bilal Phillips'
22 occupation was in Saudi Arabia?

23 A I had no idea.

24 Q Did you subsequently go with him to Austria?

25 A Yes, I did.

1 Q And approximately when did you go?

2 A I think that was around the earlier part of
3 January. Yes, around the early part of January.

4 Q And what happened there?

5 A We went there, and there was some difficulty,
6 because the man who was supposed to be there to provide the
7 money was not there at the time, and they said it wasn't
8 time for us to come to get the money. He had said that he
9 had made the call and there was the connection for the
10 moneys to be picked up, so he should be there. And he
11 wasn't. So we had to set up in a hotel and go back, before
12 we achieved what we went for.

13 Q What did you achieve that you went for?

14 A We picked up \$20,000.

15 Q Is this in cash?

16 A Cash. All hundred-dollar bills.

17 Q Who took the money?

18 A I took it.

19 Q Where did you take it?

20 A I brought it back to America.

21 Q Did you declare it when you came into the
22 country?

23 A No, I didn't.

24 Q How did you take it into the country?

25 A I put \$10,000 in my pocket and I put another

1 \$10,000 in my pants.

2 Q Was there any duty to declare the \$10,000 in your
3 pants?

4 A Well, I just felt this project Bosnia was
5 something that I didn't want to expose in public, and I
6 didn't think that they would let me bring the 20,000 in, so
7 I just put it in my trousers.

8 Q You knew, did you not, that you were required to
9 declare it when you came in?

10 A Yes.

11 Q What did you do with the \$20,000 after you came
12 to the Customs?

13 A When I arrived back to New York, I gave the money
14 to Hanif, the brother in Jersey.

15 Q What then happened to the money?

16 A Then he gave me 10,000.

17 Q Now, what did you do with that 10,000?

18 A 10,000 I searched around. I had been looking,
19 with the 8,000, to find a place to set up the training, but
20 all the storefronts and stuff that I was looking at, people
21 wanted \$2,000 a month, \$2,500 and I couldn't afford that
22 because this is supposed to be a very small budget. I found
23 a place on Rogers Avenue, and I rented an apartment upstairs
24 and a place downstairs that used to be a livery place for
25 cabs. I rented both.

1 Q And who did you rent the place from, do you
2 recall?

3 A From Junior Pussey.

4 Q How do you spell it?

5 A That is P-u-s-s-e-y.

6 Q Now, when you rented the place, do you recall
7 what you rented it for, how much money?

8 A I rented the upstairs for \$800 and downstairs,
9 started with \$1,100 but I got him down to a thousand.

10 Q Do you recall when you took occupancy of the
11 premises?

12 A I took occupancy February 22 upstairs and, later
13 on, downstairs because it needed a lot of work, the place.
14 As I said, it used to be a livery. The walls were shot, no
15 lighting, etc. And he fixed it up. And I moved in there
16 about the end of March or the beginning of April.

17 Q Did you sign up for electricity and phone?

18 A Electricity, phone, gas, all the, you know,
19 necessary things we would be moving.

20

21 (continued on next page)

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1 Q What was the function of the downstairs going to
2 be?

3 A Downstairs was going to be a training area, so we
4 set it up as a dojo for close contact.

5 Q What is a dojo?

6 A Dojo is a place where you study martial arts,
7 aiki combative, aiki jujitsu.

8 Q What is aiki jujitsu?

9 A It's a Japanese form of martial arts.

10 Q What else was Rogers Avenue going to be used for,
11 if anything?

12 A As I said before, downstairs was going to be used
13 for training. Upstairs, because I was told people would be
14 coming from Saudi Arabia, they wanted to see what type of
15 training was going on, how the moneys were being spent, so
16 upstairs -- Muslims try not to have too much comfort in this
17 life so I just put rugs on the floor. I said they can sleep
18 on the floor when they come. That was going to be for the
19 people who came from Saudi, to stay upstairs, and they would
20 have also upstairs and be able to go right downstairs and
21 see what was going on and see the people who were part of
22 the training.

23 Q The video that was played for the jury the other
24 day, can you tell the jury how that video came to be?

25 A The video was developed because after the

1 training ceased in Pennsylvania --

2 Q When was that, sir? Do you recall approximately?

3 A Around the end of January, when the FBI said they
4 wanted to do a raid only the brothers there and asked --

5 MR. FITZGERALD: Objection.

6 THE COURT: That is stricken.

7 MR. WASSERMAN: I am sorry. Reporter, can you
8 read my question.

9 (Record read)

10 THE COURT: I believe you asked how the video
11 came to be made.

12 Q How did the video come to be made?

13 A The video came because there was a need, it
14 showed the people something was going on when in fact things
15 had stopped, and I only had a handful of men at that time.

16 Q When you say the people, who were the people?

17 A Bilal Phillips and the people in Saudi Arabia,
18 because I was invited to come to Saudi, so I was supposed to
19 take the video and show them and sit down as people with
20 them.

21 Q Do you recall who the people who took part in the
22 making of the video, who were filming, were?

23 A Abu Ubaidah, Sayfullah, the professor who was on
24 the stand here, Earl Gant, and there was three other
25 brothers, four other brothers, I forget their names.

1 Q Was there anybody who participated in making the
2 video who was also involved in the training in Pennsylvania?

3 A Abu Ubaidah -- no.

4 Q When was this video made, to the best of your
5 recollection?

6 A Somewheres in April.

7 Q How do you date that in your mind?

8 A Because I was asked to come to Saudi, and it was
9 conflict. I couldn't get there at the time they wanted me
10 to. And then someone else wanted to go themselves, Kither
11 said he would go, because he spoke Arabic and he knew the
12 traditions and what not of the Arab people.

13 Q When you said you couldn't go, why?

14 A I am working all the time, so most of the time
15 I'm working anyway, so I couldn't get the time off.

16 Q When you say that the people who took part in the
17 training in Pennsylvania were not the same people depicted
18 in the video, had you met the people who took part in the
19 training in Pennsylvania?

20 A Yes. Sayfullah I had met before, and Earl Gant
21 and two of the other brothers, because they had came down
22 from Philadelphia and did some brief training themselves.
23 They said they wanted to go to Bosnia.

24 Q Did Sayfullah take part in the training in
25 Pennsylvania?

1 A No.

2 Q Who is Sayfullah?

3 A He is a martial artist from Philadelphia.

4 Q Had you met him before the making of the video?

5 A Yes. He came over a few times. He stayed over,
6 and one time when I was unable to go he had to make a trip
7 to Europe with Ubaidah.

8 Q For what purpose?

9 A To pick up moneys.

10 Q Was there any kind of relationship between
11 Sayfullah and Ubaidah?

12 A Very close. Sayfullah used to train him, so he
13 was with Sayfullah for quite sometime.

14 Q Who is Earl Gant?

15 A Earl Gant is a brother who used to be in this
16 case. He was also training.

17 Q Of the people who trained in Pennsylvania,
18 besides Siddig Ali and Abdel Haggag, did you meet anybody
19 else for training in Pennsylvania?

20 A Two other individuals.

21 Q Who were they?

22 A After getting the place on --

23 Q If I may, let me just ask, during the time of the
24 training did you meet anybody?

25 A No.

1 Q This occurs after the training?

2 A Yes.

3 Q When approximately do you meet them and who do
4 you meet?

5 A I met Tariq Elhassan and Amir Abdelgani. They
6 came over to the place that I finally got over on Rogers
7 Avenue, to meet me and to try to help fix the place up.

8 Q When was this, approximately?

9 A The last part of February or the beginning of
10 March.

11 Q Did the Trade Center bombing have any effect on
12 the training at that time?

13 A To my understanding from Kelvin Smith, yes, he
14 said he was afraid.

15 MR. FITZGERALD: Objection.

16 THE COURT: Again that is stricken. Let's go,
17 Mr. Wasserman.

18 Q Did it have any effect on your activities at the
19 time?

20 A Not to me, because I didn't think I am doing
21 anything wrong.

22 Q Did anybody at any time in any way approach you
23 for explosives, in '92?

24 A Never, then or ever in my life.

25 Q What about Emad Salem?

1 A On the 30th, they did, but at that particular
2 time, at that juncture no one had said anything.

3 Q Are you knowledgeable about explosives?

4 A No knowledge at all.

5 Q No knowledge from your tour in the army or tour
6 in Afghanistan?

7 A I had bombs dropped on me but I don't know how
8 they function.

9 Q Did you go back to Europe at any time after your
10 first trip with Bilal Phillips to Austria?

11 A I made two additional trips.

12 Q When were they?

13 A Another one in January, and the last one was in
14 February.

15 Q Do you recall who you went with in January on
16 your second trip?

17 A I went with Ubaidah the second and the third
18 trip.

19 Q Where did you go on the second trip?

20 A Same place, to Vienna and --

21 Q Do you recall who you saw in Vienna, the name of
22 the person?

23 A Brother by the name of Shakana,. That's
24 S-H-A-K-A-N-A.

25 Q How much money was picked up on the second trip,

1 if you recall?

2 A 20,000.

3 Q Did you take that money or did someone else take
4 the money?

5 A I gave the money to Hanif. Out of it --

6 Q Excuse me. How did the money get to Hanif?

7 A Myself and Ubaidah took it to him.

8 Q You gave the money to Hanifa?

9 A Yes, I did.

10 Q You gave him 20,000?

11 A Right.

12 Q What happened to that 20,000, if you know?

13 A Out of the 20,000, he supported his family --
14 excuse me -- the families for this Bosnia project, because
15 it was a lot of people had kids, wife, grand, etc., and they
16 were told if they went these things would be taken care of
17 as though they were here.

18 Q Did you know those people?

19 A No, I never met any of them.

20 Q Did you get any money from Hanif at that time?

21 A I think at that time I got an additional 10,000.

22 Q You made one additional trip you testified to?

23 A Yes.

24 Q Where was that?

25 A To Vienna again, but this time the people said we

1 have no moneys for you. Abdul who went with me on the first
2 trip, he went inside of Yugoslavia, and matter of fact they
3 asked me to go in there and set up a place so it would make
4 it easier for the people to come. But my wife said no way
5 Jose.

6 Q Did you want to?

7 A Pardon?

8 Q Did you want to?

9 A I was willing.

10 Q Go ahead.

11 A They said I had to go to Yugoslavia. And most
12 people said you're crazy if you go in there. Anyway, I
13 bought a ticket for myself and Ubaidah, and we went. We
14 arrived in Yugoslavia and it was like, it was unreal. It
15 was an armed camp.

16 Q Where in Yugoslavia did you go?

17 A Zagreb.

18 Q Do you know what part of Yugoslavia Zagreb is in?

19 A That's in Croatia.

20 Q Croatia?

21 A Yes.

22 Q What happened when you arrived in Croatia?

23 A When I arrived, because I was dressed
24 Islamically -- I don't think about these things because it's
25 natural, and when I arrived everybody at the airport had

1 machine guns and shotguns and pistols and stuff and I was
2 scrutinized very, very, very closely. I was asked what I
3 was doing there.

4 Q What did you tell them?

5 A I told them I came to spend some money, you know,
6 to look at Yugoslavia.

7 Q What actually had you come for?

8 A I went there to meet Abdullah and to look at the
9 situation.

10 Q You went to meet Abdullah?

11 A Yes.

12 Q Go ahead.

13 A And to look at the situation, to see that if in
14 fact I was going to go there, to see what it looked like. I
15 was taken from the airport and driven to a development. On
16 the way -- first of all, at the airport Abdullah told me, he
17 said listen, I just bought a pair of boots, cost \$300, they
18 got nice leather in Vienna. He says if anybody comes to you
19 and says take your boots off, take your coat off, you be
20 sure to take them off because if you don't, you be dead
21 meat. I said you got to be crazy. He said I mean it.

22 So we got in this vehicle and we started driving,
23 myself, Ubaidah and another brother that came with him. We
24 maybe went 4, 5,000 yards. There was troopers on both sides
25 of the street with machine guns and on the other side they

1 stopped the vehicle and they were talking to the people.
2 And all of a sudden, the guy raised his foot -- pow -- and
3 he kicked the guy out of the vehicle and he put his gun on
4 him. I said wow, this is serious.

5 So I understood what he was talking about when he
6 said if they come to you give up your boots and your coat,
7 to give that up and whatever else, you know.

8 Q Did you ultimately get any funds in Zagreb?

9 A Yes, we stayed over that day and that night, and
10 the following morning -- that night, excuse me, we spoke to
11 Bilal on the phone, and he said even though the program had
12 somewhat become stagnant -- because what happened with
13 Bosnia, the opening that the mujahideen was going in, they
14 closed up the opening, stopped the mujahed from going in.
15 So they was looking for another way to get in and they said
16 maybe only by the ocean and stuff like that.

17 So being that a cycle of programs, moneys and
18 what not was coming to an end, he said that there would be
19 new budget established, that the Saudis was willing to give
20 up \$250,000, and it would continue. So I talked to him on
21 the phone, this is what he is telling me. I said hamdi
22 Allah, praise be to Allah, and we went to -- excuse me. We
23 went to bed.

24 The following morning, before I got the money, we
25 went to the masjid. What I saw out there was people in

1 bread lines, drinking water that was festered and everything
2 else. And at the masjid there was a soldier who was
3 blocking the door, had a cigarette hanging out his mouth and
4 his foot across the door. And the people said we weren't
5 going in there. And I said we are going to pray, and I ran
6 up the stairs. There was like several layers, 10 steps to
7 each layer. As I approached, his leg was across the door
8 and I just raised the leg. I was going to break the
9 sucker's leg, and he moved the leg. And I went inside and I
10 said come on to the people, let's pray, this is the house of
11 Allah, nobody is supposed to close this door. So we prayed,
12 went back, had some food, stopped, talked for a while, then
13 he gave me the money.

14 Q How much did he give you?

15 A 20,000.

16 Q Did you leave Zagreb that day?

17 A Yes, we left that afternoon, went to the airport,
18 had a meal, a rather extravagant meal. See, he got locked
19 up over there, and I guess they know that from the tapes
20 already, but he got locked up over there for using a credit
21 card that was no good.

22 Q When did he get locked up?

23 A They called me and told me he got locked up in
24 April sometime, I believe.

25 Q Where did you go from Zagreb?

1 A It was hard getting out of Zagreb, because the
2 soldier, he must have searched me about 15 times back and
3 forth through the thing, and it looked like he was trying to
4 provoke me so he could kill me. He came up in my face like
5 this, we were almost kissing, you know.

6 THE COURT: The question with was where you went
7 from Zagreb.

8 THE WITNESS: Excuse me.

9 THE COURT: The question was where you went from
10 Zagreb.

11 THE WITNESS: Yes.

12 A I went back to Vienna.

13 Q Did you see anybody there?

14 A I told them I got the money, I left Vienna and
15 came back to America.

16 Q Where in America?

17 A Brooklyn first -- I stayed in Brooklyn because
18 they came over to Brooklyn and picked up the money.

19 Q Who picked up the money?

20 A Kither and Hanifa.

21 Q Was there a split of the money? How was the
22 money distributed, if at all?

23 A They gave me \$15,000 and they said that's it.

24 Q What did you do with that money?

25 A We were still, like I said, the project wasn't

1 dead to me, it wasn't over. So we got some more equipment.
2 I gave Ubaidah the money to get whatever he need, and he
3 purchased a lot of stuff that would be used for training.

4 MR. WASSERMAN: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q Rashid, I want to show you a passport. Would you
7 take a look at it, please. Whose passport is that?

8 A That's me.

9 Q I want you to take a look at -- when you say
10 that's me, does that mean this is your passport?

11 A That's my passport.

12 Q I want you to take a look at this page of the
13 passport.

14 MR. WASSERMAN: Your Honor, if I may, I would
15 like to introduce that into evidence.

16 THE COURT: Does it have an exhibit number on it?

17 MR. WASSERMAN: Z, Hampton-El Z.

18 MR. FITZGERALD: If I could just look at it for a
19 moment.

20 THE COURT: Yes.

21 MR. FITZGERALD: No objection.

22 THE COURT: Hampton-El Z is received without
23 objection.

24 (Defendant Hampton-El Exhibit Z received in
25 evidence)

1 Q Could you tell the jury, the visa entry that is
2 on the page that I have just shown you.

3 A This is 2/20/93 to Zagreb.

4 Q Is that stamped by --

5 A This is stamped by turizam, Zagreb government.

6 (Continued on next page)

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1 Q Thank you.

2 MR. WASSERMAN: Your Honor, may we take a moment
3 to publish this to the jury?

4 THE COURT: Yes.

5 MR. WASSERMAN: Your Honor, if I may, while the
6 jury is looking may I approach side bar?

7 THE COURT: Yes.

8 MR. WASSERMAN: Thank you.

9 (At the side bar)

10 MR. WASSERMAN: Your Honor, I have about probably
11 another 15, 20 minutes and then we have to go to the tapes,
12 which requires installing the machine, which will have to be
13 done over the lunchtime. I just wanted to advise the court.
14 If I thought I was going to go to 12:30, I would ask for a
15 5-minute rest for him, because he has been going for about
16 an hour.

17 THE COURT: He is doing all right. Go until you
18 are out of gas, and then ask for another side bar. We will
19 come up to the side and I will break for lunch.

20 (In open court)

21 (Pause)

22 THE COURT: Mr. Wasserman, I think you can
23 continue.

24 MR. WASSERMAN: Thank you, Judge.

25 BY MR. WASSERMAN:

1 Q Rashid, approximately how much money were you
2 given for this project?

3 A In the neighborhood of 44,000, \$45,000.

4 Q That is money that came from your trips to
5 Europe?

6 A Yes.

7 Q Did you provide any payments to Siddig Ali from
8 that money?

9 A On a few occasions he asked me for money.

10 Q Do you recall when, approximately?

11 A I think it started in January. He said that --
12 well first of all Ubaidah said that Siddig had been helping
13 him, which he had, driving him around because he didn't have
14 a vehicle, and that he had lost his job, or he was on the
15 verge of losing his job because he hadn't lost it just yet,
16 and that he needed some money. So I gave him some money.

17 Q How much money, do you recall, approximately?

18 A I think the first time was \$200. After that, the
19 approach came from him, and he said his rent needed to be
20 paid, phone bill needed to be paid, he needed food and stuff
21 like this.

22 Q Do you recall approximately when that was?

23 A Perhaps towards the end of the month, of the same
24 month. If not, the early part of February. That was 500,
25 he said, because it was his phone bill, his food, and his

1 apartment. And he approached me again, came by my job.

2 Q When was that?

3 A I think that was towards the end of March. I
4 believe it was the end of March, beginning of April,
5 something like that. And he asked for money again. I told
6 him listen, if you need a job --

7 Q We are talking '93, correct?

8 A Yes.

9 Q Go ahead.

10 A I said listen, if you need a job I'll help you
11 get one, but, you know, I ain't got it like that.

12 Q When you say he came by, where was that?

13 A Brooklyn Kidney Center, Flatbush and Sterling.
14 He popped out out of the blue. Somebody said someone wants
15 to see you, it was Siddig. So I gave him \$20, that's all I
16 can help you. He seemed to be somewhat annoyed by it, but
17 that's the way I see it.

18 Q This was, you testified, late March, early April?

19 A I believe so.

20 Q Did you provide him with any moneys afterward?

21 A No, to the best of my recollection, no.

22 Q Did you provide Ubaidah with money?

23 A Ubaidah after a while required a salary because
24 he did have kids and he wasn't working. So I started him
25 off with a thousand dollars a month, and his need became a

1 little greater, because he said he had five kids and a wife.
2 So I raised the fund up -- excuse me -- the moneys to \$1,500
3 a month.

4 Q When did you pay him the \$1,500 a month?

5 A Usually at the end of the month or the beginning
6 of the month. One time he received, because he needed an
7 advance, two months in one time. So that was like \$3,000.

8 Q How long did these payments continue?

9 A Until I got arrested.

10 Q Did you provide him anything else besides these
11 monthly payments?

12 A He needed a place to stay, so eventually, he
13 didn't take over, but the apartment upstairs became his. He
14 lived upstairs on the top floor, him and his wife, and I
15 think it was two children. They lived up there, so that was
16 his place at that time, until the people came, but it didn't
17 look like they were coming.

18 Q Did you keep any books and records evidencing
19 these payments?

20 A Yes, I did.

21 Q I would like to show you what has been marked as
22 Hampton-El Y -- may I approach, your Honor?

23 THE COURT: Yes.

24 Q Rashid, would you take a look at what has been
25 marked Hampton-El Y for identification, and do you recognize

1 what has been so marked?

2 A This is the ledger, yes.

3 Q What is that ledger of?

4 A This is the ledger for everything --

5 THE COURT: Mr. Wasserman, your client can't be
6 heard without the microphone.

7 A This is a ledger for everything that was spent
8 for the project Bosnia, down to buying a 5-pound bag of
9 sugar. Everything is down there.

10 Q Do you know who prepared this ledger?

11 A My wife did.

12 Q Do you know what she prepared it based upon?

13 A Receipts from grocery stores, from anything that
14 was used for gas, I got a receipt for.

15 Q Who gave her the receipts?

16 A I gave her the receipts.

17 MR. WASSERMAN: Your Honor, at this time I would
18 move what has been marked defendant Y in evidence.

19 MR. FITZGERALD: I have seen copies, I would just
20 like to look at the original for a second.

21 THE COURT: Go ahead.

22 MR. FITZGERALD: No objection.

23 THE COURT: Exhibit Y is received without
24 objection.

25 (Defendant Hampton-El Exhibit Y received in

1 evidence)

2 MR. WASSERMAN: Your Honor, we have copies of
3 Exhibit Y which I would ask the court's permission to
4 publish after the lunch break.

5 THE COURT: All right.

6 MR. WASSERMAN: Thank you.

7 Q Did there come a time, Rashid, where there was a
8 meeting between you, Abdel Haggag, Ubaidah, and I believe
9 Amir Abdelgani?

10 A Yes, there was.

11 Q When approximately did that occur?

12 A The middle of March or towards the end of March.

13 Q How do you date that? What makes you recollect
14 it as then, approximately?

15 A Well, if wasn't too far from Siddig's constant
16 approach, because after he asked me for money and I kind
17 of -- I think he was upset because I only gave him \$20 last
18 time, and he start complaining that it was misuse of funds
19 and Ubaidah was very extravagant and he was wasting money,
20 and that himself and Haggag did not like it, and they were
21 very upset about it and they wanted to go at and have a
22 meeting about it. So I told him if I am going to talk about
23 this man I want him to be present here, so we will have a
24 meeting, discuss this, we will see what happens.

25 Q When you say talk about it with him present, who

1 is the him present?

2 A Abu Ubaidah.

3 Q Did the meeting happen?

4 A This is how I remember the meeting, from these
5 things. The meeting happened. We all sat down and start
6 talking. Haggag seemed to be somewhat of a ringleader. He
7 was the most aggressive, and he said that he would not
8 permit myself and Ubaidah to use the brothers in this
9 program and spend money and waste it, that him and Siddig
10 had to take over the project, take over the moneys, decide
11 how it would be spent, and control everything.

12 I said well, this meeting, number one, is to
13 establish if Ubaidah has been over extravagant, and to my
14 way of thinking, I said, at this point he hasn't because the
15 stuff that was downstairs in the dojo was needed to train
16 people, he perhaps spent a little too much money on the
17 videos, which I admonished him for and told him don't do
18 that. And any receipts for moneys that he had spent I
19 wanted to see them immediately. And I told him to -- or
20 them that they should shake hands, apologize and amend, and
21 that would be it. They shook hands, they got up, and Haggag
22 and Siddig and Ubaidah went into an adjoining room. I heard
23 a lot of screaming and crying. So I got up and I went
24 inside, and Siddig was standing up in the corner screaming
25 and crying, I can't take it any more, I can't take it,

1 ripping his clothes off, and Haggag seemed to be laughing
2 and they were saying something in Arabic, I don't know what
3 they was talking about. And they kind of calmed him down.
4 Ubaidah grabbed him, calm down, calm down, and I gave him a
5 sweater to put on that I had in the apartment.

6 After that, we spoke, shook hands, I said As
7 Salamu Aleikum Wa Rahmatu Allah Wa Barakatu, and they
8 left -- that means peace be on you and a lot of things --
9 and they left, himself, Amir and Haggag. But one of the
10 concerns they brought up was that Amir had used a credit
11 card to rent a van, and they wanted me to give Amir back
12 this money. I disagreed first, that I wouldn't do it, and
13 then I says all right, I'll give it to him. And later on I
14 retracted that statement even, because I said this money, I
15 had no knowledge of this arrangement with you and Ubaidah, I
16 did not tell you to spend this money and I can't pay it to
17 you out of the money of project Bosnia.

18 Q Was there ever any time after this meeting --
19 this meeting took place at Rogers Avenue, correct?

20 A Yes.

21 Q Was there ever any time after this meeting that
22 you were alone with Abdel Haggag?

23 A No, we were always together up until the meeting
24 broke up, and when the meeting broke up Haggag, Siddig,
25 Ubaidah and them removed themselves and went to the

1 adjoining room. I was still sitting. That's when I heard
2 the crying and screaming, and that was it. We were never
3 alone. We shook hands and they left. That was it.

4 Q You never had any conversation with him about
5 Mahmoud Abouhalima or anything along those lines?

6 A At no time at all.

7 Q After this meeting takes place, did you have any
8 further contact with Siddig Ali?

9 A Yes.

10 Q What was it?

11 A Later on, Siddig Ali and Haggag -- I was coming
12 out of a restaurant where I usually eat, called India House.

13 Q Where is that located?

14 A Over on Court Street and Atlantic Avenue.

15 Q Go ahead.

16 A When I came out the two of them were standing
17 across the street, Haggag and Siddig. They said Salam alay
18 kum, sheik, I said Salam back, and they said we need to talk
19 to you.

20 Q When approximately did this take place in
21 relation to the meeting at Rogers Avenue?

22 A This is early April.

23 Q Go ahead.

24 A They said we need to talk to you. I says all
25 right, what do you want to talk about? They said let's take

1 a walk. So we walked around the corner, Dean Street, over
2 to Smith Street, came back up Atlantic Avenue. In the
3 process we stopped for a minute or two and sat on the
4 sidewalk there, and they says we have a project we want to
5 do here. I said what are you talking about? He said we
6 want to do something here in America. I said what? He said
7 well, I can't tell you what it is. I said so, what's up?
8 He said we need some weapons. I said let me tell you
9 something. If you are doing something haram, you are going
10 to go to hell. I said and if you're doing something
11 illegal, you're going to end up in jail. So you better get
12 your head together, think about what you're doing. He says
13 no, no, sheik.

14 Q Who said, who is he?

15 A Siddig.

16 Q Go ahead.

17 A He said this is halal, this is halal. I said all
18 right. He says what can you do for me? I says I can't do
19 anything this time, I'll look into it. He says I need it
20 right away. I says how much time you need? He says two
21 days. I says all right, I'll talk to you in two days. Two
22 days passed by, I didn't talk to Siddig and Siddig made no
23 effort to get in touch with me.

24 Q He never called you?

25 A Never.

1 Q Did you ever have any further contact with Siddig
2 after that?

3 A Yes, I did.

4 Q Did he ever tell you what the weapons were for?

5 A He never mentioned his project or the weapons.

6 Q Did you ask him?

7 A No, I thought he was stupid talking about. I
8 thought it was something crazy he was speaking about, this
9 project.

10 Q Did you ever have any other discussions with
11 Siddig after that concerning any action, if you will?

12 A Yes.

13 Q When was that, approximately?

14 A Same month, later on. He popped up at my job
15 again. This time I was kind of annoyed because I am not
16 accustomed to having people just come to my job without
17 being invited. I said look, what do you want to talk about?
18 He said I need to talk to you, sheik. I took a brief break
19 and we took a walk. I'm like two blocks from Prospect Park.
20 And I said what do you want to talk about? We sat. He said
21 well, I want to go ahead and get the Serbs. I said what do
22 you mean get the Serbs? He said, there is a Serb warehouse
23 here, and I think he mentioned an armory. He said they're
24 sending stuff to Serajevo and we have to go ahead and do
25 something, I want to do something. I said yeah, all right.

1 He says you want to join? I said all right, I'm on board.

2 That was it.

3 Q After your trip to Zagreb, did you go back to
4 Europe again?

5 A No. The next trip after having that one to Saudi
6 Arabia, I made arrangements to meet the sheik Bilal
7 Phillips, in Philippines.

8 Q When was that?

9 A That was in May.

10 Q Did you go to the Philippines?

11 A May 15, yes.

12 Q What was the purpose of your going?

13 A The purpose was to show him how the moneys was
14 being spent, so I took a copy of the book, that same budget
15 right there, and its total. I took a video to show him the
16 type of training, combative jujitsu that people were doing.
17 And also there was a symposium there which they asked me to
18 speak at. So these were the multipurposes that I went
19 there.

20 Q Did you speak at the symposium?

21 A Yes, I did.

22 Q What did you speak about?

23 A He suggested that I speak about the Malcolm X
24 movie. I did in brief but I thought it was more important
25 for the people to see the spread of Islam and how it had

1 grown in America and how many masjids there were and how
2 that at one time there was great, great division between the
3 Muslims here because there used to be a thing called the
4 black Muslims and there is no black Muslim. Islam
5 transcends all color. There is no nationality, there is no
6 barriers. We all believe in the same God, we practice the
7 same deans, we follow the same prophet. So this is what I
8 thought was necessary to tell the people.

9 Q Is that what you told them?

10 A Yes, that the growth here, and the barriers that
11 had been built with the foreign element and the Muslim
12 element -- excuse me -- and the American element had
13 diminished to a great degree.

14 Q When you were in the Philippines you were with
15 Bilal Phillips?

16 A Yes, I was.

17 Q Did you take part in any jihad in the
18 Philippines?

19 A No.

20 Q Did you meet anybody in the Philippines besides
21 Bilal Phillips?

22 A Yes. I met the assistant mayor. I met the
23 ambassador --

24 Q Mayor of what city?

25 A Manila.

1 Q Go ahead.

2 A I met the ambassador for Malaysia. I met a
3 diplomate from Indonesia. There were a lot of dignitaries
4 at the meeting. Attorneys, I met an attorney, I can't think
5 of his name. He had a radio station that I was supposed to
6 do some speaking on the radio there, too.

7 Q Did you meet anyone else?

8 A And I met a sister whom I became more than fond
9 of.

10 Q What was her name?

11 A Fatima.

12 Q Last name?

13 A Gibriel.

14 Q I would like to show you what has been marked as
15 defendant's AA1, AA2 and BB1 through BB12.

16 May I approach, your Honor?

17 THE COURT: Yes.

18 Q Rashid, I am going to show you AA1 and AA2 first.
19 Could you identify AA1?

20 A AA1?

21 Q What is it?

22 A AA1 is the symposium. It says Symposium on
23 Islam, Environment and World Peace.

24 Q Do you recognize that?

25 A Yes, I do.

1 Q What is it?

2 A This is what we call da'wa, to propagate Islam.

3 Q What is the document itself that I have shown
4 you?

5 A It's from the Philippines.

6 Q Specifically what is the document? What is its
7 relationship, if any, to your trip there?

8 A It was my purpose for going -- one of the
9 purposes for going, other than to meet Bilal and give him
10 the stuff for project Bosnia.

11 Q I would like to show you what has been marked as
12 AA2. Do you recognize that document?

13 A Yes.

14 Q What is it?

15 A This is a certificate from the Islamic da'wa
16 Council of the Philippines for brother Abdul Rashid
17 Hampton-El.

18 MR. WASSERMAN: Your Honor, at this time I would
19 like to offer into evidence AA1 and AA2.

20 MR. FITZGERALD: No objection.

21 THE COURT: AA1 and AA2 are received without
22 objection.

23 (Defendant Hampton-El Exhibits AA1 and AA2
24 received in evidence)

25 Q Rashid, at this time I want to show you what have

1 been marked as BB1, BB2, through BB12. Do you recognize
2 those photographs?

3 A Yes. These are photographs of myself, of the
4 mayor's assistant from the Philippines, of the --

5 Q Excuse me. Your, is of yourself and other people
6 in these pictures were people in the Philippines at that
7 time at the conference?

8 A Including Bilal Phillips, the mayor from Manila,
9 the mayor's assistant, attorneys --

10 THE COURT: Mr. Wasserman, your client can't be
11 heard without the microphone.

12 MR. WASSERMAN: Let me do one thing at a time. I
13 would like to move the photographs into evidence and ask
14 Hampton-El to identify each photograph.

15 MR. FITZGERALD: If I could just look at them for
16 a second.

17 No objection.

18 THE COURT: BB1 through BB12 are received without
19 objection. Go ahead.

20 (Defendant Hampton-El Exhibits BB1 through BB12
21 received in evidence)

22 Q Taking them briefly one by one, briefly explain
23 who is in the picture. BB1?

24 A Myself, Bilal and the mayor's assistant.

25 Q In BB1, where is Bilal?

1 A He is sitting between me and the mayor's
2 assistant.

3 Q BB2?

4 A This is, I believe, the ambassador from Indonesia
5 and an attorney.

6 Q BB3?

7 A This is another picture of the ambassador from
8 Indonesia and myself.

9 Q I am sorry. Just a correction, your Honor. That
10 was BB4. I will find BB3 in a moment.

11 Q BB5?

12 A This is myself and I believe it is one of the
13 media, because this was not --

14 THE COURT: Mr. Wasserman, again --

15 MR. WASSERMAN: Pardon me, your Honor.

16 A This is myself and I believe it is the media
17 because this symposium was not only for Muslims, there was a
18 lot of non-Muslims there too, because the object was to give
19 da'wa.

20 Q BB6?

21 A Myself, attorney, ambassador from Indonesia and
22 ambassador -- excuse me -- the prime minister of Malaysia.

23 Q BB7?

24 A That's myself on the podium lecturing the people.

25 Q BB8?

1 A This is myself and a brother by the name of
2 Abdullah I met there who is part of the da'wa program, da'wa
3 program meaning to propagate the dean of Islam, dean meaning
4 faith.

5 Q BB9?

6 A It is myself in the home, taking a picture.

7 Q BB10?

8 A I am at the zoo in manila.

9 Q BB11?

10 A Same place, eating at a restaurant.

11 Q BB12?

12 A The zoo by the eagle cage.

13 Q And the long lost BB3, who is in that picture?

14 A Myself and Bilal shaking hands after the meeting,
15 greeting, you know. It was successful.

16 (Continued on next page)

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1 MR. WASSERMAN: Your Honor, together with the
2 ledger that has been marked as Y, after the lunch break I
3 would request permission to publish the pictures as well as
4 the certificate of attendance and programs that have been
5 AA1.

6 THE COURT: All right.

7 MR. WASSERMAN: At this time, your Honor, I would
8 request that we resume after the lunch break.

9 THE COURT: Do you want to publish it now? Why
10 don't we publish it now.

11 MR. WASSERMAN: No problem.

12 (Pause)

13 THE COURT: Ladies and gentlemen, we are going to
14 break for lunch now. Please leave your notes and other
15 materials behind. Please don't discuss the case, and we
16 will resume this afternoon.

17 (Jury excused)

18 MR. NOOTER: Your Honor, my client would like to
19 be excused this afternoon. I will be here to protect his
20 interests, if that is all right.

21 THE COURT: Mr. Saleh, is it all right if we go
22 ahead without you?

23 DEFENDANT WAHID SALEH: Yes, sir.

24 THE COURT: You are excused.

25 MR. JACOBS: Your Honor, my client would like to

1 be excused as well. He is not feeling well. He would like
2 to return to MCC.

3 THE COURT: You, too, Mr. Mohammed Saleh, is it
4 all right if we go ahead without you?

5 DEFENDANT MOHAMMED SALEH: Yes.

6 THE COURT: I hope you feel better.

7 MR. SERRA: Your Honor, Mr. Alvarez would like to
8 inform your Honor of something. I told him that it was
9 likely that you would direct him to do it through me.

10 THE COURT: Not only likely, but I do direct him
11 to inform me through you.

12 MR. SERRA: Yes. May we come with Mr. Alvarez to
13 the robing room?

14 THE COURT: Yes.

15 Miss London, I read your client's note. I will
16 respond to it in writing.

17 MS. LONDON: Thank you.

18 (In the robing room; Mr. Alvarez Mr. Serra and
19 Mr. Khuzami present)

20 MR. SERRA: Your Honor, I guess we are without
21 the presence of an interpreter.

22 THE COURT: That is unfortunate. I noticed that
23 Mr. Khuzami is here. This is not to be ex parte?

24 MR. SERRA: No, your Honor. Given the subject of
25 the conversation, it was my opinion that the government has

1 a right to be present.

2 (Interpreter present)

3 MR. SERRA: Your Honor, the reason that we are
4 here is because there is a dispute, a fairly major dispute
5 as a matter of strategy between Mr. Alvarez and me, and he
6 asked that it be put on the record. I don't know that there
7 is any application to the court. He wishes to call Siddig
8 Ali as a witness. I don't want to, because it is
9 privileged, go into conversations he and I have had.
10 Suffice it to say that we have discussed the subject many
11 many times.

12 It is my basic position that I have read
13 Mr. Siddig Ali's plea allocution before your Honor and I am
14 aware that he would say that Mr. Alvarez is guilty. That is
15 what it amounts to. For that reason, as a strategic matter
16 I am not willing to call Mr. Alvarez. As Mr. Alvarez knows,
17 I am not in fear of the government calling him because there
18 is much material to use should the government do that. But
19 I don't believe it is in Mr. Alvarez's interests and I feel
20 it strongly enough that I will not do it despite his wishes
21 to call Mr. Siddig Ali as a witness in this case.

22 That is why we are here. As I understand the
23 state of the law, it is my decision as to everything except
24 two items, namely if we go to trial in the first place and
25 if Mr. Alvarez testifies, and I am exercising that

1 discretion not to call a witness who I believe will hurt my
2 client.

3 THE COURT: If Mr. Alvarez wishes to put his
4 position on the record, he may, other than as you have
5 stated, although I have to tell him, as I am sure you have,
6 and since the government is here and they have access to
7 this transcript, he ought to be very careful about what he
8 says and how he says it, because if it is anything that can
9 be used against him, it will.

10 MR. SERRA: Your Honor, my understanding of
11 Mr. Alvarez's position is that since so much of what Siddig
12 Ali says is on tape, which is surely true, over and over and
13 over, that he does not fear Siddig Ali as a witness, and I
14 surely understand that viewpoint, but my opinion is that
15 there is something else, there is another consideration as
16 to whether we affirmatively call him as a witness. That is
17 what I understand Mr. Alvarez's position to be, that he
18 feels that Siddig Ali will look very bad as a witness. And,
19 your Honor, it is my advice that Mr. Alvarez not speak on
20 the record, whether the government is present or not,
21 because we are on the record.

22 DEFENDANT ALVAREZ: Can I speak directly to you,
23 your Honor?

24 THE COURT: If you want to --

25 DEFENDANT ALVAREZ: Just three minutes.

1 THE COURT: In spite of your lawyer's advice, if
2 you want to talk to me I can't stop you from talking to me.
3 I am simply telling you that, as I said a moment ago, you
4 ought to be very careful, number one. And number two, if
5 your lawyer has accurately stated your position, then I
6 question what more you would wish to tell me. But it is
7 your decision as to whether you wish to do that or not.

8 DEFENDANT ALVAREZ: It is my purpose to come and
9 speak to you, to call to your attention, my purpose in
10 bringing Siddig Ali to the witness stand is because there
11 are certain things that are going to benefit me, and I am
12 very sure of that. Without getting into details, I would
13 like him to come. But my attorney has refused to call him.
14 Simply, I just wish to place that on the record, because it
15 is something that I want to do, bringing Siddig Ali in.

16 THE COURT: I think the record is quite complete
17 on that. I should say that Mr. Serra is correct when he
18 states the law, namely that there are two decisions in a
19 case that are up to a client alone. The first decision is
20 to whether to plead guilty or not guilty, and the second
21 decision is to whether to testify or not, that is, whether
22 the client testifies or not. Those two decisions are the
23 client's, that is, yours. Everything else is the lawyer's
24 decision, and therefore his decision as to tactics and
25 strategy will control, and although my opinion is really

1 irrelevant to this discussion, I can see quite clearly and
2 easily the reason why he wants to refrain from calling
3 Siddig Ali. It is not at all in my estimation an
4 unreasonable decision. But you have your record as to your
5 preference. Thank you very much.

6 DEFENDANT ALVAREZ: Thank you very much.

7 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:05 p.m.

3 (Trial resumed; jury not present)

4 MR. WASSERMAN: Your Honor, as your Honor may
5 recall, I am putting in some tapes, in agreement with the
6 government, without objection. Then I am putting Ms. Siri
7 Averill the stand with respect to two transcripts that were
8 prepared with respect to those tapes.

9 THE COURT: I see. Out of order?

10 MR. WASSERMAN: Out of order.

11 THE COURT: All right. Shall I explain to the
12 jury?

13 MR. WASSERMAN: Yes.

14 THE COURT: All right.

15 MR. WASSERMAN: I guess my client will retake the
16 stand after that.

17 THE COURT: All right.

18 MR. WASSERMAN: Thank you.

19 MR. FITZGERALD: A brief request. Mr. Wasserman
20 is going to play one section of a tape, which is a single
21 sentence, a number of times, and I am not going to object to
22 that because he wants the jury to figure out whether it is
23 as he transcribed it. Because that one sentence is taken
24 out of context of the entire transcript, I would just like
25 an instruction given at that time that they should view

1 everything in the context of the whole tape. But I don't
2 want to otherwise interfere with the presentation.

3 MR. WASSERMAN: I have no objection.

4 THE COURT: Do you want me to clear the language
5 in advance, or do you trust me to improvise something that
6 says that?

7 MR. WASSERMAN: I have confidence in you.

8 THE COURT: Thank you. I hope it is not
9 misplaced.

10 (Jury present)

11 THE COURT: Good afternoon, ladies and gentlemen.
12 Mr. Wasserman?

13 MR. WASSERMAN: Thank you. Your Honor, the
14 defense is offering into evidence three digital audiotapes
15 marked for identification W1, W2, and W3. The first is a
16 digital audiotape copy of Government Exhibit 325, which is a
17 tape of CM25. W2 is a digital audiotape provided by the
18 government to the defense of Government Exhibit 343, which
19 is CM41 and 45. Pursuant to stipulation with the
20 government, the relevant portion which was the transcript
21 reflecting the excerpt of Government Exhibit 343T, there is
22 a stipulation as to the date being June 16 and not June 14.

23 THE COURT: It is all June 16, 1993.

24 MR. WASSERMAN: It is all. As to W3, that
25 contains several enhanced portions of W1 and W2.

1 My understanding is that there is no objection
2 from the government to the introduction of those tapes into
3 evidence.

4 MR. FITZGERALD: That is correct, your Honor.

5 THE COURT: All right. W1, W2 and W3 are
6 received without objection.

7 MR. WASSERMAN: Thank you.

8 (Defendant Hampton-El Exhibits W1, W2, and W3
9 were received in evidence.)

10 MR. WASSERMAN: In addition, Government Exhibit
11 marked for identification 325E, audiotapes 1 through 3, is
12 being offered into evidence; again, it is my understanding,
13 without objection from the government.

14 MR. FITZGERALD: That is correct, your Honor.
15 And the record can reflect they are consent tapes.

16 THE COURT: All right. 325E, cassette tapes,
17 consisting of three tapes, are received without objection.

18 (Defendant Hampton-El Exhibit 325E was received
19 in evidence.)

20 MR. WASSERMAN: I should make clear, your Honor,
21 that on W1 there are two digital audiotapes and on W2 there
22 are four digital audiotapes. W3 is just one digital
23 audiotape.

24 Your Honor, at this time the defense is calling
25 out of order -- my client will resume the stand after we

1 hear from her -- Ms. Siri Averill.

2 THE COURT: We are going to interrupt Mr.
3 Hampton-El's testimony so Ms. Averill can testify. Go
4 ahead.

5 MR. WASSERMAN: Thank you.

6
7 SIRI AVERILL,
8 called as a witness by the defense,
9 having been duly sworn, testified as follows:

10 MR. WASSERMAN: Your Honor, may I approach?

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION

13 BY MR. WASSERMAN:

14 Q Good afternoon, Ms. Averill.

15 A Good afternoon.

16 Q Ms. Averill, how are you employed?

17 A I am a paralegal for the defense of Clement
18 Hampton-El.

19 Q Approximately how long have you been engaged as a
20 paralegal?

21 A It was a year in May.

22 Q What is your professional education?

23 A I graduated Brooklyn Law School last June, I
24 passed the July bar, and I am awaiting admission to the bar
25 right now.

1 Q Ms. Averill, there before you are two documents
2 and a number of tapes. The tapes have been marked into
3 evidence as W1, W2 and W3. The transcripts are W1-T and W2-
4 T for identification. Do you recognize those transcripts?

5 A The transcripts? Yes, I do.

6 Q What is W1-T?

7 A W1-T is a transcript of CM25.

8 Q And W2-T?

9 A W2-T is a transcript of a portion of CM41, 45.

10 Q You prepared those transcripts based upon what
11 recordings?

12 A Based upon the digital audiotape recordings.

13 Q Do those transcripts actually reflect what you --
14 withdrawn.

15 There are underlinings in those transcripts, are
16 there not?

17 A Yes, there are.

18 Q What do those underlinings stand for?

19 A Where what I heard differed from the government
20 transcript.

21 Q And the government transcripts in question are
22 325T and 343T, respectively, is that correct?

23 A Yes.

24 Q Where you underlined and inserted a word, is that
25 what you heard?

1 A Yes, it is.

2 MR. WASSERMAN: Your Honor, I would offer into
3 evidence at this time what has been marked as W1-T and W2-T.

4 MR. FITZGERALD: No objection to their being
5 received as an aid to the jury.

6 THE COURT: W1-T and W2-T are received again as
7 aids to the jury. Since these are English language tapes --
8 yes?

9 MR. WASSERMAN: Yes, your Honor.

10 THE COURT: -- it is what is on the tape that is
11 in evidence. These will be received accordingly.

12 (Defendant Hampton-El Exhibits W1-T and W2-T were
13 received in evidence.)

14 MR. WASSERMAN: Thank you. No further questions.

15 THE COURT: Cross?

16 MR. FITZGERALD: Briefly, Judge.

17 CROSS-EXAMINATION

18 BY MR. FITZGERALD:

19 Q Good afternoon, Ms. Averill.

20 A Good afternoon.

21 Q I will just ask you questions only about W1-T,
22 which is the transcript corresponding to CM25.

23 A Yes.

24 Q And transcript of W1. You indicated that what is
25 underlined is where what you heard differs from the

1 government version?

2 A That's correct.

3 Q Did you review the entire transcript, even the
4 parts that are not underlined?

5 A No. I reviewed portions of the transcript.

6 Q The second question I have is: When you reviewed
7 the underlying portions of the transcript, were you given a
8 transcript in an underlined fashion and you verified the
9 fact of what is here is what is written in the transcript,
10 or did you create the transcript itself?

11 A I created the transcript myself.

12 Q When you were working and listening to CM25, did
13 you have anything written in front of you to look at to see
14 whether or not the words you heard on the tape were what was
15 in front of you?

16 A I had the original government exhibit, yes.

17 Q Let me just direct your attention to what is in
18 evidence at pages 77 and 78 and 79. I am just going to ask
19 you questions on those three pages. What I would like to do
20 is actually listen to the tapes once, going through those
21 three pages, but to tell you the questions in advance so you
22 know what to listen for. If you would like to write down,
23 if you could, if you would write it down on the transcript
24 next to it so you can listen to the two words to compare,
25 yes or no, and then you can just listen to it once and I

1 will simply ask you to tell me again whether or not you
2 think any of those underlinings should be changed.

3 A OK.

4 Q If you look at the very bottom of page 77.

5 MR. FITZGERALD: I don't think the jurors have
6 these in their books, your Honor. This will be Hampton-El
7 W1-T.

8 MR. WASSERMAN: They do.

9 THE COURT: Page 77?

10 MR. FITZGERALD: Page 77. If you look at the
11 bottom of page 77, the last speaking portion is
12 Mr. Hampton-El who says, "Yes. You see, the obvious thing
13 is to let them think." And as to the words "obvious thing,"
14 if you could put a Post-it or write in there, above "obvious
15 thing" the words "I did things." So that when you listen to
16 the tape, determine whether it says "the obvious thing is to
17 let them think" or "I did things to let them think." That
18 is the first thing.

19 Then turn to page 78, the next page. If you can
20 look at the eighth attribution down, and if you look at the
21 second line, "distracting deception, (UI) from here to there
22 to there." If you hear the digital version of the tape, if
23 you would listen to the unintelligible and see if you hear
24 the word "call," c-a-l-l.

25 A That's where there is no underline?

1 Q Right. "(UI)." Just to see if the digital
2 version now makes it intelligible. And feel free in any
3 answer to say yes or no or you are not sure. I realize it
4 may not be clear.

5 The next speaking part Hampton-El said "The
6 Jewish Defense League is, underlined, disgusted with you
7 and." Would you look at those words and see whether or not
8 you hear "infested with UN pay. So is it "is disgusted with
9 you" or "infested with UN pay"?

10 A All right.

11 Q The next sentence says "and this is a rebuttal to
12 world peace," "world peace" being underlined. Just write
13 down to see if you hear the words "those people" instead of
14 "world peace."

15 A Yes.

16 Q In the next speaking part, Mr. Hampton-El says
17 "nothing to think about." The first word, see if it is
18 "something" rather than "nothing."

19 And the next speaking part, the third line, it
20 says "getting so old (UI)." Then you hear the words "these
21 people on the phone." If you could listen to see whether or
22 not you hear "yahood" on the phone, y-a-h-o-o-d.

23 A OK.

24 Q The next speaking part, under Hampton-El, where
25 it says "(UI) when the call comes in, aki," if you could

1 listen to see whether you can hear "when that happened,
2 aki."

3 A OK.

4 Q And then the next speaking part there is no
5 underlining where it says "structure symbols." If you could
6 listen to the digital tape and see whether or not the words
7 are "structure similar," s-i-m-i-l-a-r.

8 A OK.

9 Q And finally, just three things to listen to on
10 page 79, and we will be done. The two-thirds of the way
11 down the page, a relatively long-speaking part by Siddig
12 Ali --

13 A Right.

14 Q -- on the second line it says "It'll take at
15 least years." If you can listen to see whether it says
16 "take this here," t-h-i-s h-e-r-e.

17 A Yes.

18 Q And then the final two questions, or the next
19 line by Hampton-El, "Course, with that you don't need me."
20 The word "me" is underlined. You listen to whether you hear
21 the word "me" or "it" or whether you can tell the difference
22 between the two.

23 A OK.

24 Q And then finally, on the next attribution to
25 Hampton-El, when you hear the second line "told me when I,"

1 if you listen to see whether the sentence read "The two
2 structures you said before," said before or told.

3 A OK.

4 Q I realize I gave you a lot, but I will play it
5 and you just listen and make a note as to whether that
6 changes any of the words or whether you are not sure.

7 MR. FITZGERALD: I think we are ready to play the
8 tape.

9 (Tape played)

10
11 (continued on next page)

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1 THE WITNESS: Excuse me, excuse me. I just
2 wanted to make sure -- never mind. I got confused with the
3 stickie. Go ahead.

4 Q If you need to stop, go ahead.

5 A I had overlapping stickies.

6 (Tape continued)

7 A There are a couple portions, actually, I couldn't
8 tell. Would you like me to listen to them again?

9 Q OK. Why don't I run through them and just ask
10 you, for example, on the first page, 77, I did things --

11 A The obvious thing -- with these headphones, I
12 couldn't tell.

13 Q And then on page 78, did you hear the word
14 call --

15 A I couldn't tell.

16 Q The section where it said disgusted with you or
17 infested with UN pay, could you tell what it was?

18 A Again, I would want to listen to it again,
19 several of these.

20 Q The next one where it says world peace versus
21 those people?

22 A That one I heard, world peace.

23 Q The next one, nothing for something?

24 A I heard nothing.

25 Q The next one, did you hear Yahood on the phone

1 telling me to come?

2 A I think I did, yes.

3 Q And the next one where it says Hampton-El
4 unintelligible, did you hear when the call comes in or when
5 that happen?

6 A I heard -- see, where it says where the call
7 comes in aki unintelligible, I heard aki when that happens.
8 The unintelligible was when that happens.

9 Q And then where you see the word structure
10 symbols, could you tell whether it was symbols or similar?

11 A I heard symbols.

12 Q And just three questions on page 79. Where it
13 said it will take at least years, did you hear at least
14 years or this here?

15 A I heard at least years.

16 Q With that you don't need me, could you tell
17 whether it was me, it --

18 A I heard me. I heard the M.

19 Q And finally, the two structures you told me or
20 the two structures you said before, which ones did you hear?

21 A Said before. I heard said before.

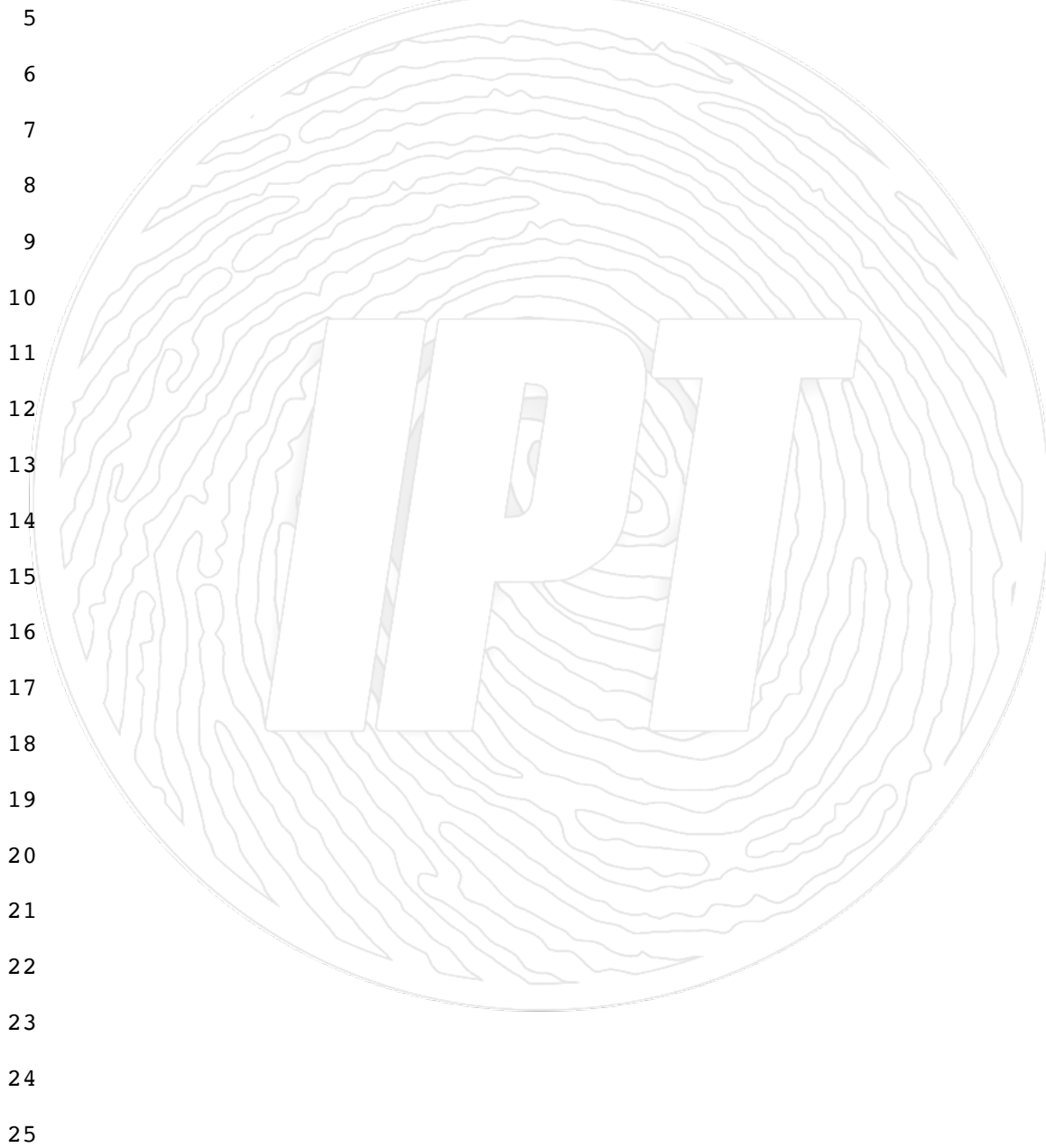
22 Q Thank you. Will you agree with me that sometimes
23 you have to listen a number of times to make up your own
24 opinion as to what you hear?

25 A Sometimes you have to listen several times, yes.

1 Q And the ones that you identified you think you
2 have to listen to several times?

3 A For right now, yes.

4 (Continued on next page)



1 MR. FITZGERALD: Thank you.

2 THE COURT: Anything else, Mr. Wasserman?

3 MR. WASSERMAN: No, thank you.

4 (Witness excused)

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

9 (Jury excused)

10 THE COURT: Is this the point at which you are
11 going to play the tape, Mr. Wasserman?

12 MR. WASSERMAN: Yes, your Honor. Thank you.

13 CLEMENT HAMPTON-EL, resumed.

14 (Jury present)

15 THE COURT: Mr. Wasserman.

16 (Continued on next page)

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1 DIRECT EXAMINATION continued

2 BY MR. WASSERMAN:

3 Q Good afternoon, Rashid.

4 A Good afternoon.

5 Q Did there come a time after you had that
6 discussion in the park with Siddig about doing something to
7 the Serbs here that you saw Siddig again?

8 A Yes. I saw him again.

9 Q Could you raise your voice.

10 A Yes, I saw him again.

11 Q Do you remember when?

12 A I think the exact date was the 30th of May.

13 Q You were aware -- pardon me. Withdrawn.

14 Where did you see him that day?

15 A It was over at the training center for Bosnia,
16 Rogers Avenue, the dojo.

17 Q Please lift your voice up.

18 A The apartment dojo up on Rogers Avenue.

19 Q Thank you. Had Siddig or you made an appointment
20 in advance with each other?

21 A He said he wanted to talk to me.

22 Q Did he tell you he was bringing anything?

23 A No, he didn't.

24 Q When he came, approximately what time of day was
25 it?

1 A I think it was the late afternoon.

2 Q Was there anybody with him?

3 A Emad Salem.

4 Q I would like to ask you a series of questions
5 concerning that meeting. How long was the meeting?

6 A Perhaps two hours.

7 Q You are quite aware that conversation was
8 recorded as CM 25?

9 A I am now.

10 Q I would like to play the tape and, your Honor,
11 with the court's permission hand up to Mr. Hampton-El what
12 has been marked as Defendant's Exhibit W1T.

13 THE COURT: Go ahead.

14 MR. WASSERMAN: If the jurors would put earphones
15 on. Thank you.

16 (Tape played)

17 Q Rashid, a few questions about what has happened
18 so far in this meeting. At the moment the tape stops, what
19 is going on?

20 A We are getting ready to perform prayer.

21 Q At the beginning, on page 1 of the transcript, it
22 refers to the last time we met, or rather, I am sorry, Emad
23 Salem is saying at the bottom of the page the last time we
24 met, and you referred to Abu Bakr, and then on the following
25 page he says Abu Bakr with Sheik Ali, and you say nahm,

1 nahm. Then two attributions down you say hamdi Allah, I
2 know the brother, you know, we talked about some things
3 already.

4 What is being referred to there?

5 A Referring to the time that I was over at Abu Bakr
6 making prayer and Ali Shinawy introduced me to Emad Salem.

7 Q What are some of the things you discussed?

8 A He approached me at that time and asked me to get
9 him a weapon and the things that he said he wanted to do was
10 to harm -- first of all, he spoke about how many people he
11 had did already, he had killed people before and he did
12 things in. And that Dov Hikind, Charles Schumer, Jewish
13 Defense League and the Jewish Defense Organization, he was
14 interested in doing something against them.

15 Q Did you ever provide him a weapon?

16 A Never.

17 Q Do you know of anyone who provided him a weapon?

18 A Not to my knowledge. I never saw him again until
19 this time here.

20 Q Down the page there is a reference to your having
21 15 cars on you, surveilling you. Is that true?

22 A It's a little exaggerated but it was several
23 cars, as much as 8 and as many as 10, to the best of my
24 recollection, FBI.

25 Q When you say on page, I believe it is 4, that I

1 know where they live, I know their names, is that true?

2 A That's a lot of garbage. I mean, that's
3 something I was dropping on him to impress him, so to speak.

4 MR. WASSERMAN: We can continue with the playing
5 of the tape.

6 (Tape continued)

7 MR. WASSERMAN: Your Honor, with the court's
8 permission and for everybody's mental health, we are going
9 to pass the pause by. It will just take a second to where
10 it picks up on the tape. Thank you.

11 MR. FITZGERALD: No objection.

12 (Pause)

13 MR. WASSERMAN: I think we are ready to resume.
14 Thank you.

15 (Tape continued)

16 Q Rashid, I am directing your attention to page 5,
17 the second attribution. You say I can get the most
18 sophisticated equipment. Where did you have access to the
19 most sophisticated equipment, if anything?

20 A I didn't.

21 Q Where if anyplace did you have access to the most
22 sophisticated equipment for what is referred to as the bug
23 detector?

24 A I didn't. Garrett Wilson offered me something
25 but there wasn't anything sophisticated about it. This was

1 just feeding into the conversation of what Emad was saying.

2 But I had no access to this type of stuff.

3 Q Did you have any concern about being bugged?

4 A Yes, I did. The fact that I was being surveilled
5 by the FBI to the degree that I was, I figured perhaps I was
6 bugged, or could be.

7 Q There is a reference earlier in the transcript
8 that you went and tripped the hand of someone you thought
9 was surveilling you from the FBI. Is that correct?

10 A Yes, it is. The fact that these people were
11 always around my home, my job, following me all the time, I
12 tried to approach them many times to find out exactly what
13 was going on. Each time I approached them they rolled up
14 their car window or they sat there like, just like that
15 without opening their mouths. So this one day by my job, it
16 was five cars, 21 Sterling Street, one across this side of
17 Flatbush, the other on the right-hand side, on Sterling.
18 Two on Flatbush, one going towards Grand Army Plaza and the
19 other one going towards Atlantic Avenue. The fifth car was
20 down by the Cinema Theater.

21 So I saw the people leaning out against the car.
22 I said today I am going to see if I can find out what's
23 going on. So I crossed the street like I was going to get
24 some chicken from this place across the street, and I waited
25 for the light to change and the traffic was moving. At this

1 time I looked for an opening, I dashed across the street.
2 The guy bounced up off the car. I said how you doing,
3 what's up, why are you following me all the time? He said
4 look, man, you're OK in my book, I'm just doing my job. I
5 said OK, I'll do mine. So I start writing down some license
6 numbers and the woman jumped in the car, she was quite
7 angry, and they took off.

8 (Continued on next page)

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1 MR. WASSERMAN: Just one second. Excuse me, your
2 Honor. One moment with counsel.

3 Your Honor, may I approach side bar with counsel?

4 (At the side bar)

5 MR. WASSERMAN: Your Honor, it is just that there
6 is a redacted portion in the transcript that had been agreed
7 to previously between the government and Ms. Stewart,
8 counsel for Sheik Omar Abdel Rahman. The government is
9 suggesting that we can simply fast forward a page and a half
10 and continue.

11 MR. FITZGERALD: Just tell the jurors not to
12 listen while she cues it up.

13 THE COURT: Fine. Is that right now or in the
14 middle of what you are going to play?

15 MR. WASSERMAN: We are right there now.

16 (In open court)

17 MR. WASSERMAN: If the jurors would please keep
18 their headsets off until we find the place to resume. Thank
19 you.

20 (Pause)

21 MR. WASSERMAN: Your Honor, my apologies to the
22 court. We are not able to resume after the redacted
23 portion. If it is OK with the court, we can continue with
24 other things.

25 THE COURT: We will take a break in 10 minutes,

1 so if you can continue with something else, we can find it
2 at the break.

3 MR. WASSERMAN: Your Honor, we will be resuming
4 on page 8, the ninth attribution down where Hampton-El says
5 I got signatures.

6 (Tape played)

7 (Continued on next page)

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IPT

1 BY MR. WASSERMAN:

2 Q Rashid, that last attribution, can you explain
3 that to the jury?

4 A Referring to the signatures, I was referring to
5 the time I was in the armed services --

6 Q I want sorry. That is not my question. The
7 question is, on page 9 at the top where it says so I'm just
8 saying that when Sayyid Nosair, he knows why I don't come
9 see him, can you explain what you were meaning there?

10 A I was meaning that myself being involved in
11 project Bosnia and my efforts for jihad overseas, he would
12 understand why I wasn't coming to see him.

13 Q Why would you not come to see him because of your
14 efforts of jihad overseas?

15 A I felt as though the fact that he was being
16 scrutinized, his trial, rather, and the publicity that he
17 received, that whoever I would get to participate in project
18 Bosnia or any other thing, people would be fearful because,
19 number one, when people hear FBI they tend to step back a
20 notch. The FBI to my way of thinking is an intimidating
21 government agency. So this is what I meant by what I said.

22 MR. WASSERMAN: Thank you.

23 (Tape continued)

24 MR. WASSERMAN: Your Honor, this is a reasonable
25 break.

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

5 (Jury excused)

6 (Recess)

7 (Continued on next page)

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IPT

1 (Jury present)

2 THE COURT: You may proceed.

3 MR. WASSERMAN: Thank you, your Honor.

4 DIRECT EXAMINATION (continued)

5 BY MR. WASSERMAN:

6 Q Rashid, on page 8 you said, "I got signatures, I
7 got maybe five, ten thousand signatures of the United States
8 Army organized government of America." Was that true?

9 A Exaggeration. It wasn't true.

10 Q Moving on to page 9, Mr. Siddig Ali at the middle
11 of the page says, "I need something. I need it bad, bad,
12 OK?" Did you know what he was referring to?

13 A No, I didn't.

14 Q Speak up.

15 A No, I didn't. I don't recall him even saying
16 that.

17 Q At the bottom of page 10, where he said, "What do
18 you think they did to Bruce Lee." What did they do to Bruce
19 Lee that you are referring to?

20 A I was speaking about before this "A Touch of
21 Death," it is called, and it was just --

22 Q Where did you get it from?

23 A A Kung Fu movie.

24 Q Moving on to page 12, you say, near the middle of
25 the page, the third attribution "So it's something you got

1 to do, ak, to continue our work." What are you referring
2 to? What is "our work"?

3 A Project Bosnia.

4 Q At that time there was no more training going on,
5 was there?

6 A No.

7 Q What training was going on?

8 A There was no training at that time.

9 Q At the paragraph below you say "Because in fact
10 most people are not ready." What are you referring to
11 there?

12 A Jihad. I went to several people and most people
13 weren't ready. And I wasn't referring only to here; I was
14 referring universally, as far as the Muslims were concerned,
15 because there was little help being done, as far as I was
16 concerned, for the people in Bosnia.

17 MR. WASSERMAN: You can resume the playing of the
18 tape.

19 Sorry, we are in the middle of page 13, the third
20 attribution from the top, Mr. Hampton-El, and we are about
21 five lines in where it says "it's Christmas or New Year's,"
22 and where it says "I am sick saying to myself."

23 (Tape played)

24 Q Rashid, when we picked up on the tape, you said,
25 "So I'll go to Salat in the morning in the park inshallah."

1 What is the reference to the park?

2 A I was referring to the Eid. There is an Eid
3 after Ramadan. Ramadan is a month of fasting and, after the
4 month ends, there is a festival, a celebration, so it is
5 called Eid, E-i-d.

6 Q What has the park got to do with it?

7 A The park, all of the Muslims gathered there. It
8 started out about two or three thousand; now it is up to 25,
9 30,000 people. They come to the park, they greet each
10 other, they pray, they listen to a long sermon, they
11 exchange gifts, and they are happy because they were able to
12 achieve the fasting, and the fasting consisting of many
13 areas aside from abstaining from oral intake.

14 Q What park are you talking about?

15 A Prospect Park usually, and many other parks.
16 They are in all the parks.

17 Q What park were you talking about at the time?

18 A Prospect Park in Brooklyn.

19 Q There is a word that is used in the next
20 attribution to you, "Takwa, the state of Allah,
21 unintelligible, takwa is very, you know." What does takwa
22 mean?

23 A Takwa has many shades of meanings. The main one
24 is fear of your creator, God consciousness, love, obedience.

25 Q In the next attribution, you are talking about

1 something coming "out of Egypt, America, Great Britain,
2 Japan, France, Israel, etc., etc. All those powers of kufar
3 being aided by people like Mubarak, Hussein, Khomeini,
4 Assad, etc." What are you talking about?

5 A First of all, Great Britain, France, Israel,
6 America, a lack of understanding of Islam and in its truest
7 form, because it's been written by people who lack the
8 knowledge in its purity, speaking of Mubarak, Assad,
9 Khomeini --

10 Q Stop for a second, if you would. Mubarak is who?

11 A He is the president of Egypt.

12 Q Hussein is?

13 A He is the president of Syria.

14 Q And Khomeini?

15 A He was the president or emir of Iran.

16 Q And who is Assad?

17 A Excuse me. Hussein is Iraq. Assad is Syria.

18 Q Are you putting together those people, Mubarak,
19 Hussein, Khomeini and Assad, with the powers of kufar?

20 A In a certain respect, the fact that they are
21 Muslim and they have knowledge of Islam, but they have
22 deviated from the true path, in the respect that Mubarak, I
23 look at him as a dictator, a tyrant, because he oppresses
24 the people of Egypt, he locks them up, puts them in jail,
25 kills them. If a man wears a beard there, he is

1 incarcerated. If he speaks about Islam, he is scrutinized
2 and his family is put in jeopardy.

3 Q What about Saddam Hussein?

4 A Saddam Hussein, well, everybody knows he's been a
5 fool and because he did a lot of stupid stuff to get his
6 people in a problem there by entering Kuwait and creating
7 havoc. He caused war for his people.

8 Q What about Khomeini, Assad?

9 A Assad? It is known by Muslims, and probably
10 people who are non-Muslims, that he's went into towns or
11 communities in one weekend, from Friday to Sunday morning,
12 he killed in the neighborhood of 200,000 people. And he
13 oppresses Islam too. And Khomeini, I thought he was radical
14 in the sense that he is a man and we as Muslims, we worship
15 Allah, and we don't look up to any man as someone who would
16 direct us as to what to do, unless with something that was
17 according to the laws of Islam.

18 MR. WASSERMAN: Let's continue with the tape,
19 please.

20 (Tape played)

21 Q Rashid, working backwards, what film are you
22 referring to in the line that you just heard?

23 A The film I am referring to is a film I made in
24 the hospital about Afghanistan.

25 Q You mentioned that before. You say that you have

1 been on TV. Were you ever on TV?

2 A Yes, I was, not heavy, I mean CNN came by the
3 masjid one time when the Jewish Defense League said they
4 were going to close us down. There was a march on the
5 masjid and I was outside and spoke briefly.

6 Q There was a mention here of Shayton,
7 S-h-a-y-t-o-n, as it is spelled in the transcript. What is
8 Shayton?

9 A Shayton is the devil.

10 Q And you are talking about a bomb at the top of
11 the page and then at the bottom of the page, number 16, you
12 say when you made the Salat you don't hear the bomb. What
13 are you referring to?

14 A I am speaking about when I was in Afghanistan
15 they used to bomb us, and it was disturbing the first time,
16 but when you focused on your prayer, it was like you didn't
17 hear it. And I got blown up. There was bombing going on.
18 And we all stopped and prayed, and we didn't hear. It was
19 locked out.

20 Q There is a lot of music going on in the
21 background. Where was that coming from?

22 A That was the music, a kid across the street had
23 like two ghetto blasters, big radios sitting outside his
24 window, and he was blasting them. This is what I was
25 referring to in the bombing in Afghanistan, because he says,

1 "How can you do this?" I says, "Well, I have heard enough
2 loud music that you have to learn how to block it out
3 sometimes, otherwise you can't read Koran, you can't sleep,
4 you can't concentrate on your prayer."

5 MR. WASSERMAN: We will resume.

6 Page 17, and it is about a third of the way up,
7 should begin approximately with the words "So they know all
8 this."

9 (Tape played)

10 (continued on next page)

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1 MR. WASSERMAN: Going to page 19, there is a
2 reference there in the middle of the page to, they tell me
3 they want to be paid money to go inside. Who is they and
4 what is inside?

5 A I was referring to Afghanistan. They wanted to
6 pay me when I got there a salary for going inside, and I
7 told them that the Muslim doesn't take a salary to function.

8 Q The question, if I may, and you may look at the
9 page in the transcript, is, the fifth attribution down on
10 page 19 they are saying, so, ah, I have experts -- have you
11 found the attribution? Do you recall what that says? If
12 you don't, you don't. Do you recall, rather, what that
13 meant? If you don't, you don't.

14 (Pause)

15 Q Does reading it refresh your recollection?

16 A Not really.

17 Q At the bottom -- rather, in the middle on page
18 20, you are saying, the only one who got all the way was
19 certain brothers and one of them is still inside.

20 A Right.

21 Q Who were you referring to there?

22 A Speaking about Taher, and he was inside Bosnia.
23 As I said before, the entrance for people to go inside
24 Bosnia had gotten closed up, so there were many people who
25 got there, and there was way out.

1 Q There is a reference right below that where you
2 are telling Siddig, and there is a lot of Sudanese brothers
3 in there. Was that correct?

4 A Yes. My understanding was that a lot of the
5 people that went to Bosnia was Egyptian, Sudanese and Saudi.

6 Q If you turn to page 21, in the middle of the
7 page, where it begins with the people are armed, Serbian
8 army is armed, etc., there are two words that are used and
9 they have a PH in parentheses after them, the word deen and
10 the word kuhfars. What is deen and what is kuhfars?

11 A Deen is the faith, Islam. The word deen is faith
12 in Islam.

13 Q What is kuhfar?

14 A Kuhfar is someone who has no faith, is either
15 communist or just atheist.

16 Q Moving to the next page, page 22, in the second
17 Hampton-El attribution, five lines from the bottom of it
18 there is a word dunya, D-U-N-Y-A, followed in the next line
19 by PH in parentheses. What does dunya mean?

20 A Dunya means this life, this world.

21 Q That word is followed by, it's a jail for the
22 Muslims, this world here, it's a prison for us, so the
23 awakening has to be there. What are you referring to? What
24 do you mean?

25 A I am referring to Muslims. This life is an

1 unreal stage, it's something like today is going to leave
2 and there will be tomorrow. It's not going to last long, so
3 we don't strive in this life. We live this life, we have to
4 go through it, we try to enlighten people about the tenets
5 of Islam but we are not going to cling to it because we are
6 striving for the life to come, which is eternity.

7 (Continued on next page)

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1 THE COURT: Mr. Wasserman, may I see you at the
2 side.

3 (At the side bar)

4 MR. WASSERMAN: The exact question actually is,
5 there is a line there ain't no freedom here referring to the
6 United States and my question wasn't actually precise.

7 THE COURT: Are you planning to march through
8 this page by page, line by line?

9 MR. WASSERMAN: Not line by line but it is
10 necessary to go through it --

11 THE COURT: Are you going to go through all 80
12 pages of this?

13 MR. WASSERMAN: I have to.

14 THE COURT: At this rate?

15 MR. WASSERMAN: I will try to move along.

16 THE COURT: It's ridiculous. Mr. Wasserman,
17 look, part of what we do here is to establish a priority of
18 facts. You seem to inhabit a democracy of facts in which
19 every fact is equal to every other fact and every fact gets
20 a vote.

21 MR. WASSERMAN: I have no way of presenting my
22 defense than this recorded conversation and explaining what
23 he is doing as the conversation is proceeding. Otherwise
24 the jury will draw the wrong inference as to different --

25 THE COURT: Mr. Wasserman, you are going to

1 establish some priorities here or I am going to do something
2 that I do not want to do here and did not want to do and
3 that is to set a time limit. This morning you moved along
4 from subject to subject, but this is absurd.

5 MR. WASSERMAN: Your Honor, I have no way of
6 accelerating it.

7 THE COURT: Yes, you do.

8 MR. WASSERMAN: What is that?

9 THE COURT: Common sense.

10 MR. WASSERMAN: Judge, the point here is that
11 although it will take several hours, it will establish for
12 the jury when my client is serious and when he is not and
13 how this conversation progressed. There is no other way of
14 doing it. The government played this conversation in its
15 entirety, and there are many things that need to be
16 explained to the jury that occur in this conversation. It's
17 that simple. They are using it to convict him and I need to
18 use it to have the jury reach a different decision. If you
19 want to give a time limit to the defense, you're the judge,
20 but it is not something that -- I have thought this through
21 very carefully and I have worked very hard to prepare this.
22 This is not something that I am doing to tax them.

23 THE COURT: That is the effect.

24 MR. WASSERMAN: It's the defense.

25 (In open court)

1 BY MR. WASSERMAN:

2 Q Rashid, there is a line in that paragraph that
3 says there ain't no freedom here, referring to America.
4 What did you mean by that?

5 A Meaning that the Muslims, they are being
6 distracted by --example. One leaves Egypt, one leaves
7 Somalia, Sudan, wherever, be it Europe, be it Africa, be it
8 the Middle East, where there is poverty, people are poor to
9 a very great degree. So they come here and they become
10 very, very stagnant and content, with the TV, the
11 wall-to-wall carpeting, etc., etc. And the freedom that a
12 person would have for his own mind as to know that the
13 preparation he is making in his life is for the life to
14 come, you can't take a building with you, a car, a boat or
15 nothing else. Only thing you can take with you is your
16 actions.

17 MR. WASSERMAN: Can we continue the tape.

18 (Tape continued)

19 BY MR. WASSERMAN:

20 Q Rashid, at page 22, at the bottom, you state this
21 is not the time to fall back, this is the time to advance.
22 And then on the following page, the first attribution to
23 you, this is not the time to stick your head in a hole and
24 hide, this is the time to bring your whole body up and let
25 the man know that you have no fear of him. Continuing on

1 the next attribution, that he cannot intimidate you. What
2 are you talking about?

3 A I am speaking about Bosnia again. I am speaking
4 about people, the World Trade having happened, it upset a
5 lot of people because it was said that Muslims had did it.
6 So people became afraid because the scrutiny that was there
7 before heightened, and any time you would ask a person,
8 mention something about Bosnia, jihad, they would step back
9 and say I don't want no part. And I would tell them this is
10 not about here, this is about going over there and help
11 people who are being destroyed, so why be afraid, as long as
12 you are not doing anything bad, what you going to stick your
13 head in a hole in the ground and play like, you know, you
14 are in problems.

15 MR. WASSERMAN: Your Honor, this would be a
16 convenient breaking point. If you want me to continue, I
17 will.

18 THE COURT: Try one more.

19 MR. WASSERMAN: I am sorry, Judge.

20 THE COURT: Do one more.

21 MR. WASSERMAN: Could you continue, please.

22 (Tape continued)

23 Q Who was the guy who was a changed man who was
24 very, very annoyed?

25 A Bilal Phillips.

1 MR. WASSERMAN: Thank you.

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.

5 I have said several times, please don't see, hear
6 or read anything about this case or any related matter, and
7 I want to stress that now and in the coming days. I would
8 also remind you that if even inadvertently you do see
9 anything that relates either to this case or any other case
10 that you think could conceivably affect your judgment, you
11 are asked to point it out to Miss Schwartz who can then
12 point it out to me, and we can talk about it if necessary.
13 If that admonition, see you tomorrow morning. Good night.

14 (Jury excused)

15 THE COURT: For any of defense counsel who may be
16 interested in it, the topic I discussed with Mr. Wasserman
17 at the side was the process that we are now going through,
18 and the wisdom and efficacy of it. What he told me in
19 essence is, he has thought it through very carefully and
20 that it is necessary for him to go through this process in
21 order to put on his defense. I don't know whether he has
22 discussed this with anyone else or not. I would invite any
23 of you who have views to discuss it with him.

24 See you tomorrow morning.

25 One more thing. The record should reflect that

1 we are now approximately, what, a third, Mr. Wasserman,
2 through this tape? Less than that, right?

3 MR. WASSERMAN: We are about a third of the way.

4 THE COURT: And we started when?

5 MR. WASSERMAN: We started this afternoon.

6 (Page 15735 sealed)

7 (Proceedings adjourned until Thursday, April 3,
8 1995, at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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

5 v.

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

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

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

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

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

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

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

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

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

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

Defendants.

-----X

S5 93 Cr. 181 (MBM)

August 3, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Have the court reporters and
4 translators been provided with copies of the transcript?

5 MR. WASSERMAN: I believe so, Judge.

6 THE COURT: Good. When I say court reporters, I
7 mean the people making the transcript, not the people who
8 are covering the trial.

9 MR. WASSERMAN: Yes, I understand, your Honor.

10 (Jury present)

11 THE COURT: Good morning, ladies and gentlemen.

12 JURORS: Good morning, your Honor.

13 CLEMENT HAMPTON-EL, resumed.

14 THE COURT: Good morning, Mr. Hampton-El. You
15 are still under oath.

16 Mr. Wasserman.

17 MR. WASSERMAN: Thank you, your Honor.

18 (Continued on next page)

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1 DIRECT EXAMINATION continued

2 BY MR. WASSERMAN:

3 Q Good morning, Rashid.

4 A Good morning.

5 Q Please keep your voice up and about six inches
6 away from the microphone.

7 We left off with your identifying Bilal Phillips
8 as the man who was very very annoyed, which is on page 25,
9 the second Hampton-El attribution from the bottom. Why was
10 Bilal Phillips --

11 THE COURT: Can you recall the exhibit? It is
12 W-1T, page 25, all right.

13 MR. WASSERMAN: The government's 325T except for
14 the underlined portions.

15 Q Rashid, why was Bilal Phillips annoyed?

16 A He told me that I should speak exclusively about
17 the Malcolm X movie at the symposium, and I told him that I
18 wanted to broaden the scope of the speech. The fact that
19 Malcolm X was a great man and most people knew this, I said
20 I figured it was necessary to broaden the scope of the
21 speech to cover Islam in every aspect.

22 Q So why was he annoyed?

23 A Because he had directed me only to speak about
24 the movie of Malcolm X and I thought the speech was more
25 significant than that. So he was annoyed because I didn't

1 follow his orders to speak about the movie Malcolm X only.

2 Q Who sponsored that conference in Manila, do you
3 know?

4 A The Da'wa Council of the Philippines.

5 Q At that time was there any jihad occurring over
6 in the Philippines? Was there any insurrection occurring in
7 the Philippines?

8 A None that I saw, but I heard there was something.
9 I didn't see it.

10 Q What did you hear?

11 A In the media. It was a known fact that they had
12 been having a problem there, in, I think it is the southern
13 part, for 30 years already, maybe even since the Second
14 World War. But I was in Manila, so I wasn't, you know,
15 exposed to anything.

16 MR. WASSERMAN: Moving on, if we could resume the
17 tape at the bottom of page 25, near the end of the second
18 Hampton-El attribution from the bottom.

19 (Tape continued)

20 Q Just picking up where that last line is and then
21 we will go back, when you say no one is supposed to say
22 things about certain imams, what are you referring to?

23 A There are certain leaders in the community and
24 worldwide that if you speak out against their actions you
25 will be attacked verbally, politically and physically.

1 Q Were you referring to anybody specifically in
2 terms of local?

3 A Not really.

4 Q Going back to page 26, you mention the name
5 Hamid. Who is Hamid?

6 A Hamid is an Egyptian brother who goes to the
7 masjid and he has been known to give pictures and
8 information to the Egyptian government, and when these
9 people go back home they are snatched --

10 MR. FITZGERALD: Objection, competence.

11 THE COURT: Sustained.

12 MR. FITZGERALD: Move to strike.

13 THE COURT: That is stricken.

14 Q Did you know this from your own observation or
15 were you told?

16 A Told, and my own observation. I have seen him
17 with the FBI.

18 Q There is a mention on page 27, the third Siddig
19 attribution from the top, he says it is one solid
20 cooperation for the Mossad. What is the Mossad?

21 A Mossad is the equivalent to the CIA here in
22 America, if not more sophisticated. It is of the Israeli
23 government. Secret police, intelligence.

24 Q On page 28, your third attribution, you say if
25 anybody tries to harm the sheik. Which sheik are you

1 referring to? Who are you referring to?

2 A Sheik Omar Abdel Rahman.

3 Q Is there anything in particular there that you
4 are referring to?

5 A The newspaper and the media, television, papers,
6 had fabricated a lie that this man was working with the CIA
7 and this made people wonder a lot of stuff about him, and it
8 would put a person in jeopardy if he is in your community
9 and then say that he is working for the government and
10 trying to create problems within the community.

11 Q On page 29, there are two statements that I would
12 like to ask you about. At the top you say I have done a lot
13 of things and then in the second attribution you say I spit
14 on the FBI. Could you explain to the jury what you were
15 talking about when you said those things.

16 A The first attribution was just, it's a bull
17 session going on there. That's what that was about. And
18 the second attribution was to say that this was what I felt
19 about them, the FBI, and the fact that they were trying
20 to -- not physically spit on them but the fact that they
21 were trying to intimidate people, and myself mainly at that
22 time.

23 Q On page 30, when you say -- I am sorry. The
24 attribution at the bottom, I sent messages to Sayyid, tell
25 him the reason I do or he knows why I'm here to do, what is

1 that about?

2 A It's about nothing. Siddig, he always looked at
3 Sayyid as someone that he wanted to be like and he said
4 Sayyid is a good brother, blah, blah, blah, so this is just
5 feeding into the conversation.

6 Q What is the operation that you are referring to
7 on page 30?

8 A The operation is project Bosnia.

9 Q What is the meaning of, I am not worried about me
10 but I don't want to bring any attention to anybody?

11 A The fact that I have been under observation 24
12 hours a day by the FBI, at my home, job, following me all
13 over the place. I would think anyone that I knew, which
14 turned out to be true anyway, that these people would be
15 going to them, knowing them and harassing them, so I figured
16 if I distance myself from people this is not going to cause
17 them any hardship or difficulties.

18 Q Did you actually personally know of anybody who
19 had been contacted or followed by the FBI as a result of
20 their contacting you?

21 A Yes.

22 MR. FITZGERALD: Objection.

23 THE COURT: Sustained, and stricken. Move on to
24 something else.

25 MR. WASSERMAN: Let's pick up the tape on page

1 30, after the third Hampton-El attribution from the bottom.

2 (Tape continued)

3 Q Did you take Bilal Phillips to a secret place
4 with all kinds of stuff over there?

5 A Pardon.

6 Q The last statement that we just heard was, took
7 him to a secret place with all kinds of stuff over there.
8 Is that true?

9 A It is not true.

10 Q There wasn't any secret place?

11 A No.

12 Q Did you go anyplace other than Manila when you
13 were in the Philippines?

14 A No, I didn't.

15 Q Was there a secret place in Manila?

16 A No, it wasn't. That was just a lot of bull.

17 Q On page 31, you are talking about someone who
18 shows a picture of a man with his nose pushed up to his
19 forehead, etc. What are you referring to?

20 A I am not referring to anything. That's just
21 something -- see, the conversation, everybody was throwing a
22 lot of bullshit around, so to speak, so I just put my part
23 in, too.

24 Q There never was a picture?

25 A No, not that I know of.

1 Q There was an incident that it related to?

2 A No.

3 Q There was never any intimidation that went on in
4 any of the Brooklyn mosques?

5 A Yes, but there was nothing like a picture.

6 Q What kind of intimidation, if any, went on?

7 A As I said before, there are places where certain
8 people control with an iron hand, and it's rare that people
9 speak out against this type of dictatorship.

10 Q There is a reference on the top of page 32,
11 Siddig says I want to talk to you about something. Did you
12 know at that time what he wanted to talk to you about?

13 A No idea at all.

14 Q There is a statement in parentheses, describing a
15 briefcase opens. Can you tell the jury what that is about?

16 A The briefcase opening was Emad Salem doing
17 whatever he was doing with his gadgets, his bugging devices.

18 Q What was he doing with his bugging devices, do
19 you recall?

20 A I think he was either elevating the sound, making
21 adjustments to turn it down --

22 MR. FITZGERALD: Objection to competence.

23 Q Did you see exactly what he did?

24 A I saw him open the briefcase but I didn't know
25 what he was doing.

1 THE COURT: Then the speculation is stricken. Go
2 ahead.

3 Q There is a statement by Siddig Ali, you can get
4 it for 25, and then there is subsequent conversation where
5 he says you take 5, give me 20. What is he talking about?

6 A He wanted me to take some of the money that I had
7 for project Bosnia and to buy some money he said he had
8 which was counterfeit.

9 Q How much money, about, approximately, at that
10 time did you have left for project Bosnia?

11 A Perhaps \$10,000.

12 Q What was your reaction to his proposal?

13 A I rejected it, because he was suggesting that he
14 would take the money and spread it around, go to department
15 stores, go to banks and whatever else, and exchange it for
16 good money, and I said you can't do that.

17 Q Why can't you do that?

18 A It's wrong.

19 Q You say on page 33, you are not dealing with
20 jihad aki because I got, I got blockbusters and mortar
21 rockets. Did you have blockbusters and mortar rockets?

22 A No, I didn't.

23 Q Did you ever have blockbusters and mortar
24 rockets?

25 A No.

1 Q Did you ever have any kind of explosives?

2 A Never.

3 Q When you say you do anything unintelligible used
4 for jihad, it has to be used for the widows and children in
5 Zagreb and Bosnia, what are you talking about there?

6 A I was saying if you are going to do anything it
7 should be legitimate and it should affect what's going on in
8 Bosnia. And the war, number one, the main people it
9 affects, the way I see it, is the women and children, and
10 they have the decision over it because the men are fighting.
11 So I say your efforts should be for Bosnia, because that's
12 my main thing, it has to be for that purpose, the women and
13 children and the people that are fighting there.

14 MR. WASSERMAN: Let's continue with the tape. We
15 are on page 34, right after the third Hampton-El
16 attribution, where it says took him to a secret place with
17 all kinds of stuff over there.

18 (Tape continued)

19 MR. WASSERMAN: Your Honor, we are going to stop
20 for one second and skip the next portion, which is
21 unintelligible.

22 MR. FITZGERALD: No objection.

23 THE COURT: Go ahead.

24 (Pause)

25 MR. WASSERMAN: While we are finding the place,

1 let me ask a couple of questions. You can take the
2 headphones off for one second.

3 Q What is going on here? As we are skipping the
4 tape, do you recall what was going on at the time?

5 A Emad suggested that he wanted to check the place
6 out to make sure there was no bugs in the place, on the
7 telephones, etc. So he opened up the suitcase. He said he
8 needed an outlet to plug this device in.

9 Q You say something up above here, shayton makes a
10 lot. What are you referring to?

11 A I said the devil acknowledges Allah but he is
12 still the devil.

13 (Pause)

14 MR. WASSERMAN: We are at the point where it says
15 it should light right, about six attributions from the
16 bottom on page 34.

17 (Tape continued)

18 Q Rashid, let's go back to page 36. In the middle
19 of the page there is a statement that you had to remove your
20 pants last time you came back into the country. What is
21 that in reference to?

22 A When I came back from the Philippines, the
23 customs, and it appeared to be two other men who were not
24 with customs, they stopped me, and they start taking my
25 underclothes out and going through the side of it and

1 bending my shoes and stuff, and they says you're coming into
2 the room. I said what's wrong? They said the dogs smell
3 drugs. I said drugs, what you talking about? They took me
4 in a room and said take all your clothes off. I said I am
5 not taking my clothes off. All right, they pat me down,
6 they said open up your trousers. I opened up my trousers.
7 They can OK, you can go.

8 Q The next page, page 37, you talk about the Mossad
9 training people to speak Arabic and to become imams. Was
10 that based upon your knowledge?

11 A No, it wasn't.

12 Q Was it true?

13 A No, it was not true. It was something that I
14 said that I shouldn't have said.

15 Q Did you know any imams that were trained by the
16 Mossad?

17 A No, I can't say that.

18 Q When Emad said correct, did you think that he
19 knew that the Mossad had trained people to become imams?

20 MR. FITZGERALD: Objection.

21 THE COURT: I will allow it.

22 Q Go ahead.

23 A From the statement, it felt as though he was
24 confirming what I said.

25 Q If he was confirming what you knew not to be

1 true, how did you take his confirmation?

2 A Figured, you know, all of us was slinging some
3 bullshit here, and that was the way I accepted it.

4 Q In the next page you say I'm not beat up yet, I
5 says I'm not beat up yet because I tell 'em if you come this
6 way to beat me, surely I will kill you. What are you
7 talking about there?

8 A It's the same trend. It's a lot of crap.

9 Q Down below in the middle of the page you say sit
10 down, come on, just relax, unintelligible, I don't have any
11 at the house now, in case they come with a search warrant.
12 What don't you have any of in the house now?

13 A I don't have anything in the house.

14 Q Were you referring to anything specific that you
15 wanted to avoid being discovered if it was a search warrant?

16 A Yes.

17 Q What was that?

18 A I was referring to a gun.

19 Q In fact did you have a gun, personally?

20 A No.

21 Q Did you ever have a gun?

22 A No.

23 Q At the top of page 39, you say, or rather Siddig
24 says, I stood, we talked about this before, me and Abu
25 Ubaidah and the brothers. And then it continues on to say

1 you know, standing by the same covenant. Did you know what
2 he was referring to?

3 A No, I don't.

4 Q At the bottom of the page, he says, we are
5 working on a project, and then on page 40, he says to you
6 right before the tape stopped, what I need, I spoke with you
7 before in the park, OK, and I told you, remember that day?

8 Do you recall what he was referring to about
9 speaking to you in the car?

10 A To my understanding, he was referring to when he
11 said he wanted to destroy the Serb warehouse and some kind
12 of an armory that the Serbs controlled that were sending
13 stuff to Serajevo.

14 Q Where was this warehouse and/or armory located?

15 A Only thing he told me was Queens. He didn't give
16 me the location or anything in the conversation.

17 Q In this reference to what he told you in the
18 park, did he tell you in the park what he needed?

19 A No.

20 Q There are other references that I would like you
21 to explain to the jury on that page. Emad Salem says to
22 you, remember, we go back a year ago, I started a project,
23 and you and bother Ali Shinawy, we met and we talked. Did
24 you and Ali Shinawy and Emad Salem have a conversation
25 together?

1 A At no time. Only thing I understood that to be
2 was the time that he saw me after making prayer he was
3 introduced to me, he said that he wanted a weapon because
4 his desires was to go ahead and harm people such as Charles
5 Schumer, Dov Hikind, Jewish Defense League, Jewish Defense
6 Organization, and he said in fact he had did things to
7 people before.

8 Q After that exchange, you go on to say, let me
9 just say what me and the sheik, we haven't talked in a while
10 but there's a whole lot we discussed previous, there is a
11 lot that I can't, blah, blah, blah, unintelligible. I'm not
12 at liberty to get into this kind of talk.

13 Who is the sheik that you are referring to and
14 what is that about?

15 A I am referring to Omar Abdel Rahman, but my
16 reasoning for this statement is because I am talking to two
17 guys who profess to be his righthand man or his interpreter,
18 his this, his that. So I'm just trying to make myself look
19 as important as they are, as far as the sheik is concerned.

20 Q When you say at the end of that attribution, you
21 know, you surprised me, who were you directing that remark
22 to, if you recall, and what was it that surprised to?

23 A Emad Salem, the fact that he approached me,
24 because I didn't even know this guy and he's asking me for a
25 weapon, you know, I mean, like you don't go up to somebody

1 you don't know and say give me a weapon if you are looking
2 for one.

3 MR. WASSERMAN: Continuing with the tape, we
4 start at page 40 right after Siddig saying what I need, I
5 spoke with you before in the park, OK, and I told you,
6 remember that day."

7 (Tape continued)

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9 (Continued on next page)

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1 Q What is an M80? Did you know at the time what an
2 M80 was?

3 A I think it is a firecracker.

4 Q And a blockbuster, what is that?

5 A That is another firecracker.

6 Q And when Siddig tells you, on page 40,
7 "Detonators," you respond, "Some of the things you might
8 need to get, unintelligible, blockbuster." Are you saying
9 that your --

10 MR. FITZGERALD: Objection; leading.

11 MR. WASSERMAN: Withdrawn.

12 Q When you ask Emad Salem, where they talk at page
13 41, "Do you mean if I stuck an M80 into C-4" -- did you
14 understand what C-4 was?

15 A To the best of my knowledge, it is a plastic
16 explosive.

17 Q And you understood that then? Yes or no.

18 A Yes.

19 Q You ask a question, "Do you mean if I stuck an
20 M80 into a C-4 and lit the fuse, it wouldn't blow it up?"
21 Was that a sincere question or you really didn't know the
22 answer?

23 MR. FITZGERALD: Objection.

24 Q Did you know the answer to that question?

25 A I did not. That is why I said what I did. That

1 is why I said, when he mentioned detonator, do you want a
2 blockbuster.

3 MR. WASSERMAN: We will continue with the tape.

4 (Tape played)

5 Q Who are the negligent and ignorant people?

6 A The people that I heard about doing those things.

7 Q Did you know them?

8 A No, I didn't.

9 Q Did you have any contact with them?

10 A Never.

11 Q When you answered Emad Salem, on page 42, "These
12 brothers they got 30 or 50 of these," what is the 30 or 50
13 referring to?

14 A I was speaking about weapons.

15 Q And you then go on to say: C-4s, M16s, AKKs,
16 everything. Detonators, bulletproof vests, they had
17 everything." Did you know what they had?

18 A I had no idea.

19 Q Were there in fact any robberies being committed
20 by what are called here brothers, in that time period or
21 right before?

22 A I don't know if it was in that time period. I
23 heard rumors to that effect, but if there was any validity
24 to it, I don't know.

25 Q And what were the rumors?

1 A That there were people sticking up banks and post
2 offices, stuff like that.

3 Q For what purpose?

4 A I have no idea.

5 Q What connection was it to the Muslim community,
6 if any?

7 A Well, the only connection I figured, if a
8 person -- first of all, I said it was wrong, and if a person
9 did it, that they were more than stupid. But I said if a
10 person was to rob banks or anything of that nature, the
11 money would have to be for jihad, and that is not meaning
12 here in America. That means if you are in Serbia, the
13 people don't have arms there, they don't have this, if they
14 was to establish something like that to fight the enemy, to
15 get themselves arms, I would say yes, it's justified. But
16 here in America there's nobody doing anything to Muslims in
17 any shape, form or fashion to oppress them or to deter them
18 from their faith, so you can't do anything like that.

19 Q On page 42 you say to Emad and to Siddig: "Don't
20 you know from Atlanta, Georgia, to New York, everything in
21 between. These guys took off all the banks, post offices,
22 they were sticking them up. They asked me to be their emir,
23 but I told them like this--" and then it goes on, "I
24 couldn't."

25 Were you asked to be their emir?

1 A No, I wasn't.

2 Q Did you make up Atlanta, Georgia, to New York?

3 A Yes, I did.

4 Q What is an emir?

5 A He is one who is in charge of a group of men.

6 Q Now, Emad Salem seems to be indicating, when he
7 says to you on page 42 --

8 MR. FITZGERALD: Objection to form.

9 THE COURT: Sustained.

10 MR. WASSERMAN: Withdrawn. I will rephrase it.

11 Q What is he referring to when he says "Very
12 important, that is why at the first time one year ago when
13 we were looking for this and you told me it was available,
14 you already had, unintelligible."

15 Did you discuss detonators with him?

16 A At no time.

17 Q Is there any reason that you didn't correct it in
18 that conversation at that time?

19 A The conversation is moving pretty fast. I am not
20 paying attention to everything that is being said. I am
21 just feeding in with some of the rhetoric that is happening
22 there, but I didn't hear him say that.

23 Q If in fact Emad Salem had asked you for
24 detonators in June of '92, would you tell the jury that?

25 A I wouldn't have any reason not to tell the jury.

1 I mean, if he asked me for the gun -- like I said, he asked
2 me for the gun. Rather, if he had asked me for the
3 detonators, I would say that too, because, number one, he
4 got nothing from me, so why would I have any reason not to
5 say it?

6 MR. WASSERMAN: We will continue the tape. I
7 think we are on page 43 at the top. I am sorry, we are at
8 the bottom of page 43, right after "ignorant, ignorant
9 people. Negligent and ignorant people."

10 (Tape played)

11 Q On page 44 there is a statement by you near the
12 top, "I gave one paperwork, because I was doing paperwork at
13 the time." Did you give one paperwork and were you doing
14 paperwork at the time?

15 A I never gave anybody paperwork, nor have I ever
16 given any paperwork.

17 Q What is paperwork?

18 A I was talking about a passport.

19 Q There is a word used in the middle of the page,
20 "So they promised to give him, like I said, three to five
21 hundred years, and his father-in-law came to me, said he
22 needed faloose and, you know, I threw a little something his
23 way." What is faloose?

24 A Faloose is money, and I didn't give anybody any
25 money.

1 Q I am sorry?

2 A And I didn't give anybody any money.

3 Q The reference on page 44 to "they're going to put
4 him to sleep. Just like the guy upstate who we were
5 training with, in Pennsylvania." Who is the guy upstate?

6 A The guy upstate is Mohaimon, Kelvin Smith.

7 Q Who was going to put him to sleep?

8 A No one was going to put him to sleep.

9 Q There is a reference to equipment, on page 45 at
10 the top. You are saying, "I wanted the equipment back, and
11 I wasn't taking no for an answer. There was a lot of
12 equipment left up there." What equipment are you talking
13 about?

14 A The equipment that was being used to train the
15 people for Bosnia.

16 Q And what did that consist of, to the best of your
17 recollection?

18 A Repelling gear, numerous blankets, ponchos, and
19 whatever else that we had for the training.

20 Q You stated on that page of the transcript that
21 the FBI was all over you immediately when you had this
22 meeting with Mohaimon. Was that in fact correct?

23 A Yes, it was. You see, I had never been up to
24 Pennsylvania, so I am assuming that they needed him to bring
25 me out to make a physical connection with him.

1 MR. FITZGERALD: Objection, your Honor;
2 competence. Move to strike.

3 MR. WASSERMAN: If I may show the connection by
4 following with a question and then you can strike the whole
5 thing if necessary.

6 THE COURT: All right.

7 MR. WASSERMAN: Thank you, your Honor.

8 Q Did you in fact observe surveillance at the time
9 that you met with Mohaimon?

10 A Yes, I did. And he told me himself that the FBI
11 questioned him, they wanted him to bring the people back up
12 there, they said, so they could put a raid on. These were
13 his words.

14 Q Where did you meet him?

15 A I met him in East New York.

16 Q Approximately when?

17 A I think it was sometime in April, the last -- the
18 middle part or the last part.

19 Q All right.

20 A After meeting him, say like it was on a corner,
21 it was supposed to be the Con Edison man. Over there was
22 the Brooklyn Union Gas Company. Nobody was working, by the
23 way. And as we turned, we saw the man taking pictures.

24 Q You saw someone actually with a camera?

25 A Yes, yes.

1 Q When you say what was being done was legitimate,
2 there is nothing illegal about it, what were you referring
3 to?

4 A Training in Bosnia. He said he was going to tell
5 him everything that was going on. I said, tell him. I
6 said, everything appears legitimate. We are training. We
7 are not doing anything wrong.

8 Q There is a reference to put him to sleep. What
9 does that mean?

10 A That is terminology for BS, but kill somebody.

11 Q I am sorry, terminology for what?

12 A Bullshit. Kill somebody.

13 Q To your knowledge, is Mohaimon alive and well
14 today?

15 A Alive and well, breathing good.

16 Q And do you know what association, if any, does he
17 have with a witness who has appeared in this proceeding,
18 Robert Abdullah?

19 MR. FITZGERALD: Objection.

20 THE COURT: Sustained.

21 MR. WASSERMAN: If I may ask as to that period of
22 time, your Honor, at the time of the Pennsylvania training?

23 THE COURT: You may.

24 MR. WASSERMAN: Thank you.

25 Q At the time of the Pennsylvania training, what

1 association did Mohaimon have with Robert Abdullah?

2 A They had a joint effort to develop this place for
3 Muslims, for exercise, for gatherings, for trainings, for
4 whatever they decide. And he was up there during the time
5 and working with the brothers in training.

6 THE COURT: Mr. Wasserman, would this be a
7 convenient break place?

8 MR. WASSERMAN: This would be fine.

9 THE COURT: Ladies and gentlemen, we are going to
10 take a court break. Please leave your notes and materials
11 behind. Please don't discuss the case among yourselves or
12 with anyone else.

13 (The jury left the courtroom.)

14 MR. STAVIS: May I see your Honor with counsel in
15 the robing room on a matter?

16 THE COURT: With counsel? You mean you want to
17 crowd into the robing room?

18 MR. STAVIS: Yes, your Honor.

19 THE COURT: All right.

20 (pp. 15765-15769 sealed)

21 (Recess)

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1 (In open court; jury present)

2 THE COURT: Mr. Wasserman.

3 MR. WASSERMAN: Thank you, your Honor. We resume
4 with the tape at page 45, the third Hampton-El attribution
5 from the bottom, right in the middle where it says I said
6 number two.

7 (Tape continued)

8 BY MR. WASSERMAN:

9 Q The last statement by Emad Salem, look at my
10 eyes, we're doing serious work, did you have an idea of what
11 he was talking about when he mentioned serious work?

12 A I took him to mean what was suggested by Siddig
13 in the park about the Serbian warehouse and the armory.

14 Q Did you look at his eyes?

15 A No, I didn't look at his eyes.

16 Q Moving backwards there, on page 47, there is a
17 statement by you, you'll hear now -- the Hampton-El
18 attribution from the bottom -- so I'm just saying that
19 there's a lot happening and you'll hear now from Omar Abdel
20 Rahman in regards to that tomorrow you said you were gonna
21 be there with some other brothers.

22 What is going on tomorrow, what are they going to
23 hear from Sheik Omar Abdel Rahman, and who are the other
24 brothers?

25 A What's going on tomorrow is the Eid, number one.

1 Q The Eid, again --

2 A The Eid is after fasting for Ramadan, so the
3 people gather until the park, and usually there is a sermon,
4 and what they will hear tomorrow, I don't remember exactly
5 what it was. And the other brothers is security, because he
6 requested some security while he was, you know, speaking in
7 the park.

8 Q Above that is a reference to, when you are
9 talking about killing Muslims you better have your facts 150
10 percent correct. Does that mean that it is OK to have --

11 MR. FITZGERALD: Objection to form.

12 THE COURT: Sustained.

13 Q What did you mean by that statement?

14 A I meant by that statement, there is a lot of
15 rumors out about the sheik being CIA, and any type of
16 dialogue, because people start rumors and people are crazy
17 in this world, you know, people listen to what they hear
18 sometimes and they do stupid things. So that's what that
19 was related to, that you should be sure of something of that
20 nature before responding, and the main thing is that under
21 the laws of America, there is things you can't do here that
22 you might be able to do under Islamic laws in other
23 countries, once it's proven to be true.

24 Q The sermon that you referred to before that Omar
25 Abdel Rahman was going to give, was that sermon going to be

1 given in the park?

2 A Yes, that was.

3 Q Did you in fact go?

4 A No, because that was in Lincoln Park, and I go
5 here in Brooklyn.

6 MR. WASSERMAN: If we could continue with the
7 tape, we are in the middle of page 48, beginning with I know
8 this and ah.

9 (Tape continued)

10 Q Going backwards again, on page 51, who are people
11 with shit in their clothes, people who kufar?

12 A I was speaking about the Congress, that they were
13 full of shit.

14 Q Who were you speaking about who made fadjia, and
15 what is fadjia?

16 A It is the opening prayer when you are performing
17 prayer. It has to be recited first, and this was recited
18 with the hope that the Congress would get some understanding
19 about what Islam was about.

20 Q The question was who recited?

21 A Imam Siraj.

22 Q Now let's go back to page 49. When Emad Salem
23 was talking about dedicating his life to Sheik Omar Abdel
24 Rahman, what was your reaction?

25 A Not totally believable, but he said that he was

1 willing to die for him and pledge allegiance to him.

2 Q Speak up, please?

3 A He said that he was willing to die for the sheik
4 and that he had pledged allegiance to him, his life.

5 Q He then talks about taking a detonator out of a
6 hand grenade, and that it is very dangerous, and then you
7 say each time -- it's the middle of page 49. When you said
8 each time, was that based upon your personal knowledge?

9 A No, it's not.

10 Q Have you ever seen anyone take a detonator out of
11 a grenade?

12 A I never knew a detonator was in a grenade.

13 Q On page 50, there is an exchange of dialogue
14 which begins with the fifth Hampton-El attribution from the
15 top. Unintelligible to just unintelligible here,
16 Sayfwafadeun. I haven't told anybody this. You know?
17 Siddig says, I think I know, Allah, unintelligible. You
18 say, that night, I should have been with him. I know, you
19 told me, I know. You say OK, all right, I love the brother
20 very, very much. Siddig says a good brother, a very good
21 brother.

22 Who were you talking about?

23 A I was speaking about Sayyid Nosair.

24 Q That night I should have been with him, what are
25 you saying to Siddig Ali and Emad Salem?

1 A I was saying I should have been with him that
2 night but there was no truth to that. This was just
3 something that I said to impress them.

4 Q Why would you say that to impress them?

5 A Siddig, like I said, he held, he thought a lot
6 about Sayyid, and it just fed into what was going on.
7 Everybody was talking about how good they were at this and
8 that and so I am trying to make them believe that I got
9 something going for me, too.

10 Q You then go on to say when this happened,
11 brother, and I couldn't see him, I started to begin to
12 function with my heart instead of my head. The sheik told
13 me look aki unintelligible if you don't go see him, he will
14 understand, he knows you. Who is the sheik that you were
15 referring to in that sentence?

16 A I was referring to Sheik Omar Abdel Rahman but
17 there is no truth to that statement.

18 Q Did you ever have a conversation with him about
19 visiting El Sayyid Nosair?

20 A No.

21 Q Did he ever tell you, personally or through
22 anyone else, look, if you don't go see him, Sayyid Nosair
23 will understand?

24 A I don't think he even knew that I knew Sayyid,
25 but he never said anything like that.

1 Q There is a reference at the bottom of page 50
2 where you say Omar Abdel Rahman, you see I stood up and told
3 1,500 people, a thousand people at Farook who try to lay a
4 hand on this man you're going to answer to Allah and me.
5 What is that in reference to?

6 A That's in reference to when he spoke out against
7 the wrongdoing here in America by Muslims and those abroad,
8 when he was attacked by the people at the masjid. I spoke
9 to them the following Jummah after prayer and I told them
10 they were wrong in the actions. I exaggerated about the
11 numbers. It wasn't no 1,500, not even a thousand.

12 Q The following Jummah, the following Friday?

13 A Yes, the following Friday. I told them they were
14 wrong in what they was doing.

15 Q When Siddig said I want to you to be real honest
16 you, I don't want to go to Siraj, what is he referring to
17 there? If you take a look at page 51, it begins at the top
18 of the page, with Siddig saying I was there, Abdel Rahman
19 security, and then he goes on to say about Siraj. If you
20 recall.

21 A No, I don't recall.

22 Q If you don't recall, you don't recall.

23 A No.

24 Q When you make that statement which we just
25 started this questioning with, people who shit in their

1 clothes, people who kufar, do you vote?

2 A Yes, I have been voting for 30 years or better.

3 MR. WASSERMAN: Let's move on with the tape. We
4 are at the bottom of page 51, Siddig Ali saying he did
5 salaams.

6 (Tape continued)

7 Q On page 52 where you say this is a whole
8 different type of thing, do you recall what you were
9 referring to? Right before that you say because they were
10 doing dumb stuff. Siddig says um hum. You say all right,
11 this is a whole different type of thing. If you recall.

12 A Yes, I was referring to what was suggested by
13 Siddig previously about --

14 Q You have to speak up.

15 A I was speaking about what was suggested by Siddig
16 previously, the Serb warehouse and the armory.

17 Q Where Siddig says on page 56, he says in the
18 middle of the attribution, boom, they call this brother on
19 the avenue and then there was unintelligible. I was, you
20 were involved. And then you say I told you you were being
21 followed, you just didn't know it. Yeah, aki, you got to
22 remember, too, certain areas.

23 What are you two talking about?

24 A It is a place on Atlantic Avenue and Court Street
25 in Brooklyn where I usually have lunch, called India House.

1 They have halal food. I was over there eating and Siddig
2 and Haggag and Rahman approached me.

3 Q When was this, approximately?

4 A I believe it was in April, the early part of
5 April. They called me and they approached me and the FBI
6 took pictures. Haggag spoke about the FBI having taken
7 pictures of that incident, and that's what I told him. I
8 said I told you before that I was being followed and anybody
9 comes in contact with me would be followed also. Haggag was
10 subpoenaed after that by the FBI, and then co-opt to come
11 back and put other people in trouble.

12 MR. FITZGERALD: Objection, your Honor.

13 THE COURT: Sustained and stricken.

14 MR. WASSERMAN: Talking about the last page.

15 THE COURT: The objection was sustained.

16 MR. WASSERMAN: We can continue with the tape.

17 (Tape continued)

18 Q You go to the middle of page 57, you are talking
19 about trying to get detonators, is that right?

20 A Yes.

21 Q And you are talking about getting M80's and
22 blockbusters, correct?

23 A Correct.

24 Q The transcript has Siddig Ali saying Mustafa. Do
25 you recall hearing that at the time of the conversation?

1 A No.

2 Q When you go on after Mustafa to say going out to
3 Baldwin, New York, what was that in reference to?

4 A I think it was Jummah, and I was going to go out
5 there to make prayer.

6 Q Do you recall with whom?

7 A Ubaidah.

8 Q You say in that passage that you are going to try
9 to get detonators out at Baldwin, isn't that correct?

10 A Yes, I did say it, but I did not mean it.

11 Q Aside from saying it and not meaning it, was
12 there a possibility of getting detonators out at Baldwin?

13 A No way at all.

14 Q Do you recall who you were going to meet out in
15 Baldwin?

16 A I was going out there to meet a brother by the
17 name of Mikail, but I never went out there.

18 Q On page 58, approximately where we stopped, you
19 reference that there was another one that contact me, he's
20 been with me in the army and he calls himself
21 unintelligible. He wants to get on board unintelligible,
22 I'll call him unintelligible and see if he can get me,
23 unintelligible. Do you recall what the unintelligible was,
24 what you were saying seeing he can get me?

25 A I don't recall what it was about, perhaps even

1 detonators, but the fact is, I've been out of the United
2 States Army for 38 years.

3 Q Was there anybody who kept in touch with you from
4 that period of time who was with you in the army?

5 A No, I haven't seen anybody since I have been
6 discharged, and that was in 1958.

7 (Continued on next page)

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1 MR. WASSERMAN: Thank you.

2 THE COURT: Ladies and gentlemen, we are going to
3 break for lunch. Please leave your notes and other
4 materials behind. Please don't discuss the case, and we
5 will resume this afternoon.

6 (Jury excused)

7 THE COURT: Just for everybody's scheduling
8 purposes and awareness, we are going to have to break this
9 afternoon at 4:30 rather than at 5.

10 MS. HOFSTEIN: Your Honor, Mr. Saleh would like
11 to be absent this afternoon and waives his right to be
12 present.

13 THE COURT: Is it all right for us to continue
14 this afternoon without you?

15 The record should reflect that he nodded his head
16 in an affirmative answer.

17 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:15 p.m.

3 (Trial resumed; jury present)

4 CLEMENT HAMPTON-EL, resumed.

5 THE COURT: Good afternoon, ladies and gentlemen.

6 JURORS: Good afternoon.

7 THE COURT: Mr. Wasserman?

8 MR. WASSERMAN: Thank you.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. WASSERMAN:

11 Q Good afternoon.

12 A Good afternoon.

13 Q You mentioned Mikail right near the break this
14 morning. Could you give us a little more information about
15 who Mikail is?

16 A Mikail is a brother that I know.

17 Q Speak up clearly.

18 A Mikail is a brother that I know, that I prayed
19 with in different masjids. He used to go to the range and
20 train, and shoot weapons. He used to do security over one
21 of the masjids. And he visited me in the hospital when I
22 came back home from Afghanistan.

23 Q Did he live in Baldwin?

24 A I don't know. I know he lived in Queens, but I
25 don't know exactly where.

1 Q You testified that you were supposed to go out
2 there but that in fact you did not?

3 A I never went.

4 Q Did you ever contact Mikail before or after this
5 conversation with Emad Salem and Siddig Ali?

6 A No.

7 Q When you mentioned in that same attribution on
8 page 57 that "if he's not able to do it himself, then I'll
9 be the middleman," do you recall who the "he" was that you
10 were referring to?

11 A There was no "he".

12 Q Did you have any people to be the middleman
13 between?

14 A At no time at all was there a middleman, and as
15 far as I was concerned, what we were speaking about was just
16 a lot of conversation. I didn't think there was any truth
17 to what they were speaking about.

18 Q As you sit here today, do you know whether Emad
19 or Siddig had had any conversation before meeting with you
20 about your desire to strike the Serbs?

21 MR. FITZGERALD: Objection.

22 THE COURT: Sustained.

23 A We did not have a conversation --

24 THE COURT: And stricken.

25 Q Have you reviewed some of the CM's in this case

1 or most of the CM's in this case?

2 A Yes, I have.

3 Q Have you reviewed the CM's that are in evidence?

4 A Yes.

5 Q In CM20, which is dated May 29, 1993, is there a
6 statement by Siddig Ali to Emad Salem that you want to
7 strike the Serbs?

8 THE COURT: Sustained.

9 A Yes, there is a statement.

10 THE COURT: Sustained and stricken.

11 Q Did you ever tell Siddig to strike the Serbs?

12 A No, Siddig was the one that said to me, and I
13 told him I am on board if this is what you want to do.

14 MR. WASSERMAN: To resume the tape, I think we
15 are on page 58, right before the Salem attribution from the
16 bottom where it says "How much."

17 (Tape played)

18 Q Were you saying, on page 59, "You take your time,
19 unintelligible"? What were you referring to?

20 A I was talking about what they were discussing.
21 They was talking about the warehouse and the armory. So I
22 was telling them, take your time, take your time, think
23 about it.

24 Q Why were you telling them this?

25 A Well, I didn't believe they were serious about

1 what they were talking about, but I was trying to get them
2 to stop and think.

3 Q You then go on to say, "This takes a lot of
4 courage." In the next Hampton-El attribution, at the end of
5 it, you say, "This takes a lot of courage, man." And then,
6 following that, Eman says, "That's my job."

7 What are you talking about?

8 A Emad had said already that he's taken detonators
9 out of hand grenades hundreds, thousands of times. And I
10 think you got to be crazy, you got to have a lot of courage
11 to do something like that.

12 Q Now, at the top of page 60 there is a reference
13 in the Siddig attribution, which is a continuation from the
14 bottom of page 59, to "we'll make these, you know, fifteen
15 or twenty-five."

16 And then you say, "Back off from it."

17 Do you recall what that was about? You can look
18 at the transcript. If you don't recall it, if it doesn't
19 refresh your recollection, it doesn't refresh your
20 recollection.

21 A I see, to the best of my understanding, they had
22 asked me for money already, Siddig had, and I said I don't
23 have money to give up. And Siddig is stating that the money
24 is going to be a problem. The reference to the remainder of
25 it, I don't know, but I know the beginning of it was what

1 was said.

2 Q When you say, near the end of page 60, that "I
3 don't have the slightest idea, akie, of cost, the slightest
4 idea of the cost," what cost are you referring to?

5 A It was actually about plastics, plastic C-4, and
6 I don't know what the cost is or what the cost is for
7 detonators that they are referring to.

8 MR. WASSERMAN: Now we can resume the tape.

9 (Tape played)

10 Q If you would, on page 62 you say, "You see,
11 there's money available. If these people, if they knew it
12 was something like there, they run."

13 Who are "these people"?

14 A I am speaking about the people who would be
15 coming to America.

16 Q And later on in that page you are saying that
17 someone is coming who is rich. I wanted to ask him for some
18 money, 100,000, quarter million."

19 Was that true?

20 A No, sir.

21 Q How much, all told, did you get for Project
22 Bosnia?

23 A \$45,000.

24 Q If I may go back to page 60, you talked about
25 opening up a center. It is the fifth Hampton-El

1 attribution, in the middle of page 60, opening up a center
2 in Egypt for a quarter of a million, half million, maybe
3 million, million and a half. What was that about?

4 A The people asked me to come to Aswan, Egypt, and
5 open up a dialysis center, set it up for them. And I told
6 them the only way I can do that is, number one, because the
7 power goes off in Egypt a lot, and it is difficult doing it,
8 I said it cost a lot of money, you would have to get
9 secondhand stuff from here, and you would have to have a
10 generator, because if you are treating people for something
11 and the machines go off, you are going to lose blood and
12 wouldn't be able to function. And what are you doing? So
13 this is what I am talking about here. This is the kind of
14 money I was talking about.

15 Q Now, on page 61, you are talking about 1,000 to
16 1,500 pounds, at the top of the page. 1,000 to 1,500 pounds
17 of what?

18 A Talking about C-4, so I figured that was what
19 they would need. So I said, you know, they need 1,000
20 pounds, 1,500 pounds.

21 Q Had you ever worked with C-4 before?

22 A Pardon?

23 Q Had you ever worked with C-4 before?

24 A No.

25 Q What was your figure based upon?

1 A A lack of knowledge, really.

2 Q Later on in the page you say, "talking about
3 having to drive a trailer almost, unintelligible, C-4,
4 brothers." Again, what was your basis for that statement?

5 A I was telling them if you want 1,000 pounds of
6 C-4, 1,500 pounds of C-4, you are going to have to have a
7 trailer or something to put it in.

8 Q Had you in Afghanistan had any contact with C-4?

9 A I was in Afghanistan functioning medically. As
10 far as I know, the main thing they was dealing there with
11 was Stinger missiles that they got from Americans, or
12 whatever, but no C-4.

13 Q There was no C-4 there anywhere?

14 A No.

15 Q Did you ever work with anything on C-4 when you
16 were in the Army in the 1950s?

17 A I don't even know what C-4 looks like. It is
18 something you hear about in the movies.

19 Q On page 62, at the bottom, you stated, "I'm
20 picking up my second passport in about three weeks." Was
21 that true?

22 A No. I had trouble to get my first passport, and
23 I don't know how you go about getting your second one.

24 Q On page 63, you say that "I have to have a second
25 one, in case I have to move, unintelligible, move." What is

1 that in reference to?

2 A It is just a lot of foolish talk. I mean, it was
3 stupid and dumb things to say, but I am feeding into a
4 conversation where there is a lot of stupid things being
5 said.

6 Q You then followed it up with saying "I'm letting
7 you know that you can get a second one if you need and
8 yourself." Were you able to do that?

9 A No.

10 MR. WASSERMAN: We will resume with the tape.

11 (Tape played)

12
13 (continued on next page)

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1 (Tape continued)

2 BY MR. WASSERMAN:

3 Q Going back to page 63 where we started you say at
4 the bottom I got my faces at home. What is faces?

5 A Pictures for passports.

6 Q Continuing on page 64, Siddig says I have a
7 formula in my house and a very big plan, and then he
8 continues on, saying working on a lot of things. At that
9 point in the conversation, had he told you about a very big
10 plan and a lot of things?

11 A Only thing that I can say is still the same
12 thing, the warehouse of the Serbs, and the armory.

13 Q When you tell him on page 65, you say the fourth
14 Hampton-El attribution, you say to him you got to work on
15 the money now, and the next attribution, you got to work on
16 the money, what is the money for?

17 A The money is for, number one, their asking for
18 passports, and I am talking about the money for passports
19 and whatever project they are dealing with.

20 Q And when you say at the bottom, even if it don't
21 happen until next year, and then you follow it up with you
22 have to go ahead, take time doing it, and don't rush for
23 success, what were you talking about at that time?

24 A The same thing. I don't think that they are
25 serious about what they are talking about, the Serbia

1 action, but in the event that they are, I am trying to give
2 them some time to think about it and to distance myself from
3 it.

4 Q On page 66, at the bottom of the page is an
5 attribution of yours in which you state, and when they start
6 charging people, I never charged nothing. When they start
7 charging people 15, 25,000, people went to the FBI.

8 Two questions. First of all, was there someone
9 who was charging 15, 25,000 for passports?

10 A Not that I know of.

11 Q Did you ever get passports?

12 A Never.

13 Q So I never charged nothing was --

14 A It's clear garbage.

15 Q How about where we ended up at page 67, where you
16 say in the middle of the page, people understand money, if
17 he wants 50,000 and I showed him 30,000, he sees that,
18 that's something. Do you recall what that was about?

19 A No.

20 Q At the top of the page, do you recall, talking
21 about somebody who was charging 15 to 25,000, and somebody
22 beat him up for having charged that and then he comes to
23 you. Was that a true story?

24 A No, that's the same thing about 15, 25,000. That
25 was just a made up thing.

1 MR. WASSERMAN: Let's continue, please.

2 (Tape continued)

3 Q On page 68 where Siddig is talking about someone
4 who opens the safe, takes 20,000 to the house, steal the
5 market, boom, boom, boom, 10 hours bring it back, return
6 20,000, do you know who he was talking about?

7 A He said he knew someone who worked with banks and
8 securities and he would take money out, put it in another
9 bank of some sort and make 20,000 on it in seven hours or
10 so.

11 Q Did you understand how that worked?

12 A Not the faintest idea.

13 Q Did you believe him?

14 A No, I didn't believe him.

15 Q Emad Salem asks at the top of page 69, says a
16 question for you, we need hand grenades, how much? And you
17 say they want 50 to \$100 apiece.

18 Who is they?

19 A It's no they.

20 Q What about the 50 to \$100 apiece?

21 A I don't know. That's just a price that came up
22 my head, you know. I said they will cost 50 to \$100 apiece.
23 I didn't know what hand grenades cost.

24 Q Had you ever had a hand grenade? Did you ever
25 buy a hand grenade?

1 A No.

2 Q Did you ever price a hand grenade?

3 A No.

4 Q When you say, fourth attribution from the bottom
5 you say, like I say, that's going through certain channels
6 too, brother, your reference is to passports as well as to
7 the grenades?

8 A Yes, it is.

9 MR. FITZGERALD: Objection to form.

10 THE COURT: Sustained as to form.

11 Q What is your reference?

12 A My reference is to both grenades and passports.

13 Q What does channels mean to you?

14 A Meaning I would have to check with someone
15 because I don't know anyone that can get these.

16 (Continued on next page)

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1 THE COURT: Mr. Wasserman, can I see you at the
2 side bar.

3 MR. WASSERMAN: Sure.

4 (At the side bar)

5 THE COURT: There have been a number of times
6 where either you have suggested answers and then backed off
7 when you got caught, or as you did with the CM when you had
8 no basis for believing it would be permitted, and then keep
9 telling me that you don't want me to do anything in front of
10 the jury. I tell you what. If you won't, I won't. How is
11 that?

12 MR. WASSERMAN: That is always fair.

13 THE COURT: Good.

14 (In open court)

15 MR. WASSERMAN: Let's resume the tape. That is
16 at the top of page 70.

17 (Tape continued)

18 (Continued on next page)

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1 BY MR. WASSERMAN:

2 Q Just one quick question. That conversation was
3 in Arabic, as denoted by the transcript, beginning on page
4 70 near the middle, and then denoted by end of Arabic
5 conversation on page 71. Did you understand that
6 conversation?

7 A No, not at all.

8 MR. WASSERMAN: Let's resume.

9 (Tape continued)

10 Q A few questions on page 72. You make a statement
11 that if you fast -- this is in the middle of the page. It
12 begins, Allah suallah forgive you all your sins this year
13 and next year, inshallah.

14 Were you serious about that statement?

15 A Yes, I was.

16 Q In the third Hampton-El attribution from the
17 bottom, you talk about ah, see if I can get over to Saudi,
18 too. The sheik came in and he invited me over to his place.
19 Which sheik, or who were you talking about?

20 A Someone I was in Afghanistan with.

21 Q Had he, as you state in the second attribution
22 from the bottom, in fact come back a few times to buy boats
23 and town cars and stuff?

24 A Yes, he had.

25 MR. WASSERMAN: We can continue with the tape.

1 (Tape continued)

2 Q Do you recall at that point in the conversation
3 what Emad Salem's reaction was when you asked him if he had
4 any personal pistols.

5 A When I asked him if he had a gun he became very
6 very nervous and started stuttering. He said, I, I, I, I, I
7 had one but I got rid of it during the World Trade Center.

8 MR. WASSERMAN: Let's resume the tape.

9 (Tape continued)

10 Q Taking up where the tape leaves off, who are you
11 talking about?

12 A I am talking about the sheik from Saudi Arabia, I
13 am talking about Bilal Phillips, who heads up Project
14 Bosnia.

15 MR. WASSERMAN: Let's continue with the tape.

16 (Tape continued)

17 Q There is an attribution on page 79 that is
18 underlined, Siddig Ali, deception to confuse, to deceive,
19 etc. Is that your recollection that he said that?

20 A Yes.

21 MR. WASSERMAN: Your Honor, we would like to
22 switch at this time to the digital audiotape. It will take
23 a moment.

24 THE COURT: Yes. Ladies and gentlemen, we will
25 take a break now. Please leave your notes and other

1 materials behind. Please don't case the case, and we will
2 resume in a few minutes.

3 (Recess)

4 (At the side bar)

5 MR. WASSERMAN: Your Honor, he is on his last
6 legs. What I would like to do is finish this CM. There are
7 some FISA's that I would like to play and then I would like
8 to call it a day. I think he is exhausted.

9 THE COURT: Forgive me, but we have had all kinds
10 of testimony about his heroics. He had his leg blown off,
11 he violated doctors' orders to give speeches, he disregarded
12 a broken leg to save a suicide, and he has had difficulty
13 answering questions?

14 MR. WASSERMAN: He has been on the stand since
15 Tuesday --

16 THE COURT: This isn't exactly heavy duty
17 testimony.

18 MR. WASSERMAN: Judge, his medication for
19 diabetes was produced last week and he had been basically
20 suffering from that for several weeks, with a resulting
21 weakening condition. I am not talking about ending this
22 minute. I have about another two hours with him, and
23 pushing another half hour is about all I think I can get.

24 THE COURT: Ask for a side bar. Don't just ask
25 to quit.

1 MR. WASSERMAN: Absolutely, understood. Thank
2 you.

3 (In open court; jury not present)

4 MR. WASSERMAN: Your Honor, we are going to be
5 playing on the digital audiotape machine about a page and a
6 half and then we will have to resume with the audio to
7 finish out the rest of the tape. It just takes a minute or
8 so.

9 THE COURT: Whatever it takes, it takes.

10 (Jury present)

11 THE COURT: Go ahead, Mr. Wasserman.

12 MR. WASSERMAN: Thank you, your Honor. We will
13 resume at page 79, approximately at the point of in and
14 around I hear you. This is from the digital audio of W-3,
15 Defendant's Exhibit W-3.

16 (Tape played)

17 BY MR. WASSERMAN:

18 Q Rashid, going to page 79 and the attribution of
19 about six or seven attributions up from the bottom, Siddig
20 Ali, there is a parentheses and a description of clap in
21 background, pause, snap of fingers, and statement of Siddig
22 Ali, break like straws, boom. Five minutes apart. Followed
23 by you saying course, with that you don't need me.

24 What was he talking about when he snapped his
25 fingers and said break like straws, boom, five minutes

1 apart?

2 A He was talking about the tunnels.

3 Q What was your response?

4 A My response was, at that particular time I had
5 been talking with them about a lot of crap, number one, the
6 warehouse of the Serbs and the armory, and I still didn't
7 believe that. But the conversation became very -- this was
8 nothing you could even play with as far as talking about
9 joking, BS or anything. It took a serious overtone to me.
10 I didn't believe what they were saying but I said I'm not
11 going to be part of it. I said you don't need me for that
12 there.

13 Q You said at the top of page 80, you're talking
14 about knocking out the federal system. What was that in
15 response to?

16 A Because when he said the tunnels, he mentioned
17 the FBI office. He said 26 Federal Plaza. I said you
18 talking about knocking out the federal system. He mentioned
19 the UN. But the fact is, when he mentioned this, number
20 one --

21 THE COURT: There is no question pending.

22 Q When you were talking about in the fourth
23 Hampton-El attribution from the top on page 80, in all
24 probabilities some people are going to be drowned to death,
25 that's in all probability it's ordinary citizens will be

1 harmed, what are you talking about?

2 A Talking about people going to be killed in the
3 tunnels. I ride the tunnel. In Islam this is not
4 permissible. This is my country too. What am I going to
5 blow it up for, or help anybody do it?

6 (Tape continued)

7 Q On page 81 when you say this is our goal, what
8 are you referring to?

9 A When I told him what I did about the tunnels and
10 the UN and the federal system, they said all right, forget
11 that, we were not serious, we will do what we were
12 originally talking about, we go back to doing the Serbs, the
13 warehouse, and the armory.

14 MR. WASSERMAN: Let's continue.

15 (Pause)

16 MR. WASSERMAN: We will resume on page 81, I
17 think four attributions from the bottom, the fourth
18 Hampton-El attribution from the bottom.

19 (Tape continued)

20 Q In the story about the --

21 MR. FITZGERALD: Objection to form.

22 THE COURT: Sustained.

23 Q There is a statement in the transcript, first
24 full Hampton-El attribution on page 82, concerning the
25 Gallos, Columbos -- they used to call me Bobby, Bobby. What

1 is the truth about that?

2 A There is no truth about it. The fact that there
3 is an element of fear, they said something about doing
4 something that might be a real hit. So I'm just trying to
5 let them know I know the Gallos, I know the Columbos, and
6 you mess with me I got connections. You know, I figure
7 these guys might do anything.

8 Q What about the statement in the following
9 attribution, I worked with a couple of guys once and they
10 tried to kill me one time and this guy tell them that I was
11 good people. So I said to myself you kill me we both die.

12 Is that a true story?

13 A No, it's not, but I figure if anything is going
14 to happen or if they have anything in mind, this will keep
15 them at a distance or at least make them think.

16 Q At the end of this meeting with Emad Salem and
17 Siddig Ali, did you have any intention of getting them
18 anything?

19 A No, I never had any intentions of getting them
20 anything. I never expected to see them again.

21 MR. WASSERMAN: Your Honor, I would like to
22 introduce into evidence a FISA recording, Defendant's
23 Exhibit EE-T -- I am sorry. The recording is EE and the
24 transcript is EE-T. It is June 13, 2:37 p.m. I don't think
25 the jury has a copy. The tape is short and fairly quick.

1 MR. FITZGERALD: No objection.

2 THE COURT: EE and EE-T are received.

3 Is this an English language tape?

4 MR. WASSERMAN: Yes, your Honor.

5 THE COURT: Obviously the transcript is for the
6 jury's assistance and the tape is the evidence.

7 MR. WASSERMAN: Yes, your Honor.

8 THE COURT: Do you want to play that now?

9 MR. WASSERMAN: Yes, your Honor. The jury does
10 not have a copy of the transcript. My apologies.

11 THE COURT: So you want them to listen without
12 the transcript?

13 MR. WASSERMAN: Yes, and I will supply the
14 transcript on Monday.

15 (Defendant Hampton-El Exhibits EE and EE-T
16 received in evidence)

17 (Tape played)

18 MR. WASSERMAN: Your Honor, I would like to
19 follow that with a short FISA already in evidence, 754T,
20 June 15, 12:12 p.m. That is in the jury books as
21 Government's Exhibit 754T.

22 THE COURT: There is a book that runs from 751 to
23 850 that should contain that transcript.

24 (Pause)

25 MR. WASSERMAN: We will play this June 15, 1993

1 conversation.

2 (Tape played)

3 Q In that conversation you state, the term was
4 stated interkof. What is that?

5 A Interkof means staying in masjid without leaving
6 and reciting Koran, praying and discussing the practices of
7 our prophet, all dealing with Islam.

8 Q Was it your intention to get together with him as
9 stated in the FISA, to do interkof?

10 A By no means. As a matter of fact, two weeks had
11 lapsed since the 30th, since I had had any dealings with
12 him.

13 (Continued on next page)

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1 MR. WASSERMAN: Your Honor, may I approach?

2 THE COURT: Yes.

3 (At the side bar)

4 MR. STAVIS: Your Honor, judging from the amount
5 of news cameras outside I think there might be quite a bit
6 of publicity concerning the arraignment before Judge Duffy.

7 THE COURT: You want me to give it a special
8 twist?

9 MR. STAVIS: Yes, your Honor.

10 THE COURT: You want to call it a day?

11 MR. WASSERMAN: Yes, Judge.

12 THE COURT: Good.

13 MR. WASSERMAN: Thank you very much, Judge.

14 (In open court)

15 THE COURT: Ladies and gentlemen, we are going to
16 break now, from your standpoint for the week. Please leave
17 your notes and other materials behind. Please don't discuss
18 the case either amongst yourselves or with anyone on the
19 outside, and please pay particular attention about not
20 seeing, hearing, reading anything either about this case or
21 any related matters. There may be news reports but I would
22 urge you not to read any news reports or see anything on
23 television. We will see you Monday. Have a pleasant
24 weekend.

25 (Jury excused)

1 THE COURT: More miscellaneous pieces of
2 business. Miss Amsterdam, did you get a message?

3 MS. AMSTERDAM: I got the message, your Honor,
4 and I would be more prepared to address it on Monday, if
5 that's OK.

6 THE COURT: That is fine. A writing or a
7 citation of authority would help.

8 MS. AMSTERDAM: I had filed a motion on this
9 sometime ago that addressed the subject --

10 THE COURT: In general terms --

11 MS. AMSTERDAM: -- of what I had offered as an
12 alternative suggestion. I want to take a look at the CJA
13 act.

14 THE COURT: I have to tell you that that argument
15 is not a strong one, and in fact is one that if you think
16 about the implications of it, is a disaster.

17 MS. AMSTERDAM: Then I think that I will take --

18 THE COURT: Because I don't think there is
19 anything about the fact that he was hired under CJA that
20 makes what he did any more discoverable than it would be if
21 I were being paid coin of the realm out of the pocket of the
22 defendant, and to suggest otherwise seems to me has
23 implications that are --

24 MS. AMSTERDAM: I can appreciate that, your
25 Honor.

1 THE COURT: -- very unattractive, particularly
2 since you are being paid under CJA and you wouldn't want
3 anyone to suggest, would you, that somehow your records and
4 material that you generate in connection with this case
5 become somehow the more discoverable or the more open to my
6 authority than they would be if you were privately retained.

7 MS. AMSTERDAM: I don't think it is because he is
8 being paid that I am raising the objection.

9 THE COURT: It is not a question of raising the
10 objection. There are privileges that attach to all of us.
11 He was retained by counsel; you know that and I know that.
12 The fact that he was paid under CJA, as far as I am
13 concerned, creates no enhanced authority for me. If you
14 want to try to convince me otherwise, you are welcome to do
15 it. I just tell you that you are peddling up a hill that is
16 about 180 degrees.

17 MS. AMSTERDAM: That is fine. I had only
18 proposed that as what I thought was for expedience sake.
19 Maybe I hadn't thought through the ramifications of it, but
20 I thought if your Honor looked at it and there wasn't
21 anything there, I didn't want to by the off more than I
22 could chew in terms of the larger argument. However, I now
23 feel that the larger argument is before the court. I have
24 put in papers and I will take a look at it and supplement it
25 as timely as I can, but I intend to press the issue. I

1 think that there are Brady and Giglio and 806 issues which
2 if in fact Mr. Siddig Ali was non compos mentis in some way
3 when he made coconspirator statements, that is a fact that
4 should be brought before the jury.

5 THE COURT: Brady and Giglio relate to materials
6 in the hands of the government.

7 MS. AMSTERDAM: I would refer your Honor to a
8 case before Judge Sprizzo where a person raised the question
9 of patient/doctor privilege, and Judge Sprizzo said before
10 this man takes the stand I am ordering him to undergo a
11 psychiatric examination. He was a witness who testified in
12 court. However, Mr. Siddig Ali is in fact a straw witness
13 in this case by virtue of the coconspirator statements, and
14 if the court doesn't want to release Dr. Teisch's report --

15 THE COURT: The report doesn't exist.

16 MS. AMSTERDAM: If the court doesn't want to have
17 Dr. Teisch reduce his findings to writing, my alternative
18 request is that Mr. Siddig Ali be forced to undergo a
19 psychiatric examination. I do think that it raises an issue
20 of Brady if in fact the man is unable to discern right from
21 wrong, real from fantasy, and that fact is kept from the
22 jury. So I will look at my motion and I will supplement it.

23 THE COURT: As I said before, I think this is
24 something that people can argue. But I understand.

25 Mr. Wasserman, any idea how long --

1 MR. WASSERMAN: I will be through Monday morning.

2 THE COURT: Who is next up?

3 MR. BERNSTEIN: I am. I don't know if Mr.

4 Wasserman has more beyond his client and I don't know how
5 long the government's cross-examination will be.

6 MR. WASSERMAN: I misspoke, your Honor. I am
7 only speaking in terms of the direct.

8 THE COURT: I understand that. I am assuming
9 that their cross will be focused and relatively brief. You
10 are next?

11 MR. BERNSTEIN: I have mostly a short amount of
12 documents and stipulations which I am almost 100 percent
13 resolved with the government. Should be an hour or less.

14 THE COURT: Then?

15 MS. AMSTERDAM: Mr. Jacobs and I are calling the
16 agent witnesses next, and thereafter my case.

17 THE COURT: I take it that all goes to some
18 recognized and recognizable legal theory.

19 MS. AMSTERDAM: I don't understand what the court
20 is saying.

21 THE COURT: You and Mr. Jacobs have made various
22 offers of proof about what you are going to show through the
23 agents and you are welcome to do whatever you want to do in
24 that respect. This is to do something other than create the
25 basis for an argument for jury nullification, yes?

1 MS. AMSTERDAM: Absolutely, absolutely. I don't
2 think that you will hear the words or anything remotely like
3 jury nullification coming from Mr. Jacobs or myself in
4 summation.

5 THE COURT: Or anyone else.

6 Miss Stewart.

7 MS. STEWART: I had asked with regard to
8 Detective Napoli that I be permitted to question him about a
9 certain bootleg tape. It was 1712 and the government
10 objected to that tape coming in. I think we left it at the
11 point that you said you would like to look at the tape. I
12 don't know that it was ever provided. I don't think I ever
13 did but I would be happy to do that.

14 MR. MCCARTHY: I am sorry, I don't remember. I
15 will get you the tape.

16 THE COURT: I have to tell you I have no
17 recollection of the conversation.

18 MS. STEWART: I will put together a little letter
19 with a page from the record and bring it back to both of
20 you.

21 THE COURT: I am not saying it didn't happen.

22 MR. MCCARTHY: It certainly happened. I don't
23 remember where it was left.

24 MS. STEWART: It is the one where he said I am
25 trying to put Rahman in it.

1 THE COURT: See you next week.

2 (Proceedings adjourned until Monday, August 7,
3 1995, at 9:30 a.m.)

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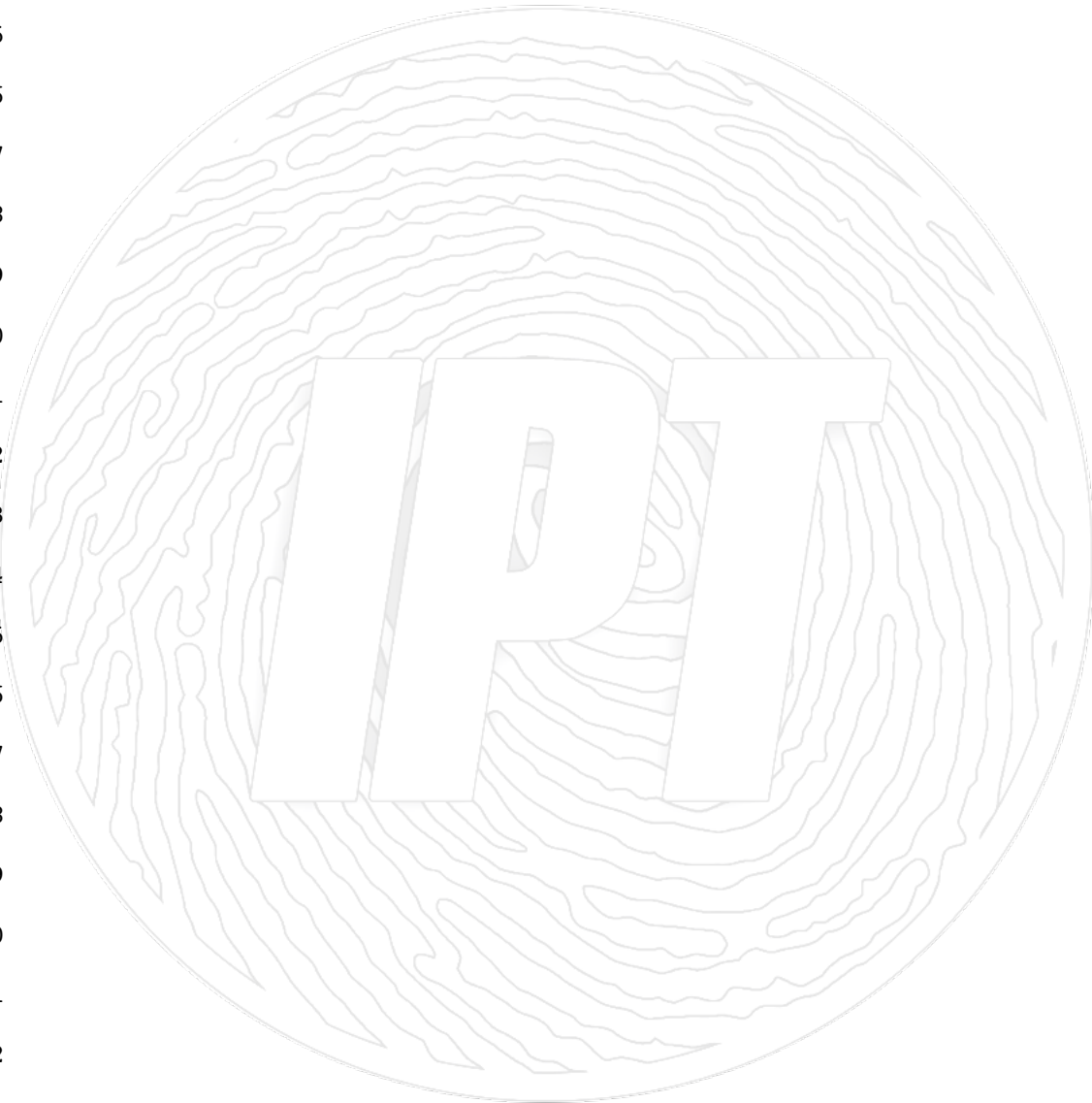
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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

5 v.

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

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

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

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

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

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

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

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

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

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

Defendants.

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S5 93 Cr. 181 (MBM)

August 4, 1995
2:30 p.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

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

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

1 THE CLERK: United States versus Wahid Saleh. Is
2 the government ready?

3 MR. McCARTHY: Ready for the government, your
4 Honor.

5 THE CLERK: Ready for the defendant?

6 MR. RUSSO: Ready for the defendant, your Honor.

7 THE COURT: Mr. Russo, do you have an
8 application?

9 MR. RUSSO: Your Honor, the defendant has
10 authorized me to withdraw his previously entered plea of not
11 guilty and to enter a plea of guilty to Count 5 of the
12 indictment before the court, in satisfaction of the charges
13 against him.

14 THE COURT: Mr. Saleh, I have been told that you
15 want to change your plea as to Count 5 from not guilty to
16 guilty, is that correct?

17 DEFENDANT WAHID SALEH: Yes.

18 THE COURT: Before I accept your guilty plea, I
19 am going to ask you some questions so that I can establish
20 to my satisfaction that you are pleading guilty because you
21 are guilty and not for some other reason. If you don't
22 understand any of my questions or if you want to talk to
23 either of your attorneys for any reason, let me know and I
24 will give you whatever chance you need to do that, because
25 it is important in order to have a valid plea that you

1 understand each of my questions before you answer.

2 Are you able to speak and understand English well
3 enough to go ahead with this proceeding?

4 DEFENDANT WAHID SALEH: Yes, sir.

5 THE COURT: Ms. Schwartz, would you please swear
6 Mr. Saleh. Do you swear or affirm?

7 DEFENDANT WAHID SALEH: I affirm.

8 (The defendant Wahid Saleh duly affirmed)

9 BY THE COURT:

10 Q Mr. Saleh, do you understand that, having been
11 sworn, your answers to my questions will be subject to the
12 penalties of perjury or of making a false statement if you
13 do not answer truthfully? Do you understand that?

14 A I understand that.

15 Q Would you feel more comfortable sitting down? If
16 you would, you are free to do that.

17 How old are you, Mr. Saleh?

18 A Thirty-nine.

19 Q How far did you go in school?

20 A Till I was 15 years old.

21 Q Where did you go to school?

22 A I went to Cairo, Egypt.

23 Q In Cairo, Egypt?

24 A Yes.

25 Q Where did you learn to speak English?

1 A I learned to speak English when I was working on
2 ships, and part, a little bit in school.

3 Q How long have you been in this country?

4 A Since 1982.

5 Q '82?

6 A Yes, sir.

7 Q Are you now or have you recently been under the
8 care of a doctor or a psychiatrist?

9 A No, your Honor.

10 Q Have you ever been hospitalized or treated for
11 narcotics addiction?

12 A No.

13 Q Have you ever been addicted to narcotics?

14 A Excuse me.

15 Q Have you ever been addicted to narcotics?

16 A No.

17 Q Have you taken any drugs, medicine or pills or
18 drunk any alcoholic beverages in the last 24 hours?

19 A No, your Honor.

20 Q How do you feel today?

21 A Fine.

22 Q Do you understand what is happening today?

23 A Yes, your Honor.

24 THE COURT: Mr. McCarthy, Mr. Russo, does either
25 of you have any doubt that Mr. Wahid Saleh is competent to

1 enter a plea?

2 MR. McCARTHY: The government is fully satisfied
3 that he is competent, your Honor.

4 THE COURT: That is the entire government. I am
5 asking you.

6 MR. McCARTHY: I personally am also satisfied.

7 THE COURT: Mr. Russo.

8 MR. RUSSO: I am satisfied, your Honor.

9 THE COURT: I find that Mr. Saleh is competent to
10 enter a plea.

11 Q Have you had enough of a chance to discuss this
12 case with Mr. Russo, including any possible defenses that
13 you might have to the charge that you are offering to plead
14 guilty to?

15 A Yes, your Honor.

16 Q Are you satisfied with Mr. Russo's
17 representation?

18 A Yes, your Honor.

19 Q You and I have had several discussions about your
20 relationship with Mr. Nooter, who has also represented you
21 at trial, and you know what my views are on that subject,
22 and you have had disputes with Mr. Nooter about trial
23 tactics and about what he is doing and not doing, correct?

24 A He was doing the best for me.

25 Q First of all, are you satisfied with that now?

1 A Yes.

2 Q Secondly, whatever disputes you had with Mr.
3 Nooter, are you pleading guilty because you had those
4 disputes or for some other reason?

5 A No --

6 Q Not because of any dispute with Mr. Nooter?

7 A Yes, sir.

8 Q I want to explain to you your constitutional
9 rights.

10 MR. McCARTHY: Your Honor, I think the last
11 exchange was ambiguous. He answered yes.

12 Q Is it correct that you are not pleading guilty
13 because you have had disputes with Mr. Nooter?

14 A Yes.

15 Q Yes, it is correct?

16 A Yes.

17 Q Thank you. I am now going to explain your
18 constitutional rights. Because you are participating in a
19 trial or have been participating in a trial up until today,
20 you know that under the Constitution and laws of the United
21 States you are entitled to a speedy and public trial by a
22 jury under the charges contained in this indictment,

23 S5 93 Cr. 181?

24 A Yes, your Honor.

25 Q At a trial you would be presumed to be innocent

1 and the government would be required to prove you guilty by
2 competent evidence and beyond a reasonable doubt before a
3 jury could return a guilty verdict. The jury would have to
4 agree unanimously that you were guilty and you would not
5 have to prove that you were innocent. Do you understand
6 that?

7 A Yes, your Honor.

8 Q At a trial and at every stage of your case, you
9 would be entitled to be represented by a lawyer, and if you
10 could not afford a lawyer, then one would be appointed to
11 represent you. Do you understand that?

12 A Yes, your Honor.

13 Q During a trial the witnesses for the government
14 would have to come to court and testify in your presence, as
15 they did at trial. Your lawyer could cross-examine
16 witnesses and could subpoena witnesses and offer evidence in
17 your behalf. Do you understand that?

18 A Yes, your Honor.

19 Q At a trial, although you would have the right to
20 testify if you chose to do so, you would also have the right
21 not to testify, and if you decided not to testify, then
22 nobody could draw any inference or suggestion of guilt from
23 the fact that you did not testify, if that is what you
24 decided to do. Do you understand that?

25 A Yes, your Honor.

1 Q If you were convicted at trial, you would have
2 the right to appeal that verdict. Do you understand that?

3 A Yes, your Honor.

4 Q Even now as you are entering this plea, you have
5 a right to change your mind, decide to continue your plea of
6 not guilty, and continue the trial until the verdict. Do
7 you understand that?

8 A Yes, your Honor.

9 Q If you plead guilty and if I accept your plea,
10 you will give up your right to a trial and the other rights
11 that I have just mentioned. There will be no trial and I
12 will enter a judgment of guilty and sentence you on the
13 basis of your plea after I have considered a presentence
14 report and whatever submissions I get from your attorneys
15 and from the government. Do you understand that?

16 A Yes, your Honor.

17 Q If you plead guilty, you will also have to give
18 up your right not to incriminate yourself because I may ask
19 you questions about what you did in order to satisfy myself
20 that you are in fact guilty of the crime that you have
21 offered to plead guilty to, and you will have to admit your
22 guilt. Do you understand that?

23 A Yes, your Honor.

24 Q You have a copy of the indictment, correct?

25 A Yes, your Honor.

1 Q And you have gone over the charges against you,
2 in particular Count 5, with Mr. Russo?

3 A Yes, sir.

4 Q You understand that you are charged in that count
5 with participating in a conspiracy, which is an unlawful
6 agreement, to bomb and transport explosives, carry
7 explosives in interstate transport. That is the charge in
8 that count.

9 A Yes, your Honor.

10 Q You understand that the maximum possible penalty,
11 that is, the most that I could sentence you to, is five
12 years imprisonment, a \$250,000 fine, a \$50 special
13 assessment, and up to three years of supervised release
14 after your release from any jail term. Do you understand
15 that?

16 A Yes, your Honor.

17 Q Do you understand also that in any event there is
18 a mandatory \$50 special assessment that I have to impose
19 regardless of any other penalty?

20 A Yes, your Honor.

21 Q I mentioned three years of supervised release.
22 Do you understand that one of the features of supervised
23 release is that there are certain terms that you have to
24 comply with, and if you don't comply with those terms you
25 can be sent back to jail for the entire term of the

1 supervised release. So, for example, if you have three
2 years of supervised release and after two years you violated
3 one of the terms, you could be sent back to jail for another
4 three years. Do you understand that?

5 A Yes, sir.

6 Q There is a probation violation charge pending in
7 New Jersey, is that correct?

8 A Yes, your Honor.

9 Q You understand that whatever sentence I impose
10 here could conceivably be consecutive to whatever sentence
11 you get in New Jersey or, to put it another way, if I impose
12 a sentence here first there is no guarantee that they won't
13 impose a consecutive sentence there. Do you understand
14 that?

15 A Yes, your Honor.

16 Q Are there any other charges pending against you
17 in any other court, that you are aware of?

18 A No, your Honor.

19 Q Do you understand also that this case is governed
20 by what are called the sentencing guidelines, which means
21 that when I get the presentence report, I will also receive
22 a recommended range of sentence? I don't know what the
23 range is going to be, but let's say that it is, say, between
24 four and five years. I would have to sentence you to
25 between four and five years unless I find that there is

1 present in this case some fact or some element that suggests
2 that I should go, in my example, below the guideline range,
3 but if I did that, the government would have the right to
4 appeal that sentence. Do you understand that?

5 A Yes, your Honor.

6 Q If the guideline range is below five years, I
7 could also go above the guideline range if I felt that was
8 appropriate, but if I did, you would have the right to
9 appeal that sentence. Do you understand that?

10 A Yes, your Honor.

11 Q But in no event can I go above five years. Do
12 you understand?

13 A Yes.

14 Q The only way that I could go that nobody can
15 appeal from is if I got a letter from the government saying
16 that you provided substantial cooperation. That is the only
17 way that I could go below that guideline range. Do you
18 understand that?

19 A Yes, sir.

20 THE COURT: It is my understanding that there is
21 a plea agreement dated August 1 in connection with this. Is
22 that correct?

23 MR. MCCARTHY: That is correct, your Honor.

24 THE COURT: Mr. Russo, I have got a letter dated
25 August 1 that I believe has your signature on it, is that

1 right?

2 MR. RUSSO: Yes, your Honor.

3 THE COURT: And has your client's signature, is
4 that right?

5 MR. RUSSO: Yes, your Honor, it does.

6 THE COURT: Are you satisfied that your client
7 understood it before he signed?

8 MR. RUSSO: Yes, your Honor.

9 Q In this letter, Mr. Saleh, the government says
10 that they agree that under the guideline calculation that I
11 mentioned a moment ago, you would be entitled to a 4-point
12 reduction for minimal participation and a 2-point reduction
13 for acceptance of responsibility. That is the agreement.
14 Do you understand that?

15 A Yes, sir.

16 Q But do you understand also that I have to make my
17 own guideline calculation, so although this agreement is
18 binding on the government it is not binding on me? Do you
19 understand that?

20 A Yes, your Honor.

21 Q All this achieves is that the government cannot
22 take an appeal if I apply the 4-point reduction for minimal
23 participation and the 2-point reduction for acceptance of
24 responsibility. You understand that?

25 A Yes, your Honor.

1 Q Other than the agreement contained in that
2 letter, are you aware of any other agreement between you and
3 the government that in any way relates to this plea?

4 A No, your Honor.

5 Q Orally or in writing?

6 A No, your Honor.

7 Q Has anyone made any promise or inducement to you
8 other than what is contained in this letter in order to get
9 you to plead guilty?

10 A No, your Honor.

11 Q In particular, has anyone made any promise to you
12 as to what your sentence would be in this case?

13 A No, your Honor.

14 Q I am not going to ask the government for a
15 proffer as to what the evidence would be as to Count 5
16 because I have already seen it, and I will tell you that I
17 have found, because I have denied a dismissal motion, that
18 it is sufficient as a matter of law to support a conviction.
19 But, Mr. Saleh, would you tell me in your own words what it
20 is that you believe that you have done that makes you think
21 that you are guilty of the crime charged in Count 5 of the
22 indictment.

23 DEFENDANT WAHID SALEH: Your Honor, I violated
24 the law in Section 842(a)(3)(A), Title 18, United States
25 Code. On June 23, 1993, I agreed to sell cars to Siddig

1 Ali, and he was going to use this car to transfer explosives
2 between garage in Queens, interstate to Newark, New Jersey
3 Airport, and I don't know what he was going to use it, you
4 know, to do with it. I have no knowledge about anything
5 else, that he was going to do anything else with it.

6 Q Did you understand that at a minimum he was going
7 to use it to transport explosives?

8 A Yes, your Honor. And something else I was --

9 Q Yes.

10 A On July 21, me and -- I entrapped my exwife to
11 come into Wildwood, New Jersey, without she have any
12 knowledge I was there, and when she get there -- she had the
13 three kids and husband, and she cannot call the cops -- and
14 me and anybody -- and it was my fault, and she went to the
15 trial. I was asking the lawyers to go there to be witness
16 in this trial, to tell the truth about her, and she find
17 guilty, and I wish I know that the Judge Rodriguez -- I hope
18 if some way I can take the punishment for her, because it
19 was my fault.

20 Q That doesn't relate to this trial but I
21 understand it was something that you wanted to say.

22 MR. RUSSO: Yes, your Honor.

23 Q Are you pleading guilty to the crime charged in
24 Count 5 because you are in fact guilty of it?

25 A Yes, your Honor.

1 THE COURT: Mr. McCarthy, do you believe there is
2 a sufficient factual predicate for the plea?

3 MR. McCARTHY: Yes, your Honor.

4 THE COURT: Do you, Mr. Russo?

5 MR. RUSSO: Yes, your Honor.

6 Q Mr. Saleh, since you have acknowledged that you
7 are guilty of the charge in Count 5 of the indictment, since
8 you know of your right to a trial, you know what the maximum
9 possible punishment is, since you know the maximum special
10 assessment and the other possible terms of supervised
11 release, and since you are voluntarily pleading guilty, I am
12 going to accept your plea of guilty and enter a judgment of
13 guilty on that plea.

14 Is there any reason we should not have a
15 presentence report in this case?

16 MR. RUSSO: No, your Honor.

17 THE COURT: I will direct that a presentence
18 report be prepared.

19 Counsel, Mr. Russo, do you want to be present for
20 any interview in connection with that report?

21 MR. RUSSO: Yes, your Honor.

22 THE COURT: Then I will note that.

23 Mr. Saleh, it is in your interests to cooperate
24 with the people who prepare the presentence report, because
25 the only basis I have for deciding on a sentence is what I

1 have heard during the trial, what I have heard today and
2 what I get in any submissions from your lawyer, from the
3 government, and what I see in the report. So the report is
4 a pretty important component. Tell them whatever they ask
5 you to tell them that Mr. Russo says you should tell them,
6 both the good things, obviously, and if there is anything
7 not so good that they have asked for that Mr. Russo tells
8 you to disclose, you should disclose it, because if they
9 find it out on their own and you haven't disclosed it, they
10 will simply tell me that you haven't disclosed it, and that
11 is not helpful from your standpoint.

12 Sentencing will be at 9:15 on November 1, and
13 Mr. Saleh will remain in custody until then.

14 MR. McCARTHY: May I put one thing on the record,
15 your Honor?

16 THE COURT: Yes.

17 MR. McCARTHY: Mr. Russo and I consulted on what
18 was handed up to your Honor as Exhibit 1 for purposes of the
19 plea.

20 THE COURT: Yes. That is a letter dated July 31?

21 MR. McCARTHY: Yes, your Honor. Well,
22 collectively the documentation before the court, and that is
23 the totality of the agreements between the parties. I just
24 wanted the record to reflect that.

25 THE COURT: Is that correct, Mr. Russo?

1 MR. RUSSO: Yes, your Honor.

2 THE COURT: And to the extent that there is
3 anything in there that is signed, did you review that with
4 Mr. Saleh before he signed it?

5 MR. RUSSO: Yes, your Honor.

6 THE COURT: Are you satisfied that he understood
7 it?

8 MR. RUSSO: Yes, your Honor.

9 THE COURT: Mr. Russo, I have an advice of rights
10 form here with a rider on it that I believe has your
11 signature on it, is that correct?

12 MR. RUSSO: Yes, it does, your Honor.

13 THE COURT: It has your signature on the top of
14 the form and it has your initials on the rider, is that
15 right?

16 MR. RUSSO: Yes, your Honor.

17 THE COURT: And your client's signature and
18 initials?

19 MR. RUSSO: Yes, your Honor.

20 THE COURT: You are satisfied that he understood
21 it before he signed it.

22 MR. RUSSO: Yes.

23 THE COURT: I will make it part of the record.
24 It is not dated. Is it all right if I date it today?

25 MR. RUSSO: Absolutely.

1 THE COURT: Is there anything else?

2 MR. McCARTHY: Thank you.

3 THE COURT: Good luck to you, sir.

4 (Pages 15829 - 15832 sealed)

5 (Proceedings adjourned until Monday, August 7,

6 1995, at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,"
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"

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

IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"

a/k/a "John Medley,"

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

AMIR ABDELGANI,
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.

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S5 93 Cr. 181 (MBM)

August 30, 1995
9:30 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

MARY JO WHITE

United States Attorney for the
Southern District of New York

BY: ANDREW McCARTHY

PATRICK FITZGERALD

ROBERT KHUZAMI

Assistant United States Attorneys

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ANDREW PATEL

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ANTHONY RICCO

Attorney for Defendant Ibrahim A. El-Gabrownny

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VALERIE C. AMSTERDAM

Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON

Attorney for Defendant Tarig Elhassan

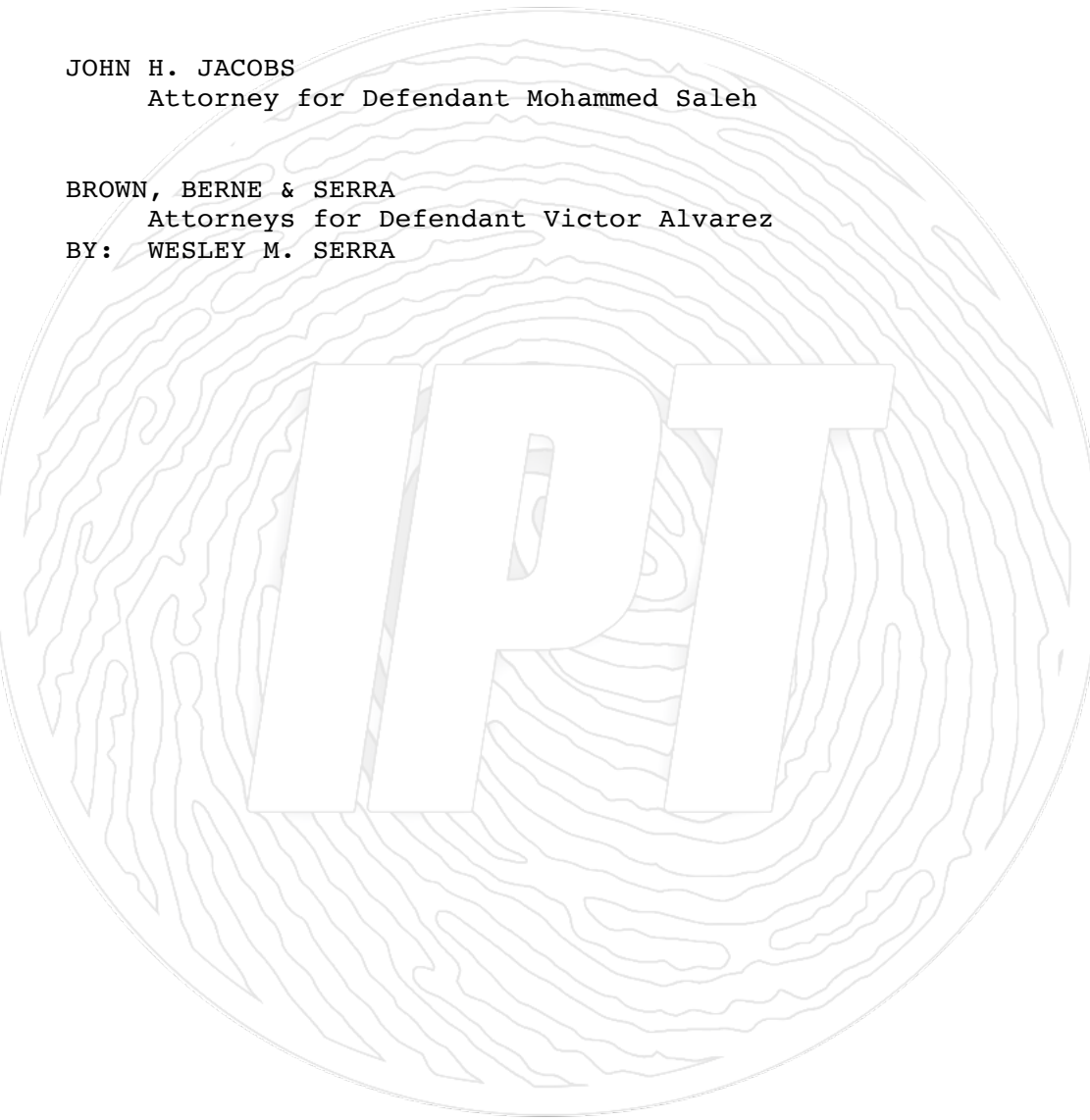
APPEARANCES CONTINUED

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BY: CHARLES D. LAVINE

JOHN H. JACOBS
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Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA



1 (In the robing room)

2 THE COURT: Thanks for coming in. As should be
3 obvious to the more observant among you, I have a swelling
4 in the lower part of my face. I talked to a physician about
5 it last night, and I think it is some kind of allergic
6 reaction for which I intend to see somebody. It is not
7 painful other than to look at. It is sort of like having an
8 office at 26 Federal Plaza: it is disgusting but when you
9 are inside you don't have to see it (laughter).

10 What I would like to do is to take the same
11 people we had last night and go into the jury room and at
12 least explain it to them so that they don't come out and
13 start at some point wondering whether the trial is being
14 presided over by the second coming of the late President
15 Nixon (laughter).

16 MR. PATEL: I am sure your Honor has not taken up
17 chewing tobacco.

18 THE COURT: And also I haven't started gathering
19 nuts in anticipation of the winter.

20 MR. MCCARTHY: What they will say is that the
21 last you were seen publicly was when you told them they were
22 being sequestered.

23 THE COURT: I would like to clear it up, so we
24 don't have to think it is something terrible.

25 Also, Friday, the charging conference. Can we

1 assume that that is lawyers only?

2 MR. PATEL: Yes.

3 MS. AMSTERDAM: Yes.

4 THE COURT: I think that is the easier way to do
5 it. So what I would ask is if the same attorneys, Ms.
6 Stewart and Ms. London and Mr. McCarthy, would accompany me,
7 we will go in.

8 MS. LONDON: Your Honor, getting back to the
9 charging conference on Friday, have you set a time for that
10 yet?

11 THE COURT: No.

12 MS. AMSTERDAM: The earlier the better.

13 THE COURT: Fine.

14 MS. LONDON: It is important for me. I have a
15 medical appointment early in the morning. However, if it is
16 going to be early, I have got time to make other
17 arrangements.

18 THE COURT: What would your preference be?

19 MS. LONDON: I can roll with the majority. If
20 the majority want early, so that they can --

21 THE COURT: I would prefer to do it at 9:30, and
22 then just work through it and get done.

23 MR. STAVIS: I feel very strongly that that is
24 what we should do. (Laughter)

25 THE COURT: All right:

1 MR. JACOBS: Did you tell the judge you were to
2 withdraw that application?

3 MR. MCCARTHY: We are going to punt --
4 (laughter) -- we are withdrawing our application on Mr.
5 Saleh's former counsel's representations.

6 THE COURT: Good.

7 MR. MCCARTHY: I will take that tough call off
8 your hands.

9 MR. JACOBS: Thank you, your Honor.

10 (In the jury room, with Ms. London, Ms. Stewart,
11 and Mr. McCarthy present)

12 THE COURT: The only reason I am here is that the
13 observant among you may see that I have some swelling on the
14 bottom of my face. Rest assured, it is painful to look at
15 but it is not painful for me. I talked to a doctor about
16 it. It fits into the category of hideous but not serious.
17 I am going to see somebody about it within the next couple
18 of days, so don't worry. It is probably an allergic
19 reaction or something.

20 JUROR NO. 2: We hope it is not from the jury.

21 (Laughter)

22 THE COURT: I can assure you it is not. See you
23 inside.

24

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1 (In open court; jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 JURORS: Good morning, your Honor.

4 THE COURT: Mr. Fitzgerald.

5 MR. FITZGERALD: Thank you, Judge.

6 THE COURT: The witness hasn't been sworn yet.

7 MR. FITZGERALD: The government calls Special
8 Agent Michael Dressler.

9 MICHAEL DRESSLER,
10 called as a witness by the government,
11 having been duly sworn, testified as follows:

12 THE COURT: Go ahead, Mr. Fitzgerald.

13 MR. FITZGERALD: Thank you, Judge.

14 DIRECT EXAMINATION

15 BY MR. FITZGERALD:

16 Q Agent Dressler, if I could ask you to keep your
17 voice up or pull the microphone closer to you. Probably the
18 one in front of you is easiest. It is directional.

19 Would you tell the jury what you do for a living.

20 A I am a special agent for the Federal Bureau of
21 Investigation.

22 Q Can you tell the jury how long you have been an
23 FBI agent?

24 A Next month it will be 10 years.

25 Q Let me approach you with an exhibit that has been

1 marked as Government's Exhibit 35155F as in Frank. Do you
2 recognize the person depicted in 35155F?

3 A Yes, I do.

4 Q Can you tell the jury who he is?

5 A Certainly. The person in 35155F is a man that I
6 know as Marcus Robertson, R-O-B-E-R-T-S-O-N.

7 Q Does Marcus Robertson son go by any other name?

8 A Yes, he does.

9 Q Can you tell us the other name he goes by?

10 A Talib Abdul Salaam.

11 Q If you could spell that for the reporter.

12 A Certainly. Talib, T-A-L-I-B as in boy, Abdul,
13 A-B-D-U-L, Salaam is S-A-L-A-A-M.

14 Q Did there come a time when you met this person
15 Marcus Robertson?

16 A Yes.

17 Q Can you tell the jury where and when you first
18 met him?

19 A The first time I met Mr. Robertson was August 2,
20 1991. The place was the Delaware County Prison in Chester,
21 Pennsylvania.

22 Q At the time you met him, was he in custody?

23 A Yes, he was.

24 Q Had you participated in his actual arrest?

25 A No, I had not.

1 Q From his appearance, did it appear whether or not
2 he had been shot during his arrest?

3 A He had not.

4 Q Do you know how long before he had been arrested
5 you saw him?

6 A Mr. Robertson was arrested on July 28, 1991, so I
7 believe we are talking a period of three days.

8 Q Did there come a time when you were present in a
9 courtroom when the person Marcus Robertson pled guilty to
10 some charges?

11 A Yes, I was.

12 Q Did those charges include the robbery of banks
13 and post offices?

14 A Yes, sir, they did.

15 Q What is your understanding of the penalties he
16 faced at the time he pled guilty?

17 A At the time Mr. Robertson pled guilty, he was
18 looking at a possible sentence of life.

19 Q Did there come a time when the person Marcus
20 Robertson entered into a cooperation agreement with the
21 government office in Brooklyn?

22 A That is correct.

23 Q Did he actually become a government witness and
24 testify at a different proceeding?

25 A Yes, he certainly did.

1 Q So we are clear, is it fair to say that no one in
2 this courtroom was a defendant in that proceeding?

3 A That is correct.

4 Q I have also placed before you a photograph
5 premarked as Government's Exhibit 35155L, and I ask you to
6 look at that photograph.

7 A Yes, sir.

8 Q Do you recognize the person depicted in that
9 photograph?

10 A Yes, I do.

11 Q Who is he?

12 A The person depicted in this photograph, 35155L,
13 is a man known to me as Suliman El-Hadi, which is
14 S-U-L-I-M-A-N, El-Hadi is E-L dash H-A-D-I.

15 Q Do you know of the relationship if any between
16 Suliman El-Hadi, the person in 35155L, and Marcus Robertson,
17 the person depicted in 35155F?

18 A Yes, I do.

19 Q What is that relationship?

20 A Mr. Robertson is married to the daughter of
21 Suliman El-Hadi, so their relationship would be
22 father-in-law and son-in-law.

23 MR. FITZGERALD: May I have one moment, your
24 Honor.

25 Your Honor, I would offer those photographs at

1 this time.

2 MR. WASSERMAN: No objection.

3 THE COURT: 35155F and L are received without
4 objection.

5 (Government's Exhibits 35155F and 35155L received
6 in evidence)

7 MR. FITZGERALD: And I have no further questions.

8 THE COURT: Mr. Wasserman, representing
9 Mr. Hampton-El. Go ahead.

10 CROSS-EXAMINATION

11 BY MR. WASSERMAN:

12 Q Good morning,

13 A Good morning.

14 Q When you went down to Chester, Pennsylvania, at
15 that time were you aware what he was charged with in
16 Chester, Pennsylvania?

17 A Yes, sir.

18 Q What was he charged with, sir?

19 A There were a list of charges, sir. One of them
20 was possession of a weapon, possession of illegal
21 ammunition, possession of -- driving a motor vehicle without
22 a license. He was also wanted by United States --

23 Q I asked you what he was charged with, sir.

24 MR. FITZGERALD: Objection.

25 MR. WASSERMAN: The question was fact-specific,

1 Judge.

2 THE COURT: If he was starting to say that there
3 was an outstanding warrant, that would relate to charges.
4 If you don't want to know about outstanding warrants, you
5 can confine him to the charges pending against him.

6 MR. WASSERMAN: I have no trouble taking it one
7 question at a time.

8 Q The question was, what was he charged with in
9 Chester, Pennsylvania?

10 THE COURT: That was not the question, actually.
11 The question was what was he charged with. Do you want to
12 confine it to Chester?

13 MR. WASSERMAN: Your Honor --

14 Q Go ahead. Your answer?

15 A As best the common law of Pennsylvania charges
16 were the three that I just recited and some others that I
17 can't recall.

18 Q The weapon in question, sir, was a handgun, was
19 it not?

20 A Yes.

21 Q And you say that Mr. Robertson has been a
22 cooperating witness for the government?

23 A That is correct.

24 Q And he is alive and well?

25 A That is correct.

1 MR. WASSERMAN: Thank you, sir. No further
2 questions.

3 MR. FITZGERALD: Nothing further.

4 THE COURT: Thank you very much. You are
5 excused.

6 (Witness excused)

7 THE COURT: May I see Mr. Jacobs, Mr. Wasserman,
8 and the government at the side briefly.

9 THE COURT: Or Ms. Amsterdam -- I am sorry. Mr.
10 Bernstein. Come on up.

11 (At the side bar)

12 THE COURT: I thought Mr. Jacobs had asked for an
13 instruction. Is this the point at which the instruction
14 should be given?

15 MS. AMSTERDAM: Yes.

16 THE COURT: And the instruction should be that
17 this evidence is received only with respect to
18 Mr. Hampton-El and that it does not involve any charges
19 against any defendant in this case.

20 MS. AMSTERDAM: That is right.

21 MR. WASSERMAN: I had also asked for something to
22 the effect that none of the defendants in this case were
23 charged as coconspirators in any manner involving
24 Mr. Robertson and none of the cases involving
25 Mr. Robertson --

1 THE COURT: No, because I don't --

2 MR. WASSERMAN: None of the defendants in this
3 case were charged as coconspirators in any case involving
4 Mr. Robertson.

5 THE COURT: I am not going into that detailed an
6 explanation. I think it is sufficient to say that the
7 evidence is received only with respect to Mr. Hampton-El and
8 that the charges against Mr. Robertson do not involve any
9 other defendant in this case including Mr. Hampton-El.

10 MR. WASSERMAN: That's fine.

11 MS. AMSTERDAM: Fine.

12 MR. FITZGERALD: That is fine.

13 (In open court)

14 THE COURT: I just wanted to point out, ladies
15 and gentlemen, that the testimony of the last witness is
16 received only with respect to Mr. Hampton-El and that the
17 charges involved in that case do not involve any defendant
18 in this case, including Mr. Hampton-El.

19 MR. MCCARTHY: Your Honor, the government calls
20 John Casale. While we are getting the witness, I would ask
21 to advise the jury of a brief stipulation.

22 THE COURT: Go ahead.

23 MR. MCCARTHY: Ladies and gentlemen, it is
24 stipulated by the government, by me, and by Mr. Jacobs as
25 counsel for Mohammed Saleh as follows: That United States

1 Secret Service Agent Brian Parr would testify that he
2 recovered an expired United Arab Emirates driver's license
3 from Mohammed Saleh's wallet at the time of Saleh's arrest
4 on the evening of June 23, 1993.

5 JOHN CASALE,

6 called as a witness by the government,
7 having been duly sworn, testified as follows:

8 THE COURT: Detective, if you could pull your
9 chair forward and lean into the microphones, talk into it so
10 everybody can hear you. Thank you.

11 MR. MCCARTHY: May I proceed, your Honor?

12 THE COURT: Please.

13 (Continued on next page)
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1 DIRECT EXAMINATION

2 BY MR. MCCARTHY:

3 Q Good morning, sir.

4 A Good morning.

5 Q Can you tell us where you are a detective?

6 A Yes, with the New York City Police Department.

7 Q How long have you been with the NYPD?

8 A Twenty-six years.

9 Q Are you currently part of a task force made up of
10 federal, state and local law enforcement agencies?

11 A Yes, I am.

12 Q Were you part of that task force in 1993?

13 A Yes.

14 Q I want to direct your attention to June 19, 1993.
15 Did you have a surveillance assignment that day?

16 A Yes, I did.

17 Q Who were you assigned to surveil on June 19,
18 1993?

19 A Mr. Siddig Ali.

20 Q I want to ask you to answer this question yes or
21 no: Had you surveilled Mr. Siddig Ali on other occasions
22 prior to June 19, 1993?

23 A Yes.

24 Q Directing your attention to the time shortly
25 after 4:00 in the afternoon, can you tell us where you were

1 posted?

2 A I was in the vicinity of 112 Brunswick Street,
3 Jersey City, New Jersey.

4 Q What did you know that residence as?

5 A The residence of Mr. Siddig Ali.

6 Q Did there come a time shortly after 4:00 in the
7 afternoon on June 19, 1993, when you saw Mr. Siddig Ali get
8 into a van?

9 A Yes.

10 Q Can you describe to us what you saw?

11 A I saw him get into a van -- I don't remember the
12 color of the van -- and it was driven by an unknown person
13 to me at that time.

14 Q Were there anybody else in the van besides
15 Mr. Siddig Ali and the person you say you did not know?

16 A No, just the driver.

17 Q Did there come a time that afternoon that you got
18 a chance to observe the driver?

19 A Yes.

20 Q Can you give us a description of what he looked
21 like?

22 A He was very tall, approximately six four, 6 foot
23 4 inches, thin built, 200, 210 pounds.

24 Q You say you had seen Mr. Siddig Ali on other
25 occasions?

1 A Yes.

2 Q Was the driver that you have described taller or
3 shorter than Mr. Siddig Ali?

4 A Taller than Mr. Siddig Ali.

5 Q Can you tell us, please, where it was that you
6 saw Mr. Siddig Ali first get into the van?

7 A I believe it was around the corner from his
8 residence.

9 Q What happened after he got -- withdrawn. Who was
10 driving?

11 A The tall gentleman, 6 foot 4.

12 Q Mr. Siddig Ali was in the passenger side?

13 A That is correct.

14 Q Can you tell us where the van went after
15 Mr. Siddig Ali got into it?

16 A It made a stop in New Jersey, at 926 West Side
17 Avenue.

18 Q What happened at 926 West Side Avenue?

19 A The driver pulled to the curb, partly on the
20 sidewalk, and got out and went in 926.

21 Q Did you maintain your surveillance in the
22 vicinity of 926 West Side Avenue?

23 A Yes.

24 Q Did there come a time that you saw the driver of
25 the van?

1 A Yes.

2 Q About how long after he went inside 926 West Side
3 Avenue, did you see him?

4 A Approximately five minutes.

5 Q What happened then?

6 A He came out, got back in the van, and the van
7 drove away.

8 Q Did you maintain your surveillance of the van?

9 A Yes.

10 Q Where did the van go?

11 A We followed the van into Manhattan.

12 Q Did you follow it towards a specific location in
13 Manhattan?

14 A Yes, a nursery on White Street between Church and
15 Avenue of the Americas.

16 Q What do you mean by a nursery?

17 A Where you buy flowers and, you know, soil,
18 fertilizer.

19 Q Did you maintain your surveillance in the
20 vicinity of the nursery?

21 A Yes.

22 Q Can you tell us as best you recall exactly where
23 the nursery was?

24 A The nursery is located between Church and Avenue
25 of the Americas on White -- White is the corner.

1 Q Did there come a time that you saw Mr. Siddig Ali
2 and this other man that you have described, the driver, come
3 out of the nursery?

4 A Yes.

5 Q Can you tell us what you saw them do when they
6 came out of the nursery?

7 A They were loading some bags into the van.

8 Q At that point when they were loading the vans,
9 were you able to see exactly what it was that they were
10 loading?

11 A No.

12 Q Did you maintain your surveillance of the van?

13 A Yes.

14 Q Where did it go?

15 A It went over to First Avenue and 11th Street.

16 Q What happened there?

17 A They parked on the east side of First Avenue.

18 Q When you say First Avenue and 11th Street, you
19 mean here in lower Manhattan?

20 A Yes.

21 Q Did they depart the area of the van? That is,
22 did they get out and walk away?

23 A Yes.

24 Q After they did that, did you do anything?

25 A Yes. I took my shirt off and a basketball from

1 the trunk of the car and bounced it along the side of the
2 street.

3 Q Did you bounce it along the side of the van?

4 A Yes.

5 Q Did you look inside the van?

6 A Yes, I did.

7 Q What did you see?

8 A I saw bags of fertilizer.

9 MR. MCCARTHY: May I have just a moment?

10 THE COURT: Yes.

11 Q Sir, I don't believe I asked you this: With
12 respect to the driver that you saw, you described him as --
13 withdrawn. How did you describe him?

14 A He was tall, approximately 6 foot 4, 200 to 210
15 pounds.

16 Q What did his racial makeup appear to be?

17 A Middle Eastern.

18 Q Can you describe his complexion?

19 A I don't remember.

20 MR. MCCARTHY: Thank you, sir.

21 THE COURT: Any cross? None. Thank you very
22 much. You are excused.

23 (Witness excused)

24 MR. JACOBS: Your Honor, may I approach with Mr.
25 McCarthy?

1 THE COURT: Yes.

2 (At the side bar)

3 MR. JACOBS: Your Honor, the government by letter
4 had informed us that they were going to call Colleen Barry,
5 basically two matters. One is the tape chart, which I don't
6 have a dispute. The second matter concerns the reproduction
7 of CM 1. As your Honor is aware, we put some evidence in
8 that it might have been reproduced by Salem. I have no
9 objection to putting on Ms. Barry, who is going to testify
10 to obtaining from the government translators their copies of
11 CM 1.

12 MR. MCCARTHY: From the files of the squad.

13 MR. JACOBS: From the files of the squad.
14 However -- and it is not a criticism of Mr. McCarthy -- he
15 brought them this morning. I don't think necessarily I want
16 to play them privately at this point but I really need to
17 have about 15 minutes to have Mr. Ginsberg I look at the
18 outside of the tapes. I would like to discuss it with Ms.
19 Amsterdam. I can move it along very quickly if we can get
20 our ducks in order, if that is all right.

21 MR. MCCARTHY: The only relevance as we see if --

22 THE COURT: I don't have to have a long
23 discussion about it. I can't argue with somebody who tells
24 me that he can move it along if he takes 15 minutes. He has
25 been in good faith.

1 MS. AMSTERDAM: Thank you.

2 THE COURT: When?

3 MR. JACOBS: I think she is coming on now.

4 MR. MCCARTHY: We can put on --

5 THE COURT: Can we put on a few now and have it
6 coincide with the break?

7 MR. JACOBS: Even better.

8 (In open court)

9 MR. MCCARTHY: Your Honor, the government calls
10 Peter Ronayne.

11 PETER JAMES RONAYNE,
12 called as a witness by the government,
13 having been duly sworn, testified as follows:

14 MR. MCCARTHY: May I proceed, your Honor?

15 THE COURT: Yes.

16 (Continued on next page)
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1 DIRECT EXAMINATION

2 BY MR. MCCARTHY:

3 Q Good morning, Agent Ronayne.

4 A Good morning.

5 Q Can you tell us how you are employed.

6 A I work for the Federal Bureau of Investigation.

7 Q Are you an FBI agent?

8 A Yes, I am.

9 Q How long have you with the FBI?

10 A Twelve years.

11 Q Are you with the New York office?

12 A Yes, I am.

13 Q Let me direct your attention to the time
14 beginning June 24, 1993. Did you have an assignment at that
15 time in connection with Emad Salem?

16 A Yes. I was assigned to a protection detail.

17 Q Can you describe for the ladies and gentlemen of
18 the jury generally where the protection detail was?

19 A We were at an undisclosed location in the state
20 of New Jersey.

21 Q It is undisclosed to us but it was disclosed to
22 you, I take it?

23 A Yes.

24 Q What day did Mr. Salem arrive at the location?

25 A June 24.

1 Q Do you know where he came from when he arrived
2 there?

3 A He came from Manhattan, out of New York City.

4 Q Was that his apartment in Manhattan?

5 A Yes.

6 Q Who was with Mr. Salem -- withdrawn.

7 Were there any members of Mr. Salem's family with
8 him?

9 A Yes, he brought his family with him.

10 Q How long were Mr. Salem and his family kept in
11 the protective custody of the FBI in the location in New
12 Jersey?

13 A From the 24th of June until July 2.

14 Q That is 1993?

15 A 1993.

16 Q Can you tell us what happened on July 2, 1993?

17 A We changed our geographic location from the state
18 of New Jersey to somewhere else on the east coast.

19 Q Were Mr. Salem and his family moved to the second
20 location by the FBI?

21 A Yes, they were.

22 Q While Mr. Salem and his family were in the
23 custody of your detail between June 24 and July 2, 1993, was
24 he or any member of his family ever returned to his
25 apartment in Manhattan?

1 A No.

2 Q All right. Can you tell us, please, who took
3 over Mr. Salem's security after July 2, 1993?

4 A It was assigned to a supervisor by the name of
5 Dan La Saffre.

6 THE COURT: Spell it, please.

7 THE WITNESS: The usual spelling, your Honor.

8 (Laughter)

9 MR. MCCARTHY: I believe, your Honor, it is
10 L-A-S-A-F-F-R-E, with all qualifications that have been
11 developed over the months.

12 Thank you, Agent.

13 THE COURT: Mr. Jacobs.

14 CROSS-EXAMINATION

15 BY MR. JACOBS:

16 Q Good morning, Agent.

17 A Good morning.

18 Q On the 24th, Mr. Salem came to some undisclosed
19 location in New Jersey where you were at, correct?

20 A Yes, sir.

21 Q You were not at the apartment, correct, Agent?

22 A That is correct.

23 Q You don't know what he did in the apartment,
24 personal knowledge, correct?

25 A Yes.

1 Q Yes, meaning you have no personal knowledge?

2 A Yes.

3 Q What agents were with him in the apartment only
4 the 24th, if you know?

5 A No, I don't.

6 Q When he arrived, you were at the location
7 already?

8 MR. McCARTHY: Objection. Arrived where?

9 Q I am sorry, arrived at the location in New
10 Jersey. When he arrived on the 24th, you were physically at
11 the location?

12 A Yes.

13 Q What agents brought him, if you can recall?

14 A It was a large detail. I can recall Steve Veyera
15 and John Dew, at least two of the agents.

16 Q Was John Anticev there, Special Agent John
17 Anticev, if you can recall?

18 A I don't recall.

19 Q How about Detective Louie Napoli, was he there?

20 A No, I don't believe so.

21 Q How about Nancy Floyd, was she there?

22 A Not on the 24th, no.

23 Q Between the 24th and the 2nd, did Anticev come to
24 that location in New Jersey?

25 A He may or may not have.

1 Q How about Agent Floyd? Did she come during that
2 period, 24th to the 2nd?

3 A No, she didn't.

4 Q How about Detective Louie Napoli? Did he come?

5 A Not to my knowledge.

6 Q Agent, would I be correct in stating that at no
7 time during the 24th through the 2nd did you go through
8 Mr. Salem's personal belongings? Is that a fair statement?
9 You didn't search his personal belongings, did you?

10 A No, I did not.

11 Q When he arrived on the 24th, do you know if he
12 was carrying anything?

13 A In the way of?

14 Q Briefcase, bags --

15 A He had numerous bags, clothing, that type of
16 thing.

17 Q In other words, he was relocating out of his
18 apartment, correct?

19 A Yes, he was.

20 Q And he and his family brought various bags
21 containing unknown matter, unknown things, clothing,
22 whatever, correct?

23 A Yes.

24 Q You didn't search the bags, correct?

25 A No, I did not.

1 Q Do you know if the agents stopped anywhere from
2 the time they went left the apartment and came to New
3 Jersey? Would you know that?

4 A No, I wouldn't.

5 Q Do you know if any FBI agent reremoved anything
6 from the apartment on the 24th?

7 A There might have been some agents helping to move
8 luggage downstairs as an assist in carrying luggage. Other
9 than that, I don't know.

10 Q Do you know whether the FBI had access to the
11 apartment, had the keys to the apartment?

12 A No, I don't.

13 Q During the week that you had custody of them, did
14 Salem send you or any agents back to the apartment to get
15 anything?

16 A No.

17 Q Did you prepare any 302's or reports of your
18 activities that week?

19 A No.

20 Q Mr. Salem have access to the phone during that
21 week, the 24th to the 2nd?

22 A He had access to a cell phone, I believe.

23 Q I would be correct in stating his calls were not
24 being monitored by the Bureau? Fair to say?

25 A Yes.

1 Q Did he ever tell you during that week that he had
2 tapes of FBI agents?

3 A No.

4 Q Did he give you any tapes that week, 6/24 to July
5 2?

6 A No.

7 Q Give you personally any tapes?

8 A No.

9 MR. JACOBS: I have nothing further.

10 MS. AMSTERDAM: I have no questions.

11 THE COURT: Anyone else? Any redirect?

12 MR. FITZGERALD: No, your Honor.

13 THE COURT: Thank you very much. You are
14 excused.

15 (Witness excused)

16 MR. McCARTHY: Your Honor, the government calls
17 Steven Yarnell.

18 JOHN STEPHEN YARNELL,

19 called as a witness by the government,

20 having been duly sworn, testified as follows:

21 THE COURT: Go ahead.

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

23 THE COURT: Yes.

24 DIRECT EXAMINATION

25 BY MR. McCARTHY:

1 Q Good morning, Agent Yarnell.

2 A Good morning.

3 Q Why don't you move your chair a little closer to
4 the microphone and try to speak directly into it. OK?

5 A OK.

6 Q Tell the ladies and gentlemen of the jury how you
7 are employed.

8 A I am a special agent with the FBI.

9 Q How long have you been an FBI agent?

10 A Over 20 years.

11 Q Did you have an assignment in connection with
12 Emad Salem in July of 1993?

13 A Yes, I did.

14 Q Would you tell us what that assignment was.

15 A I was assigned to arrange for the protection of
16 Emad, beginning on July 2, to include relocating him from
17 the New York metropolitan area to another location in a
18 state on the eastern sea coast.

19 Q Can you tell us who your supervisor was at that
20 time?

21 A Daniel J. La Safary.

22 Q How do you spell Le Saffre?

23 (Laughter)

24 A It is L-E capital S-A-F-F-R-E.

25 Q Thank you.

1 Q How long was Mr. Salem kept at the location on
2 the east coast?

3 A From approximately -- exactly from July 2 until
4 August 30.

5 Q Can you tell us what happened on August 30?

6 A On August 30, the U.S. Marshals Service took over
7 the protection detail.

8 Q Prior to the end of August when Mr. Salem was
9 turned over to the Marshals Service, was he ever returned to
10 his apartment in Manhattan?

11 A No.

12 Q Did there come a time that he was returned to his
13 apartment in Manhattan?

14 A Yes, in September of 1993.

15 Q Do you recall what the purpose of that was?

16 A At that time, the marshals were arranging to pack
17 his household goods to relocate him, relocate his household
18 goods to another location in the United States.

19 Q Was Mr. Salem, while he was in the custody of the
20 FBI, on the east coast between the beginning of July and the
21 end of August 1993, able to receive and send mail?

22 A Yes, he was.

23 Q How was he able to do that?

24 A I arranged for all of his mail, which was being
25 delivered to his former residence, to be held by the U.S.

1 postal inspectors, and on a weekly basis I would pick up the
2 mail and have it delivered to the new location, and if he
3 wanted to mail any letters they were given to either myself
4 or an individual that was at the location, and the mail was
5 then brought back to the New York metropolitan area, where
6 it was placed into the post office service.

7 MR. McCARTHY: Thank you, Agent. Could I have
8 just a moment, your Honor?

9 THE COURT: Yes.

10 Q Agent Yarnell, was Mr. Salem, during the time
11 that he was in the custody of the FBI between July 2 of 1993
12 and the end of August, under the constant supervision of the
13 FBI?

14 A Yes. He was under 24-hour protection.

15 Q Do you recall during that period of time whether
16 you either received in the mail or sent in the mail from
17 Salem any tapes, cassette tapes?

18 A No.

19 Q You don't recall or you didn't?

20 A I don't recall.

21 MR. McCARTHY: Thank you.

22 THE COURT: Mr. Jacobs.

23 CROSS-EXAMINATION

24 BY MR. JACOBS:

25 Q Good morning, Agent Yarnell.

1 A Good morning.

2 Q The custody detail that you had beginning on July
3 2, was Special Agent John Anticev part of that detail?

4 A No.

5 Q Did there come a time that Agent Anticev arrived
6 between July 2 and July 15 to the location you were at?

7 A Yes.

8 Q When did he arrive, approximately?

9 A I don't recall.

10 Q Before the 15th, after the 15th? Can you tell
11 us?

12 A I don't recall.

13 Q Was he there for more than one day?

14 A I believe he was there for a couple of days, yes.

15 Q Was he part of the protection? Was he there in
16 some other capacity as an agent, sir?

17 A He wasn't part of the protection.

18 Q He was not?

19 A Correct.

20 Q Did he and Salem listen to tapes together?

21 A I don't recall.

22 Q During the time that you had custody of him, did
23 you ever see Emad Salem listening to tapes? Yes or no.

24 A Could you repeat that?

25 Q Sure, of course. During your protective detail

1 from July 2 to August 30, did you ever see Emad Salem put a
2 tape into a cassette player and listen to it? Yes or no.

3 A Yes, I did.

4 Q On how many occasions, sir?

5 A How many tapes? I believe there was like over 50
6 tapes.

7 Q And on numerous occasions, you would agree with
8 me, he was listening to tapes?

9 A Correct.

10 Q Did you make any entries or any logs on what he
11 was listening to, Agent?

12 A No.

13 Q Do you know if any other agent made any list or
14 any logs of what Salem was doing?

15 A No.

16 Q It would be fair to say, Agent Yarnell, you and
17 others members of the Bureau other than Anticev were there
18 to protect Salem, correct, custody detail?

19 MR. McCARTHY: Objection to form.

20 MR. JACOBS: I will withdraw it.

21 Q You were on a custody detail?

22 A I was in charge of the protection detail.

23 Q You weren't there to prepare the case, were you,
24 or investigate the case?

25 A No.

1 Q Mr. McCarthy asked you about whether Salem could
2 mail things. Do you recall those questions?

3 A Yes.

4 Q Did he have access to a garbage can? Yes or no.

5 A Did he -- no. To a garbage can? No.

6 Q Yes. Was there garbage in the house? Did you
7 and the agents eat meals, put garbage out? Yes or no.

8 A Yes.

9 Q Take out some food, agents go out to local places
10 and bring in food from local take out restaurants? I am not
11 interested in where. Fair to say that's a routine thing in
12 protective detail, bring in food?

13 A No.

14 Q You guys cooked?

15 A No.

16 Q How did you eat?

17 A The food --

18 Q If it's a security problem, I am not interested.

19 A The food that we ate was prepared on the
20 premises.

21 Q Nobody went shopping between July 2 and August
22 30?

23 MR. McCARTHY: Objection.

24 A Yes.

25 Q Salem have access to the phone? Yes or no.

1 A Yes.

2 Q Did Detective Napoli visit him during that period
3 of time?

4 A I don't recall.

5 Q Would I be correct that Anticev and Salem had
6 conversations out of your presence? Fair to say?

7 A Yes.

8 MR. JACOBS: May I have 663 in evidence? Thank
9 you.

10 Q Agent, I think there is a headset up there, if
11 you would be so kind, and anybody else that wants to listen.
12 Would you listen to it for a couple of minutes, Agent.

13 (Pause)

14 Q Can't get it to work, and rather than me sing,
15 Agent Yarnell, did you ever see Emad Salem between July 2
16 and July 15 meditating, listening to music?

17 A No.

18 MR. JACOBS: No further questions.

19 MS. AMSTERDAM: I just have a couple brief
20 questions.

21 THE COURT: Ms. Amsterdam.

22 CROSS-EXAMINATION

23 BY MS. AMSTERDAM:

24 Q You indicated that Mr. Salem was able to send and
25 receive mail, Agent, correct?

1 A Yes.

2 Q His mail was not monitored, was it? By that I
3 mean you didn't open his mail and read it before it was
4 given to him, correct?

5 A No.

6 Q So you have no personal knowledge as to whether
7 or not he received any letters from Agent Floyd, Agent
8 Anticev or Detective Napoli?

9 A No.

10 Q His phone calls, he had access to a phone, you
11 stated, correct?

12 A Yes.

13 Q His phone calls were not monitored, were they?

14 A What do you mean by monitored?

15 Q There wasn't an agent on an extension listening
16 to his personal phone calls, were there?

17 A No.

18 MS. AMSTERDAM: Thank you.

19 THE COURT: Anyone else? Any redirect, Mr.
20 McCarthy?

21 MR. McCARTHY: Yes, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. McCARTHY:

24 Q Agent Yarnell, you say that you saw Mr. Salem
25 listening to tapes?

1 A Yes.

2 Q Do you know whether he was translating the CM
3 tapes in connection with this case?

4 A Yes, he was.

5 MR. McCARTHY: Thank you.

6 THE COURT: Mr. Jacobs.

7 RE CROSS-EXAMINATION

8 BY MR. JACOBS:

9 Q Do you know what date he started translating the
10 CM tapes?

11 A Yes.

12 Q What date?

13 A He started the next day that we arrived.

14 Q July 3?

15 A Yes, I believe that is correct.

16 MR. McCARTHY: Objection to form. July 30?

17 MR. JACOBS: I said July 3.

18 MR. McCARTHY: Objection to my ears then. Sorry.

19 Q July 3 he started?

20 A Yes, I believe that is correct. Within the first
21 couple of days of arrival.

22 MR. JACOBS: Nothing further.

23 THE COURT: Anything else?

24 BY MR. McCARTHY:

25 Q You don't know whether he was already listening

1 and translating the tapes before he got to this location,
2 right?

3 A No, I don't.

4 MR. JACOBS: I am sorry.

5 Anything else, Mr. Jacobs?

6 MR. JACOBS: No.

7 THE COURT: Thank you very much. You are
8 excused.

9 (Witness excused)

10 MR. McCARTHY: Your Honor, this might be a
11 convenient point, if we could.

12 THE COURT: Ladies and gentlemen, we are going to
13 take our break a little bit early. 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 (Jury excused)

17 MR. McCARTHY: We need the equipment no matter
18 which way we go from here.

19 (Recess)

20 (Continued on next page)

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1 MR. JACOBS: Your Honor, we did not have an
2 understanding with respect to the tapes. Mr. McCarthy
3 clarified a number of points on it. It helps to shorten the
4 examination.

5 THE COURT: Thank you very much.

6 (Jury present)

7 THE COURT: Mr. McCarthy.

8 MR. McCARTHY: Thank you, your Honor. The
9 government calls Colleen Barry.

10
11 COLLEEN ANN BARRY,

12 called as a witness by the government,
13 having been duly sworn, testified as follows:

14 THE COURT: Ms. Barry, if you could move up to
15 the microphone, and please speak into it.

16 DIRECT EXAMINATION

17 BY MR. McCARTHY:

18 Q Good morning, Ms. Barry.

19 A Good morning.

20 Q Would you tell the ladies and gentlemen of the
21 jury how you are employed?

22 A I am employed by the FBI.

23 Q I am going to have to ask you to keep your voice
24 up as loud as you can so we can hear you back here.

25 A OK.

1 Q What do you do at the FBI?

2 A I work with the squad that's currently working on
3 this case.

4 Q Are you an agent?

5 A No, I am not.

6 Q How long have you been with the FBI?

7 A Five years.

8 Q And how long have you been with the squad which
9 was investigating the case?

10 A Since February of '94.

11 Q Ms. Barry, have you ever testified before?

12 A No.

13 Q Ms. Barry, were you asked to conduct a search at
14 the FBI for copies of some of the CM tapes?

15 A Yes, I was.

16 Q Let me direct your attention to some of the tapes
17 that I have placed before you. There should be a group of
18 two tapes there. Do you see that?

19 A Yes.

20 Q Which are Government Exhibits 301-L, 1 of 2, and
21 2 of 2.

22 A Yes.

23 Q Do you recognize those?

24 A Yes, I do.

25 Q What do you recognize them to be?

1 A These are two of the tapes that I took out of our
2 cabinets the day we searched for the tapes.

3 Q I am sorry, you going to have to keep your voice
4 up.

5 A These are two of the tapes that I took out of our
6 cabinets the day we searched for the tapes.

7 Q The day that you searched for the tapes?

8 A Right.

9 Q Do you know how long those tapes have been in
10 your cabinet?

11 A Well, they were in my cabinet since I came on in
12 '94, February of '94.

13 Q Can you tell us what those tapes are?

14 A These are of CM-1.

15 Q Are you familiar with the term "control copies"?

16 A Yes. Yes. They are not the original CM. They
17 are just copies of CM-1.

18 Q Those are copies of CM-1 that were maintained in
19 the squad area at the FBI?

20 A That's correct.

21 Q Can you take the tapes out of their cases. If
22 you would, would you read into the record the lot number
23 which is imprinted on the top of the tape?

24 MR. JACOBS: Your Honor, no objection, but I am
25 requesting that we look at the evidence when we reach it.

1 THE COURT: Fine.

2 MR. JACOBS: I have no objection, but I request
3 that the exhibits themselves and not just numbers --

4 THE COURT: You mean the physical tape itself?

5 MR. JACOBS: Yes.

6 MR. MCCARTHY: We offer the physical tape 301-L,
7 1 of 2, and 301-L, 2 of 2.

8 MR. JACOBS: No objection.

9 (Government Exhibits 301-L, 1 of 2, and 301-L, 2
10 or 2, received in evidence.)

11 Q Could you read the lot number into the record.

12 A Sure. F031A9A1.

13 Q Let me just stop you for a moment. The one you
14 just read, could you read the exhibit number you read that
15 from?

16 A Government Exhibit 301-L, 2 of 2.

17 Q How about 301-L, 1 of 2?

18 A F031A9A1.

19 Q Thank you.

20 MR. MCCARTHY: Your Honor, may I refer to two of
21 the cassettes, which are personal tape recordings of
22 Mr. Salem's received into evidence, Government Exhibits 636A
23 and 605A?

24 THE COURT: Go ahead.

25 MR. MCCARTHY: Reading the lot number at the top:

1 F031A9A1.

2 THE COURT: And that is on? That is 636A?

3 MR. McCARTHY: That is 605.

4 THE COURT: 605A.

5 MR. McCARTHY: I should say: 605 is the tape;
6 605A is the envelope. I am referring to the tape which does
7 not have an A number.

8 THE COURT: So 605 was the exhibit you just read
9 from?

10 MR. McCARTHY: Yes, your Honor. And I am now
11 reading from 636. F031A9A1.

12 Q Ms. Barry, the two exhibits you just read from,
13 the two tapes, the 301-L, 1 of 2 and 2 of 2, are those
14 Maxell C60 tapes?

15 A Yes, they are.

16 Q Ms. Barry, was a search conducted of other
17 duplicates of cassettes maintained by the FBI and the
18 government?

19 A Yes, there was.

20 Q Can you explain that to us, please?

21 A Yes. We made copies of --

22 THE COURT: Can we find out when this was?

23 MR. McCARTHY: Yes, your Honor.

24 Q Is it correct that a control set of duplicates of
25 Mr. Salem's personal tapes was made by the FBI and given to

1 the United States Attorney's Office?

2 A Yes.

3 Q Did you search the box that contained the set of
4 Mr. Salem's personal tapes, that is, the duplicate set that
5 was in the possession of the United States Attorney's
6 Office?

7 A Yes, I did.

8 Q When did you do that?

9 A This morning.

10 Q Directing your attention to the stack of tapes
11 next to you, which I will read into the record -- Exhibits
12 612-L, 613-L, 630-L, 1 of 2; 630-L, 2 of 2; 632-L, 670-L,
13 and 671-L -- did you check those tapes to determine whether
14 the lot number imprinted on the tape is the same lot number
15 that we referred to this morning, that is -- let me read it
16 again --

17 THE COURT: It is F031A9A1.

18 MR. McCARTHY: Thank you, your Honor.

19 Q Did you check that?

20 A Yes, I did.

21 Q What did you find?

22 A All of these tapes have that lot number on them.

23 Q Are they also Maxell C60 tapes?

24 A Yes, they are.

25 Q Ms. Barry, am I correct that the stack that you

1 have referred to is only some of the control copies of the
2 tapes? Correct?

3 A Yes, that's correct.

4 Q There are many other tapes that don't have that
5 lot number, isn't that right?

6 A That's correct.

7 Q Ms. Barry, did you also assist in the preparation
8 of a chart?

9 A Yes, I did.

10 Q Was that a chart that pertained to Mr. Salem's
11 tapes?

12 A Yes.

13 Q I have placed before you for identification
14 Government's Exhibit 551. Do you recognize that document?

15 A Yes. This is the chart I helped create.

16 Q Can you explain to the ladies and gentlemen of
17 the jury what you did to help create the chart?

18 A OK. I was given a rough draft of this chart, and
19 I went back to all of the transcripts that were prepared
20 from Salem's personal tapes. And I tallied up all the
21 participants and defendants and agents and made some changes
22 that were needed to be made on this chart.

23 Q Is it correct that in terms of identifying who
24 the speakers were on the conversations, in some instances
25 you relied on identifications that the translators had

1 found?

2 A Yes, that's true.

3 Q And in some instances you relied on the context?

4 A Yes.

5 Q And there were a number of unknown participants,
6 is that correct?

7 A Yes, that's correct.

8 Q Running across the chart from left to right, am I
9 correct that the first column of the chart contains the
10 government exhibit number of each of Mr. Salem's tapes?

11 A Yes.

12 Q Then there are the total calls?

13 A Correct.

14 Q There is a category then for defendants?

15 A Correct.

16 Q Is it correct that that category involved
17 conversations that you were able to identify that involved
18 either Mr. Siddig Ali or one of the defendants on trial?

19 A That's correct.

20 Q Then there is a column for calls to Agent
21 Anticev?

22 A Yes.

23 Q A column for calls to Agent Floyd?

24 A Correct.

25 Q A column for calls to Detective Napoli?

1 A Correct.

2 Q There is then a column for calls to what are
3 identified as subjects?

4 A Correct.

5 Q On the last page of the chart, is it correct that
6 there is a footnote on the final tally of subjects which
7 indicates the identifications of the persons that you took
8 into account for the category of subjects?

9 A Yes.

10 Q And then finally there is a category at the end
11 which says "other"?

12 A Correct.

13 Q Am I correct that in the category marked "other"
14 you tallied up whatever calls were on a particular cassette
15 that didn't fall into one of the other categories?

16 A That's correct.

17 MR. McCARTHY: Your Honor, I am not going to
18 offer the chart at this time because I have discussed with
19 counsel some modifications that will be made over the lunch
20 break.

21 THE COURT: All right.

22 MR. McCARTHY: Your Honor, even though I am not
23 offering the chart, I have no objection to Ms. Amsterdam
24 asking a couple of questions on voir dire.

25 THE COURT: Fine. Ms. Amsterdam?

1 VOIR DIRE EXAMINATION

2 BY MS. AMSTERDAM:

3 Q Good morning.

4 A Good morning.

5 Q I notice that you broke out specifically calls to
6 Agents Anticev, Floyd, and Detective Napoli; correct?

7 A Correct.

8 Q Other calls to agents, such as Agent Mahaffey,
9 Agent Veyera, where are those located on your chart? In the
10 other column?

11 A That's correct.

12 MS. AMSTERDAM: Thank you.

13 THE COURT: Anyone else?

14 MR. RICCO: Yes, your Honor.

15 THE COURT: Mr. Ricco, representing
16 Mr. El-Gabrownny.

17 BY MR. RICCO:

18 Q Good morning.

19 A Good morning, sir.

20 Q In preparing the chart, you discovered that, for
21 example, Government GX 601 contained 39 calls. Right?

22 A Correct.

23 Q However, another tape, for example, GX 607, only
24 contained 11 calls?

25 A Correct.

1 Q And so what you ultimately discovered was that
2 some tapes have more calls than others?

3 A That's correct.

4 Q And the calls individually had different
5 participants in each call, isn't that right?

6 A That's correct.

7 Q And you did your best to note who the
8 participants were in those particular calls?

9 A That's correct.

10 Q Some tapes contain calls with the subjects, the
11 defendants, and also calls with agents. Isn't that correct?

12 A That's correct.

13 Q And they were mixed together, isn't that correct?

14 A Yes, they were intermingled throughout the tapes.
15 The conversations weren't mixed together, but the tapes
16 contained conversations of agents and defendants on the same
17 tape.

18 Q And this list was compiled from the tapes that
19 were known to the Bureau, isn't that correct?

20 A Yes.

21 Q And these were the tapes that the Bureau had in
22 its possession, isn't that correct?

23 A That's correct.

24 MR. RICCO: I have no further questions.

25 THE COURT: Is there any objection to the chart

1 as it is to be modified?

2 MR. RICCO: Your Honor, I have no objection
3 subject to modifications discussed with Mr. McCarthy.

4 MS. STEWART: I too have some modifications which
5 I haven't discussed with Mr. McCarthy but I am sure it will
6 be amicable.

7 THE COURT: Go ahead, Mr. McCarthy.

8 MR. McCARTHY: Thank you, your Honor.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. McCARTHY:

11 Q Ms. Barry, Ms. Amsterdam just asked you a couple
12 of minutes ago about whether you had a category for calls
13 with agents other than Floyd, Anticev, and Detective Napolli.

14 A Yes, that's correct.

15 Q And you said that you put those people in the
16 "others" category?

17 A Right.

18 Q Did you also put a footnote in the "others"
19 category to explain that you found 14 other calls with FBI
20 agents or the FBI office?

21 A Yes, I did.

22 Q Can you tell us, please, combining all of the
23 tapes together, how many recordings in total you counted up
24 on Mr. Salem's tapes?

25 A There was 1,205 calls.

1 Q And out of that 1,205, can you tell us how many
2 have been received in evidence at this trial?

3 A There have been 19 of these calls received into
4 evidence.

5 MR. McCARTHY: Thank you.

6 I have nothing further at this time,

7 THE COURT: Cross, Mr. Ricco?

8 MR. RICCO: Yes.

9 CROSS-EXAMINATION

10 BY MR. RICCO:

11 Q Mr. McCarthy asked you, were you aware of 19 of
12 those over 1,000 calls that were received in evidence and
13 you said yes?

14 A Yes.

15 Q But there were more than 19 telephone calls
16 involving Agent Anticev, isn't that correct?

17 A Yes.

18 Q There were 49 telephone calls involving Agent
19 Anticev, isn't that correct?

20 A Well, 50.

21 Q OK, 50. OK?

22 A Yes.

23 Q That is more than 19, right?

24 A Yes, sir.

25 Q And there were at least 64 calls with Agent

1 Floyd, isn't that correct?

2 A 65.

3 Q OK. That is more than 19, right?

4 A Yes.

5 Q And there were more than 20 calls with Agent
6 Napoli, isn't that correct?

7 A 20.

8 Q So that is over a hundred calls with the agents,
9 isn't that correct?

10 A That's correct.

11 Q Now, telephone calls involving Mr. El-Gabrowny,
12 where Mr. El-Gabrowny was speaking, were well over 35, isn't
13 that correct?

14 A 38, yes.

15 Q Based on the chart that you have in front of you
16 now.

17 A Correct.

18 Q And there were at least 11 or more telephone
19 calls that Emad Salem made to Mr. El-Gabrowny's residence
20 that did not include Mr. El-Gabrowny.

21 A I counted ten. I counted ten calls.

22 Q OK. And those calls would have been either
23 messages or where he spoke to Mr. El-Gabrowny's wife or his
24 children, isn't that correct?

25 A That's correct.

1 Q There were at least 33 calls with Mohammad
2 El-Gabrownny, isn't that correct?

3 A Yes, well, 44.

4 Q Again, well over 19, isn't that correct?

5 A Correct.

6 Q Now, there were also, of Mr. Salem's what we have
7 been calling his personal tapes, there were also recordings
8 that he had that are not on your chart of conversations
9 involving people that didn't have anything to do with this
10 case. Isn't that correct?

11 MR. MCCARTHY: Objection to form.

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

13 THE COURT: Go ahead.

14 Q In other words, there were recordings of
15 conversations with Mr. Emad Salem and his children, isn't
16 that right?

17 A Yes.

18 Q And there were telephone conversations of
19 Mr. Emad Salem recorded with his in-laws, isn't that
20 correct?

21 A That's correct.

22 Q And there were telephone calls that he recorded
23 with his garage, for example, isn't that right?

24 A Correct.

25 Q And these calls were not included in this chart,

1 isn't that correct?

2 MR. McCARTHY: Objection.

3 MR. RICCO: Hold it one second.

4 (Conference between Mr. Ricco and Mr. McCarthy)

5 MR. RICCO: Thank you, Mr. McCarthy.

6 THE COURT: I should also point out to the jurors
7 that the chart has not been received, so I don't think
8 anything dangerous is going to happen, but please don't look
9 at it.

10 Q The calls that I just asked you about are the
11 calls that were recorded involving Mr. Salem's in-laws, his
12 daily life, those were included in the "other" category on
13 your chart?

14 A That's correct.

15 Q Thank you very much, Ms. Barry.

16 MR. RICCO: I have no further questions.

17 THE COURT: Thank you. Mr. Jacobs.

18 MR. JACOBS: This is cross, your Honor.

19 THE COURT: Yes, cross.

20 CROSS-EXAMINATION

21 BY MR. JACOBS:

22 Q Good morning, Ms. Barry.

23 A Good morning.

24 Q You are not a special agent, ma'am?

25 A No, I am not.

1 Q Are you an investigator? What is your exact
2 title with the Bureau, ma'am?

3 A Investigator-specialist.

4 Q Investigator-specialist. Am I correct, Ms.
5 Barry, that part of your responsibilities since you became
6 assigned to this case in February -- February '94, correct?

7 A Correct.

8 Q -- one of your jobs was to take some of the CM's
9 and the bootleg tapes and deliver them to Paul Ginsberg? Is
10 that fair to say?

11 A That's correct.

12 Q You have been sort of a liaison between the
13 Department of Justice and Mr. Ginsberg who has been
14 conducting examinations --

15 MR. McCARTHY: Objection.

16 Q -- is it fair to say?

17 THE COURT: Sustained as to form, and stricken.
18 Go ahead.

19 Q Am I correct --

20 MR. JACOBS: May I have CM-1.

21 Q Ms. Barry, you were asked questions before by
22 Mr. McCarthy concerning CM-1 and copies of it that were
23 maintained in the FBI files; correct?

24 A Correct.

25 Q And am I correct that at various times since

1 February '94 you yourself have taken the envelope that is in
2 front of you, 301-A, I think -- A, Mr. McCarthy?

3 MR. McCARTHY: 301-A is the envelope.

4 Q And 301, the tape itself, in evidence, and 301 --
5 the white envelope which is in evidence as well, you
6 yourself have taken that and signed it out from the Bureau;
7 correct, ma'am?

8 A I signed it out in my care, yes.

9 Q Yes, correct. And your handwriting appears on
10 that, I guess it is the stapled attached chain of custody;
11 correct, ma'am?

12 A Not on the attachment, no.

13 Q It is on the envelope itself?

14 A Yes.

15 MR. JACOBS: I would offer the envelope itself in
16 evidence at this time.

17 MR. McCARTHY: Objection.

18 THE COURT: May see counsel at the sidebar.

19 (At the sidebar)

20 THE COURT: I don't understand. What is this
21 being offered to show?

22 MR. JACOBS: Well, your Honor, it is our
23 contention that the FBI did not duplicate CM-1 for
24 Mr. Salem. The evidence envelope supports that position
25 because the first time it is signed out for duplication is

1 by Agent Liguori in August of '94 -- I am sorry -- August of
2 '93. Ms. Barry is familiar with the envelope; she herself
3 accepted custody of it. I reviewed my notes last night and
4 I was going into the examination with Agent Anticev, July 6,
5 '95, and I am not saying your Honor is incorrect but your
6 Honor thought the matter had been gone into about Detective
7 Napoli when you discussed the envelope.

8 THE COURT: This particular one?

9 MR. JACOBS: Yes. And your Honor sustained a
10 number of objections in my examination with Agent Anticev,
11 and I guess I am partially responsible I thought it was in
12 evidence. In other words, there were a number of objections
13 sustained.

14 MR. MCCARTHY: I make the same point which was
15 made with respect to the offer we had on Shinawy. A person
16 with competent knowledge of this was here to be confronted,
17 that is, Anticev. He wasn't. Ms. Barry doesn't have a
18 basis to testify to what Mr. Jacobs is getting at. And the
19 outside envelope is hearsay as to her.

20 THE COURT: Why is it not a business record?

21 MR. JACOBS: I was about to add that. Thank you,
22 your Honor.

23 THE COURT: It is a business record. You can
24 bring Anticev in if you want to explain the entries, but I
25 am going to admit it.

1 MR. McCARTHY: Then I will withdraw my objection.

2 (In open court)

3 THE COURT: Sorry, what is the exhibit number on
4 that?

5 MR. JACOBS: 301-A, your Honor.

6 THE COURT: 301-A is received.

7 (Government Exhibit 301-A was received in
8 evidence.)

9 BY MR. JACOBS:

10 Q Agent Barry, would you look at the exhibit that
11 has been received in evidence, the outside of the envelope.
12 Is that the 504 form? Is that the technical number?

13 A Yes, FD 504.

14 Q Am I correct that that envelope indicates that
15 Anticev got the tape, according to the writing on it, May 8?
16 Correct?

17 A Of '93, yes.

18 Q Yes, ma'am. And he released custody when,
19 according to the envelope in evidence, ma'am?

20 A May 13.

21 Q Would you tell the jury what your
22 understanding -- by the way, you are on the envelope as well
23 later on in '94, correct, ma'am?

24 A Correct.

25 Q Where you took out the tape for duplication

1 purposes. Correct, ma'am?

2 A Correct.

3 Q What does your released custody mean, ma'am, as
4 far as you know?

5 A Well, you are no longer in custody of it. You
6 are giving it over to somebody else.

7 Q When you take custody of the envelope and you
8 duplicate it, where do you go?

9 A Do you mean in general or in this specific
10 purpose?

11 Q Well, in general, what happens?

12 MR. MCCARTHY: Objection to form.

13 THE COURT: Sustained.

14 Q When you took the tape out to duplicate it, where
15 did you go?

16 A To Paul Ginsberg.

17 Q And you put an entry on the chain of custody
18 slip, that duplication, of your handwriting, correct?

19 A Correct.

20 Q Would you go back to the front page, the first
21 page of the exhibit. Is there an indication when on that
22 piece of paper that is in evidence, when does the word
23 "duplication" appear for the first time, what date?

24 A August 4, '93.

25 Q Who is the agent, if you can read the

1 handwriting?

2 A I can't really tell.

3 Q Liguori, John Liguori?

4 A I don't think so. Hummel, it looks like, Hammel.

5 Q Right here.

6 A Oh.

7 Q Ma'am, showing you a particular entry on the
8 exhibit in evidence, is that the first entry that appears on
9 the document indicating that on or about, I think it is
10 August 4 or August 10, Agent Liguori put down "duplication"?

11 A That is not Agent Liguori.

12 Q I am sorry, who is it?

13 A Gina somebody.

14 Q Does it look like Liguori, second name?

15 A No.

16 Q In any event, is that the first entry of
17 duplication?

18 A Yes.

19 Q What is the date?

20 A August 4, '93.

21 Q Is there an entry date before that for Agent Voss
22 who is seated here at the front table?

23 A Yes, there is.

24 Q What date?

25 A May 12, May 13.

1 Q What is it listed, the reason for the acceptance
2 of custody?

3 A He accepted it under the reason "evidence."

4 Q What about Anticev?

5 A The same reason.

6 Q When you receive custody, is it removed from the
7 safe in the FBI offices?

8 A Yes.

9 Q And when you put it in the safe, you release
10 custody of it, correct, ma'am?

11 MR. McCARTHY: Objection.

12 Q Is that correct, ma'am?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q Is there an evidence vault in your office, ma'am?

16 MR. McCARTHY: Objection.

17 A There is a few.

18 MR. McCARTHY: Withdrawn.

19 Q I am sorry, is there an evidence locker, safe, in
20 the office, ma'am?

21 A There's a few of them.

22 Q Few of them. And is one of the evidence safes
23 contain tapes, CM's?

24 MR. McCARTHY: Objection to form.

25 THE COURT: Sustained.

1 Q Is there a place where the tapes are kept, CM
2 tapes?

3 MR. McCARTHY: Objection as to form.

4 THE COURT: Talk to Mr. Jacobs.

5 (Pause)

6 Q Ma'am, when you took the tapes for duplication,
7 this tape, CM-1, where did you get it from?

8 A From a unit called Elsur.

9 Q What is Elsur.

10 THE COURT: Spelled how?

11 THE WITNESS: E-l-s-u-r.

12 Q What is that?

13 A It's where we put all the electronic tapes that
14 we initiated.

15 Q And you signed it out, correct?

16 A That's correct.

17 Q And when you returned it to the Elsur unit, you
18 released custody of it, correct?

19 A No. When I gave it to Paul Ginsberg, I released
20 custody.

21 Q You didn't ask Mr. Ginsberg to sign it, correct?

22 A Yes, I did.

23 Q Oh, you did. So he is on the evidence envelope
24 as well?

25 A Yes.

1 Q And when you put it back and gave it back to
2 Elsur, did you release custody of it on the envelope?

3 A Yes, after I received it from Paul and then I
4 released it again to Elsur.

5 Q Now, you were asked a number of questions by
6 Mr. McCarthy concerning some duplicates that you located
7 recently, correct, ma'am?

8 A Correct.

9 (Continued on next page)

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1 Q If you take a look at the two that are in
2 evidence, 301L and L2, those two tapes, am I correct that
3 there is certain writing that appears on both of them?

4 A That is correct.

5 Q Am I correct, ma'am, you didn't put any of the
6 writing on it?

7 A That is correct.

8 Q And would it be fair to say that you don't know
9 who put the writing on it?

10 A That is correct. Some of the writing, I know who
11 put some of the writing on it.

12 Q You recognize Agent Liguori's?

13 A That is correct.

14 Q And he made an entry or put on it August '95, is
15 that correct, ma'am?

16 A Correct.

17 Q Do you know as you sit there now when the Federal
18 Bureau of Investigation made that copy, what date?

19 A I know it was prior to February of '94.

20 Q But my question to you is, do you know as you sit
21 there now whether that copy was made before June 23, 1993?

22 A No, I don't.

23 Q How about June 29, '93?

24 A No, I have no idea.

25 Q In other words, looking at the exhibit that you

1 found, the two tapes, there is nothing on the tape that
2 tells you when the Bureau made a copy of it, correct?

3 A There is a date on here. I don't know what it
4 means.

5 Q What date is on it?

6 A May 7, '93.

7 Q If you looked at the evidence envelope, am I
8 correct that the first date for duplication on the evidence
9 envelope is sometime in August '93, correct, ma'am? We just
10 discussed it, correct?

11 A Yes, correct.

12 Q You were asked by Mr. McCarthy to look at some
13 lot numbers, correct?

14 A Correct.

15 Q And you were able to match up the lot numbers of
16 at least those two tapes that are in evidence, the duplicate
17 copies, correct?

18 A Right.

19 Q With, I think it is ES5, correct, the two tapes
20 Mr. McCarthy showed you?

21 A Correct, and another one.

22 Q 63?

23 MR. MCCARTHY: 605 and 636 are the exhibit
24 numbers.

25 Q And you did that by matching up the lot numbers,

1 correct?

2 A Correct.

3 Q Ma'am, am I correct that the two exhibits, 605
4 and the other number, do not contain any writing that
5 matches up with the duplicates you found in the FBI office,
6 correct?

7 MR. McCARTHY: Objection.

8 Q I am sorry. Is there any writing that appears
9 the same on the two exhibits?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q Looking at the two exhibits, 605 and the other
13 one, do you know if the FBI duplicated those, ma'am?

14 A No. I believe so.

15 Q You believe so. On what basis?

16 A Because of the lot numbers.

17 Q How many Maxell C-60's did Detective Louis Napoli
18 give Emad Salem, if you know?

19 A I don't know.

20 (Continued on next page)

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1 Q Let me show you Defendant's Exhibit R, and may
2 the ladies and gentlemen of the jury turn to Defendant's
3 Exhibit R --

4 MR. MCCARTHY: Objection.

5 THE COURT: May I see it?

6 MR. JACOBS: Yes, sir.

7 THE COURT: In fact, why don't you come up.

8 MR. JACOBS: Sure.

9 (At the side bar)

10 THE COURT: She has already said that she has no
11 knowledge of how many Maxell C-60's he gave her. It can't
12 be used to refresh her recollection since obviously she
13 never had a recollection. The time to argue is in
14 summation, if that's what you want to do.

15 MR. JACOBS: Then can I do this, your Honor. I
16 would like an opportunity to reserve, it will probably take
17 us -- I just want to be able to put on the record -- I am
18 not sure these are in evidence all of them, but I would like
19 to get that on the record. She has examined lot numbers on
20 other of the FBI tapes. We can stipulate with Mr. McCarthy.

21 THE COURT: Fine.

22 MR. JACOBS: I just want to reserve on that.

23 THE COURT: You have your reservation.

24 (In open court)

25 BY MR. JACOBS:

1 Q Miss Barry, let me ask you, does your office
2 have -- I will withdraw that.

3 Where does an agent or someone like yourself
4 obtain blank tapes?

5 MR. McCARTHY: Objection, scope.

6 THE COURT: Sustained.

7 MR. JACOBS: Other than what I reserved at the
8 side bar, your Honor, I have no further questions, and I
9 would request at some point that the envelope 605 and the
10 other one as well as the two others that have come into
11 evidence be passed among the jury, whenever your Honor sees
12 fit.

13 THE COURT: Which is not now.

14 MS. AMSTERDAM: I have one brief question.

15 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MS. AMSTERDAM:

3 Q Ms. Barry, you indicated that you believed, in
4 answer to Mr. Jacobs, that these tapes were made by the FBI,
5 correct?

6 A That is true.

7 Q Ma'am, based on the evidence envelope, the first
8 time there was any indication of duplication was August 4,
9 1993, correct?

10 A Correct.

11 Q So if these tapes had been duplicated by an FBI
12 agent or any individual FBI agent prior to that day, it was
13 not recorded on the envelope, was it?

14 A It wasn't recorded on the envelope, no.

15 MS. AMSTERDAM: Thank you.

16 THE COURT: Anyone else? Any redirect?

17 MR. McCARTHY: Yes, your Honor.

18 THE COURT: Go ahead.

19 REDIRECT EXAMINATION

20 BY MR. McCARTHY:

21 Q Ms. Barry, you testified that you gave some of
22 the tapes over to Mr. Ginsberg?

23 A Yes.

24 Q Do you know if that was for duplication of the
25 tapes for the defense in this case?

1 A Yes, it was.

2 Q On the evidence envelope, where it says that a
3 tape, custody of a tape changed hands for purposes of
4 duplication, am I correct that that is where the tape is
5 given by somebody to the audiovisual area of the FBI to be
6 duplicated?

7 A It depends. These are Nagra's, so the audiovisual
8 would have to do it in this case, but if it was a cassette
9 tape, then the person doing it could do it themselves, the
10 person who signed it out could just duplicate it and give it
11 back.

12 Q But if an agent himself brought the tape and
13 stayed with it in the audiovisual room and never surrendered
14 custody of it, he could make a copy without turning it over
15 to the audiovisual room, is that correct?

16 A That is correct.

17 MR. McCARTHY: Thank you.

18 THE COURT: Mr. Jacobs? Ms. Amsterdam? Anyone?

19 Thank you very much. You are excused.

20 (Witness excused)

21 MR. McCARTHY: Your Honor, at this time we would
22 request permission to play from six recordings which are
23 made in Government's Exhibit 686, which is the same
24 recording from which Khallafalla Exhibit C, the conversation
25 between Mr. Salem and Agent Floyd was recorded.

1 MR. LAVINE: Your Honor, could we have the A
2 numbers on that? Thank you.

3 MR. McCARTHY: Sure. Let me read them into the
4 record. I should note also, your Honor, while I am doing
5 that, that all of these conversations will be in English and
6 transcripts have been provided to the jury as an aid.

7 THE COURT: This is the same, from the same tape
8 as Khallafalla C?

9 MR. McCARTHY: Yes, your Honor. In other words,
10 the tape with all the conversations on it is 686.
11 Khallafalla Exhibit C --

12 THE COURT: Is one of those conversations?

13 MR. McCARTHY: Correct.

14 THE COURT: And this is other conversations on
15 the same tape?

16 MR. McCARTHY: That is correct, and I will read
17 the numbers now. It is 686A-6L; 686A-8L; 686A-15L;
18 686A-16L; 686A-17L; and 686A-18L.

19 MR. STAVIS: May we have a brief side bar, your
20 Honor?

21 THE COURT: Sure.

22 (At the side bar)

23 THE COURT: You want some clarification about
24 what?

25 MR. STAVIS: Yes, because I had discussed the

1 matter with Mr. McCarthy this morning and I understood that
2 the tapes were being played to show mechanical difficulties
3 with the actual tapes.

4 THE COURT: Yes, but you can't understand the
5 significance of the mechanical difficulties unless you
6 follow -- the significance or insignificance of the
7 difficulties unless you follow where the conversations
8 occur.

9 MR. STAVIS: I did not understand that the jury
10 was going to have transcripts.

11 THE COURT: Are these English language
12 conversations?

13 MR. MCCARTHY: Yes, they are.

14 THE COURT: They can hear them in any event.

15 MR. MCCARTHY: I thought the transcripts would be
16 a mechanism for the jury, if they chose to, to note where
17 the erasures occur.

18 MR. RICCO: Can we clarify, Mr. McCarthy, that
19 the A series calls come from a tape that included many
20 telephone calls, that these are being offered as a sampling
21 from the other tape?

22 THE COURT: Fine. I will clarify that. What I
23 was going to suggest is that I simply point out to the
24 jurors that the reason they are hearing these conversations
25 is to note where the gaps occur so they don't start focusing

1 on the content.

2 MR. STAVIS: That is what I was going to ask.

3 MR. McCARTHY: And that on the tape they heard,
4 Khallafalla C, there were two gaps.

5 MR. JACOBS: Fine.

6 MR. McCARTHY: Thank you.

7 (In open court)

8 MR. McCARTHY: Your Honor, in connection with
9 what I think the court is about to do, I should note for the
10 record that the whole exhibits is 686A and there are a total
11 of 28 recordings on that tape.

12 THE COURT: That is 28 conversations?

13 MR. McCARTHY: 28 different incidents of
14 conversation or beeper type things.

15 (In open court)

16 THE COURT: What I have been asked to point out
17 to you, ladies and gentlemen, is first to reiterate that the
18 conversations that you are about to listen to are from
19 6786A, which is the same tape that contains Khallafalla
20 Exhibit C. That was a conversation that was played to you
21 and about which there was questioning as to two gaps in that
22 conversation, two places where the conversation could not be
23 heard. The conversations that are going to be played for
24 you are some of the remaining conversations on that tape,
25 not all, obviously, because there are many more, and the

1 reason you are being asked to listen to them is to listen
2 for gaps in those conversations as well and indicate where
3 it is in the conversations that those gaps occur. For that
4 reason you will have transcripts of those conversations so
5 that you can see where in the conversation the gaps occur.

6 MR. McCARTHY: Thank you.

7 THE COURT: Go ahead.

8 MR. McCARTHY: I will start with 686A-6L.

9 THE COURT: The transcripts are marked with T's
10 correspond to the number of the conversation, so that 686-6L
11 is 686-6T on your transcript.

12 MR. McCARTHY: Yes, your Honor. Your Honor, the
13 jurors will need their headsets.

14 (Tape played)

15 MR. McCARTHY: The next conversation is
16 Government's Exhibit 686A-8L.

17 (Tape played)

18 MR. McCARTHY: The next conversation is 686A-15L.

19 (Tape played)

20 MR. McCARTHY: The next conversation is 686A-16L.

21 (Tape played)

22 MR. McCARTHY: The next conversation is
23 Government's Exhibit 686A-17L.

24 (Tape played)

25 MR. McCARTHY: And the last call would be

1 686A-18L.

2 (Tape played)

3 MR. KHUZAMI: Your Honor, the government calls
4 Gamal Abdel-Hafiz.

5 MR. BERNSTEIN: Judge, may we approach the side
6 bar?

7 (At the side bar)

8 MR. BERNSTEIN: Your Honor, I understand the
9 government is about to offer 381 as part of the translate
10 translator's proffer at this point in time. I want to renew
11 my application not to have it come in. I could to
12 secondarily renew my application for an instruction that it
13 is offered only as to Fadil Abdelgani and not as to Amir
14 Abdelgani, and if those applications are denied then I renew
15 the severance motion, which the court will remember not only
16 referred to Mr. Saleh as a potential problem for me on the
17 severance question but involved Fadil Abdelgani, and then
18 based upon yesterday's arguments that are already on the
19 record, I renew my severance application.

20 THE COURT: That is all denied. Let's go.

21 (In open court)

22 GAMAL ABDEL-HAFIZ,

23 called as a witness by the government,

24 having been duly sworn, testified as follows:

25 THE COURT: Go ahead, Mr. Khuzami.

1 MR. KHUZAMI: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. KHUZAMI:

4 Q Mr. Abdel-Hafiz, are you still employed as a
5 translator with the FBI?

6 A Yes, sir, I do.

7 Q At my request, Mr. Abdel-Hafiz, did you recently
8 get a copy of the Elias, E-L-I-A-S, Arabic-to-English
9 dictionary?

10 A Yes, sir, I have.

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

12 THE COURT: Yes.

13 Q Let me show you, Mr. Abdel-Hafiz, what has been
14 marked as Government's Exhibit 397 for identification and
15 ask you to take a look at that what is Government's Exhibit
16 397 for identification?

17 A It is an Arabic-English dictionary.

18 Q Who is the author?

19 A Elias.

20 Q Did you look up two words in that dictionary?

21 A Yes, sir, I have.

22 Q What words were those?

23 A Wajihah and ramz.

24 Q Can you spell those two words in English for the
25 record.

1 A Wajihah, W-A-J-I-H-A-H, ramz, R-A-M-Z.

2 Q What definition did you find for the word wajihah
3 in that dictionary?

4 A Front.

5 Q What definition did you find for the word ramz?

6 A Symbol.

7 Q If you would please pick up what has been placed
8 next to you as Government's Exhibit 397A for identification,
9 I ask you to take a look at that.

10 A Yes, sir.

11 Q What is that exhibit?

12 A These are three copies, one of the front page of
13 this dictionary and one of the page number 363, which has
14 the word ramz, which means symbol, on it. The third copy is
15 page number 781 from the same dictionary, which has the word
16 wajihah, which is translated as front or fore part.

17 Q Mr. Abdel-Hafiz, do you have a pen with you?

18 A Yes.

19 Q Could you just mark on those two pages where the
20 words wajihah and ramz appear.

21 A Sure.

22 MR. KHUZAMI: At this time the government offers
23 Government's Exhibit 397A in evidence.

24 THE COURT: 397A is received without objection.

25 Go ahead.

1 (Government's Exhibit 397A received in evidence)

2 MR. KHUZAMI: May I approach, your Honor?

3 THE COURT: Yes.

4 Q Mr. Abdel-Hafiz, just so the record is clear, you
5 defined the word ramz as symbol, is that right?

6 A Yes, sir.

7 Q That is S-Y-M-B-O-L?

8 A Yes.

9 Q I have placed before you what is marked
10 Government's Exhibit 381, the videotape, and 381BT, a
11 transcript. Can you take a look at those, please.

12 A Yes, sir.

13 Q Did you have an opportunity to review the
14 videotape, Government's Exhibit 381B?

15 A Yes, I had.

16 Q How do you know that?

17 A With my initial on it.

18 Q Did you listen to the Arabic conversation on that
19 videotape?

20 A Yes, sir, I have.

21 Q Is 381BT a translation from the Arabic you heard
22 on the videotape into English?

23 A Yes, sir, it is.

24 Q Does that translation fairly and accurately
25 translate the Arabic to English of what you heard on the

1 videotape 381B?

2 A Yes, sir, it is.

3 Q Are the voice attributions accurate as well?

4 A Yes, sir, it is.

5 Q How do you know that they are accurate?

6 A Because I saw it on the videotape.

7 Q Are you also familiar with the voices of the
8 participants?

9 A Yes.

10 Q Who are the participants?

11 A Mr. Siddig Ali, Mr. Emad Salem, Mr. Amir
12 Abdelgani and Mr. Fadil Abdelgani.

13 MR. KHUZAMI: Your Honor, at this time I would
14 offer Government's Exhibit 381B, the videotape, and the
15 corresponding transcript 381BT.

16 MR. LAVINE: May I have a brief voir dire?

17 THE COURT: Yes.

18 MR. LAVINE: Thank you.

19 VOIR-DIRE EXAMINATION

20 BY MR. LAVINE:

21 Q Good afternoon, Mr. Abdel-Hafiz.

22 A Good afternoon, sir.

23 Q When did you review the video 381B?

24 A I believe it was given to me on Tuesday, last
25 Tuesday.

1 Q Do you know what time on Tuesday?

2 A I believe it was in the afternoon.

3 Q Was that the first time that you had reviewed
4 that particular video?

5 A Yes, sir, it was.

6 Q You mentioned that the voice attributions are
7 accurate and correct.

8 A Yes, sir.

9 Q Are there portions of that video where when you
10 watch it, you do not see the people who are speaking?

11 A Yes, sir.

12 Q How do you know that the voice attributions are
13 correct in those situations?

14 A Because I am familiar with the voices of the
15 people who were talking.

16 Q Were you familiar with the voice of Fadil
17 Abdelgani?

18 A This was my first time to listen to or watch a
19 tape of Fadil Abdelgani. That's why in doing my translation
20 there was a statement that was made, I was not sure who made
21 it, and I wrote unknown male, because I was not sure who
22 made this particular statement.

23 Q I am sorry. You are talking about your
24 translation of 381B?

25 A Yes.

1 Q On 381B, did you hear Mr. Abdelgani's voice?

2 A Which Abdelgani?

3 Q Fadil.

4 A Yes, sir, I have.

5 Q Would it be fair to say that you heard his voice
6 approximately 15 to 25 times?

7 A Yes, that would be fair.

8 Q And would it be fair to say that of those 15 to
9 25 times, almost every one of those attributions, of the
10 statements attributed to him was unintelligible?

11 A Not almost all of them.

12 Q Close?

13 A No. There are several attributions at the
14 beginning when he was introducing himself or being
15 introduced to Mr. Emad Salem that was very clear, and when
16 he talked with Emad a couple times, that was very clear.
17 But once they disappeared from in front of the camera, yes,
18 it was unintelligible.

19 (Continued on next page)

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1 MR. LAVINE: I have nothing further.

2 MR. BERNSTEIN: Objection as previously noted.

3 THE COURT: Those exhibits are received. That is
4 381B and 381BT.

5 MR. KHUZAMI: Your Honor, to clarify, the
6 government is only offering a portion of the videotape, the
7 portion beginning approximately 8:39 p.m. and continuing for
8 about 90 minutes.

9 THE COURT: Then it is that portion of 381B that
10 is received.

11 (Government's Exhibits 381B and 381BT received in
12 evidence)

13 MR. KHUZAMI: Your Honor, at this time I would
14 ask that you request the jury to refer to their binders of
15 the exhibits offered by Mr. Hampton-El.

16 THE COURT: I am told they don't have those.
17 There was no request that they be put out and so they
18 weren't.

19 MR. KHUZAMI: I am sorry. That was my oversight,
20 your Honor.

21 THE COURT: Indeed. Is there anything else you
22 can examine on?

23 MR. KHUZAMI: That is the last part of my
24 examination.

25 THE COURT: In that event, we will break for

1 lunch and reconvene at 15 minutes before 2. Ladies and
2 gentlemen, please leave your notes and other materials
3 behind. Please don't discuss the case, and we will resume
4 this afternoon.

5 (Jury excused)

6 THE COURT: You can step down.

7 (Witness excused)

8 THE COURT: How are we doing as to time? How
9 much more?

10 MR. McCARTHY: We have one other witness after
11 this one that I don't expect to be lengthy, and we have to
12 read the transcript.

13 THE COURT: How long is that?

14 MR. McCARTHY: Almost 13 pages.

15 THE COURT: You have?

16 MR. JACOBS: I have Paul Ginsberg and Detective
17 Fuhrman.

18 THE COURT: Detective -- OK, you got me.

19 MR. JACOBS: Ginsberg 10 minutes.

20 MR. LAVINE: Mohamed Yousry will be retaking the
21 stand briefly.

22 THE COURT: Mr. Wasserman?

23 MR. WASSERMAN: No. The only thing I should
24 alert the court, in cross-examination of Mr. Abdel-Hafiz, I
25 have to connect the tape recorder, which will require

1 perhaps a 2-minute break.

2 THE COURT: Yes, as long as it doesn't -- let's
3 everybody be careful.

4 MR. WASSERMAN: Absolutely.

5 THE COURT: Is there anybody else who has
6 anything? Then we will finish this afternoon.

7 Thank you.

8 (Luncheon recess)

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1 AFTERNOON SESSION

2 1:55 p.m.

3 (Trial resumed; jury not present)

4 MR. SERRA: Your Honor, two brief matters before
5 the jury comes out.

6 THE COURT: Yes.

7 MR. SERRA: First of all, there is an addition, a
8 two-page revision, actually, of Government Exhibit 362 that
9 Mr. Khuzami and I have been going back and forth on for
10 several days and finally came to an agreement. Ms. Schwartz
11 has a copy. There is no need to read it to the jury, but
12 they should be informed, if the Court would, or I will, if
13 the Court wishes, that the parties agree that there are two
14 pages which will be inserted at the appropriate place in
15 their transcript books, which are more accurate than what
16 they have.

17 THE COURT: As to Exhibit 362?

18 MR. SERRA: As to Exhibit 362, your Honor.

19 THE COURT: Fine. I will break that to them.

20 MR. SERRA: Your Honor, the other thing is, I was
21 reviewing the record of my case, Mr. Alvarez's case, in the
22 last couple of days, and I am not just sure on the Court's
23 procedure on one thing. There were four stipulations, AA
24 through DD, which were reproduced in Mr. Alvarez's exhibit
25 books for the jury and each of which was offered and read to

1 the jury. I didn't specifically offer the pieces of paper.
2 I would, however, like them to remain in the exhibit books
3 so the jury can have them for deliberations. Does the Court
4 wish me to formally offer the stipulations?

5 THE COURT: I think, in view of their treatment,
6 they will be deemed to have been received.

7 MR. SERRA: I am sorry, Judge, I can't hear you.

8 THE COURT: I say, in view of how they were
9 treated, I will deem them to have been received. That is
10 the usual course with stipulations.

11 MR. SERRA: Thank you.

12 THE COURT: So it is AA through DD?

13 MR. SERRA: DD, your Honor, yes.

14 (Defendant Alvarez Exhibits AA through DD were
15 deemed received in evidence.)

16 MR. McCARTHY: Your Honor, there are also two
17 charts, 520 and 521, on which there are minor modifications
18 that Mr. Ricco has suggested to me, and also Ms. Stewart.
19 They are going to be made overnight. But other than that,
20 that will be the end of the chart matter.

21 THE COURT: All right. Did somebody want to be
22 heard with respect to that chart even as modified? I don't
23 hear anybody. So the chart, then, as modified, is received
24 as 520 and 521.

25 No, 551. It is 521 and 551.

1 MR. McCARTHY: You are right, your Honor. I am
2 sorry.

3 THE COURT: All right. Those exhibits are, for
4 the record, 521 and 551. Those are received as revised.

5 (Defendant Alvarez Exhibits 521 and 551 were
6 received in evidence.)

7 GAMAL ABDEL-HAFIZ, resumed.

8 (Jury present)

9 THE COURT: Good afternoon, ladies and gentlemen.

10 JURORS: Good afternoon.

11 THE COURT: Mr. Khuzami.

12 MR. KHUZAMI: Thank you, your Honor.

13 Your Honor, at this time I would ask that the
14 jury be requested to refer to the binders marked defendant
15 Hampton-El, and specifically, your Honor, to Hampton-El
16 Exhibit Q50-T.

17 THE COURT: That is behind the Q tab in the book.

18 MR. KHUZAMI: For the record, Q50-T is an excerpt
19 from Government Exhibit 353, otherwise known as CM50.

20 GAMAL ABDEL-HAFIZ, resumed.

21 DIRECT EXAMINATION (Continued)

22 BY MR. KHUZAMI:

23 Q Mr. Abdel-Hafiz, did you compare the underlined
24 portions of Hampton-El Q50-T to the corresponding Arabic
25 that was spoken on Government Exhibit 353 or what is known

1 as CM-50?

2 A Yes, sir, I have.

3 Q The underlined portion on Q50-T which says "We
4 should look around," do you see that?

5 A Yes, sir, I do.

6 Q What is the Arabic phrase for the phrase "we
7 should look around"?

8 A Almukasif.

9 Q Is that for "we should look around"?

10 A No, not for "we should look around." "We should
11 look around," it means nefatish ano.

12 Q Excuse me --

13 THE COURT: Could we please get the spelling of
14 those for the reporter?

15 THE WITNESS: Nefatish, N-a-f-a-t-i-s-h.

16 Q And did you listen to this part of the tape?

17 A Yes, sir, I have.

18 Q Did you hear that phrase spoken?

19 A No.

20 Q Did you hear a word in its place or a phrase in
21 its place?

22 A Yes, I have.

23 Q What did you hear?

24 A Almukasif.

25 Q Spell that.

1 A A-l-m-u-k-a-s-i-f.

2 Q How many times did you hear that word spoken?

3 A Twice.

4 Q Can you give us the Arabic that you heard on the
5 tape that corresponds to this portion of the transcript?

6 A On the first one, where it says here, underlined,
7 "What is the solution?" it said, "Almukasif," which was just
8 spelled. On the other one, when it said "We should look
9 around," he was told here, when he said almukasif the first
10 time, Siddig said, "Huh?" to question it. And the second
11 time Emad Salem said, "Hanemel almukasif, h-a-n-e-m-e-l
12 a-l-m-u-k-a-s-i-f.

13 Q Who is the "he" that you are referring to?

14 A On which one?

15 Q The second time who said the word mukasif?

16 A Emad said it twice.

17 Q So, starting at the line that is underlined that
18 says, "We should look around," is it correct to state that
19 what you heard was the word mukasif?

20 A Yes.

21 Q And then you heard the word "huh?" by Siddig?

22 A Yes. No, the word "huh?" was by Siddig, yes, the
23 first time, yes.

24 Q And then after the word "huh?" you heard Emad
25 repeat word mukasif, is that correct?

1 A Yes.

2 Q Did you hear the word nefatish at all?

3 A No, I have not.

4 Q Can you please spell the word?

5 A N-e-f-a-t-i-s-h.

6 MR. KHUZAMI: Your Honor, at this time I would
7 like to play the corresponding portion of Government Exhibit
8 353.

9 THE COURT: Can we get the witness to say again
10 what the meaning is of the word "mukasif" here?

11 Q Mr. Abdel-Hafiz, what is the definition of the
12 word "mukasif" that you heard?

13 A It's condenser.

14 Q So the phrase as you heard it, can you please
15 translate for the jury those three passages that you heard
16 on the tape?

17 A OK. If I can get the jury to look at the first
18 underline for Siddig when he said "What is the solution?"
19 that was correct, "What is the solution?" The following
20 one, for Salem, was the condenser. Then Siddig said "Huh?"
21 Then after that Salem said, "we'll do the condenser." Then
22 Siddig Ali, after that, said, "Is it gonna make up for it?"

23 Q We will deal with that after we listen to the
24 tape.

25 A OK.

1 MR. KHUZAMI: Your Honor, at this time I would
2 like to play that corresponding portion of the tape, and I
3 would ask Mr. Abdel-Hafiz to raise his arm right before the
4 point that he hears this passage, he will lower his arm.

5 THE COURT: In other words, when he lowers his
6 arm, the passage is coming up?

7 MR. KHUZAMI: Upcoming, immediately upcoming.

8 THE WITNESS: Immediately upcoming.

9 THE COURT: In other words, we should watch for
10 the witness lowering his arm to listen particularly
11 carefully.

12 MR. KHUZAMI: That's correct.

13 I am sorry, your Honor, just to make clear:

14 Q The word that you hear in this passage is the
15 word mukasif, is that correct?

16 A Yes. And it will be mentioned twice.

17 (Tape played)

18 Q Mr. Abdel-Hafiz, farther down on Q50-T there are
19 the words underlined, "Forget about him." Do you see that?

20 A Yes, sir.

21 Q And what is the Arabic phrase for "Forget about
22 him"?

23 A Ensah, E-n-s-a-h, or Seebak minoh, or s-e-e-b-a-k
24 m-i-n-o-h.

25 Q And did you hear either of those words on this

1 tape?

2 A No, sir, I have not.

3 Q What did you hear?

4 A That when Siddig Ali said, "Would that make up
5 for it," the word in Arabic was bia'awadh.

6 Q Spell that.

7 A B-i-a'a-w-a-d-h.

8 Q And again English translation for that is what?

9 A "Would it make up for it?"

10 Q And two lines down, you see the underlined phrase
11 "We shouldn't trust him." Did you listen to the
12 corresponding portion of the tape for that?

13 A Yes, sir, I have.

14 Q What is the Arabic for "We shouldn't trust him"?

15 A Mish lazem, m-i-s-h l a z e m, nathiq feeh,
16 n-a-t-h-i-q f-e-e-h.

17 Q Did you hear that on the tape?

18 A No, I have not.

19 Q What did you hear?

20 A Here there was, before the pause -- this
21 particular line was made wrong here -- before the pause it
22 was Emad the one who was saying "We'll try to do something
23 or another." There was an unintelligible word after that.

24 Q What did you hear in place of the phrase "we
25 shouldn't trust him"?

1 A In Arabic?

2 Q Yes.

3 A Emad said "Hanemil", h-a-n-e-m-i-l, "(ui)."

4 Q And what is the English translation of that
5 Arabic phrase?

6 A "Will do, or "will be making (ui).

7 MR. KHUZAMI: No further questions.

8 Q By "ui," you mean unintelligible?

9 A Unintelligible, yes.

10 THE COURT: Ms. Stewart.

11 MS. STEWART: Thank you.

12 CROSS-EXAMINATION

13 BY MS. STEWART:

14 Q Good afternoon, Mr. Abdel-Hafiz.

15 A Good afternoon, ma'am.

16 Q I think this is probably the last time, I hope, I
17 think everybody is hoping that, that we will see each other.

18 This is not the first time you testified with
19 regard to the word wajihah, is that right?

20 A No, it is not the first time.

21 Q And back in March you indicated that it might be
22 translated as, and this is at page 7980, someone who is in
23 the forefront, someone who is like a leader? Is that
24 correct? Do you remember saying that?

25 A I believe so.

1 Q And today you indicated, after looking at a
2 dictionary page, that it should be defined as "front"?

3 MR. KHUZAMI: Objection to form.

4 THE COURT: Sustained as to form.

5 Q When you used the word "front" in your
6 translation of 639-1, is it still your testimony that it
7 would mean forefront or leader?

8 A My translation of 639, the word wajihah was
9 translated "front." If I recall correctly, that was about
10 five months ago. When I was asked, can that be used, can
11 this word be used as a leader, and they indicated it may.
12 But if I felt like it would be a leader, I would have wrote
13 it as a leader. The word wajihah, when I heard it on the
14 tape and I checked my dictionaries and my references, I
15 found only translation to it as front.

16 Q And when you say "front," are you aware of the
17 way that word may be used in English to mean concealing
18 someone behind a front?

19 A I believe, yes.

20 Q Is that the way you are translating this word in
21 this instance?

22 A I am not sure what was meant by the word when it
23 was said. I just translated the word.

24 Q Is this concept of a front, a person acting as a
25 front, is that an Arabic concept using the word wajihah?

1 A Yes.

2 Q It is your testimony that it is?

3 A Yes, it is.

4 Q Did you ever consult an Arabic-to-Arabic
5 dictionary for the word wajihah?

6 A No, I haven't.

7 Q Let me give you a group of documents. These are
8 marked Abdel Rahman QQ through VV.

9 THE COURT: I am sorry, QQ?

10 MS. STEWART: Through VV.

11 Q Mr. Abdel-Hafiz, if you would look at the first
12 item of VV document.

13 A I am not sure I have a VV.

14 Q Does it look like UU maybe?

15 A I have it right here. Yes, ma'am.

16 Q This is an Arabic-Arabic dictionary?

17 A Yes, it is.

18 Q And it is by Mohammed Al Basha, is that right?

19 A Yes, ma'am.

20 Q And it is entitled "The Sufficient," is that
21 correct?

22 A That's correct.

23 Q If you would turn the page to the entry for
24 wajihah, which is in the extreme right column --

25 A Yes.

1 Q -- would you look at the definition at the two
2 inverted VV's?

3 A OK. The word that is written here, al wajihah,
4 A-l w-a-j-i-h-a-h, and that is exactly like saying "the
5 front." The word that was said on the tape was "front,"
6 period, without "the" or "al" before it. And the definition
7 here say al wajihah, which means the front part of
8 something.

9 Q Well, I would ask you now to look at the same
10 dictionary page, which I also had reproduced from Elias.
11 This is at QQ, Abdel Rahman QQ. You indicated, I think,
12 that you had recently purchased Elias, is that right?

13 A No, I --

14 MR. MCCARTHY: Objection to form.

15 THE COURT: Sustained as to form, but you can
16 rephrase it.

17 Q When did you get your copy of Elias that you
18 consulted in connection with your testimony?

19 A I have this dictionary, I believe, since 1977 or
20 '78.

21 Q OK. The hearing isn't so good on that side of
22 the room.

23 Would you look at the page that contains the
24 Arabic to English definition of wajihah, which you testified
25 about this morning. Is that right?

1 A Yes, ma'am.

2 Q That gives the definition as front, right?

3 A Yes.

4 Q And then it shows a picture next to it, doesn't
5 it?

6 A The picture doesn't pertain to this explanation.
7 The picture pertains to the following meaning, which it says
8 wajihah of a building, say wajihah al bena'a, b-e-n-a'a, or
9 something. And the picture, if you see, there is an arrow
10 right next to the second explanation, which it says front of
11 a building, and there is a building, the arrow is pointing
12 to the building.

13 Q Is it not true that this is part of the
14 definition of wajihah?

15 A No.

16 Q Well, then, would you --

17 A It says definition, when you say the front, the
18 word "front," if you want to translate it, you have a
19 translation for the word "front" by itself. If you say the
20 front of a building, that is another translation. If you
21 say the front of a car, that is a third translation. But
22 because there is the word "front," common word among all of
23 them, that is why you have the dash that make up for the
24 word wajihah, which has the triangle next to it.

25 Q But it indicates, does it not, that with the

1 dash, using the word, it can mean facade or front of a
2 building, is that right?

3 MR. KHUZAMI: Objection to form.

4 THE COURT: Sustained as to form.

5 May I see counsel at the side briefly.

6 (At the sidebar)

7 THE COURT: I haven't up until now jumped in, but
8 it is fairly obvious to me what I think is going on here,
9 and I am going to jump in if it doesn't come out.
10 Dictionaries commonly give a definition and then give an
11 example of usage. And where the defined word goes, there is
12 a blank. So that if you had the word "hood," which can be
13 used to mean a variety of things, they might have the
14 picture of the front of a car and the sentence or the phrase
15 "the blank of a car," indicating that that is where the word
16 "hood" would go, and then the photograph. It is fairly
17 obvious to me that that is what is going on here.

18 MS. STEWART: It is a little more complicated,
19 but, I mean, one of the problems is that when you are using
20 an Arabic to English dictionary, we have the English in
21 front of us, but the problem --

22 THE COURT: But he describes the phenomenon that
23 goes on in English to English dictionaries, which is you get
24 a usage phrase with the defined word rendered as a blank, so
25 that you know not only what the definition is but how to use

1 the word in a phrase, of which an example is offered by the
2 publisher.

3 MS. STEWART: I hear that. I will move on,
4 Judge.

5 THE COURT: All right.

6 MR. WASSERMAN: Judge, there evidently was 3500
7 material concerning this witness as it pertains to the
8 testimony of Hampton-El handed out this morning. I did not
9 receive it. I did not expect any, because my understanding
10 was there was no issue as to interpretation and the rest was
11 unintelligible, according on the government. I may have
12 misunderstood Mr. Khuzami at a point, but I represent to the
13 Court that I am hearing for the first time what he is saying
14 he heard on that tape.

15 THE COURT: You want a short break?

16 MR. WASSERMAN: Yes.

17 THE COURT: All right.

18 MR. WASSERMAN: There is another witness after
19 this.

20 THE COURT: You want to reserve and then come
21 back?

22 MR. WASSERMAN: That would be perfect.

23 THE COURT: Good.

24 Ms. Stewart, when you say "I will move on," I
25 would like to clear it up.

1 MS. STEWART: All right.

2 THE COURT: Do you mind if I question? Do you
3 want to finish questioning?

4 MS. STEWART: No, go ahead.

5 THE COURT: I am going to ask him. He can always
6 say no.

7 MS. STEWART: Right.

8 (In open court)

9 THE COURT: Mr. Abdel-Hafiz, in the dictionary
10 that you were just looking at -- which is which one? Elias?

11 THE WITNESS: Elias.

12 THE COURT: -- is the phrase "the front of a
13 building" an example of a way to use the word or is it a
14 definition of the word?

15 THE WITNESS: Well, it is an example of a way to
16 use the word added to something else.

17 THE COURT: You say there is a blank in the
18 phrase the blank of a building?

19 THE WITNESS: Yes.

20 THE COURT: And that is where the defined word
21 goes?

22 THE WITNESS: Exactly.

23 THE COURT: Thank you.

24 BY MS. STEWART:

25 Q Mr. Abdel-Hafiz, if we look at RR, the Oxford

1 English Arabic dictionary --

2 A Yes, ma'am.

3 Q -- if you would look at the English word
4 "front" --

5 A Yes, ma'am.

6 Q -- and you would look at all the definitions in
7 Arabic, is it fair to say that the word "front" as you have
8 defined it for us, meaning to conceal behind it, does not
9 appear here?

10 A No, again, I did not define it as conceal behind
11 it. I defined the word from wajahah to front. Now, you ask
12 me if that is what is meant by it. I am not sure what is
13 meant by it. I translated the word from the Arabic to the
14 English. So I don't think it is fair to say that I defined
15 it as concealed behind it.

16 Q Well, it has to be -- as an interpreter -- as a
17 translator, you have to interpret in context, is that right?

18 A I believe we have agreed from the very beginning
19 that I don't interpret meanings, I translate what I hear.

20 Q OK. You translate it. But you have to translate
21 in context, in other words, the word that you select to use
22 to represent what is being said in Arabic has to fit the
23 context in which it is said. Is that correct?

24 A That's correct.

25 Q Would you tell me whether the word "front,"

1 meaning to conceal, is an Arabic definition as found in the
2 Oxford?

3 MR. KHUZAMI: Objection to form.

4 THE COURT: Will you rephrase it?

5 Q Mr. Gamal Abdel-Hafiz, if you would please look
6 at "front," the English word, which is defined in this
7 dictionary into Arabic.

8 A Yes, ma'am.

9 Q There are five different definitions given for
10 that, and some subparts as well. Is that correct?

11 A That's correct.

12 Q And none of them define "front" meaning being
13 used to conceal something behind, is that correct?

14 A That's correct.

15 Q I think you indicated that when you testified
16 first about this word to Mr. McCarthy, that you used the Al-
17 Mawrid Dictionary, Arabic to English, is that right?

18 A That's correct.

19 THE COURT: Can we get a spelling on that.

20 MS. STEWART: Yes. A-l - M-a-w-r-i-d.

21 Q If you would look at Exhibit SS in front of you,

22 A Yes, ma'am.

23 Q Is this the same dictionary?

24 A This is English Arabic, not Arabic English.

25 Q Right. But it is the same -- you have both parts

1 of it, I assume, is that right?

2 A Yes, I do.

3 Q In this English Arabic portion of it, could you
4 look up for us the word "infidel"?

5 A Yes.

6 MR. KHUZAMI: Objection; scope.

7 THE COURT: Do you want to be heard?

8 MS. STEWART: Yes.

9 (At the sidebar)

10 MS. STEWART: I am just trying to demonstrate
11 that this particular dictionary has a Western bias in the
12 way it defines things by using this word "infidel," which is
13 defined in this dictionary to mean anyone who isn't a
14 Christian -- hardly an Arabic-type definition.

15 THE COURT: So you are trying to show the bias of
16 the dictionary he used?

17 MS. STEWART: Yes.

18 THE COURT: Wait a second, he didn't say he
19 consulted that.

20 MS. STEWART: Yes, he did, in his direct
21 testimony in front of Mr. McCarthy. And then our
22 dictionary -- the first time -- and then that dictionary was
23 shown to --

24 THE COURT: That is not within the scope of his
25 examination here. That is the point. He didn't use it on

1 his direct here.

2 MR. KHUZAMI: No.

3 THE COURT: This is getting a little bit far,
4 really. Let's move on.

5 Objection sustained.

6 (continued on next page)

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IPT

1 (In open court)

2 BY MS. STEWART:

3 Q If you would look at TT, Mr. Abdel-Hafiz.

4 A Sure.

5 Q This is a newspaper article, is it not, from June
6 26, 1995?

7 A Yes, ma'am.

8 Q And if you would look at the underlined portion
9 on the right-hand side.

10 A Yes.

11 Q The word wajihah is used there, is that correct?

12 A Yes, along with the word shining.

13 Q Or bright.

14 A Or bright.

15 Q I think if you would turn to the next page.

16 A Again, I will disagree with translating the word
17 wajihah as a symbol.

18 (Continued on next page)

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1 Q The entire sentence is Mohammed El Shinawy added
2 that --

3 MR. KHUZAMI: Objection.

4 MS. STEWART: The context, I think, is -- I will
5 make a question out of it if that is the problem.

6 THE COURT: I don't know whether that is the
7 problem. Do you want to come up again.

8 (At the side bar)

9 THE COURT: I heard the name Shinawy and I didn't
10 know where we were going. That is not where we are going.

11 MR. KHUZAMI: We have a translation of a 1995
12 document.

13 THE COURT: I think she is showing an arguable
14 usage of the word wajihah is a leader. He can say he
15 disputes it.

16 MS. STEWART: He just said that front is the
17 right definition. I will substitute the word front into
18 that sentence.

19 THE COURT: I am going to let her do it.

20 MR. KHUZAMI: A 1995 article?

21 THE COURT: Yes, 1995.

22 MR. KHUZAMI: Whose translation is this?

23 MS. STEWART: I am sure it is Yousry's.

24 THE COURT: It could be yours. The point is, he
25 disputes it.

1 MR. KHUZAMI: My only point is that I am going to
2 want to elicit that it came from the person who originally
3 translated the wajahah symbol. He is the translator who
4 originally translated wajahah as symbol. She is reinforcing
5 his translation with another translation.

6 THE COURT: I think she is showing that it is
7 possible to have an article in which it is appropriate to
8 use the word symbol and the word wajahah appears.

9 MR. KHUZAMI: By the same translator.

10 THE COURT: Then presumably there would be
11 another word that would go in context of that article
12 instead. I will allow it. Go ahead.

13 (In open court)

14 THE COURT: Go ahead.

15 (Continued on next page)

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1 BY MS. STEWART:

2 Q Mr. Abdel-Hafiz, this is a newspaper article
3 about someone in the movie industry who passed away and they
4 are discussing that, is that correct?

5 A That is correct.

6 Q And they actually use the word wajihah, the word
7 that is the subject of so much discussion here, is that
8 right?

9 A Close enough, yes.

10 Q The excerpt that I asked you to read says
11 Mohammed El Shinawy, no relation to any other name in this
12 case, added that he, the deceased, was a bright symbol for
13 all people working in the movie industry, is that right?

14 A It reads that.

15 Q That is what the translation that I asked you to
16 read says, is that right?

17 A Yes.

18 Q That translation translated wajihah as symbol
19 there, is that correct?

20 A That is correct.

21 Q And would you substitute the word front?

22 A Why yes.

23 Q So it would read that Mohammed El Shinawy added
24 that he was a bright front for all people working in the
25 movie industry?

1 A I would have translated a shining front.

2 Q A shining front?

3 A A shining front, yes.

4 Q Mr. Abdel-Hafiz, you have translated a great deal
5 of the sheik's speeches and sermons and press conferences,
6 is that right?

7 A That is correct.

8 Q He frequently uses language related to Koranic
9 texts, is that right?

10 A That is right.

11 Q I think you also told us that though you are
12 Abdul-Hafiz, meaning a servant of the keeper of the Koran --

13 A That is correct.

14 Q -- do you know if the word wajihah or its root is
15 used anywhere in the Koran?

16 A I don't recall right offhand.

17 Q Are you familiar with is your rat -- I know I am
18 hurting this pronunciation and I beg your pardon and
19 everyone else's -- sorat loqman?

20 A Yes, ma'am.

21 THE COURT: Could you at least spell that for the
22 reporter.

23 MS. STEWART: S-O-R-A-T-L-O-Q-M-A-N.

24 Q And a verse which means and he who submits his
25 face to Allah. Are you familiar with that verse?

1 A Yes.

2 Q That is from the same root, is it not, as
3 wajihah?

4 A No. Do you have the Arabic of the verse handy?

5 Q I don't have it handy.

6 THE COURT: Also, which of those words is the
7 antecedent of the word that?

8 MS. STEWART: Let me step back. Thank you,
9 Judge.

10 Q And he who submits his face to Allah, the word
11 face in that particular, are you familiar with that, the
12 word that is used for face in that?

13 A Yes.

14 Q And is it not from the same root as the word
15 wajihah?

16 A The word face, yes, wajh is a root of wajihah.
17 Wajh is W-A-J-H, and here when he says face, again, that's
18 the face, the front, the forehead. That's what is meant by
19 this.

20 Q Is it, as I asked so many months ago, the
21 forefront, that part which is first seen, that part which is
22 first perceived by a person?

23 A That is correct.

24 Q So when the sheik says in 639 that he wishes to
25 be the wajihah of the Muslims, he really means the face, the

1 forefront of the Muslims.

2 MR. KHUZAMI: Objection.

3 THE COURT: Sustained.

4 MS. STEWART: Nothing further. Thank you.

5 THE COURT: Mr. Wasserman is going to reserve for
6 later on. Anyone else?

7 MR. LAVINE: Yes, your Honor.

8 THE COURT: Mr. Lavine, representing Mr. Fadil
9 Abdelgani. Go ahead.

10 MR. LAVINE: Thank you.

11 CROSS-EXAMINATION

12 BY MR. LAVINE:

13 Q Good afternoon again, sir.

14 A Good afternoon.

15 Q Let me direct your attention to Government's
16 Exhibit 381. That is BT, 381BT, the transcript.

17 A Is that the videotape?

18 Q Yes.

19 A I would like to have a copy of it, please.

20 MR. LAVINE: If I can approach.

21 Q You mentioned you began working on this this last
22 Tuesday?

23 A I believe so, yes.

24 Q Sometime in the afternoon on this last Tuesday?

25 A As I can recall.

1 Q When did you finish it?

2 A I finished it Friday night.

3 Q In that three-day period of time -- that would be
4 Tuesday to Wednesday to Thursday to Friday -- were you
5 working on other things as well or was this the project that
6 was occupying your attention?

7 A That was my primary project.

8 Q When you were working on this, you were working
9 with the actual videotape itself?

10 A Yes, sir.

11 Q That videotape runs for about how long, would you
12 say?

13 A The videotape runs for about two hours.

14 Q Would you say that it was a challenging project
15 for you in the sense that the words on the videotape are not
16 easy to hear?

17 A You can say that, yes.

18 Q How many drafts did you prepare during that
19 three-day period of time?

20 A Drafts of this, none. That's the only one I
21 produced.

22 Q Was anyone working with you during that three-day
23 period of time?

24 A There is another translator who was typing while
25 I was listening, to concentrate on the listening.

1 Q While you were working on this, were you working
2 with any other documents? Let me withdraw that.

3 Were you working with any prior drafts?

4 A I had one in my hand, yes.

5 Q You had not prepared that draft, had you?

6 A No, I had not.

7 Q Before that last Tuesday, had you ever even seen
8 that draft?

9 A No, I had not.

10 Q During the three days that you worked on this
11 product, were you in communication with anyone from the FBI
12 about the contents?

13 A No.

14 Q Did you look at any other documents in order to
15 assist you with the preparation of 381BT?

16 THE COURT: You mean other than the draft that he
17 had?

18 MR. LAVINE: Yes, I apologize.

19 Q Other than the initial draft, the first draft,
20 did you look at any other documents to assist you in the
21 preparation of 381BT?

22 A No, sir, I have not.

23 Q Would it be fair to say that as you were
24 preparing this final draft, the 381BT, that at times you had
25 to listen repeatedly to the tapes to hear what was being

1 said?

2 A That is true, yes.

3 Q Let me direct your attention to, I believe it is
4 page 6 of your draft -- I apologize for saying draft. Page
5 6 of 381BT. It is the exhibit.

6 Before I ask you about that page, if I ask you
7 what does the word zabiha mean, could you tell me?

8 A Zabiha means a slaughtered animal.

9 Q What would Abu Zabiha mean?

10 A I really don't know why it can be used but it can
11 be used as a name, just the name of somebody.

12 Q Like a nickname?

13 A It can be a nickname or it can be one of the
14 names that used to be used in the old Arabic days for
15 someone who is generous, who slaughters for his guests a
16 lot.

17 Q On page 6 of this document 381BT, at the middle
18 of the page, Siddig says his name is Abu Zabiha, Abu Zabiha,
19 and Salem says Abu Zabiha is fine but does he know what this
20 is or not. Siddig, you have smiles. Then Siddig, he is the
21 one who slaughters the infidels. What did Siddig say in
22 Arabic?

23 A He said dah elly bedbah elkufar.

24 Q How many times did you have to listen to the
25 videotape to hear those words, Mr. Abdel-Hafiz?

1 A This one?

2 Q The phrase you just told us, dah elly bedbah
3 elkufar?

4 A I heard it and I got it the first time but I
5 tried to hear it twice, two more times to make sure I am
6 right and correct.

7 Q And you were satisfied that you were able to hear
8 that?

9 A Yes, and the action was going with it, with
10 Siddig's hand. He was making a motion with his hand, like
11 this.

12 Q And you relied upon that hand motion, didn't you?

13 A No, I did not.

14 Q What was the significance of the hand motion, Mr.
15 Abdel-Hafiz?

16 A It's one of the observations that I see on the
17 tape with other things that I have seen.

18 Q Did you see him do that as he said those words as
19 you report them on page 6, he is the one who slaughters the
20 infidels?

21 A Yes, sir.

22 Q Did you ascribe any particular meaning to that
23 hand motion, and that hand motion was one hand on top of
24 another in a sort of sawing fashion, S-A-W-I-N-G fashion?

25 A I did not describe it.

1 Q I just described it.

2 A Yes.

3 Q You saw that as you were doing the translation?

4 A Yes, sir.

5 Q Did that mean anything to you?

6 A It means slaughtering somebody.

7 Q Does it mean slaughtering somebody?

8 A Somebody or something. Either or.

9 Q Could it mean slaughtering an animal?

10 A It possibly can, yes.

11 Q But you translated it as he is the one who
12 slaughters the infidels, is that correct?

13 A I translated the --

14 MR. KHUZAMI: Objection.

15 THE COURT: Sustained. Sustained.

16 Q Earlier on in that page, at about the sixth
17 attribution down, Salem is talking, and it begins, laughing.
18 And about three or four lines down Salem is saying who is
19 the person that you brought for us? Do you see that?

20 MR. LAVINE: Can I approach the witness?

21 THE COURT: Yes.

22 Q Page 6.

23 A I cannot look at it.

24 Thank you.

25 Q Did you hear the words I kept asking myself who

1 is this person that you brought for us?

2 A Yes.

3 Q Is it on this page that an introduction is taking
4 place?

5 A No, I believe it was before that.

6 Q But there is an introduction that takes place?

7 A Yes.

8 Q At any point in this document does Mr. Salem say
9 that he has met or seen Fadil Abdelgani before?

10 A No.

11 Q As a matter of fact, towards the bottom of that
12 page, five attributions from the bottom, it is Salem saying
13 by God, forgive me, I do not mean, and it says conversation
14 and voices overlapping each other. I opened the door and
15 saw the van entering, I opened the door and saw you facing
16 me, and you have exclamation point. Is that correct?

17 A Yes.

18 Q Did that indicate to you that Mr. Salem did not
19 know who Fadil Abdelgani was?

20 A That's an indication, yes.

21 Q You worked on CM's as well at various points in
22 the course of this investigation, did you not?

23 A Yes.

24 Q In this Exhibit 381BT, does there come a time
25 that Fadil Abdelgani leaves with Siddig?

1 A Yes, that is true.

2 Q And you see them on the video leaving, do you
3 not?

4 A Yes, sir, you do.

5 Q After they leave, is there any whispering?

6 A Not really, no.

7 Q Is there whispering, Mr. Abdel-Hafiz, while Fadil
8 Abdelgani is there?

9 A There was, yes.

10 Q As a matter of fact, is that reflected on page 7?

11 A Yes.

12 Q Mr. Abdel-Hafiz, would it be fair to say that as
13 you reflect on the CM's that you worked on and all the
14 video, or whatever video translations you worked on and
15 whatever other translations you worked on, that whispering
16 occurs very, very seldom?

17 A I cannot say very, very seldom, but it is not
18 often.

19 Q At any point in your work with the video 381 and
20 your preparation of 381BT, do you hear Fadil Abdelgani say
21 that he is going to pray the istikhara or do the istikhara
22 or perform the istikhara?

23 A No, I haven't heard him say that.

24 Q At any point during your translation of this
25 document, did you hear Emad Salem tell Fadil Abdelgani that

1 Emad Salem was building a bomb?

2 A I don't recall that.

3 Q Can you take a look?

4 A No, I don't think I have it. It didn't have it.

5 Q At any time did you hear Salem say let us not get
6 into details with him till -- let me direct your attention
7 to page 10.

8 A 10?

9 Q Bottom part.

10 A Yes.

11 Q So that language is there and you heard that
12 language, is that correct?

13 A Yes, sir, yes.

14 Q Let me direct your attention to page 12. In the
15 middle of that page -- have you got it?

16 A Yes, sir.

17 Q In the middle of that page, and by now just --
18 let me withdraw that question.

19 On page 12, is what is reflected here some
20 conversation that takes place before Siddig leaves with
21 Fadil, and after as well?

22 A Yes.

23 Q Towards the top of the page, say about the fifth
24 or sixth attribution down where it is Siddig saying fine,
25 fine, fine, so we are going, etc., etc., that is the last

1 attribution for Siddig, correct?

2 A That is correct.

3 Q After that, will Siddig and Fadil leave, correct?

4 A Yes, sir.

5 Q Then you have in your translation Salem saying,
6 about a third of the page, close to half the page down, yes,
7 tell you what, sheik, did you tell this brother about the
8 things we are intending to do, meaning the targets? Do you
9 have the word targets?

10 A Yes, sir.

11 Q You heard the word targets?

12 A Yes, sir, I have.

13 Q What does Amir say?

14 A He says no, not exactly.

15 Q Then Salem says, what does not exactly mean?
16 Correct?

17 A That is correct.

18 Q You heard that on the tape, did you not? You
19 heard those words?

20 A Yes, sir, I have.

21 Q Would it be fair to say that when Salem says what
22 does not exactly mean, that he didn't say it quite so softly
23 as I just did?

24 A Yes, that is fair to say that.

25 Q Is it fair to say that Salem's tone of voice was

1 an excited or an angry tone of voice?

2 A It was a harsh tone of voice.

3 Q After that, you have Amir saying I proposed to
4 him, no, I proposed to him. Mr. Abdel-Hafiz, Arabic is not
5 as precise as many other languages, is that correct?

6 A That is correct.

7 Q Could the word told be substituted for proposed,
8 in that line?

9 A It could, yes.

10 Q So Amir is saying I proposed to him or I told to
11 him, no, I proposed or told to him that someone will bring
12 us, and then you have Salem saying ummm, U-M-M-M, is that
13 correct?

14 A Yes.

15 Q Isn't it a fact that at that point Salem doesn't
16 say U-M-M-M, but Salem sigh with a heavy sigh?

17 A I don't really recall.

18 Q You then have Amir saying, the cars, after that
19 there is someone else who will take the one who did the,
20 unintelligible, could took, unintelligible --

21 THE COURT: Excuse me. Read it at a normal pace.

22 MR. LAVINE: I am sorry.

23 THE COURT: Thank you.

24 Q The cars. After that, there is someone else who
25 will take the one who did the, unintelligible, could took,

1 unintelligible, it is possible to follow us with this other
2 car, unintelligible. Then you have Salem saying, hm, and
3 Amir saying, that is it. Then Salem says, and he agreed,
4 question mark. Could that be did he agree as well?

5 A Yes, it could.

6 Q What is the word in Arabic for yes?

7 A Aiwa.

8 Q Would that be A-I-W-A or close?

9 A I didn't hear you, I am sorry.

10 Q Would that be A-I-W-A?

11 A Yes.

12 Q Then you have Amir saying yes, meaning that he
13 became comfortable with that. When you listened to that
14 videotape, did you hear the word aiwa?

15 A I am not sure what I heard at that time.

16 THE COURT: Mr. Abdel-Hafiz, you have to talk
17 into the microphone.

18 A I am not sure what I heard here, I cannot recall.
19 But the word yes can be aiwa, as you spelled it, can be ah,
20 A-H, it can be na'am, N-A apostrophe A-M. I am not sure
21 what I heard here.

22 Q And you don't remember what you heard there
23 either, do you?

24 A I don't recall.

25 MR. LAVINE: I have nothing further.

1 THE COURT: Mr. Wasserman?

2 CROSS-EXAMINATION

3 BY MR. WASSERMAN:

4 Q Good afternoon.

5 A Good afternoon, sir.

6 Q Mr. Abdel-Hafiz, going to the bottom of that
7 first page on Q50 where --

8 THE COURT: Hampton-El Q50?

9 MR. WASSERMAN: Yes, your Honor.

10 Q -- where there is a line seven attributions from
11 the bottom, Siddig saying we shouldn't trust him -- and we
12 would stipulate with you that the pause occurs after that
13 phrase. You testified, and forgive my pronunciation -- in
14 fact let me ask you so we can start off with good
15 pronunciation. What is the Arabic phrase for what you hear
16 as representing but we are not going to unintelligible?

17 A But we are not going to unintelligible?

18 Q Yes. That is what I have.

19 A Yes.

20 Q What is the Arabic phrase for that, sir?

21 A Bass, B-A-S-S.

22 Q B-A-S-S?

23 A Mish, M-I-S-H.

24 Q Right.

25 A Hana'amel, H-A-N-A apostrophe A-M-E-L.

1 Q That is what you hear?

2 A Yes.

3 Q Let's play the tape. This is Q50, which has been
4 introduced into evidence. If we could play it from the
5 beginning and then stop at the point where we hit the line
6 where you hear bass mish hana'amel, and if you would raise
7 your hand when you hear bass mish hana'amel.

8 A I will raise my hand and right before it comes I
9 will drop my hand.

10 Q That would be fine.

11 (Tape played)

12 MR. WASSERMAN: Please stop. We have passed it.

13 A It should be coming after this pause.

14 Q I am sorry.

15 (Tape continued)

16 A Can you go back a little bit, please.

17 MR. WASSERMAN: I think we did miss it. Your
18 Honor, if I may, let me try to get right before where I
19 think the expression is.

20 THE COURT: No, you are not a witness. Go right
21 before where you want him to listen.

22 MR. WASSERMAN: No problem, your Honor.

23 Q If you would try again, Mr. Hafiz, from the
24 beginning.

25 (Tape played)

1 MR. WASSERMAN: If we could back up just a couple
2 of feet and hear it again.

3 (Tape played)

4 A That's the one.

5 Q You are saying that is bass mish hana'amel?

6 A Ma benathiksh feeh.

7 Q That last phrase you are saying does not mean we
8 shouldn't trust him?

9 A Yes, that is what I am saying.

10 MR. WASSERMAN: Could we play it one more time.

11 THE COURT: Mr. Wasserman, move on to something
12 else.

13 MR. WASSERMAN: Judge --

14 THE COURT: That's an order.

15 MR. WASSERMAN: I follow your orders, Judge.

16 Q Could we go on to the first, which is, you have
17 instead of we should look around, you have the condenser, am
18 I correct?

19 A Yes, sir.

20 Q Were you by any chance looking at ahead to a
21 couple of -- did you translate CM 52?

22 A I reviewed it, I did not translate it. I
23 reviewed the underlined portions.

24 Q Do you recall that condenser was mentioned in
25 that CM?

1 A I don't really recall.

2 Q Would you take a look then at where you have
3 condenser. You hear the word mukasif?

4 A El mukasif.

5 Q El mukasif?

6 A Yes.

7 Q Rather than the word I know TPET I shall?

8 A Rather than I know TPET I shall.

9 Q Mukasif, I believe, is spelled M-U-K-A-S-E-T-H,
10 approximately?

11 A M-U-K-A-S-I-F.

12 Q And nefetsh is N-E-F-E-T-S-H, is that correct?

13 A That is correct.

14 MR. WASSERMAN: Could we play nefetsh.

15 MR. KHUZAMI: Objection to form, your Honor.

16 THE COURT: Sustained.

17 MR. WASSERMAN: Could we start at the line which
18 there is no disagreement on, which is what is the solution.

19 Q And would you agree, Mr. Abdel-Hafiz that the end
20 of that line is the word elhall?

21 A Elhall.

22 Q Yes.

23 A E-L-H-A-L-L.

24 Q That would be the cue for the jury as to what
25 word then follows to listen for, correct?

1 A Yes.

2 (Tape played)

3 Q You don't hear an N there, sir, nefetsh?

4 A No.

5 Q Let's move on. The next disagreement that you
6 have -- you say you hear -- where we have forget about him
7 you have be a'awadh?

8 A Be a'awadh.

9 Q Again starting with a B, correct?

10 A Yes. Let me write it for you, please.

11 (Pause)

12 Q You have, I believe it is B-I-A, A-D-H, is that
13 correct?

14 A Yes.

15 Q As opposed to da'ah, which would be D-A
16 apostrophe A-H?

17 A Yes, and the word da'ah that was said here, it
18 was mentioned that the word da'ah was said instead of be
19 a'awadh.

20 Q Right.

21 A The word da'ah is a very formal Arabic and it is
22 so unlikely and unusual for any two people who are talking
23 slang to put a word that will not be used except for a
24 formal speech or in a very formal conference for scholars.

25 Q Sir, would you agree, though, that before we get

1 into that judgment, whether you hear a B or D would be
2 important?

3 MR. KHUZAMI: Objection to form.

4 THE COURT: I will allow it.

5 MR. WASSERMAN: Thank you. Could we play
6 beginning with approximately elhall so that the jury can
7 follow.

8 Q If I may, before we start, could you help us out,
9 Mr. Abdel-Hafiz. Right before the disagreed word there is
10 the expression God willing, correct? There is no
11 disagreement on that?

12 A There is no disagreement.

13 Q Could you tell the jury what to listen for.

14 A Inshallah.

15 Q Let's start at approximately what is the solution
16 where we are looking for the word elhall.

17 A Excuse me. There is one more thing that maybe
18 will help the jury to follow with us. The word da'ah is one
19 syllable, the word you are looking for, and you will hear it
20 in three syllables, be a'awadh.

21 (Tape played)

22 Q That is a B rather than a D, sir?

23 A Be a'awadh.

24 Q That's a B rather than a D?

25 A Yes.

1 MR. WASSERMAN: Can we play it one more time?

2 (Tape played)

3 MR. WASSERMAN: Thank you. No further questions.

4 THE COURT: Anything else?

5 MR. KHUZAMI: No, your Honor.

6 THE COURT: Thank you very much, Mr. Abdel-Hafiz.

7 You are excused.

8 (Witness excused)

9 MR. KHUZAMI: The government calls David White as
10 its next witness.

11 DAVID ALAN WHITE,

12 called as a witness by the government,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. KHUZAMI:

16 Q Good afternoon, Mr. White. If you could speak
17 into the microphone to make sure everyone in the courtroom
18 can hear you.

19 A How am I doing?

20 Q Mr. White, how are you employed?

21 A I work in a restaurant.

22 Q Mr. White, did there come a time when you
23 witnessed a shooting on Lexington Avenue?

24 A Yes, I did.

25 Q Do you recall what date that was?

1 A I don't, without telling me, recall what specific
2 date, no.

3 Q Do you recall a year?

4 A To my recollection, again without a diary, it was
5 four years ago, I think four years ago.

6 Q Do you remember what time of the day it was?

7 A It was well into evening.

8 Q How is it that you came to be on Lexington
9 Avenue?

10 A I just got off a train at Grand Central
11 station -- Grand Central Station, excuse me, and I exited
12 the station at the Lexington Avenue exit, which is
13 approximately 43rd and Lex, and I was proceeding north on
14 Lexington Avenue thereafter.

15 Q Please keep your voice up a little.

16 You proceeded in what direction?

17 A North on Lexington Avenue.

18 Q Were you walking or driving?

19 A I was walking.

20 Q Which side of the Lexington Avenue were you on?

21 A I was walking on the sidewalk, up the west side
22 of Lexington Avenue.

23 Q Did there come a time when you heard some
24 commotion?

25 A Yes.

1 Q Do you recall what cross streets you were at on
2 Lexington Avenue when you heard this commotion?

3 A I can't give you the specific cross street, no.
4 I had been walking for sometime, and for several blocks, I
5 would say, at least from my point of departure from the
6 station.

7 Q So that would be several blocks north of 43rd
8 Street?

9 A I would say that, yes.

10 Q What did you see when you heard this commotion?

11 A Well, I heard unusual noises and looked up, and I
12 suppose the first two things I was aware of was a yellow cab
13 at curbside and some plate-glass windows that were emitting
14 kind of an eerie, Hopper-esque, yellow evening light.

15 Q First, where were you standing when you saw this
16 commotion?

17 A I was standing approximately midblock on the west
18 side of Lexington Avenue, on the sidewalk. The commotion
19 was to my north and to the east of me.

20 Q You indicated that you saw a cab. Where,
21 approximately, was the cab positioned?

22 A This cab was stopped at curbside, at the corner
23 of Lexington Avenue and whatever this cross street was.

24 Q This was north of where you were standing?

25 A North of where I was standing.

1 Q And east of where you were standing?

2 A And east.

3 Q Aside from the taxicab, what else did you see in
4 that vicinity?

5 A Immediately after recognizing the cab and this
6 sort of odd light, I saw what appeared to be a young male
7 figure tumble into the street curbside on the side street.
8 Thereafter I became aware of a man running across Lexington
9 Avenue.

10 Q Where was the man you when you first saw him
11 running across Lexington Avenue?

12 A I think I became aware of him first in what must
13 have been in front of the melee.

14 Q I am sorry?

15 A In front of the confusion. You know, there were
16 several bodies on the corner and then I was aware of him
17 being isolated, on his own in the street.

18 Q Was he in Lexington Avenue when you first saw
19 him?

20 A He was then in Lexington Avenue when I was first
21 specifically aware of this one gentleman.

22 Q Where was he.

23 Q Where was he in relation to the cab that you said
24 was stopped curbside on Lexington Avenue?

25 A My recollection is that he was very slightly

1 south and west, or not even west, but south of this cab,
2 perhaps even still in front of it.

3 Q In which direction was the person moving?

4 A This gentleman was running across Lexington
5 Avenue in a mild diagonal direction from north to west.

6 Q Can you describe the man you saw running across
7 Lexington Avenue?

8 A I can give a very vague description of what
9 appeared to me a man of average size, who had a peculiar
10 lumbering gait, like a man carrying extra poundage. His
11 hair was, I recall, dark and in a sort of conservative male
12 do, neither too particularly short nor too particularly
13 long.

14 Q When you say do, you mean hairdo?

15 A Hairdo, yes.

16 Q Approximately how far away was the man when you
17 first saw him, how far away from you?

18 A Perhaps when I first noticed him running from
19 where I am now to perhaps that window there. Would that be
20 20 yards? I don't know.

21 Q Did you follow the man as he was running?

22 A I followed him with my --

23 MR. PATEL: Objection.

24 Q Withdrawn.

25 Did you watch the man as he was running?

1 A Yes, I watched him, yes.

2 (Continued on next page)

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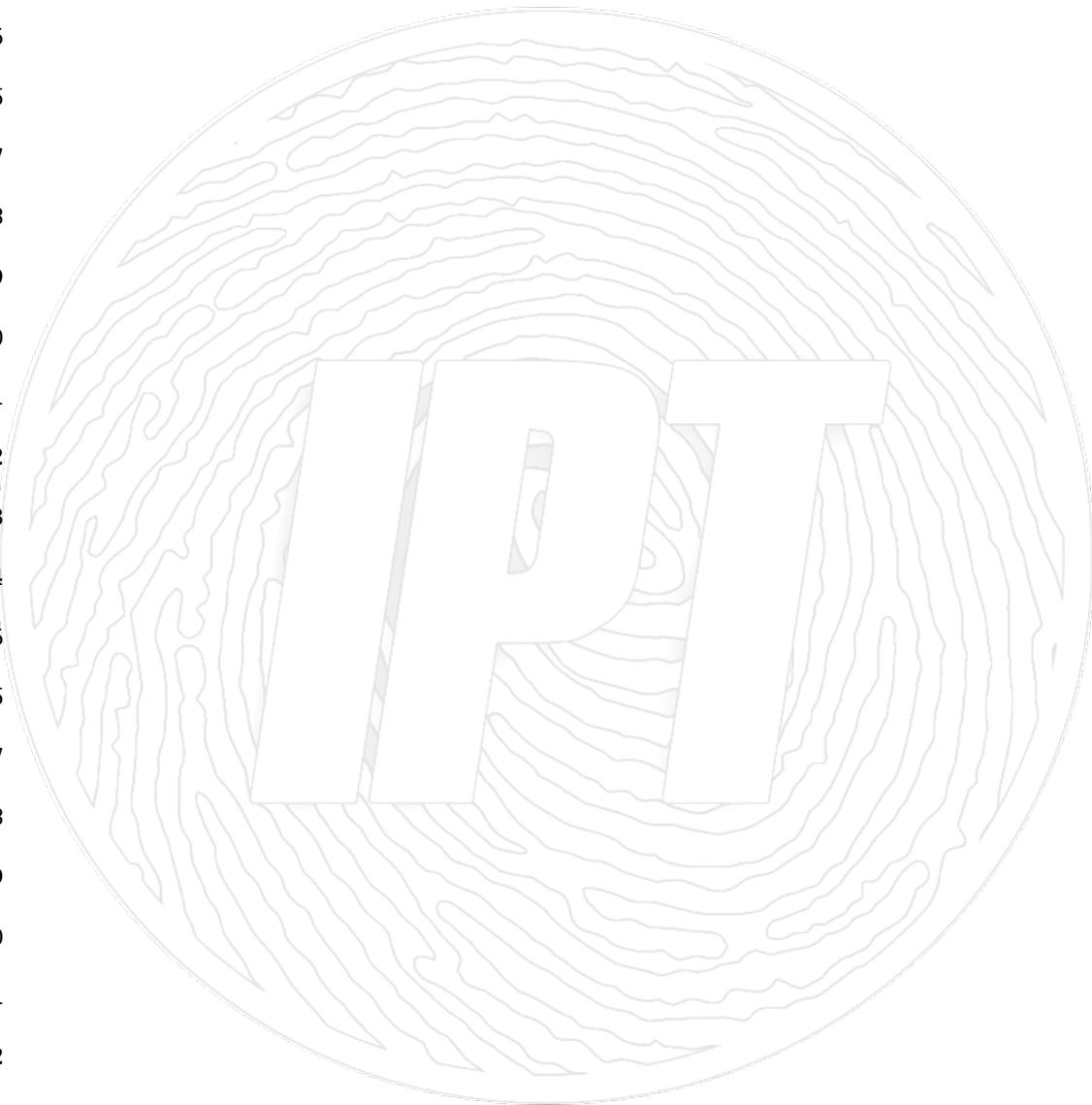
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1 Q When you first saw him, were there any other
2 people around or near him?

3 A No.

4 Q As he was running, were there any other people
5 around him or near him?

6 A No.

7 Q What happened next?

8 A Well, as he was running or lumbering across
9 Lexington Avenue, as I recollect, he reached into the waist
10 of his pants and pulled out a gun and immediately started
11 firing.

12 Q What hand was the gun in?

13 A As I remember, it was his right hand. He reached
14 into the left side of his belt to pull out this gun.

15 Q When you said he started firing, how many shots
16 did you hear that running man fire?

17 A As I perceived, he fired two shots.

18 Q And in which direction did he fire the shots?

19 A He fired the shots directly in front of him.

20 Again, he was running in a mild diagonal direction east to
21 south on Lexington Avenue.

22 Q And how was he holding the gun when he fired the
23 two shots?

24 A I assume you mean in which -- he was holding it
25 directly in front of him.

1 Q At the time that he fired the shots, did you see
2 anyone around or near him?

3 A There was no one else on Lexington Avenue, no.

4 Q What is the next thing that you noticed after you
5 heard the shots?

6 A Well, I think concomitantly with the shots I
7 became aware of a gentleman standing on the sidewalk in
8 front of me.

9 Q In front of?

10 A In front of me.

11 Q Can you describe where he was standing?

12 A He was, at this point, directly in front of me on
13 the sidewalk, on the western side of Lexington Avenue,
14 probably 15 yards in front of me.

15 Q Where on the sidewalk did you first notice him?

16 A He must have been in -- I don't recall seeing him
17 initially, when this melee started, nor as I had walked up
18 Lexington Avenue. He must have been perched somehow in the
19 shadows. But I was aware of him before the or at the time
20 of the first firing of the gun.

21 Q Are you able to describe the second man at all?

22 A No. He was just -- I could see that it was a
23 man -- well, it looked like a man to me. But it was, again,
24 dark and I was under a construction scaffolding and I really
25 couldn't identify him in any other way other than his

1 stature.

2 Q What happened after the two shots were fired?

3 A Well, while the first gentleman was -- had pulled
4 his gun and was firing, the second gentleman was at the same
5 time pulling a gun out of, as I recall, a holster on his
6 right hip, and began firing immediately. This all happened
7 in a matter of a couple of seconds.

8 Q How many shots do you recall the second man
9 firing?

10 A I perceived three shots fired by the second man.

11 Q As the first man was running across Lexington
12 Avenue, had he finished shooting before the second man
13 fired?

14 A That's as I perceived it, yes.

15 Q What happened after the second man fired the
16 three shots?

17 A Well, there was really no interval. This all
18 happened very quickly. But the second man pulled his gun
19 and started firing immediately. It happened to be just a
20 fraction of a second after the second shot fired by the
21 first man. His first shot, as I recollect, was fired into
22 the ground. He just pulled the gun -- once he got his gun
23 out of the holster, he just started pulling the trigger. He
24 fired one shot into the ground. The second shot, by that
25 time he had his hand in his waist, was fired straight out,

1 fired again, he kept his hand moving for the third shot and
2 fired again. He just kept pulling the trigger as he raised
3 his hand.

4 Q What happened after that?

5 A Apparently the last bullet fired, which was fired
6 in an upward direction, caught the first man, it lifted him
7 a couple of inches off the ground and tumbled him onto his
8 back at the feet of the first man.

9 Q And the man that was shot and fell down, was that
10 the same man that you had seen running across Lexington
11 Avenue?

12 A Yes.

13 Q At the time that the second man fired the three
14 shots, was there anyone else in the vicinity of the first
15 man?

16 A No one.

17 Q Aside from the five shots that you described, did
18 you hear any other gunshots that night?

19 A None.

20 Q Were there any other people on the sidewalk when
21 the five shots were exchanged?

22 A On my sidewalk there were none, other than myself
23 and the second gentleman with the gun.

24 Q After the shots were fired, did there come a time
25 you became aware of a cab?

1 A Yes. Immediately upon the conclusion of this
2 exchange of bullets, I was aware of a cab sort of drifting
3 to a stop at my right side.

4 Q When you say on your right side, do you mean on
5 Lexington Avenue?

6 A It was on Lexington Avenue, at curbside, on the
7 west side of the street now.

8 Q What happened after you noticed the cab?

9 A Well, the cab just seemed to drift idly to a
10 stop, and I realized that at this point I had actually had
11 something to hide behind. So I ducked under the railings to
12 this scaffolding, this construction scaffolding, and
13 positioned myself in front of the cab, which would have put
14 the cab between me and this incident that I had.

15 Q How soon after the last shot was fired did you
16 become aware of the cab?

17 A I would say immediately.

18 Q And was the cab north or south of where the
19 shooting occurred?

20 A When I became aware of the cab, it was south of
21 the shooting.

22 Q Approximately how far south of where the shooting
23 occurred was the cab?

24 A Well, if I were 15 yards south, the cab was 15
25 yards south.

1 Q What happened after you got in front of the cab?

2 A Well, I positioned myself in front of the cab in
3 such a way that I could look through its windshield and
4 backshield in order to see if anything else was going to
5 occur.

6 Q Let me stop you there. When you looked through
7 the windshield, at that point did you see anybody in the
8 cab?

9 A There was no one in the cab, no.

10 Q Was there a driver in the cab at that point?

11 A There was not a driver visible in the cab, no.

12 Q What happened next?

13 A So I was scanning, you know, the immediate
14 distance, thinking that there were probably more people
15 about to emerge from some one of these side streets with
16 guns and I wanted to know what I was going to do next. And
17 this cab, that had drifted to a stop and in whose front I
18 was now positioned, suddenly began to roll again. So I not
19 only had the complications of gunfire, but I had the
20 complication of a cab that was beginning to roll over me.
21 So I started banging on the hood, and fortunately there was
22 a driver, and he popped up from underneath the dashboard, at
23 which point I ran around the side of the cab, jumped in, and
24 told the man to get moving.

25 MR. KHUZAMI: No further questions.

1 MR. PATEL: Can we approach, your Honor?

2 THE COURT: Yes.

3 (At the sidebar)

4 MR. PATEL: Can we have a break?

5 THE COURT: But I want to get out of here today.

6 MR. PATEL: I just thought if we could take a
7 break we can accomplish two things at once. I am not going
8 any place. We can make whatever record we do. It is hot.

9 THE COURT: I know it is hot.

10 MR. PATEL: This won't take long.

11 (In open court)

12 THE COURT: Ladies and gentlemen, we are going to
13 take a break now. Please leave your notes and other
14 materials behind. Please don't discuss the case. We will
15 resume in a few minutes.

16 (The jury left the courtroom.)

17 MR. PATEL: Judge, this is real quick. I would
18 at this time make a motion to strike this witness's
19 testimony. He doesn't know when this happened; he is even
20 confused as to what year it happened. He is not sure where
21 on Lexington Avenue except that it is north of 43rd Street.
22 He makes no identification of anybody. He doesn't even
23 identify the person who fired the second gun as someone
24 wearing a uniform. I think this is asking the jury to
25 speculate on a whole lot.

1 MR. KHUZAMI: The witness does not recall the
2 specific day, it is about four years ago. However, if you
3 look at all the evidence in the record, the first cab at
4 curbside on Lexington Avenue, which was the testimony of
5 Franklin Garcia, the man --

6 THE COURT: I remember all of that, and it
7 dovetails nicely, but what have you got in his testimony
8 that pins it directly to this incident?

9 MR. KHUZAMI: The testimony of all the other
10 witnesses in the case. Mr. Haqq, who testified for the
11 defense, testified about the cab rolling to the stop, the
12 man in the front of his cab --

13 THE COURT: But he was able to place at least
14 when it occurred.

15 MR. KHUZAMI: I am sorry?

16 THE COURT: He was able to place at least when it
17 occurred. Were there any statements that this man filled
18 out at the time?

19 MR. KHUZAMI: He made a phone call. He called
20 the District Attorney's Office. He testified in the state
21 trial. And there are notes of an interview by the District
22 Attorney.

23 MR. PATEL: Weeks later.

24 THE COURT: It may very well have been weeks
25 later. I don't know what is in the material you have got,

1 and although I don't like doing it, I will permit you to
2 reopen your direct to show him whatever you need to show him
3 to at least narrow it down to something that is
4 identifiable.

5 MR. PATEL: Your Honor, his prior statements, as
6 I recall them, weren't much helpful. He didn't know where
7 this happened.

8 THE COURT: Fine. But a statement made weeks
9 later at least will narrow down the time, number one. It
10 seems to me that the jury can draw its own conclusions about
11 how likely it is that there were two incidents on Lexington
12 Avenue within weeks of one another involving people tumbling
13 to the ground and being shot, and so forth.

14 MR. PATEL: Your Honor, I apologize. I just
15 looked at the District Attorney's statement. It is undated.

16 THE COURT: He can testify, I assume, to how much
17 after the incident he made a statement to the District
18 Attorney, whether it is dated or not.

19 MR. PATEL: I will make a proposal to Mr. Khuzami
20 that maybe he could ask the witness if he can in fact answer
21 that question as to when he did this. There are no police
22 reports as to this witness.

23 THE COURT: I believe you.

24 MR. PATEL: I am just saying.

25 THE COURT: All right.

1 MR. KHUZAMI: I will be happy to talk to the
2 witness or be happy to reopen and show him prior testimony.

3 THE COURT: Do it any way you like, but an
4 incident involving a shooting on Lexington Avenue about four
5 years ago, somewhere in the 40s, isn't going to do it.

6 Sir?

7 MR. JACOBS: Your Honor, this morning I spoke
8 with Mr. McCarthy about Mr. Ginsberg's testimony, and
9 yesterday as well, and disclosed pretty much verbatim what
10 he is going to testify to concerning tape A. This morning I
11 asked Mr. McCarthy whether the government had the tape
12 examined by the Bureau. Mr. McCarthy responded that a
13 couple of weeks ago in August, earlier August, of this year
14 the tape was sent to the FBI Lab, tape A, and that
15 Mr. McCarthy was told by the lab that the Federal Bureau of
16 Investigation didn't have enough time to examine tape A,
17 some words to that effect. Mr. McCarthy can characterize
18 what the lab told him.

19 THE COURT: I want whichever defendants have to
20 take a break to start taking it now, so that we don't get
21 sidetracked, because we are going to sit today until we
22 finish.

23 MR. JACOBS: Agreed.

24 MS. AMSTERDAM: Great.

25 MR. JACOBS: And I have no problem with the

1 government, whatever they feel within the rules that your
2 Honor said yesterday, attempting to impeach Mr. Ginsberg or
3 do what they want with him on cross. However, I think there
4 are consequences that flow from an attack on Mr. Ginsberg
5 now or in summation, where the government has sent this tape
6 or any tape to the laboratory, and the FBI laboratory, for
7 whatever reason, hasn't been able to do certain things.

8 THE COURT: If what you are telling me is that
9 because they didn't examine it themselves, they can't attack
10 Mr. Ginsberg, then I am telling you that is not right.

11 MR. JACOBS: No, I didn't say they couldn't
12 attack. They are perfectly free to do what they wish on
13 examination. All I am saying is, I reserve the right at the
14 conclusion of his examination to put into evidence the fact
15 that the tape was sent to the lab and what the lab said, and
16 the fact what other --

17 THE COURT: No, not if it is what you just said.
18 If there is no evidence of a laboratory examination, then
19 there is no evidence of a laboratory examination, period,
20 and that is where it is going to stop.

21 MR. JACOBS: The fact that the FBI lab took the
22 tape and has told the United States Attorney's Office for
23 the Southern District in this case that they don't have
24 enough time to examine the tape, and then for the government
25 to hide behind and attack Mr. Ginsberg on summation that his

1 conclusions aren't supported by the evidence, I don't think
2 is a proper argument when the lab --

3 THE COURT: You have made your record.

4 MR. JACOBS: I want to reserve my applications on
5 that.

6 THE COURT: You don't have to reserve anything.
7 I just don't understand that locution.

8 MR. JACOBS: If the government isn't going to
9 attack Mr. Ginsberg's conclusions, fine. But if they want
10 to impeach him, that his results are not proper, then I
11 certainly have a right to bring out the fact that the
12 government --

13 THE COURT: You certainly don't. You have a
14 right to do what I tell you to do, and I just told you that
15 you couldn't do it.

16 MR. JACOBS: Then I want to make my record, your
17 Honor.

18 THE COURT: It is made.

19 Mr. McCarthy, can you tell us at least your side
20 of what happened --

21 MR. McCARTHY: Yes, your Honor.

22 THE COURT: -- speaking of making records?

23 MR. McCARTHY: It was a Sunday. I am trying to
24 remember whether it was two Sundays ago or not. The tape
25 was already in evidence, needed to be back and available for

1 the proceedings the following day. I had it sent down to
2 Washington so that if something arose in the proceedings,
3 since I have absolutely no competence in the area of tapes,
4 I could be conversant with the kind of things to look at.
5 They couldn't conduct the kind of examination that they
6 would conduct if it was sent down for testing. If it was
7 geographically possible for somebody in New York who knew
8 about this stuff, to sit and listen to it and tell me what I
9 thought I needed to know to be competent in the courtroom, I
10 would have done it that way. I had to send it down to
11 somebody in Washington who could listen to it in a way that
12 I couldn't.

13 But there was not a thorough examination of it.
14 Somebody down there who knows about tape stuff listened to
15 it and gave me a few pointers about things to listen to.
16 But no examination was done on it. Indeed, what they told
17 me was that to do the kind of job that they would do
18 ordinarily would take a whole lot longer than a day. Now,
19 if Mr. Ginsberg feels comfortable getting up, listening to a
20 tape overnight and rendering conclusions, I suppose that is
21 his business. But that is what they told me.

22 THE COURT: That is his business and that is what
23 he will do, and there is not going to be any other proof
24 with regard to that, Mr. Jacobs, and I will not hear
25 argument on it any further.

1 MR. JACOBS: Your Honor, I would like to make --
2 my record basically is that I don't recall an application
3 for a continuance or any of these comments brought to the
4 Court's attention. And I think for the government to hide
5 behind their skirts in this case, in this serious case, and
6 tell your Honor that the FBI lab couldn't do an examination
7 because it was a weekend is a bunch of baloney. Now, I am
8 not accusing Mr. McCarthy, they probably told him that.

9 MR. MCCARTHY: It is another time when he is not
10 accusing me. No one said the FBI couldn't do an
11 examination. Maybe the dopey prosecutor should have asked
12 them to look at it earlier. The fact is, I only had a day,
13 once I decided to do that --

14 THE COURT: Gentlemen, listen, both of you.

15 MR. JACOBS: All I am saying, your Honor --

16 THE COURT: The ruling is, for the last time,
17 that you can bring out from Mr. Ginsberg whatever you want
18 to bring out from Mr. Ginsberg, and Mr. McCarthy can throw
19 whatever he wants to throw at Mr. Ginsberg, both by way of
20 his ability and his technology, and in his summation he can
21 make of it what he will. There is going to be no
22 evidence -- repeat, no evidence -- about a lack of
23 examination by the FBI lab.

24 MR. JACOBS: Your Honor --

25 THE COURT: That is the end of it.

1 MR. JACOBS: If your Honor is telling me I can't
2 comment that the government had available this tape for
3 examination --

4 THE COURT: You can comment that it had it
5 available. I said evidence.

6 MR. JACOBS: I am sorry.

7 THE COURT: Your rhetoric isn't evidence.

8 MR. JACOBS: I think --

9 THE COURT: Believe me, I am the last person in
10 the world to try to cap that gusher.

11 MR. JACOBS: I understand. I just said, I want
12 to put it on the record. And, by the way, I accept a
13 hundred percent what Mr. McCarthy said the lab told him.

14 THE COURT: I don't care what you accept or
15 don't. That is between you and Mr. McCarthy. You can settle
16 that in the gym. See you in a few minutes.

17 (Recess)

18 (Jury not present)

19 MR. JACOBS: Judge, when the Khallafalla C was
20 received in evidence several weeks ago, since the time it
21 has been received there has been additional writing placed
22 on the exhibit, which is the FBI lab number, which is now
23 written on the exhibit, the Q number that has now been
24 written by somebody on the exhibit, I assume the lab. And
25 that is now in evidence. I just looked at it. It was not

1 there when Mr. Ginsberg examined the tape or when it was
2 placed in evidence before the jury. I assume the lab in
3 Washington or somebody wrote the Q number on it, just so
4 your Honor is clear.

5 THE COURT: A.S.W.

6 MR. JACOBS: All right.

7 (Jury present)

8 DAVID ALAN WHITE, resumed.

9 THE COURT: Mr. Khuzami.

10 MR. KHUZAMI: Thank you, your Honor.

11 THE COURT: More on direct.

12 DIRECT EXAMINATION continued

13 BY MR. KHUZAMI:

14 Q Mr. White, the incident that you testified about
15 earlier, can you recall the date that that occurred?

16 A In the previous trial?

17 Q No, when you just testified here today, the
18 incident that you testified about, do you recall when it
19 occurred?

20 A To the best of my recollection, it would be
21 around November of 1990.

22 Q And how is it that you know that?

23 A I testified in a previous trial in December of
24 1991, and I was in contact with the DA's office about two or
25 three weeks before that testimony. And, as I recall, the

1 incident took place about a year before my first contacts
2 with the DA's office.

3 MR. KHUZAMI: No further questions.

4 THE COURT: Cross, Mr. Patel.

5 CROSS-EXAMINATION

6 BY MR. PATEL:

7 Q During the break did you look at your testimony
8 from that previous trial?

9 A I looked at an excerpt of that testimony, yes.

10 Q On the evening of this event you got into a cab
11 and you went home, right?

12 A I went to my neighborhood, yes.

13 Q You eventually got home?

14 A Yes.

15 Q Did you return to the scene that night?

16 A The first thing I did --

17 THE COURT: It is a very precise question. Did
18 you go to the scene that night?

19 THE WITNESS: No, I did not.

20 Q Did you go to the 17th Precinct?

21 THE COURT: You mean that night?

22 Q That night.

23 A Did I physically go?

24 Q Did you physically go to the 17th Precinct that
25 night?

1 A I did not physically go to any precinct that
2 night.

3 Q Did you telephone the 17th Precinct that night?

4 A I telephoned -- I am not sure whether it was the
5 17th. The first thing I did upon entering my home was to
6 call the police about this incident, the very first thing I
7 did.

8 Q Did they ask you to go to the 17th Precinct?

9 A They told me they would get in touch with me if
10 they needed me.

11 Q And the --

12 A They may have told me, I don't recall, but I
13 wasn't about to go out of my apartment.

14 THE COURT: His question was very focused. He
15 asked you simply whether they asked you to go to the 17th
16 Precinct. And I gather the answer to that is no.

17 THE WITNESS: As I recollect, no.

18 Q And the next contact you had with any law
19 enforcement person was when you called the DA's office in
20 November of 1991, is that correct?

21 A Yes.

22 Q A year later you called the New York DA's office,
23 correct?

24 A That is correct.

25 Q Had you made any diary entries about this

1 incident?

2 A I made no diary entries about this incident.

3 Q At the time you called the DA's office -- that
4 was the Manhattan DA's office -- in November of '91, had you
5 read about the case in the newspapers?

6 A Yes.

7 Q Had you seen anything about the case on
8 television?

9 A Probably.

10 Q And you knew the case was coming to trial, is
11 that correct?

12 A I think the case was well into trial when I
13 called the DA's office.

14 Q And you were reading about it in the papers
15 because it was making the papers?

16 A I read several articles in the paper.

17 Q You mentioned that you were walking under a
18 scaffolding, is that correct?

19 A As I recall, yes, it was a construction
20 scaffolding.

21 Q And that scaffolding was on the same block as the
22 second man you described?

23 A Yes.

24 Q In other words, there was, as you walked up
25 Lexington Avenue, you were on the west side of Lexington

1 Avenue?

2 A Yes.

3 Q And the scaffolding was on the west side of
4 Lexington Avenue?

5 A Yes.

6 Q Covering the sidewalk?

7 A Yes.

8 Q And there was no cross street between that second
9 man or either of these men and that scaffolding?

10 A No, there was no cross street intersecting the
11 scaffolding.

12 (Continued on next page)

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1 Q Absolutely certain the scaffolding was on the
2 same block as the incident that you described?

3 A As I recollect.

4 MR. PATEL: Your Honor, may I approach the
5 witness with Government's Exhibit 6F?. Yes, you may.

6 Q We will have to share the microphone.

7 A OK.

8 Q I would like you to take a look at that. Do you
9 recognize that as being Lexington Avenue?

10 THE COURT: Mr. Patel, if you share the
11 microphone, you will have to share it --

12 MR. PATEL: I am sorry, your Honor. I apologize.

13 Q Do you recognize that as Lexington Avenue where
14 this incident occurred?

15 A I see no landmarks in this photograph that would
16 indicate to me that this was necessarily Lexington Avenue.

17 Q Is there anything about that that you recognize
18 as being where this incident occurred?

19 A Offhand, no. I think it is even facing a
20 different direction from the way I was walking.

21 Q Would this be facing south towards where you were
22 walking?

23 A It would occur to me, yes.

24 Q Do you see any scaffolding in that photograph?

25 A On this block, I see none.

1 Q Thank you.

2 MR. PATEL: Your Honor, I do want to ask a few
3 more questions about this. Do the jurors have this -- no,
4 they don't.

5 THE COURT: Do you want to pass it?

6 MR. PATEL: Yes. Could I walk by the jury slowly
7 on my way to the witness?

8 THE COURT: Yes, you may.

9 Q Do you see a police car in this photograph 6F?

10 A Yes, I do.

11 Q Do you see some, what looks like blood on the
12 sidewalk?

13 A I see what looks like a stain on the sidewalk,
14 yes.

15 Q What looks like some clothing on the sidewalk?

16 A Yes.

17 Q Do you see what looks like a post office?

18 A I can't read that. I am sorry.

19 Q Do you see what looks like a TV news van?

20 A I see a van, yes.

21 Q With an antenna coming up out of the top?

22 A What looks like an antenna, yes.

23 Q Do you see what looks like some crime scene tape
24 in the photograph?

25 A Yes.

1 MR. PATEL: May I pass this, your Honor?

2 THE COURT: Yes, you may. Do you have any
3 more --

4 MR. PATEL: Not on that point.

5 THE COURT: Go ahead.

6 Q The man you saw lumbering across the street, he
7 was wearing a coat, wasn't he?

8 A As I recollect, he was wearing a coat.

9 Q A three-quarter length coat, correct?

10 A As I recollect.

11 Q As you were walking up Lexington Avenue it was
12 dark on your side, is that correct?

13 A That is correct.

14 Q And there was light coming from the east side of
15 Lexington Avenue, correct?

16 A Yes.

17 Q As you saw that man, essentially he was backlit,
18 correct? He was lit from behind?

19 A Yes.

20 Q That coat, was that a dark blue, as you recall?

21 A I can tell you nothing more specific than what I
22 have told you. I don't know what color it was.

23 Q This was like a winter overcoat, a three-quarter
24 length overcoat?

25 A As I recollect, that's what it was. That's all I

1 really can tell you about the coat.

2 Q When the man was running, or lumbering --

3 A Yes.

4 Q Lumbering is somewhat slower than running?

5 A I am not sure lumbering is defined by speed so
6 much as motion of the body.

7 Q He was -- do you want to demonstrate?

8 A I don't know whether I can.

9 THE COURT: No.

10 A He probably tended to rock a bit as he ran. Does
11 that say something?

12 Q As he rocked across Lexington Avenue, did you
13 hear any keys jingling?

14 A No, I did not.

15 Q Did you see anyone take the coat from that man at
16 any time?

17 A No.

18 Q You have lived in New York for about -- for quite
19 awhile, correct?

20 A Going on 20 years.

21 Q You live on the Upper East Side?

22 A Yes.

23 MR. KHUZAMI: Objection.

24 THE COURT: Sustained.

25 Q You have worked in the restaurant business?

1 A Almost the entire time.

2 Q As a waiter?

3 A Waiter, bartender.

4 Q That's what you do now?

5 A That's what I do now.

6 Q Have you ever had a security clearance from the
7 United States government?

8 A I don't even think I know what that means.

9 Q In the winter of 1991 when you were working as a
10 waiter, did you go to Europe?

11 A I have family in Europe. I go almost every year.

12 (Continued on next page)

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1 Q You also own a 14-room house in Orange County?

2 MR. KHUZAMI: Objection.

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

4 MR. PATEL: Sure.

5 (At the side bar)

6 THE COURT: This is not a good-faith basis
7 inquiry. This is a "what the hell are you trying to do"
8 inquiry.

9 MR. PATEL: This guy has a tremendous amount of
10 unexplained wealth, your Honor.

11 THE COURT: You are barred. You are absolutely,
12 totally barred. OK? Now you have your record. He has
13 unexplained wealth and he works in the restaurant business,
14 tough. You are barred.

15 MR. STAVIS: He also sold his social security
16 number to another individual.

17 THE COURT: How do you know he sold it?

18 MR. STAVIS: There is another individual in Ohio
19 who is using his Social Security number at the present time.

20 THE COURT: You are barred from that, too.

21 MR. STAVIS: I think his credibility is placed in
22 issue, your Honor.

23 THE COURT: I think yours is placed in issue.

24 Do you have anything else?

25 MR. PATEL: May I have a moment with Mr. Stavis?

1 (Pause)

2 MR. STAVIS: Your Honor, I don't think that my
3 credibility is placed in issue, and we have done our
4 homework with regard to this witness.

5 THE COURT: We can discuss this on another
6 occasion. Anything else? No, good.

7 (In open court)

8 MR. PATEL: Nothing further, your Honor.

9 MR. KHUZAMI: No, your Honor.

10 THE COURT: Thank you very much. You are
11 excused.

12 (Witness excused)

13 MR. MCCARTHY: Your Honor, the government at this
14 time would ask permission to read from 381BT in evidence.

15 MR. MCCARTHY: 381BT is a conversation on June
16 23, 1993, beginning at approximately 8:39 p.m. Mr. Khuzami
17 will read the lines attributed to Emad Salem, Mr. Fitzgerald
18 will read the lines attributed to Siddig Ali, I will read
19 the lines attributed to Amir Abdelgani, and Agent Voss will
20 read the lines attributed to Fadil Abdelgani.

21 (Government's Exhibit 381BT in evidence read to
22 the jury)

23 MR. MCCARTHY: The government rests.

24 THE COURT: Mr. Ricco.

25 MR. RICCO: Your Honor, with the consent of the

1 government, the defendant Mr. El-Gabrowny offers into
2 evidence El-Gabrowny II. Your Honor, these were documents
3 that both the government and myself were under the mistaken
4 belief were actually entered and they were not.

5 THE COURT: Then II is received at this time.

6 MR. RICCO: 1 through 4, yes. Then, your Honor,
7 there are two transcripts. One would be El-Gabrowny L29-28T
8 and that would be a transcript of a tape recording that was
9 introduced into evidence as L29-28. That is with the
10 consent of the government.

11 MR. FITZGERALD: No objection.

12 THE COURT: L28T is received as well. Go ahead.

13 MR. RICCO: The remaining document would be a
14 transcript El-Gabrowny LA-20T, which is a transcript of a
15 tape that is in evidence as El-Gabrowny LA-20.

16 MR. FITZGERALD: No objection.

17 MR. RICCO: Both of these transcripts, your
18 Honor, were transcripts that the government and I had agreed
19 at that time would be introduced later.

20 THE COURT: LA20T is received well.

21 MR. RICCO: That would be it for Mr. El-Gabrowny.

22 (Defendant El-Gabrowny Exhibits II1 through II4,
23 L29-28T and LA-20T received in evidence)

24 THE COURT: Thank you very much. Mr. Jacobs?

25 MR. JACOBS: He went to get his witness.

1 THE COURT: Ladies and gentlemen, with your
2 indulgence, we have two additional short witnesses. We will
3 sit to hear them so we can finish with the evidence today.

4 MR. WASSERMAN: Your Honor, can we see you at the
5 side briefly?

6 (At the side bar)

7 MR. WASSERMAN: Your Honor, I would like to ask
8 Mr. Yousry one question concerning something that Mr.
9 Abdel-Hafiz stated during his testimony today, and if your
10 Honor will not permit me to ask that, then I would ask for
11 an instruction that only Mr. --

12 THE COURT: What is the one question?

13 MR. WASSERMAN: He testified that the word da'ah
14 is an old-fashioned formal expression that is not used and
15 and certainly not used in the circumstances of the
16 conversation Q50.

17 THE COURT: He said it is not used in sort of
18 slang, vernacular conversations but rather as a formal term.

19 MR. WASSERMAN: Mr. Yousry will testify that --

20 THE COURT: I will let you ask it.

21 MR. RICCO: For your records, El-Gabrownny LII is
22 the Ryder lease agreement.

23 THE COURT: The Ryder lease agreement?

24 MR. RICCO: Yes.

25 THE COURT: The truck?

1 MR. RICCO: Yes.

2 THE COURT: Got you.

3 MR. SERRA: Your Honor, I am reminding you about
4 the two pages in GX 362.

5 THE COURT: I thought about that. Can I make a
6 suggestion to you?

7 MR. SERRA: Of course.

8 THE COURT: If I tell them that, it isn't going
9 to tell them anything. What is the point of telling them
10 that?

11 MR. SERRA: Because as I understand it, according
12 to Ms. Schwartz, we don't want to just replace pages in
13 their books, which would be fine but they have been
14 apparently placing notes in their books. Ms. Schwartz
15 thinks there is a possibility of notes.

16 THE COURT: I will tell them that.

17 MR. PATEL: Your Honor, since no good deed should
18 go unpunished, and to give you a heads up, I would like a
19 few minutes to make a mistrial motion.

20 THE COURT: Based on my refusal to let you
21 cross-examine on what you wanted to cross-examine on? We
22 will do it later.

23 (In open court)

24 THE COURT: Before we call the witness, let me
25 apologize. We have had a number of trips up to the side

1 today and that is in part accounted for by the fact that
2 everyone, including me, is trying to get the evidence in in
3 an orderly fashion before you, and people have been making
4 great efforts and great strides towards hurrying it up, and
5 part of that means there is a little bit of confusion. That
6 is not anybody's fault, but please understand that is the
7 reason we have had to go up there so often.

8 Mr. Lavine.

9 MR. LAVINE: Thank you, Judge.

10 Mohamed Yousry.

11 MOHAMED YOUSRY,

12 called as a witness by the defense,

13 having been duly sworn, testified as follows:

14 THE COURT: Go ahead, Mr. Lavine.

15 (Continued on next page)

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1 DIRECT EXAMINATION

2 BY MR. LAVINE:

3 Q Mr. Yousry, do you have before you Government's
4 Exhibit 381BT?

5 A Yes, I do.

6 Q Prior to today, have you had an opportunity to
7 review that document?

8 A Yes, I have.

9 Q And have you as well had an opportunity to review
10 the video which is Government's Exhibit 381?

11 A Yes, I have.

12 Q Have you found inaccuracies in 381BT?

13 A Yes, I did.

14 Q Let me direct your attention to page 6.

15 Mr. Yousry, let me direct your attention to roughly the
16 middle of that page. There is an attribution to Siddig Ali
17 and the language as written next to the attribution is
18 smiles. He is the one who slaughters the infidels,
19 exclamation point. Have you reviewed the video?

20 A Yes, I have.

21 Q And have you reviewed this section of the video,
22 the section that is depicted or portrayed on page 6?

23 A Several times.

24 Q When you say several times, how many times do you
25 mean?

1 A Six or seven.

2 Q The words, he is the one who slaughters the
3 infidels, are they there?

4 A No, they are not.

5 Q Let me direct your attention to page 11. Again,
6 at the middle of that page, roughly the middle, there is an
7 attribution to Mr. Salem, and the language is, or you go
8 ahead, I will keep working on the timers. Have you had an
9 opportunity to examine the video that is reflected on page
10 11?

11 A Yes, sir, I did.

12 Q And have you again done that several times?

13 A I have.

14 Q The words on the timers, are they there?

15 A No, they are not.

16 Q Now let me direct your attention to page 12.
17 Toward the bottom of that page, Mr. Salem says, umm, U-M-M,
18 period. Amir says that is it. Salem says, and he agreed,
19 question mark. Then there is an attribution to Amir that
20 says: Yes. Meaning that he became comfortable with that.

21 I am going to ask you to listen to the actual
22 video itself.

23 MR. LAVINE: Judge, we have it cued up. It is
24 ready to go, if I could have permission to play that.

25 THE COURT: Go ahead.

1 MR. LAVINE: Thanks. I would ask the jurors, if
2 they would care to, to put on their headsets just for a
3 moment.

4 (Videotape played)

5 Q Mr. Yousry, at 21:53:38 of that video, is that
6 where Amir says that is it and Salem then asks and he agreed
7 or did he agree?

8 A Yes.

9 Q Is that where the language yes, meaning that he
10 became comfortable with that, is that where that language is
11 supposed to be?

12 A It is supposed to be there, but the word yes, it
13 is not on the tape.

14 Q What are the different words in Arabic for yes?

15 A Aiwa, nam, and they are not on the tape.

16 Q Are any of the Arabic words for yes on that
17 video?

18 A Absolutely not.

19 Q That is the video we just saw?

20 A Yes, sir.

21 Q Let me direct your attention to the next
22 attribution to Salem, which is at the second-to-the-last
23 attribution on page 12. That reads, or begins to read, but
24 he is still telling you an hour ago, I am still going to
25 pray the istikhara prayers and see whether I will come or

1 not.

2 Just directing your attention to the first phrase
3 of that, which is but he is still telling you an hour ago.

4 A Yes.

5 Q Are there different ways to translate the Arabic
6 language for those words?

7 A Yes, there is. Actually, this is a particular
8 phrase. We use that in Egyptian Arabic, and he will keep
9 tell you every hour that he will do such and such and he
10 will never do it actually. That's precisely what it means.
11 He keeps saying it, he keeps putting it off.

12 Q But is it true that the literal translation could
13 be but he is still telling you an hour ago?

14 A No.

15 Q By the way, do you know Fadil Abdelgani?

16 A I don't know Fadil Abdelgani.

17 Q Never spoken with him?

18 A Never did.

19 MR. LAVINE: I have nothing further. Thank you
20 very much, Mr. Yousry.

21 THE WITNESS: You are welcome.

22 THE COURT: Mr. Wasserman, you had a question.

23 CROSS-EXAMINATION

24 BY MR. WASSERMAN:

25 Q Good afternoon, sir.

1 A Hi, good afternoon.

2 Q Just one question, one and a half, maybe. Da'ah,
3 D-A-H-A-H, which means forget about him?

4 A Right.

5 Q Is that the type of old-fashioned, formal phrase
6 which would not fit in in the context of Q50, which is a
7 conversation between Siddig Ali and Emad Salem?

8 A It is not old-fashioned. Actually, it is
9 commonly used by a lot of Sudanese people and da'ah means
10 forget about them.

11 MR. WASSERMAN: Thank you very much.

12 THE COURT: Cross?

13 MR. KHUZAMI: Briefly, your Honor. May I
14 approach the witness?

15 THE COURT: Yes, you may.

16 CROSS-EXAMINATION

17 BY MR. KHUZAMI:

18 Q Good afternoon, Mr. Yousry.

19 A Good afternoon.

20 Q Let me show you a document which we will mark as
21 Government's Exhibit 999 for identification, and I ask you
22 to take a look at it. Do you recognize that?

23 A Yes, I do.

24 Q It is a two-page document, is that correct?

25 A It is one page in Arabic and the translation of a

1 portion.

2 Q Second page is a translation of a portion of the
3 first page?

4 A Right. Yes, it is.

5 Q Is that a translation that you did?

6 A Yes.

7 Q Is it correct to state that in this translation
8 you translated the word wajahah as symbol, is that right?

9 A Yes, I did.

10 MR. KHUZAMI: No further questions.

11 THE COURT: Ms. Stewart.

12 CROSS-EXAMINATION

13 BY MS. STEWART:

14 Q Mr. Yousry, does that also have handwritten
15 Defendant's Exhibit TT on it?

16 A Yes, it does.

17 MS. STEWART: Thank you.

18 MR. KHUZAMI: No further questions.

19 THE COURT: Thank you very much. You are
20 excused.

21 THE WITNESS: Thank you.

22 (Witness excused)

23 MS. STEWART: Judge, may offer that into
24 evidence, please?

25 MR. KHUZAMI: No objection.

1 THE COURT: TT is received in evidence.

2 (Defendant Abdel Rahman ExhibitTT received in
3 evidence)

4 MR. JACOBS: Your Honor, hopefully as the last
5 witness in the case, we would call Mr. Paul Ginsberg, Miss
6 Amsterdam and I.

7 PAUL GINSBERG,

8 called as a witness by the defense,

9 having been duly sworn, testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. JACOBS:

3 Q Mr. Ginsberg, did there come a time within the
4 last week or so that Miss Amsterdam and I asked you to
5 examine fully tape A, Khallafalla C in evidence?

6 A Yes, sir.

7 Q You had previously testified concerning the two
8 gaps or pauses, in a conversation we have marked as A22, the
9 conversation between Salem and Floyd, correct?

10 A Yes.

11 Q Did you perform such an examination at our
12 request?

13 A Yes, I did.

14 Q Would you describe your examination and your
15 observations, please.

16 A Yes. The tape was to remain here, and so a room
17 was made available and I brought some electronic equipment
18 to the courthouse to enable me to do whatever I could to
19 examine the tape physically, and also to make a noise-free,
20 distortion-free copy that I could take back to my laboratory
21 to do some electronic testing on.

22 So basically the first thing I did was to run a
23 copy onto something called digital audiotape, which is a
24 digital storage form. It is a small cassette about half the
25 size of a standard cassette, and it allows me to record,

1 without any noise, hum, hiss or distortion, exactly what is
2 on the original tape.

3 So the first thing I did was run that, which was
4 45 minutes on each side, into this digital audiotape so that
5 I had something to take back to the lab. While I ran the
6 tape I listened to, of course, the entire tape using
7 low-distortion headphones while looking at a full transcript
8 of the entire tape, which was provided to me by an FBI agent
9 who sat and maintained custody of the original tape. There
10 were a number of areas of concern that I focused on which
11 were delineated on the transcript as a pause and which I
12 believed to be further erasures, and there were in number
13 about 20 throughout the entire tape, both sides. I made my
14 notes as to that, so that I knew where to look on the
15 digital audiotape back in the lab to confirm this.

16 Following this, I went to the end of the tape on
17 side B, where there were approximately 12 minutes of
18 unrecorded virgin tape, or so it appeared, and I wanted to
19 verify that in fact that was virgin tape. So what I did
20 was, using a piece of equipment called an AC vacuum tube
21 voltmeter or sensitive AC meter, I played back that section
22 of tape on the recorder and took a reading on this meter,
23 and the reading turned out to be minus 52 decibels, as a
24 reference. I then opened up a brand new virgin tape that I
25 had just received from the factory, put that on the machine

1 and read that, and that also was minus 52 decibels.

2 So that confirmed that in fact this area of the
3 end of side B had not been recorded. This was virgin tape.
4 The reason I did this was to establish a reference on this
5 very tape using this setup.

6 Q I think you had testified to these decibel levels
7 previously on the Floyd/Salem conversations, is that
8 correct?

9 A Yes, exactly. What I did after that was I went
10 back to both those erased portions and did a measurement to
11 ensure that my test setup was valid here. They turned out,
12 one was approximately minus 47 decibels and the other varied
13 in noise level between minus 42 and minus 48 decibels, both
14 significantly higher than virgin tape noise. So that I
15 again confirmed that these two areas had been previously
16 recorded and they were not virgin.

17 I then went to a number of the other areas within
18 the other conversations that were also suspected erasure
19 points and I measured those levels as well.

20 Q There were about 20 of them, I think you said?

21 A Yes, and I took a representative sample all
22 throughout the first and the second side, and they also
23 turned out to be within this range.

24 Q What range is that?

25 A Minus 42 to minus 48, all significantly higher

1 than virgin tape. You could hear the difference and I could
2 see it on this sensitive meter.

3 Q While you had the tape here in the courthouse,
4 did you perform any other tests?

5 A Yes. After that, I wanted to make sure that I
6 knew whether the tape had for all of these other
7 conversations been recorded on one particular type of
8 machine or a number of machines, and I could make the
9 determination and the distinction between stereo and mono
10 machines pretty easily, and what I did was something
11 called -- I may have described it before -- a magnetic tape
12 developing solution test. Basically what this is is a
13 solution, a liquid in which are minute iron particles in a
14 solution, and what you do is, you dip a recorded tape into
15 that, lay it out flat, and when the liquid evaporates you
16 can see actual little tracks. They look like tiny train
17 tracks on the tape. If it is a stereo tape, you see four of
18 these tracks, a left and a right from one direction and a
19 left and a right for the other direction. In this case it
20 turned out to be a mono tape so that there was just one
21 track in each direction, a total of two. I did that and
22 made sure that the results were consistent with what I had
23 found on just the A22 conversation.

24 Following this, I went back to the lab --

25 Q When you say back to the lab, back to your lab?

1 A Yes, to my lab -- and played the digital
2 audiotape with particular reference to these different areas
3 of concern, and I looked to see whether there were what I
4 expected to see, that is, namely, representative pulses that
5 are impressed upon a tape when you start a recorder in the
6 erase head and the record head. These are, of course,
7 separated by a specific distance that is dictated by the
8 physical cassette.

9 There are three different windows or openings in
10 a cassette through which the heads can come into contact
11 with the tape, and in any direction two of those can be used
12 for heads and the third one is for the drive capstan. So it
13 turns out that the spacing is one inch exactly between the
14 centers of those windows, the tape speed is $1 \frac{7}{8}$ inches per
15 second, and that translates to a time delay from one head to
16 the other at that speed of about .5333 seconds.

17 I played the tape, listened, and fed the output
18 to something called a digital wave form storage
19 oscilloscope, which is an instrument which gives me a
20 pictorial representation of the actual wave or the sounds on
21 the tape, and it allows me to freeze it on the screen and
22 measure to a microsecond or a millionth of a second accuracy
23 between different events. What I did was I examined to see
24 where these typical representative spikes were, and whether
25 in fact I was able to locate these transients between these

1 two head pulses along with a lessening of the previously
2 recorded material, as I had testified before that occurred
3 between these two gaps, these two head gaps.

4 Q What did you find?

5 A I found that in fact that was what the case was.
6 There were prominent spikes which indicated that there was a
7 machine function of a record beginning at each of these
8 areas of concern or erasures.

9 Q What did you find these indicate? What had
10 happened, in your professional opinion?

11 A The tape, after having been recorded, had been
12 erased in different various areas on both sides A and B.

13 Q Do you have to remind rewind it to erase it?

14 A You have to position the tape at a certain point,
15 press, typically, play and record on a machine, and the time
16 elapses in real time as to how long you are erasing, and
17 then you press stop to stop that.

18 Q And you were able to make the determination from
19 both the physical exam you did here in the building and then
20 from your examination at the lab, is that correct?

21 A Yes, indeed.

22 Q These erasures were not then only on the
23 Salem/Floyd conversation but appeared throughout the tape?

24 A Yes. They were pretty were identical in
25 appearance, just varying in length.

1 Q Am I correct, did you learn discern any pattern
2 to these erasures?

3 A No, not at all.

4 Q Could these erasures, in your professional
5 opinion, have been accidental?

6 A Again, in order to initiate and make an erasure,
7 you have to position the tape, press two buttons, typically,
8 on a machine. Machines are set up that way so that you
9 would not be able to press any one button without looking
10 and accidentally erase a tape. They need you to press two
11 buttons to initiate the action. The tape would be moving
12 for the period of time, 10, 15, 20 seconds of the erasure,
13 and then you would have to press stop. During this time, of
14 course, there would be no sound coming from the machine, so
15 that if you thought you were in play, even having pressed
16 two buttons, you would know right away because there would
17 be no sound playing.

18 Q Am I correct, Mr. Ginsberg, that in the
19 Floyd/Salem section as well as the other sections, there was
20 material, I call it underneath but there was material in
21 your professional opinion was erased?

22 A Yes. The erasure happened subsequent to the
23 original recording.

24 MR. JACOBS: I have nothing further.

25 THE COURT: Mr. Fitzgerald.

1 MR. FITZGERALD: Yes, Judge.

2 CROSS-EXAMINATION

3 BY MR. FITZGERALD:

4 Q Good afternoon, sir.

5 A Good afternoon.

6 Q You indicated that you were asked this week to do
7 a complete examination of a tape, tape A, also known as
8 Government's Exhibit 686A. Is that correct?

9 A Yes, sir.

10 Q Is it fair to say that over the last few years
11 that you have worked on this case, you have had access to
12 what are called the source tapes from Emad Salem? Correct?

13 A Yes, sir.

14 Q And you were allowed access to examine those
15 tapes at your own office on a prior occasion to do whatever
16 examinations you wanted, is that correct?

17 A Yes.

18 Q And isn't it a fact, sir, that this particular
19 tape, tape A, Government's Exhibit 686A, was examined by you
20 much earlier?

21 A Yes.

22 Q That was one of the tapes that you performed a
23 critical listening test on, is that correct?

24 A Yes.

25 Q As you have described, a critical listening test

1 consists of listening to the entire tape, is that correct?

2 A Yes.

3 Q So that when you indicated that you were asked to
4 do a complete examination earlier this week, in fact some
5 months ago you had listened to the entire tape, correct?

6 A I believe so, yes, sir.

7 Q And when you listened to the entire tape, you
8 heard those 20 erasures, correct?

9 A Yes, certainly.

10 Q So you knew of those 20 erasures before you did
11 the examination this week, correct?

12 A Yes, sir.

13 Q And in fact you had that tape, 686A, not only did
14 you have access in the courtroom this week but you in fact
15 had it in your possession for some two months, is that
16 correct?

17 A I may have. If it was with a group of tapes -- I
18 believe it was with a group of tapes.

19 Q So that you had access at your own premises to
20 that tape before this week?

21 A Yes, I did.

22 Q And you were aware of those 20 erasures when you
23 did the examination this week and when you testified on a
24 prior occasion as to Khallafalla C?

25 A Yes. This week I was asked to specifically focus

1 on this tape.

2 Q And when you gave your testimony about
3 Khallafalla C being directed at the two erasures in that one
4 conversation, you were aware then that there were 18 other
5 erasures on the tape, were you not?

6 A I know -- at sometime earlier I was aware of it.
7 I don't know if I specifically had focused on it at that
8 time.

9 Q You will agree with me that you didn't mention
10 those 18 erasures during your testimony?

11 A No, sir.

12 MR. JACOBS: Objection, objection.

13 THE COURT: Sustained.

14 THE COURT: Sir, will you also agree with me that
15 you indicated that you made a copy of that tape,
16 Government's Exhibit 686A, this week while it was in the
17 custody of the FBI?

18 A Yes, sir.

19 Q So there was no change of custody while you were
20 present, so you didn't have to execute any form showing that
21 you obtained custody?

22 A There was no envelope or chain of custody form
23 with this tape. The tape was just handed to me just by
24 itself.

25 Q And it remained in the custody of the FBI but you

1 sat there and made a copy?

2 A Yes, and performed some tests.

3 Q So even though there is no paperwork indicating a
4 change of custody, in fact you will agree with me that a
5 copy was made this week?

6 A My copy?

7 Q Yes.

8 A Yes.

9 Q You indicated that you compared the pauses in the
10 tape with virgin tape and the virgin tape has a different
11 decibel level?

12 A Yes.

13 Q And that is because when the tape is made from
14 the manufacturer, the magnetic information is stored
15 randomly and done quite efficiently?

16 A Well, it is stored randomly, yes, sir.

17 Q And if it is recorded and erased, it is not quite
18 as random as before?

19 A Exactly.

20 Q Would you agree, when a record head and erase
21 head go over the tape, if the microphone is off or
22 completely disconnected, you can destroy some of the
23 randomness without recording and changing the noise level?

24 A Yes, it would destroy the noise level.

25 Q So you could simply have a recording where the

1 microphone is on low or becomes loose or disconnected when
2 the record head is activated?

3 A By erasing the tape, any time any recording is
4 made, the first head that passes over the tape is the erase
5 head, so any time regardless of a microphone setting that a
6 recording is made, the tape is erased.

7 Q Let me make it concrete. If we gave you a tape
8 recorder now and you started to make a recording on virgin
9 tape, and if the microphone input became loose at a point
10 during the recording and then you stopped and never went
11 back and touched the tape, you might find an area of pause
12 in the conversation where there is no conversation recorded
13 and where the decibel level is not consistent with virgin
14 tape.

15 A Yes, definitely, because regardless of the
16 connection of the microphone, the tape is passing over the
17 erase and record heads. Definitely.

18 Q Now, sir, will you agree with me -- is there such
19 a thing as an accidental erasure or is that concept
20 nonsense?

21 A I assume that there is such a thing as an
22 accidental erasure.

23 Q In fact, sir, when you listen to tapes during
24 your critical listening phase, don't you have a specially
25 changed machine where you disconnect some of the electronics

1 to prevent accidental erasures and overrecordings?

2 A I try to listen on playback-only machines.

3 Q Because the record and play buttons can be
4 activated and erase accidentally?

5 A Because generally when I am making copies, one
6 machine is the playback machine and one machine is the
7 record machine. So that I am in the business from time to
8 time of recording and I just want to keep track of what I am
9 recording and what I am not. For that reason, of course, I
10 try also to punch out the tape tabs on any cassettes which I
11 don't intend to record on.

12 Q Would the answer be yes, then, that you can
13 accidentally erase?

14 A On -- is it possible? Yes, it's possible.

15 Q Now --

16 A If you do it 20 times, I don't know. I think
17 that would be unlikely.

18 Q Are you an expert in what other people do?

19 MR. JACOBS: Objection.

20 Q Sir --

21 THE COURT: Overruled.

22 A No, I am not an expert in what other people do.

23 Q And you as an expert can even accidentally
24 overrecord, however many times even an expert like you does.

25 A Is it possible? Yes, it is possible.

1 Q And in fact, if you are hitting the record and
2 play buttons, you don't hear anything, so if the person who
3 touched the buttons didn't know there was a recording
4 underneath, they may not know that they were erasing
5 something; isn't that correct?

6 A I am not quite following.

7 THE COURT: Sustained. Move on to something
8 else.

9 Q Just a few more questions, sir. You will agree
10 with me that the erasures appearing on the tape 686A or the
11 gaps or whatever you want to call them are all consistent
12 with being made by the same machine?

13 A I believe so.

14 Q And the gaps that occurred included gaps in the
15 middle of a call involving someone speaking to a travel
16 agency?

17 A I believe so, yes.

18 Q Finally, sir, you have listened to all the CM
19 tapes in this case, correct?

20 A Yes, I have.

21 Q And you have heard no such gaps on those tapes,
22 correct?

23 MR. JACOBS: Asked and answered. Objection.

24 THE COURT: Sustained.

25 MR. FITZGERALD: Nothing further.

1 THE COURT: Mr. Jacobs.

2 MR. JACOBS: I am sorry.

3 REDIRECT EXAMINATION

4 BY MS. AMSTERDAM:

5 Q Mr. Ginsberg, Mr. Fitzgerald asked you if you
6 were an expert and what other people do?

7 A Yes.

8 Q Do you have children, Mr. Ginsberg?

9 A Yes, I do, four of them.

10 Q Have any of your children ever accidentally
11 erased and overrecorded 20 times on one time?

12 MR. FITZGERALD: Objection.

13 A No, not to my knowledge.

14 Q Have you ever seen that happen with anyone of any
15 age?

16 A No, ma'am.

17 MS. AMSTERDAM: Thank you, sir.

18 THE COURT: Mr. Jacobs.

19 REDIRECT EXAMINATION

20 BY MR. JACOBS:

21 Q Mr. Ginsberg, in the question parts that you
22 examined, were there any sections that had an erasure, a
23 second or two of unerased conversations and the balance
24 erased?

25 A Yes, there were.

1 Q About how many times did that occur and what does
2 that indicate to you, in your professional opinion?

3 A I believe there were two instances of that
4 observed, and to me it would be consistent with --

5 MR. FITZGERALD: Objection to competence.

6 THE COURT: Sustained.

7 Q Do you have a professional opinion as to what
8 that indicates where you observe an erasure, a second or two
9 of unerased conversation and a balance erasure?

10 MR. FITZGERALD: Same objection.

11 THE COURT: Same ruling.

12 MR. JACOBS: Then I have nothing further.

13 THE COURT: Anything else?

14 MR. FITZGERALD: One question.

15 RE CROSS-EXAMINATION

16 BY MR. FITZGERALD:

17 Q Sir, you indicated that if there was something in
18 the microphone where the volume was low or disconnected, it
19 could cause what would appear to be nonvirgin tape, correct?

20 A Yes.

21 Q And that can happen more than once, correct? Yes
22 or no, sir.

23 A Yes, but it would not appear as what I saw on the
24 tape. What I saw on that tape was subsequent recording
25 over, not recording with lack of audio signal at different

1 parts.

2 Q You told us earlier that the decibel level goes
3 up even if you do it once, because the erase head passes
4 over it and the randomness to some extent is reduced?

5 A Yes, sir.

6 Q That is consistent with someone having a problem
7 with a microphone, doing a record head and an erase head
8 over once, correct?

9 A Yes, but in addition there is the lowering of the
10 initial .533 seconds of originally recorded material along
11 with the spikes or the transients that are associated with
12 the subsequent recording for that subsequent erasure in each
13 of these sections.

14 Q That can be consistent with a microphone going up
15 and down, correct?

16 A No, sir. What is observed on this tape are areas
17 of subsequent erasure over, at a different time after the
18 original recording.

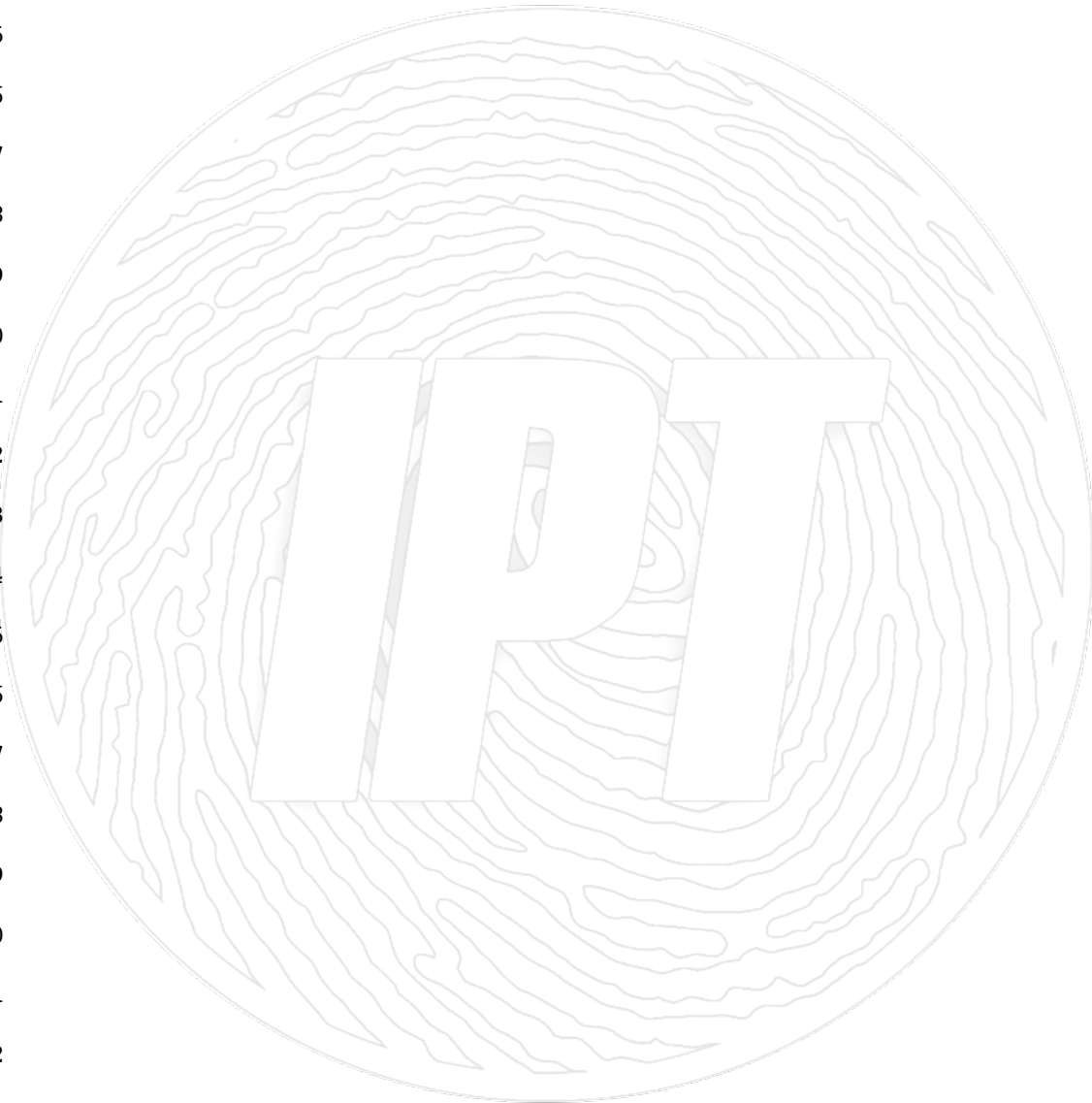
19 Q If there were no subsequent erasure but the
20 microphone were disconnected, it would still have that
21 higher decibel level than it had when it was a virgin tape,
22 correct?

23 A Yes, but without the signatures that I spoke
24 about and without the lowering of the initial audio leading
25 into each of the erased portions. That I leave to whomever

1 is going to listen to determine whether they are present or
2 not.

3 (Continued on next page)

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1 MR. FITZGERALD: Thank you. Nothing further.

2 BY MS. AMSTERDAM:

3 Q Last question, Mr. Ginsberg. Do you have a
4 professional opinion as to whether or not these erasures
5 were caused as a result of a faulty microphone?

6 MR. FITZGERALD: Objection to competence.

7 THE COURT: I think he already answered that.

8 MS. AMSTERDAM: Then I have no further questions.

9 THE COURT: Thank you. You are excused, Mr.
10 Ginsberg.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: Actually, why don't you wait there
13 for a moment before you leave.

14 Ladies and gentlemen, we are going to break now.
15 This concludes the evidence-taking portion of the case. I
16 will simply point out to you that in case you should notice
17 it at a later stage of the case, we are going to substitute
18 two pages in Exhibit 362, the transcript that corresponds to
19 Exhibit 362, two pages that the lawyers have agreed contain
20 a more accurate rendition of that transcript than is present
21 in your book. So that if you made any notes or marks on
22 those pages of Exhibit 362, you will not find them on the
23 replacement pages. Don't be dismayed by that.

24 Actually, your pages in that exhibit will be left
25 behind so that you can compare the new to the old, so that

1 you can see the difference in what you marked. So there
2 will be two additional pages in the exhibit.

3 With that we will break for the day, and have a
4 pleasant weekend. We will not sit tomorrow. We will be
5 conferring with the lawyers, and then on Tuesday we will get
6 to the next stage which will be closing arguments. Again,
7 please don't see, hear or read anything about this case or
8 anything related to this case. See you Tuesday. Good
9 night.

10 (Jury excused)

11 (Witness excused)

12 THE COURT: Mr. Patel, you had another matter you
13 wanted to put on the record.

14 MR. PATEL: Yes, your Honor. Judge, if you
15 recall, on the 24th we were here talking about the rebuttal
16 case and I had requested the government to provide me with
17 Mr. White's date of birth or something other than his
18 extraordinarily common name. The next day we had a
19 conference and they did provide that and put it on the
20 record.

21 We proceeded to put that to use and found some
22 public information about Mr. White which is what essentially
23 I was about to go into, which your Honor precluded. I feel
24 that it was appropriate, an appropriate area of
25 cross-examination. This is a witness who was called

1 exclusively on a credibility area, and I think that under
2 these circumstances I should have been allowed to go into
3 this area of what I would describe as unexplained wealth and
4 some other rather aberrant things in the public record.

5 THE COURT: With all -- go ahead. I will let you
6 finish.

7 MR. PATEL: I will make this brief, your Honor.
8 Specifically, in addition to the waiter who goes to Europe
9 every year, he owns apparently a 14-room house and an
10 adjoining undeveloped lot, apparently bought with cash.
11 There was no mortgage on these properties. Additionally,
12 your Honor, there is someone named Kenneth N. Gray, who
13 lives at, I believe the address is 2228 Bellevue, in Fort
14 Wayne Indiana, who is using his Social Security number. I
15 don't know whether this person who sat here today was
16 formerly known as Kenneth N. Gray or whether that is -- I
17 don't know what that is, but it is extremely unusual that
18 someone who works in a restaurant is spending a lot of
19 money, lives on the upper west side, owns a 14-room house,
20 goes to Europe annually, and someone else is using his
21 Social Security number. I think I should have been
22 permitted to go into that with a witness who is called
23 predominantly to attack the credibility of a witness that we
24 called.

25 THE COURT: Let me start with the first point,

1 which was, quote, to attack the credibility of the witness
2 that you called. He wasn't called to attack the credibility
3 of your witness, he was called to give a different version
4 of events from the version your witness gave. He doesn't
5 know Mr. Haqq, as far as I know, other than that he
6 apparently happens to have ridden in the back seat of his
7 taxicab for some short period of time.

8 MR. PATEL: He could make no identifications of
9 anybody.

10 THE COURT: Of anybody, Mr. Haqq, Mr. Nosair,
11 anybody.

12 He wasn't called to attack Mr. Haqq's
13 credibility, he was called to give a different version of
14 what Mr. Haqq saw. It has very little with Mr. Haqq's,
15 quote, credibility, it has to do with his perception and his
16 ability to observe, not with his truth telling. That is
17 number one.

18 Number two, the areas in which you were inquiring
19 as represented to me at the side bar were not completely
20 what you just said now, but even if they had been, my ruling
21 would have been precisely the same. I don't think that the
22 unexplained wealth that you described goes to his
23 credibility by any stretch of the imagination, number one.
24 As far as somebody in Fort Wayne, Indiana, using his Social
25 Security number, that goes nowhere.

1 MR. PATEL: Perhaps my imagination is slightly
2 more elastic at this point after eight months of trial.

3 THE COURT: You are saying he sold his Social
4 Security number to somebody in Fort Wayne, Indiana, got a
5 huge amount of wealth, bought property and goes to Europe on
6 the strength of that?

7 MR. PATEL: Your Honor, because I was precluded
8 from going into this, I don't know what the explanation is.
9 I don't know whether the David White who testified here
10 formerly called himself Kenneth Gray. I don't know if he is
11 working in a restaurant -- I have no idea where all this
12 cash is coming from. There seems to be a lot of cash
13 floating around with this guy that you don't normally see
14 with waiters. Most people who work in restaurants, no
15 matter how exclusive, don't go to Europe every year and own
16 14-room homes.

17 THE COURT: If I had a dollar for every --

18 MR. PATEL: We made a bet before, Judge.

19 THE COURT: -- for every offspring of a prominent
20 family who works as a carpenter or does other, quote
21 unquote, menial work, I wouldn't have to do the menial work
22 that I do.

23 MR. PATEL: Judge, that is what redirect is for.

24 Judge, just to get the words out, this is all
25 encapsulated in a motion for a mistrial at this late date

1 because I know of no other relief that is possible. But,
2 your Honor, I don't see how this level of inquiry is any
3 different from what the government was able to do in terms
4 of Mr. Shinawy's marriage and Mr. Ginsberg's testimony in
5 the Woody Allen case.

6 THE COURT: I do, but there we are. Do you want
7 to be heard?

8 MR. KHUZAMI: No, your Honor.

9 THE COURT: Thank you very much.
10 I have copies of the charge, unless you don't
11 want them. Why don't we take a short break and they will
12 come out.

13 (Pause)

14 THE COURT: It is 196 terse pages.

15 MR. STAVIS: Double-spaced, your Honor?

16 THE COURT: Double-spaced.

17 MS. AMSTERDAM: You are not going to read it now,
18 are you?

19 THE COURT: No, I am not. There are two
20 unnumbered pages at the beginning that you will get, the
21 jury will not get, but they will hear it. It has to do with
22 thanking them for paying attention for eight months. There
23 is a table of contents. There is at the end a seven-page
24 verdict form that I would also like your comments on.

25 MR. STAVIS: Your Honor, I don't know if your

1 Honor wishes to entertain motions under Rule 29(c) at this
2 time or at a later date. I know we have already had
3 extensive arguments on Rule 29.

4 THE COURT: Do you want to do it at the charging
5 conference?

6 MR. STAVIS: Yes, your Honor.

7 THE COURT: Fine. I would just point out two
8 specific things with regard to the charge that are in the
9 nature of blanks that need to be filled in. One has to do
10 with entrapment. I did not list the names of any defendants
11 who are or will be arguing entrapment. I would expect that
12 anybody who plans on making that argument will tell me and
13 we will then discuss who does and who doesn't get an
14 entrapment charge, and as to to which counts, if it breaks
15 down that way.

16 Second, there is a reference in there to an
17 unspecified exhibit that was the subject of Mr. Salem's
18 testimony. That was the exhibit where he raised his hand
19 when he heard a particular word. This is in discussing
20 tapes as opposed to transcripts, the tapes being the
21 evidence in English language conversations and the
22 transcripts being the evidence in foreign language
23 conversations, except for those instances in which the jury
24 has been asked to listen to particular words. I had thought
25 up until now that Mr. Salem was the only witness with whom

1 that happened, although maybe not, but it certainly happened
2 a number of times today with Mr. Abdel-Hafiz and with
3 Mr. Yousry.

4 Anybody who did that at any other point in the
5 trial, I would expect you to point it out and which exhibit
6 it relates to, because as to those exhibits, it is the jury
7 that decides and it is the tape that is the evidence, and I
8 would like to indicate which exhibits those are and not
9 simply refer to them broad brush. I have made some notes
10 today on which ones they were doing it with, but anybody who
11 did it earlier should be able to give you the other
12 exhibits.

13 MR. JACOBS: Your Honor, I know the one instance
14 with Mr. Salem and the examination concerning CM 32 your
15 Honor gave a specific instruction at that time.

16 THE COURT: That is right, I did.

17 MR. JACOBS: I don't know if that is included
18 here or not. I think we had this colloquy before and I
19 think what your Honor stated was I was free to comment on
20 your Honor's instructions in summation. Your Honor gave the
21 jury instructions on what they could consider and what they
22 couldn't consider and what value the transcript had or
23 didn't have.

24 THE COURT: I don't understand what you are
25 telling me.

1 MR. JACOBS: I don't know what conditions these
2 disputes involve. I know that your Honor instructed the
3 jury with respect to CM 32. I am satisfied with your
4 Honor's instructions at that time.

5 THE COURT: It is the same kind of thing. If you
6 think the message is different, you will tell me on Friday.

7 Also, I would hope that we will be talking about
8 large issues and not commas and semicolons, please, on
9 Friday. I am not going to start changing little nits,
10 particularly when I did not get detailed requests from
11 virtually anybody here.

12 Yes, I got a detailed request from you with
13 regard to the seditious conspiracy charge.

14 MR. STAVIS: Murder in aid of racketeering and
15 evaluation of informant testimony and various others on
16 behalf of all defendants, your Honor.

17 THE COURT: Right. To the extent I didn't follow
18 those, you have your record. I am talking about the
19 substantive counts, the other substantive counts.

20 I will see you Friday morning.

21 (Proceedings adjourned until 9:30 a.m., Friday,
22 September 1, 1995)

23

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25